
**DECLARATION OF COVENANTS, RESTRICTIONS AND
ENVIRONMENTAL EASEMENT**

This Declaration of Covenants, Restrictions and Environmental Easement ("DCR & EE") is made this 18th day of December, 2015, by and between the County of Fulton, having an address of 223 West Main Street, County Office Building Room 205, Johnstown, New York 12095 ("Grantor"), and the People of the State of New York, acting through their Commissioner of the New York State Department of Environmental Conservation ("NYSDEC") with its Central Office, located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of a 2.17± acre parcel which is part of a 99.60 ± acre parcel located in Hulbert Road, Town of Johnstown, approximately 1.5 miles northwest of the City of Johnstown and 1.75 miles west of the City of Gloversville, County of Fulton, State of New York, more particularly described on Exhibit A and Exhibit "B" attached hereto and made a part hereof together with any buildings and improvements thereon and appurtenances thereto (the "Property"); and

WHEREAS, the Property is part of the Johnstown Landfill Superfund Site ("Site") (NYSDEC Site No.: 5-18-002), the location of a solid waste landfill that the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on June 10, 1986; and

WHEREAS, on June 5, 1987, the State of New York filed suit in Federal Court against the City of Johnstown, the Gloversville/Johnstown Joint Sewer Board, Bruce Miller Trucking Company, and approximately a dozen waste generators to remediate the Site. State of New York v. City of Johnstown, et al., Civil Action No. CV-87-636 (N.D.N.Y.).

WHEREAS, in a Record of Decision Document dated March 31, 1993 (ROD), the Regional Administrator of EPA Region II selected, and the NYSDEC concurred with, a remedial action for the Site, which was chosen in accordance with CERCLA and the New York State Environmental Conservation Law ("ECL"), and provided, in part, for the following actions:

- (i) Excavation of the LaGrange Gravel Pit sediments and placing the excavated materials on the existing landfill;
- (ii) Re-grading and compacting the landfill mound to provide a stable foundation for placement of the various layers of the cap and to promote rapid runoff;
- (iii) Construction of a multi-layer closure cap over the landfill mound and excavated sediments as per New York State 6NYCRR Part 360 regulations;

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- (iv) Expansion of the Johnstown City water-supply system to provide potable water to all private water supplies potentially impacted by the landfill. Providing city water will require the extension of the City's water lines and construction of a booster pump station;
 - (v) Erection of approximately 6,800 feet of conventional chain-link fencing surrounding the entire landfill mound, with placement of appropriate warning signs;
 - (vi) Performance of air monitoring prior to, during, and following construction at the Site to ensure that air emissions resulting from the cap construction meet applicable or relevant and appropriate requirements;
 - (vii) Performance of air dispersion modeling to estimate ambient air concentrations of contaminants;
 - (viii) Imposition of property deed restrictions by including measures to prevent the installation of drinking water wells at the Site, and restrict activities which could affect the integrity of the cap;
 - (ix) Performance of a maintenance and sampling program upon completion of closure activities;
 - (x) Development and implementation of a dust control plan; and
 - (xi) In accordance with an EPA and NYSDEC-approved Site Management Plan (SMP). A copy of the SMP must be obtained by any party with an interest in the property. The SMP may be obtained from the New York State Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at derweb@dec.ny.gov].

WHEREAS, the City of Johnstown retained Malcolm Pirnie to conduct the remedial design of the selected remedy, obtain bids for the landfill closure, and provide construction administration and resident engineering. The contract for the construction of the City of Johnstown's landfill closure was competitively bid and awarded to Delaney Construction Corporation of Mayfield, New York on October 17, 1995.

WHEREAS, during December 1995 and January 1996, Delaney Construction set up the support facilities, installed the perimeter site access controls, determined the limits of the waste, completed the majority of waste relocation and placed the intermediate cover where required. Delaney Construction was forced to suspend the waste relocation activities in January 1996 due to inclement weather conditions. When the project resumed in May 1996, the remaining portion of the waste relocation activities were completed and the separation fabric, gas vent material, 60-mil geo-membrane, barrier protection material, and topsoil were placed and the site was seeded. Construction was completed in November 1996.

WHEREAS, a contract for the construction of the City of Johnstown's waterline extension was competitively bid and awarded to Syracuse Constructors of Syracuse, New York on June 26, 1996. The construction of the waterline began on September 30, 1996 and was completed on May 21, 1997.

WHEREAS, the City of Johnstown's contractor performs periodic operation, maintenance, and monitoring activities at the Site; and

WHEREAS, the parties hereto have agreed that Grantor shall grant a permanent easement and covenant a) to provide a right of access over the Property to the Grantee for purposes of

implementing, facilitating and monitoring the response action; and b) to impose on the Property use restrictions that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, for ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to this DCR & EE, and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions, covenants, right of access and Environmental Easement, all of which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination and to impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions : The following restrictions apply to the use of the Property, run with the land and are binding on the Grantor and its successors in title and assigns:
 - (i) unless otherwise approved in writing by NYSDEC and EPA, or their successor agencies, the Site Property shall not be used in any manner that would interfere with or adversely affect the implementation, integrity, or effectiveness of the remedial measures performed at the Site, including, but not limited to, the installation of on-Site drinking water wells or any digging, excavation, extraction of materials, construction, or other activities that would disturb the monitoring wells and the cap placed at the Site.
 - (ii) The Site Property may not be used for a higher level of use, such as residential use. However, the Site Property may be used for commercial or industrial use, as long as such use does not interfere with or adversely affect the implementation, integrity, or effectiveness of the remedial measures performed at the Site.
4. Modification or termination/extinguishment of covenants, restrictions, and easement: The restrictions and easement specified in the preceding paragraph of this instrument may only be modified, terminated or extinguished, in whole or in part, in writing, by the Grantee, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by NYSDEC and EPA for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument shall be made in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.
5. Right of access: Grantor hereby convey to Grantee and EPA a right of access to the Property for the purpose of complying with the remedy at all reasonable times, for the following purposes,

which shall run with the land and be binding on Grantor, its successors and/or assigns, and on any tenants or any other parties having an interest in and/or rights to the Property:

- a) Modifying the implemented response actions, including but not limited to the collection of samples and inspections;
 - b) Verifying any data or information relating to the Site;
 - c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - d) Conducting investigations under CERCLA or the ECL relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, and/or soils; and
 - e) Implementing additional or new response actions under CERCLA or the ECL.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Site Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.
7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
8. State authority: Nothing herein shall constitute a waiver of any rights the State may have pursuant to the ECL, regulations and/or relevant provisions of statutory or common law.
9. No public access and use: No right of access or use by the general public to any portion of the Site Property is conveyed by this instrument.
10. Public notice: Grantor, on behalf of itself, its successors and assigns, agrees to include in each instrument conveying any interest in any portion of the Site Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED _____, 2015, RECORDED IN THE FULTON COUNTY CLERK'S OFFICE ON _____, 2015, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

- 11. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.
- 12. Damages: Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
- 13. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
- 14. Covenants: Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein and that the Property is free and clear of encumbrances.
- 15. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

The County of Fulton
223 West Main Street
County Office Building,
Johnstown, NY 12095

To Grantee:

Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-5500

NYS Department of Environmental Conservation
Division of Environmental Remediation
Site Control
625 Broadway
Albany, New York 12233

A copy of each such communication shall also be sent to EPA in the same manner as to Grantor or Grantee, and addressed to the following two addressees:

U.S. Environmental Protection Agency
Emergency & Remedial Response Division
Central New York Remediation Section
Attention: Johnstown City Landfill Superfund Site Remedial Project Manager
290 Broadway, 20th Floor
New York, New York 10007-1866

U.S. Environmental Protection Agency
Office of Regional Counsel
Attention: Johnstown City Landfill Superfund Site Attorney
290 Broadway, 17th Floor
New York, New York 10007-1866

16. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall, with respect to the Declaration of Covenants, Restrictions, and Environmental Easement, be governed by the laws of the State of New York, and with respect to other matters, shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of New York.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to affect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) Entire agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein, provided that nothing in this instrument shall be deemed to alter or modify the Consent Order and ROD.
- e) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.
- f) Joint obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.
- g) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in

place thereof, shall mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

j) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA or NYSDEC.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Executed this 8/26 day of 2015.

GRANTOR: The County of Fulton

By: Ralph Cetera

Title: Chairman

APPROVED AS TO FORM
Jason A. Brott
JASON A. BROTT
FULTON COUNTY ATTORNEY

Grantor's Acknowledgment

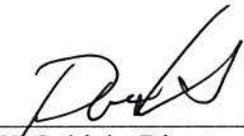
STATE OF NEW YORK)
) ss:
COUNTY OF Fulton)

On the 26 day of August, in the year 2015, before me, the undersigned, personally appeared Ralph Russo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Chairman of the Fulton Co. Board of Zoning City of Johnstown, and that by his signature on the instrument, the Grantor Fulton Co., upon behalf of which the individual acted, executed the instrument.

Vicki L. Lansburg
Notary Public - State of New York

VICKI L. LANSBURG, NOTARY PUBLIC
N.Y. STATE, FULTON CO.
#01LA6199329
MY COMM. EXPIRES ON JANUARY 12, 2017

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.

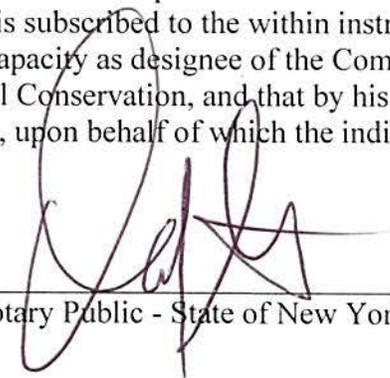
By: 
Robert W. Schick, Director
Division of Environmental Remediation

Date: December 18, 2015

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 18th day of December, in the year 2015, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2016

Attachments: Exhibit A: **Description of Property**

Exhibit B: **Survey**

EXHIBIT A
Johnstown City Landfill Superfund Site
Description of Easement Parcel "B"
Portion of Lands of
County of Fulton
Containing 2.17± Acres

All that certain parcel of land situate in the Town of Johnstown, County of Fulton, State of New York being a portion of the lands of County of Fulton as acquired by Eminent Domain (reference is made to Supreme Court Index #73317) and being more particularly bounded and described as follows:

Beginning at an existing concrete monument located at the common corner of the lands of The City of Johnstown (Tax Map I.D. No. 148.-1-59) as described in Book 453 of Deeds at Page 487, other lands of The City of Johnstown (Tax Map I.D. No. 148.-1-27.1) as acquired by Eminent Domain (reference is made to Supreme Court Index#77100), the lands of Phillips M. Ferry, Jr. and Susan E. Ferry (Tax Map I.D. No. 148.-1-51.1) as described in Book 890 of Deeds at Page 65 and the lands of County of Fulton (Tax Map I.D. No. 148.-1-57.2) acquired by Eminent Domain (reference is made to Supreme Court Index#73317) and runs thence from said Point of Beginning along the division line between said lands of Ferry on the Southeast and said lands of County of Fulton on the Northwest South 29 degrees 19 minutes 14 seconds West a distance of 200.00 feet to a point; thence through said lands of County of Fulton the following two courses: 1] North 57 degrees 34 minutes 02 seconds West a distance of 786.56 feet to a point and 2] North 20 degrees 51 minutes 29 seconds East a distance of 40.00 feet to its point of intersection with the division line between the lands of The City of Johnstown as described in Book 453 of Deeds at Page 487 on the North and said lands of County of Fulton on the South; thence along said division line South 69 degrees 08 minutes 31 seconds East a distance of 800.00 feet to the Point of Beginning, containing 2.17± acres.

County: Fulton

EPA ID No.
NYSDEC Site No.: 5-18-002

Order No.: CV-87-636 (N.D.N.Y.),
June 5, 1987

EXHIBIT B
Survey
Johnstown Landfill Superfund Site

(See attached as-built survey of Property depicting restricted-use areas)

