

REVOCABLE ACCESS AGREEMENT

This Revocable Access Agreement (“Agreement”) is made by the City of Buffalo (the “City”) and Buffalo China, Inc., a New York Corporation with offices at 500 Bailey Avenue, Buffalo, New York (“Buffalo China”) and Buffalo China’s consultant, Conestoga-Rovers & Associates, Inc. (“CRA”), (Buffalo China and CRA are hereinafter sometimes collectively referred to as “Licensee” or “Licensees”).

RECITALS:

WHEREAS, Buffalo China formerly owned and operated a manufacturing facility located at 51 Hayes Place, Buffalo, New York (the “Facility”);

WHEREAS, Buffalo China represents and warrants that it has entered into a Brownfield Site Cleanup Agreement (“BCA”) with the New York State Department of Environmental Conservation (“NYSDEC”) under all appropriate authority;

WHEREAS, the City is purportedly the owner of real property located at 66 Lester Street, 82, 112 and 118 Harrison Street and the City-owned Harrison Street right of way behind 141 Milton, Buffalo, New York 14210 as described or otherwise shown more specifically on Schedule A attached hereto and made a part of this Agreement (the “Property”);

WHEREAS, the BCA requires, among other things, that Buffalo China develop a site investigation work plan (“Work Plan”) which provides for the investigation of the nature and extent of contamination within the boundaries of the Facility and emanating from such Facility;

WHEREAS, Buffalo China, through its professional environmental consultants, CRA, has prepared and NYSDEC has approved the Work Plan;

WHEREAS, the work described in the Work Plan will include various investigative tasks on property in the vicinity of the Facility, including but not limited to the above mentioned City-owned Property which is the subject of this Revocable Access Agreement; and

WHEREAS, the City is willing to have Buffalo China access the Property for the purpose of facilitating certain work described in the Work Plan. City Property shall not be used as a work or Work Plan staging area.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Licensees hereby agree as follows:

- 1) The City hereby grants to Licensees and their respective employees and representatives (collectively “Benefited Parties”), and to representatives of NYSDEC and/or the New York State Department of Health (“NYSDOH”), access to the Property for the purposes of carrying out certain aspects of the Work Plan and overseeing that work. Further, the rights

granted under this Agreement to the Licensees and the Benefited Parties include the right to do any and all things which in the judgment of the Licensees and Benefited Parties, reasonably exercised, and subject in each case to the sole discretion and prior written approval of the City's Director of Real Estate (the "Director") as are necessary to complete the work described in the Work Plan and are otherwise necessary to permit Buffalo China to comply with and manage Buffalo China's obligations arising from all applicable legal authority and to otherwise comply with the lawful directives of NYSDEC and/or NYSDOH. Such discretion and prior written approval from the Director will not be unreasonably withheld, and in any event, Licensees and Benefited Parties will be notified of the Director's decision within 30 days of receipt by the Director of the request for work to be completed. Notwithstanding anything contained herein to the contrary, absent a separate and distinct consent in writing from the Director to Buffalo China and or to CRA, the access rights provided to Licensees hereunder are expressly limited to the collection of up to twelve (12) surface soil samples and to the installation and subsequent access to up to three ground water monitoring wells in areas near and or on the Property as shown and designated on the map attached hereto as Schedule A. The City-owned Property shall not be used as a work and or Work Plan staging and or storage area. Written notice shall be provided to the City by Licensees prior to Licensees accessing the Property. The notice shall contain a full detailed schedule and description of the proposed activities. At least seven (7) days prior to entering upon the Property as herein provided the Licensee shall mail via United States Postal Service five separate copies of the notice. One copy of the notice shall be addressed to each of the following: John Hannon (Director of Real Estate), and Dennis Sutton at the following address: Office of Strategic Planning, 920 City Hall, Buffalo, New York 14202; and Kelly Eisenried, Esq. and Bob Rua at the following address: Buffalo City School District, 713 City Hall, City of Buffalo, New York 14202. A copy shall also be sent to John Heffron, Assistant Corporation Counsel, Room 1110 City Hall, Buffalo, New York 14202. With regard to ground water monitoring well installation access and subsequent access to the Property for ground water sampling from the ground water monitoring wells installed hereunder, all purge and decontamination water shall be temporarily stored in drums on the day of sampling and removed from the Property at the close of each day for appropriate disposal at the expense of Licensees. There shall be no long-term storage of drums, containers and or any other materials on the Property. The City of Buffalo and Buffalo City School District have the right to have representatives on site during any of Licensee's activities. Licensee shall provide the City with full copies of test results obtained with respect to or related to City-owned Property at the same time such information is provided to the NYSDEC.

2) Term of Agreement. This Agreement, and all rights and obligations of the City and Licensee contained in it, shall terminate only after the NYSDEC and/or NYSDOH and/or any other governmental agency or authority having jurisdiction over the environmental related work being performed on the Property under the terms of the BCA, or any other lawful authority, have issued a Certificate of Completion under the BCA or have stated that all necessary work has been completed. Notwithstanding the foregoing, the City shall have the right to unilaterally terminate this Agreement at any time for any and or no cause. The Licensees will be given 30 days notice of the City's intent to terminate this Agreement, except in emergency situations no thirty-day notice shall be required. Upon termination, if so requested by the City, the Licensee shall at the Licensee's sole cost and expense remove the ground water monitoring well or wells as specified and shall restore the Property to its original condition or other condition all as specified by the Director.

3) Duty to Restore. Buffalo China shall immediately repair and restore such portion of the Property as may have been altered by the Licensee in performing work pursuant to this Agreement and the Work Plan to the condition that it existed prior to the performance of the work or to the condition otherwise described in the Work Plan and in all events to the satisfaction of the City. Such repair and restoration will be completed as soon as reasonably possible, weather dependent. Buffalo China shall effect such restoration within a reasonable time after completing the work, but in no event shall the Buffalo China be required to effect such restoration until, in the judgment of Buffalo China, reasonably exercised, doing so will not interfere with the purpose for which the environmental investigation work was performed. Notwithstanding the foregoing, City retains the right to order Buffalo China to restore the Property at any time and Buffalo China agrees to immediately restore the Property and pay for the restoration without regard to cost.

4) Indemnity. Licensees jointly and severally hereby indemnify the City and the Buffalo City School District (collectively, the "Indemnitees") and hold them harmless against and from, any and all costs, claims, demands, suits, proceedings, damages, liabilities, costs and expenses, including but not limited to reasonable attorneys' fees and disbursements, asserted against or incurred by Indemnitees for damages or any matters occurring at and or near the Property resulting in any manner whatsoever from activities undertaken pursuant to or in any way related to the BCA, the Work Plan and or this Agreement by anyone including but not limited to Licensees or the Benefited Parties. Damages shall also include any consequential, incidental or punitive damages or costs of any nature or kind. This indemnity does also include but is not limited to any claims based on actions taken or omissions on the part of NYSDEC, NYSDOH and/or the respective employees, agents or other representatives of those entities.

5) Applicable Law. This Agreement shall be governed by the law of the State of New York.

6) Integrated Agreement; Assignment. This Agreement constitutes the entire agreement between the parties with respect to the particular subject matter of this Agreement and supersedes all prior negotiations and agreements regarding that subject matter, whether written or oral. This Agreement may not be altered or amended except by an instrument in writing executed by all parties to this Agreement. This Agreement will not be effective as to the successors or other assigns of either Licensee without the prior written consent to assignment by all other parties hereto, any such assignment without such prior written consent shall be void and of no affect with respect to the other parties.

7) No Admissions. Nothing contained in this Agreement shall constitute or be construed as an admission by a party hereto regarding any release of hazardous or other substances onto, beneath or from the Property. The parties to the Agreement reserve all claims, rights and defenses concerning this subject.

8) No Easement Interest. Buffalo China and CRA shall acquire no interest or estate or easement interest in the City-owned Property under this Agreement. This Agreement only provides for the right to enter the Property for the limited purposes of conducting the work set forth herein.

9) Successors and/or Assigns. This Agreement is binding upon the successors and permitted assigns of Buffalo China and or CRA.

10) Insurance. CRA, prior to entering upon the Property, will provide a Certificate of General Liability Insurance evidencing general liability insurance coverage in the amount of One Million Dollars (\$1,000,000.00) Bodily Injury and Three Hundred Thousand Dollars (\$300,000.00) Property Damage per occurrence, and a certificate evidencing excess liability coverage in an amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence, each naming the City of Buffalo and the Buffalo City School District as additional insureds and insuring CRA's obligations of indemnity pursuant to paragraph 4 of this Agreement, and CRA shall maintain and evidence such coverage throughout the term of this Agreement. The parties hereto acknowledge that CRA has provided a Certificate of General Liability Insurance and a Certificate of Excess Liability Coverage, copies of which are attached hereto as Schedule B. CRA shall also provide evidence of the required workers compensation insurance as well as at least One Million Dollars (\$1,000,000.00) in automobile insurance.

11) Counterparts. That this Agreement may be executed in counterparts, each of which shall comprise one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the last date written below:

BUFFALO CHINA, INC.

By: Catherine H. Suttmeier
Position: Vice President and Secretary
Dated: July 2, 2008

STATE OF New York)
 :SS.
COUNTY OF Madison)

On the 2nd day of July, in the year 2008, before me, the undersigned, personally appeared Catherine H. Suttmeier, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Sandra C Britton

SANDRA C. BRITTON
NOTARY PUBLIC, State of New York
Appointed in Madison County
Commission Expires August 31, 2009

Conestoga-Rovers & Associates, Inc.

By: J. C. Malinski

Position: VICE-PRESIDENT

Dated: 07/21/08

STATE OF)
:ss.
COUNTY OF)

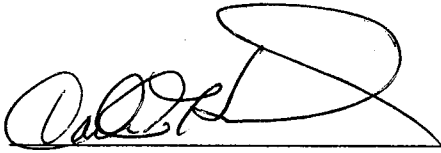
On the 21st day of July, in the year 2008, before me, the undersigned, personally appeared Kenneth C. Malinski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Christine S. Cramer

CHRISTINE S. CRAMER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CR6127382
Qualified in Erie County
My Commission Expires May 23, 2009

The City of Buffalo

By: 

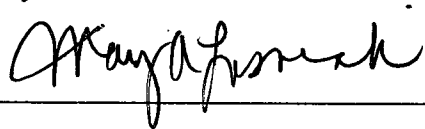
Position: Asst Director of Admin & Finance

Dated: 7/22/08

STATE OF)
):ss.
COUNTY OF)


On the 22 day of JULY, in the year 2008, before me, the undersigned, personally appeared CARLA A. KOSMICKI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public



MARY A. LESNIAK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires May 19, 2010

APPROVED
AS TO FORM ONLY


Corporation Counsel
By John Jeffrey 6-27-8

The Buffalo City School District joins in and executes this Agreement for the sole and limited purpose of accepting the indemnities and for purposes of accepting and effectuating the additional insured status of the Buffalo City School District under the Licensee's insurance coverage.

Buffalo City School District

By James M. Kane
JAMES M. KANE, DISTRICT CLERK

STATE OF)
)
:SS.
COUNTY OF)

On the 5 day of AUGUST, in the year 2008, before me, the undersigned, personally appeared JAMES M. KANE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

John Vincent Heffron

JOHN VINCENT HEFFRON
Notary Public, State of New York
No. 02HE4860576
Qualified in Erie County
My Commission Expires May 5, 2010

~~APPROVED
AS TO FORM ONLY~~

~~Corporation Counsel~~

By _____

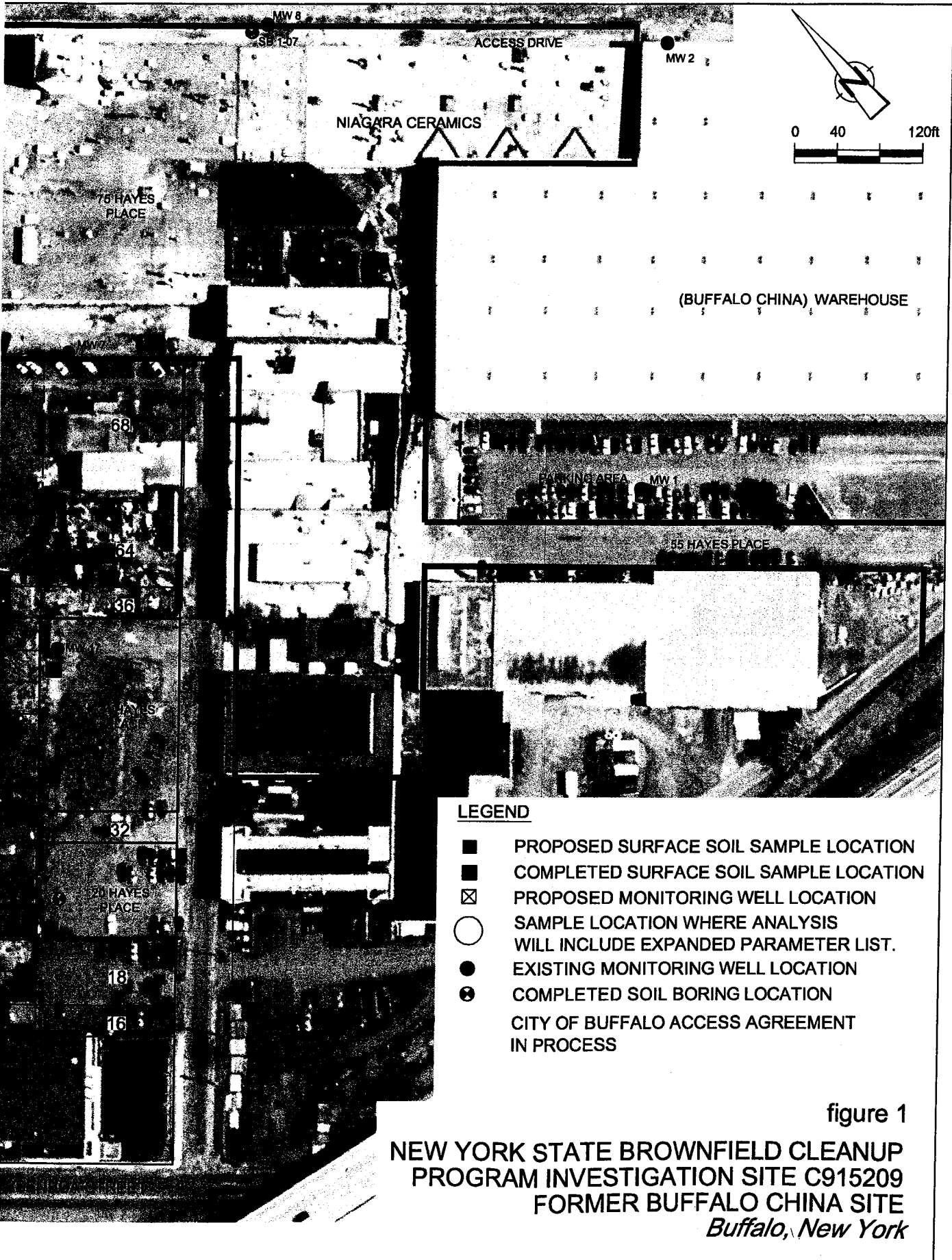
APPROVED
AS TO FORM ONLY

Assd
Corporation Counsel

By John Heffron



NOTE: MW-11 IS TO BE INSTALLED IN THE CITY OF BUFFALO RIGHT OF WAY.



LEGEND

- PROPOSED SURFACE SOIL SAMPLE LOCATION
- COMPLETED SURFACE SOIL SAMPLE LOCATION
- ⊗ PROPOSED MONITORING WELL LOCATION
- SAMPLE LOCATION WHERE ANALYSIS WILL INCLUDE EXPANDED PARAMETER LIST.
- EXISTING MONITORING WELL LOCATION
- ⊙ COMPLETED SOIL BORING LOCATION
- CITY OF BUFFALO ACCESS AGREEMENT IN PROCESS

figure 1

NEW YORK STATE BROWNFIELD CLEANUP
PROGRAM INVESTIGATION SITE C915209
FORMER BUFFALO CHINA SITE
Buffalo, New York