

10 February 2014

Mayor Tobin:

I am writing to ask that you formally declare 15 March 2014 "St. Baldrick's Day" in the city of Cortland. The St. Baldrick's foundation raises money to fund research for treatments relating childhood cancer. I have scheduled a head-shaving fundraiser on this day at the red Jug Pub to raise money for this charity. An official declaration would raise awareness of the cause and event. Please consider declaring 15 March 2014 St. Baldrick's Day citywide as a means to raise awareness and publicity of the St. Baldrick's Foundation.

Thank you,

A handwritten signature in black ink, appearing to read "Tom Terwilliger", with a stylized flourish at the end.

Tom Terwilliger



Press Release

FOR IMMEDIATE RELEASE

Media Contact:
Tom Terwilliger
607-758-3165
tom@mandobooks.com

Tom Terwilliger Proclaims March 15th as St. Baldrick's Foundation Day to Honor Children with Cancer

Cortland, NY (10 February, 2014) – Tom Terwilliger joined the effort to help raise awareness about childhood cancer by proclaiming 15 March, 2014 as St. Baldrick's Foundation Day in Cortland NY.

The St. Baldrick's Foundation is a volunteer-driven charity committed to funding the most promising research to find cures for childhood cancers and give survivors long and healthy lives. St. Baldrick's hosts signature head-shaving events where "shavees" collect pledges to shave their heads in solidarity with kids with cancer and raise money for life-saving research.

In recognition of 15 March's designation as St. Baldrick's Foundation Day, the following events are being offered:

- St. Baldrick's Day Head Shaving Fundraiser- 5:00pm, Red Jug Pub, 31 Central Ave.

For additional resources on childhood cancer or to learn more about the St. Baldrick's Foundation, visit StBaldricks.org.

Note to media: If you are interested in being a part of this story, please let us know so we can connect you with local childhood cancer survivors, Honored Families, researchers and volunteers.

About the St. Baldrick's Foundation

The St. Baldrick's Foundation funds more in childhood cancer research grants than any organization except the U.S. government. St. Baldrick's funds are granted to some of the most brilliant childhood cancer research experts in the world and to younger professionals who will be the experts of tomorrow. Funds awarded also enable hundreds of local institutions to participate in national pediatric cancer clinical trials, a child's best hope for a cure. Since the Foundation's first grants as an independent charity in 2005, St. Baldrick's has funded more than \$101 million in childhood cancer research. For more information about the St. Baldrick's Foundation please call 1.888.899.BALD or visit www.StBaldricks.org.

-Tom Terwilliger

TO: Mayor Tobin and Members of the Common Council

FROM: Friends of Greg Partigianoni Committee

RE: Baseball Field Naming Project

Date: January 30, 2014

This memorandum and included information is to provide the Common Council with background information on the naming of the baseball field (Greg's Field) after Greg Partigianoni and the renaming of all of the athletic fields at Beaudry Park, as the Ray Reilly Athletic Complex. At the Common Council meeting on February 18, 2014, we would like to make a short presentation and ask the Council to adopt a resolution authorizing the renaming of the athletic fields and especially the baseball field. The Friends of Greg Partigianoni would like to donate \$35,000 that would be earmarked for upgrades to the baseball field and provide proper signage, etc. to recognize both Mr. Ray Reilly and Mr. Greg Partigianoni.

Our proposal was presented to the CYB Advisory Board on January 14, 2014 and received the board's full support.

Included with the packet is the following information regarding the project:

- I. Proposal for the naming/renaming of the athletic fields at Beaudry Park**
- II. List of the teams and organizations that use the baseball field**
- III. List of possible improvements and updates that the field needs and the names of the coaches/parents/administrators who compiled the list**
- IV. Draft of a short power point presentation which will be addressed at the Common Council Meeting on February 18, 2014.**

As you review the information please feel free to contact John Tobin (607-591-5003 or jtobin@cortlandschools.org) with any questions relating to the project. Approval of this project would enable us to honor Greg Partigianoni and re-honor Ray Reilly while we make needed improvements to the field and enhance our city's reputation in the sports community of Central New York. We hope you will recognize the worthiness of this project and honor our request.

Greg's Field Renaming Proposal

The Friends of Greg Partigianoni Committee would like to rename the baseball field at Beaudry Park after Greg Partigianoni, a Cortland native who devoted his life to baseball and the community. Greg passed away in 1990 after battling leukemia. He was a Cortland High School and SUNY Binghamton baseball player who later coached at Binghamton, Cortland State, and Cornell. Greg was the first coach of the Cortland Apples in the Northeast Collegiate Baseball League and led them to the league championship in 1982. He also was a sporting goods salesman who worked with many of the players and coaches in the area to promote baseball. The Partigianoni Memorial Baseball Tournament, sponsored by Cortland High School, is held every in April at the field. There is currently a drinking fountain with a plaque honoring Greg at the field.

The renaming of the field at this time could coincide with the reentry of Cortland into the collegiate baseball scene this summer. The Cortland Crush is one of the new entries into the New York Collegiate Baseball League and will begin play in June. The name Crush is in honor of Greg, whose nickname was "Crusher" when he played and coached.

The field is currently named Reilly Field after former Cortland DPW head Ray Reilly, whose department cleared the land for the Beaudry Park and baseball and softball fields. He was also active as a baseball coach with the American Legion team at the time and a great supporter of all sports for the youth of Cortland. Although the field is named after Mr. Reilly, it is usually listed simply as Beaudry Park on schedules, etc. In order to honor to Mr. Reilly and his efforts, we would like to establish the Reilly Athletic Complex (2 softball fields, 1 baseball field, and 4soccer fields). The baseball field would be named Greg's Field as not to confuse it with Partigianoni Softball Field at Dexter Park. We would propose to put a new sign at the Scammel Street entrance that would list:

**Beaudry Park
Reilly Athletic Complex
Greg's Field**

Small signs could also be placed on the outfield fence at the entrance to the baseball field designating it as Greg's Field. We would also be open providing a plaque or some other way of honoring Ray Reilly.

The Friends of Greg would donate a substantial amount of money to this endeavor that would be designated for use to improve the baseball field as a lasting memory of our friend, Greg.

Teams using the baseball field at Beaudry Park:

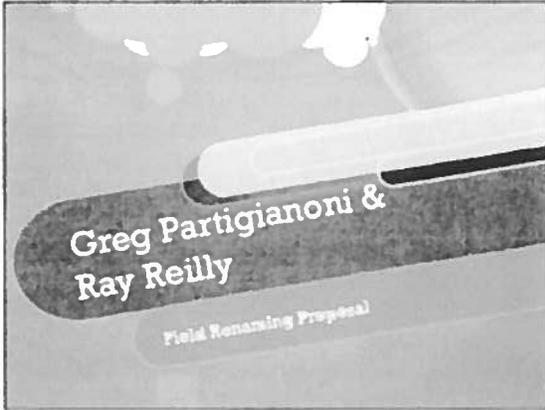
Cortland High School (Varsity, JV, and Modified)
CYB Babe Ruth (2 or 3 teams)
Cortland 14U Teeners
Cortland 16U Teeners
Cortland Connie Mack 18U
Cortland Crush (NYCBL)
Cortland HS Fall Ball (2 - 14U teams)
Cortland Fall Ball 18U
Cortland St. Club team

With all the use that the field gets, there are some improvements that would be beneficial to the field and for the safety of those using it. These are some of the improvements we think the field could use:

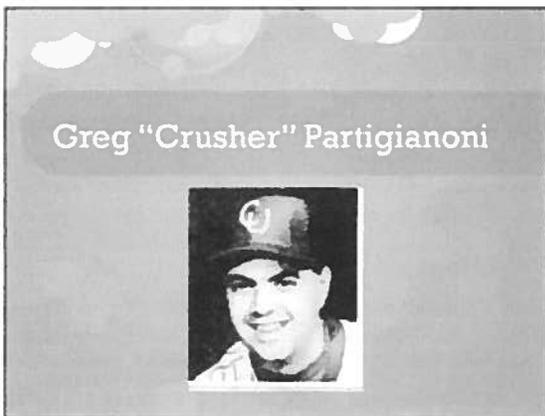
1. Leveling of the field – there are areas of the field that should be leveled or terraced to prevent injuries to those using the field.
2. Fencing – there are some areas of the outfield fence that need repair and a short fence that would enclose the field would keep bikes and dog walkers leaving their droppings off the field, as well as giving it a finished product look.
3. Dugouts – the current dugouts are very small. The players have difficulty staying inside and keeping their equipment inside. Also, they must exit the dugout to go to the on-deck area, which could be dangerous while the ball is in play. The dugouts are basically a covered chain-link fenced in area which could be dangerous during inclement weather.
4. Press box/concessions/bathrooms – the press box could be used during games by scorekeepers and announcers and a concession would obviously be a big draw that could help us finance other improvements to our baseball programs. With the new building at Beaudry Park, bathrooms are not a necessity, but ones closer to the field would be nice for players and spectators.
5. Water access – having Greg's fountain available during the High School and summer seasons would be nice, and an outlet to water the field when necessary could add to keeping the field in good shape for all seasons.

These possible improvements have been discussed by:

John McNerney
John Tobin (CYB Baseball Supt.)
Ben Albright, Yale Hughes, and Brandon Galutz (CHS Baseball coaches)
Bill McConnell (Cortland Crush)
Coaches/parents of our summer league teams.



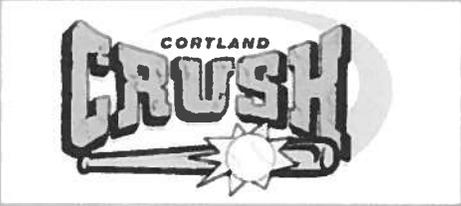




History of Greg

- Cortland native who devoted his life to baseball and the community.
- CHS and SUNY Binghamton baseball player. Who later coached at Binghamton, Cortland State, and Cornell.
- First coach of the Cortland Apples, in the Northeast Collegiate Baseball League. Led them to a championship in 1982.

The Crush



The Crush

- The Cortland Crush is one of the new entries into the New York Collegiate Baseball League that will begin play in June, here in Cortland.
- The name Crush is in honor of Greg, whose nickname was "Cracker" when he played and coached.

Reilly Field

- The field is currently named Reilly Field after former Carlisle BFW head Ray Reilly, whose department cleared the land for Beaudry Park and the baseball & softball fields.

Proposal

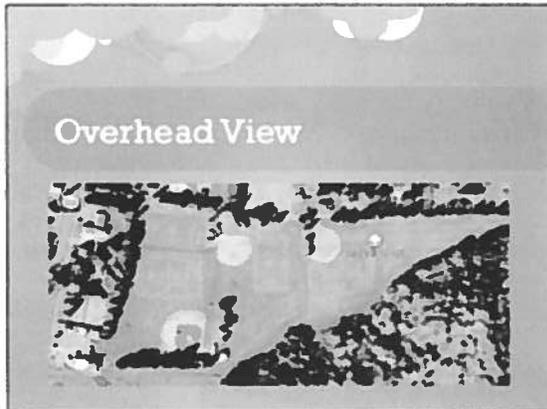
- In order to honor Mr. Reilly and his efforts, we would like to establish the Reilly Athletic Complex (1 baseball field, 2 softball fields, 4 soccer fields).
- The baseball field would be named Greg's Field, in honor of Greg Partigiani located at Reilly Athletic Complex.
- We would propose to put a new sign at the Swannell Street entrance, and along the path to the fields.

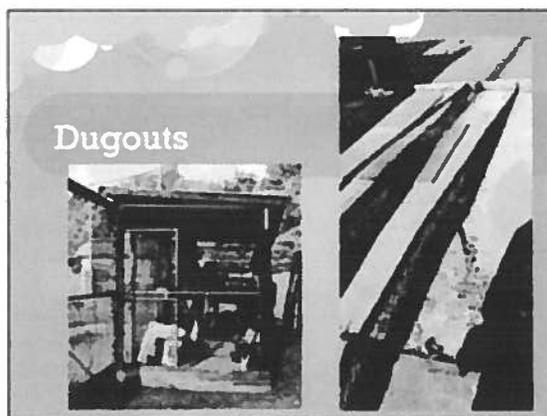
New Sign

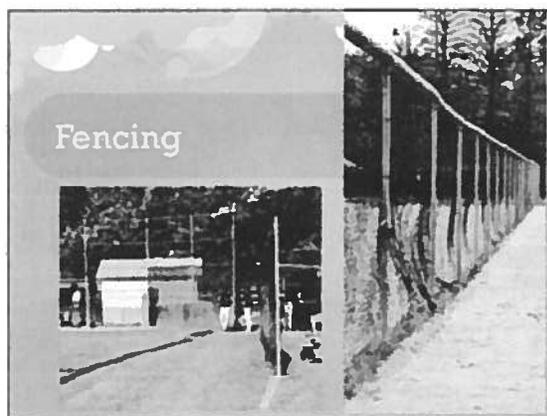


BEAUDRY PARK
REILLY ATHLETIC COMPLEX
GREG'S FIELD

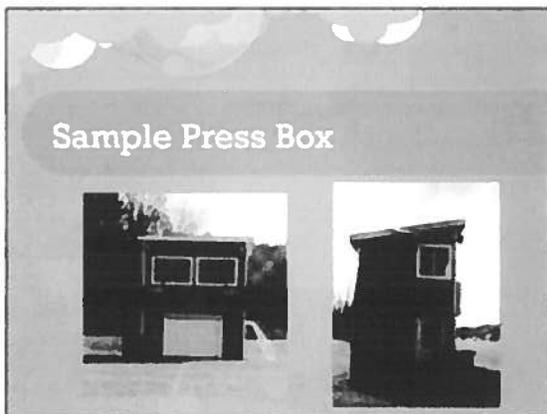
NO ALCOHOLIC BEVERAGES
PARK HOURS 6:00 A.M. THRU 10:00 P.M.

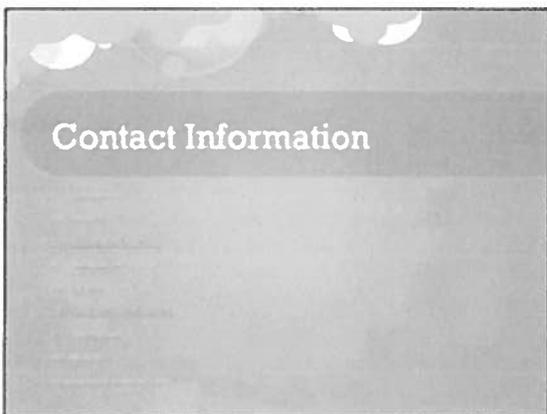


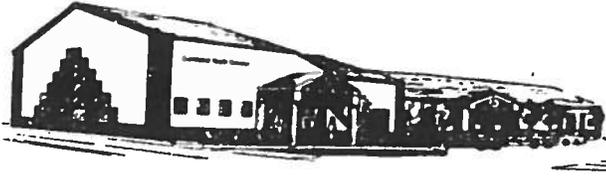












CORTLAND YOUTH BUREAU

35 Port Watson Street • Cortland, NY 13045 • (607) 753-3021 • Fax: (607) 753-3023 • www.cortland.org

City of Cortland Youth Bureau

POLICY NAME: Naming/Renaming of Parks and/or Recreational Facilities

Date Reviewed: January 3, 2014

**Contact Person: John McNerney
Position: Director**

Introduction

The naming or renaming of parks and recreational facilities is a complex and sometimes emotionally evocative since assigning a name is a powerful and permanent identity for a public place and/or facility. The naming and renaming of parks and/or recreational facilities often requires significant resources in terms of changing names on signs, maps, and literature. In addition, excessive and constant name changing can be the source of confusion to the public. The purpose of this policy is to provide guidance to those that have an interest in the naming and or renaming of the City's parks and/or recreational facilities.

Policy Statement

It is the policy of Cortland Parks and Recreation to reserve the name or renaming of parks and/or recreational facilities for circumstances that will best serve the interests of the city and ensure a worthy and enduring legacy for the City's park and recreation system.

To this end Cortland Parks and Recreation supports consideration of naming requests within the following broad categories.

Historic Events, People, and Places

The history of a major event, place or person may play an important role in the naming or renaming of a park as communities often wish to preserve and honor the history of a city, its founders, other historical figures, its Native American heritage, local landmarks and prominent geographical locations, and natural and geological features through the naming of parks.



Outstanding Individuals

The City has benefited, through its evolution, from the contributions made by many outstanding individuals. This category is designed to acknowledge the sustained contribution that has been made by such individuals to the City and the development and management of the City's park and recreation system.

Major Gifts

Over the years, the City and Cortland Parks and Recreation have benefited from the generosity of some of its residents, businesses, and foundations. On occasion, the significance of such donations may warrant consideration being given to requests from either the donor or another party to acknowledge such a gift by naming.

Definitions

Naming: the permanent name assigned by City Council via an ordinance to a given park or recreational facility.

Parks: all traditionally designed parks, gardens, natural open spaces, and specialized parks under the stewardship of Cortland Youth Bureau.

Recreational facilities: major structures such as community centers, swimming pools, pavilions, tennis courts, sports fields, and fountains located within lands under the stewardship of Cortland Youth Bureau.

Donations: a donation of property, goods or cash generally with no expectation of return. If the gift is contingent upon a special request, it is made subject to "condition."

Guiding Principles

General Principles

In considering proposals for the naming or renaming of a park and/or recreational facility, the following general principles will be taken into account either collectively or individually.

When naming a new park and/or recreational facility, the proposed name will:

- Engender a strong positive image
- Be appropriate having regard to the parks/recreational facility's location and/or history
- Have historical, cultural or social significance for future generations
- Commemorate places, people or events that are of continued importance to the city, region, state, and/or nation
- Have symbolic value that transcends its ordinary meaning or use and enhances the character and identity of the park and/or recreational facility
- Have a broad public support
- Shall not result in the undue commercialization of the park and/or recreational facility if it accompanies a corporate gift

Renaming a park and/or recreational facility

Proposals to rename parks and/or recreational facilities whether for a major gift or community request are not encouraged. Likewise, names that have become widely accepted by the community will not be abandoned unless there are compelling reasons and strong public sentiment from the broader community for doing so. Historical or commonly used place names will be preserved wherever possible.

Naming/renaming parks and/or recreational facilities for Outstanding Individuals

Naming or renaming a park and/or recreational facility for an outstanding individual is encouraged only for those who have been deceased for at least three years (this provision can be waived at Council's directive) and where that person's significance and good reputation have been accepted in the City's, State's and/or Nation's history.

In considering the naming/renaming of a park and/or recreational facility after a deceased person, priority will be given to those who made a sustained and lasting contribution to

- Cortland's park and recreation system
- The City of Cortland
- The State of New York
- The Nation

The naming of a park and/or recreational facility after people who may have lost their lives due to war or a tragic event will be considered only after the shock of such event has lessened within the community.

Naming/renaming for Historic Events, People, and Places

When a park and/or recreational facility is associated with or located near events, people, and places of historic, cultural or social significance, consideration will be given to naming that park and/or recreational facility after such events, people, and places. In considering such proposals, the relationship of the event, person or place to the park and/or recreational facility must be demonstrated through research and documentation.

Naming for Major Donations

From time to time, a significant donation may be made to the City that will add considerable value to the City's park and recreation system. On such occasions, recognition of this donation by naming a new park and/or recreation facility in honor of or at the request of the donor will be considered.

As a guideline, the threshold for considering the naming of a park and/or recreational facility will include one or more of the following:

- Land for the majority of the park was deeded to the city.
- Contribution of a minimum of 60% of the capital construction costs associated with developing the park/recreational facility.
- Provision of a minimum 20 year endowment for the continued maintenance and/or programming of the park/recreational facility.

Assessing and approving naming/renaming requests

Upon receipt of a naming request by Cortland Youth Bureau, the relevant ward representative shall be advised and their comments on the proposal will be invited.

The local neighborhood association will be notified of all naming/renaming proposals. Each proposal will then be considered by a standing committee that comprises the Director of Cortland Parks and Recreation or his/her representative, a staff member from the office of the Parks Commissioner, a staff member from the Cortland Historical Society, a member of the Cortland Parks and Recreation Board and a Common Council representative. This committee shall:

- Review the proposed request for its adherence to the policies of Cortland Parks and Recreation
- Ensure that supporting information has been authenticated, particularly when an individual's name is proposed
- Take into consideration the public comments

The standing committee will then present a recommendation to the Common Council who may either accept or reject any proposal. The Parks Commissioner may also seek to refer the matter to the Parks and Recreation Board for advice and/or convene a public meeting to gain additional information prior to making a decision prior to taking the matter to Council for a final decision.

Appeals

Any person whose proposal to name/rename a park and/or recreational facility is denied by the Parks Commissioner may appeal to City Council by petition through the City Clerk.

Related Policies, Procedures & Forms

Sponsorship Policy

Appendix

Donors seeking naming rights for major donations with respect to an individual will be encouraged to follow the principles that apply to naming a park for an outstanding person. Exceptions to this will be considered on their own merits. Cortland Parks and Recreation reserves the right to rename any park and/or recreational facility if the person for whom it is named turns out to be disreputable or subsequently acts in a disreputable way. Naming parks and/or recreational facilities with a company name is not permitted by way of City Code. Corporate logos, insignias, brands or direct advertising text shall not be used in park and/or recreational facility naming text.

Other Considerations

To minimize confusion, parks will not be subdivided for the purpose of naming unless there are readily identifiable physical divisions such as roads or waterways. However, naming of specific major recreational facilities within parks will be permitted; under these circumstances such names should be different to the park name to avoid user confusion.

All signs that indicate the name of a park and/or recreational facility shall comply with Cortland Parks and Recreation's graphic and design standards. Specialized naming signage will not be permitted.

Procedures & Guidelines

These procedures and guidelines have been established to ensure that the naming or renaming of parks and/or recreational facilities is approached in a consistent manner.

Requests for naming/renaming of parks and/or recreational facilities

All requests for the naming or renaming of a park and/or recreational facility shall be made in writing to the Director of Cortland Parks and Recreation.

Requests should contain the following minimum information:

- The proposed name
- Reasons for the proposed name
- Written documentation indicating community support or the proposed name
- Description/map showing location and boundaries of the park
- If proposing to name a facility within a park, include a description/map showing the location of the facility
- If proposing to rename a park or facility, include justification for changing an established name
- If proposing to name a park or facility after an outstanding person, include documentation of that person's significance and good reputation in the City's, State's or Nation's history.

New York State Department of Environmental Conservation

Division of Environmental Remediation, Region 7

615 Erie Boulevard West, Syracuse, New York 13204-2400

Phone: (315) 426-7551 • Fax: (315) 426-7499

Website: www.dec.ny.gov



Joe Martens
Commissioner

January 23, 2014

Honorable Brian Tobin
Mayor
City of Cortland
25 Court Street
Cortland, NY 13045

Re: Site Name: Noss Industrial Park
Site Number: E712011
SAC Number: C302976

Dear Mayor Tobin:

Enclosed are three copies of the State Assistance Contract (SAC) for the above referenced site. The site is being investigated under the 1996 Clean Water/Clean Air Bond Act's Environmental Restoration Program (ERP). Please sign all three copies of the SAC where indicated, have the signatures notarized, and return them to my attention within 30 calendar days. In addition, for new contacts, submit a resolution that names the contract's authorized representative by title and indicates that the entity will fund its share of the cost of the scope of work in the contract. If an amendment to the contract, return a copy of the original resolution accompanied by an original Certificate of Recording Officer affirming that the resolution remains in true force and effect.

If you have questions, please contact the Project Manager, Stephanie Fitzgerald at 315.426.7525.

Sincerely,

Harry Warner, P.E.
Environmental Engineer
Division of Environmental Remediation

Enclosures

ec: w/out enclosures
R. Schick
M. Ryan

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>STATE AGENCY (Name & Address):</p> <p>New York State Department of Environmental Conservation 625 Broadway Albany, New York 12233</p>	<p>BUSINESS UNIT/DEPT. ID: DEC01/3350000</p> <p>CONTRACT NUMBER: C302976</p> <p>CONTRACT TYPE:</p> <p><input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input checked="" type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME:</p> <p>City of Cortland</p>	<p>TRANSACTION TYPE:</p> <p><input type="checkbox"/> New <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Amendment</p>
<p>CONTRACTOR DOS INCORPORATED NAME:</p> <p>City of Cortland</p>	<p>PROJECT NAME:</p> <p>Noss Industrial Park</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS:</p> <p>NYS Vendor ID Number: 1000002571 Federal Tax ID Number: 156000405 DUNS Number (if applicable):</p>	<p>AGENCY IDENTIFIER:</p> <p>ERP</p> <p>CFDA NUMBER (Federally Funded Grants Only):</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS:</p> <p>25 Court Street Cortland, NY 13045</p> <p>CONTRACTOR PAYMENT ADDRESS:</p> <p><input checked="" type="checkbox"/> Check if same as primary mailing address</p> <p>CONTRACT MAILING ADDRESS:</p> <p><input checked="" type="checkbox"/> Check if same as primary mailing address</p>	<p>CONTRACTOR STATUS:</p> <p><input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality, Code: 1000002571 <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number:</p> <p>Exemption Status/Code:</p> <p><input type="checkbox"/> Sectarian Entity</p>

Contract Number: # C302976

AMENDMENT NO. 3:

Time Extension & Communications Change

Contract Number: C302976

THIS AMENDMENT, entered into by and between the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (Department), acting for and on behalf of the State, and the City of Cortland (Municipality), with offices located at 25 Court Street, Cortland, New York 13045 is hereby attached to and becomes incorporated into the above referenced contract.

The parties entered into a prior Contract which was duly assigned Contract Number C302976 which said Contract the parties now desire to amend and/or extend. The Contract provides for amendment or extension in Article XVII Section K.2.

The Municipality has requested an amendment to the Contract for the following reason(s):

The Department recently received a RI/FS from C&S Engineers. A cursory review of the report suggests that some revisions are required prior to entering into the PRAP/ ROD process. In addition, time will be needed to develop a Site Management Plan and the appropriate Deed Restrictions. Given the amount of work left to complete the project, an extension until June 30, 2015 is necessary.

The Contract is amended as follows:

(1). Item "U" in Section XVII is revised as follows:

U. The term of this Contract shall start May 26, 2005. This Contract shall end on June 30, 2015. The Municipality agrees to proceed expeditiously with and to complete the Project in accordance with Work Plans approved by the Department, and any revisions thereto, and to carry out its other obligations under this Contract.

(2). Section XV of the Original Contract, entitled "Communications A." is hereby revised and updated as follows:

A. All Written communications required by this contract shall be transmitted by United States Postal Service, by private courier service or hand delivered.

1. Communication from Municipality shall be sent to:

Stephanie Fitzgerald, Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation
615 Erie Boulevard West
Syracuse, New York 13104

Harry Warner, P.E.
Regional Hazardous Waste Remediation Engineer
New York State Department of Environmental Conservation
Division of Environmental Remediation
615 Erie Boulevard West
Syracuse, New York 13104

Ben Conlon, Program Attorney
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, New York 12233

(3). Appendix A – NYS Standard Clauses For NYS Contracts dated, June 2011 is hereby revised and replaced with Appendix A – NYS Standard Clauses For NYS Contracts dated, December 2012.

(4). Appendix B – Standard Clauses for All New York State Department of Environmental Conservation Contracts dated, April 2000 is hereby revised and replaced with Appendix B – Standard Clauses for All New York State Department of Environmental Conservation Contracts dated, March 2013.

(5). IRAN DIVESTMENT ACT

By entering into a renewal or extension of this Contract, the Recipient certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. The Recipient agrees that should it seek to further renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. The Recipient also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before the Department may approve a request for Assignment of Contract.

During the term of the Contract, should the Department receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Recipient in default.

The Department reserves the right to reject any renewal, extension, or request for assignment for an entity that appears on the Prohibited Entities List hereafter and to pursue a responsibility review with respect to any entity that is granted a contract extension/renewal or assignment and appears on the Prohibited Entities List thereafter.

All other terms and conditions of said Contract shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:

By: _____
Printed Name
Title: _____
Date: _____

APPROVED AS TO FORM:
[Signature]
CORPORATION COUNSEL

STATE AGENCY:

Department of Environmental Conservation
By: _____
Nancy W. Lussier
Printed Name
Title: Director, Division of Management & Budget Services
Date: _____

STATE OF NEW YORK

County of _____

On the ___ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Printed Name

Printed Name

Title: _____
Date: _____

Title: _____
Date: _____

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:

By: _____
Printed Name
Title: _____
Date: _____

APPROVED AS TO
FORM:
[Signature]
CORPORATION COUNSEL

STATE AGENCY:

Department of Environmental Conservation
By: _____
Nancy W. Lussier
Printed Name
Title: Director, Division of Management & Budget Services
Date: _____

STATE OF NEW YORK

County of _____

On the ___ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:

By: _____

Printed Name

Title: _____

Date: _____



STATE AGENCY:

Department of Environmental Conservation

By: _____

Nancy W. Lussier

Printed Name

Title: Director, Division of Management & Budget Services

Date: _____

STATE OF NEW YORK

County of _____

On the ___ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE

Printed Name

Title: _____

Date: _____

STATE COMPTROLLER'S SIGNATURE

Printed Name

Title: _____

Date: _____

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX B
(For DER ERP Contracts)
Standard Clauses for All New York State Department
of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Postponement, suspension, abandonment or termination by the Department:

The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. Indemnification and Hold harmless The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract which are shown to have been the result of negligence, gross negligence or reckless, wanton or intentional misconduct; except that the Contractor shall not be obligated to so indemnify and save harmless with respect to those matters described in ECL 56-0509.1 during those periods in which the protection afforded under ECL 56-0509.1 is in effect.

III. Conflict of Interest

(a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. Requests for Payment All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

W. Daigle, Director, Remedial Bureau D

(Name and Title)

625 Broadway, 11th Floor
Albany, NY 12233-7013

(Address)

(518) 402-9676

(Telephone)

The designated appeal individual to review decisions is:

M. Ryan, Assistant Division Director

(Name and Title)

625 Broadway, 12th Floor, Albany, NY 12233-7011

(Address)

(518) 402-9706

(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation
Nancy W. Lussier Chair
Contract Review Committee
625 Broadway, 10th Floor
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IX. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII. **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

- (1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and
- (2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
- (3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.
- (4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

- (1) procure for the Department the right to continue using the same item or parts thereof;
- (2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
- (3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;
- (4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what

extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVI. Force Majeure The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVII. Freedom of Information Requests The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release

and to support its position.

XVIII. Precedence In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

XIX. Article 15-Requirements

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

(1)The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(2)The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

(3)Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

(1) For purposes of this procurement, the Department hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 10 % for Minority-Owned Business Enterprises (“MBE”) participation and 10 % for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

(2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

<http://www.esd.ny.gov/mwbe.html>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

(c) Equal Employment Opportunity (EEO)

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women’s Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i) Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the

areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(ii) The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv) The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employer Department, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the

implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of 10% Minority Labor Force Participation, 10% Female Labor Force Participation.

(2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- (2) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(d) MWBE Utilization Plan

- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- (3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

(e) Waivers

- (1) For Waiver Requests Contractor should use Waiver Request Form.

(2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

(f) Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

(g) Liquidated Damages - MWBE Participation

(1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

- (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the

Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

(h) Forms

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at <http://www.dec.ny.gov/about/48854.html>

New York State Department of Environmental Conservation

Division of Environmental Remediation

Office of the Director, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • Fax: (518) 402-9020

Website: www.dec.ny.gov



Joe Martens
Commissioner

MEMORANDUM

TO: Nancy W. Lussier, Director, Division of Management and Budget Services

FROM: Robert W. Schick, P.E., Director, Division of Environmental Remediation

SUBJECT: Final Approval, Amendment No: 3 to Contract No: C302976
Site Name: Noss Industrial Park
Site No: E712011
Name of Municipality: City of Cortland

DATE: _____

Type of Contract:

State Assistance Contract (SAC) - Environmental Restoration Program-Investigation

Fund Name and Cost Center:

Fund Name: Capital Fund - 1996 Clean Water/Clean Air Bond Act -
Environmental Restoration Program

Cost Center: 674011 00

Contract Amount and Contract Period:

Contract Amount:

Total Eligible Cost:	\$70,250
Total SAC Amount:	\$63,225
Less Executed SAC Amount:	\$63,225
Total This SAC Amendment:	\$ 0

Contract Period: Start: May 26, 2005
Current End: October 24, 2013
Revised End: June 30, 2015

See Article XVII.U. of SAC for additional information.

General Discussion and Justification:

The Noss Industrial Park (NIP) site is an approximately five acre parcel located at Noss Park Drive and Main St., Cortland, NY. Previously, this site was used by a wire and screen mill and as a scrap yard. There are several floor slabs, foundation walls, and footings at or below ground level.

The Department recently received a RI/FS from C&S Engineers. A cursory review of the report suggests that some revisions are required prior to entering into the PRAP/ ROD process. In addition, time will be needed to develop a Site Management Plan and the appropriate Deed Restrictions. Given the amount of work left to complete the project, an extension until June 30, 2015 is necessary.

Alternative:

There are no alternatives. The contract is the funding mechanism for the approved application. A significant amount of resources has been expended by both the grantee and the state to perform the scope of work described above. If the SAC is not extended and the associated work is not completed, the grantee will not receive the benefits of the program such as a release of liability in the form of an indemnification from the State.

Affirmative Action and Employment Opportunity Provisions:

See Appendix B Section VII.(c)(1)(2) of contract for details.

DEC Organizational Units and/or State Agencies Involved:

Division of Environmental Remediation
New York State Department of Health

DEC Attorney and Potential Legal Issues:

Contract Attorney: Cindylou Dixon
Program Attorney: Benjamin Conlon

This State Assistance Contract (SAC) was developed using the standard boilerplate SAC for the Environmental Restoration Program. There were no changes or the following changes were made to the language in the boilerplate SAC.

Other Information:

Municipality's Federal ID No. 15-6000405

ec: M. June, M/WBE-AA Office
A. Cramer, DMBS
E. Obrecht
D. Finlayson
H. Warner
W. Daigle
S. Fitzgerald

Agenda items for Common Council meeting of 2/18/2014

Consideration of a resolution authorizing the Wastewater Chief Operator to execute an agreement with Cedarwood Engineering Services PLLC for professional services related to Clinton Street sewer evaluation (CFA #31745) in an amount not to exceed \$30,000. (Bruce Adams)

Consideration of a resolution committing the City to a 20% local match for the Clinton Street sewer evaluation (CFA #31745) planning grant. (Bruce Adams)

Whereas, the City of Cortland has received an Engineering Planning Grant for the Clinton Street project, and

Whereas, one of the requirements is a 20% local match and, the City has already committed local funds for the project Therefore, let it be;

Resolved , that the City of Cortland authorized and approves a minimum of 20% local match as required by the Engineering Planning Grant for the Clinton Street Engineering Study. Under the Engineering Planning Grant, this local match must be at least 20% of the total cost of the project cost (Engineering Study). The maximum local share appropriated is subject to any changes agreed to by the Operator shall not exceed \$6,000 of the 30,000 project cost. The Operator may increase the local match via the use of in-kind services without further approval of the City Council

Consideration of a resolution declaring the Clinton Ave sewer evaluation (CFA #31745) as a Type II action for SEQR purposes.

Whereas, 6 NYCRR Section 617.5 (Title 6 of the New York State Code of Rules and Regulations) under SEQR provides that certain action under subdivision “c” of that section are not subject to environmental review under the Environmental Conservation Law Let it be;

RESOLVED, that the **City of Cortland** hereby determines that the Engineering study to evaluate Clinton Street Sewer is a **Type II** action in accordance with 6 NYCRR section 617.5 (c) 18 which constitutes “data gathering for water quality and pollution studies”, and is therefore not subject to review under 6 NYCRR part 617.

Project Budget
Clinton Street Sewer Evaluation
Project
February 2014
CFA # 31745

1. EVALUATION OF EXISTING CONDITIONS	\$ 5000
2. PHYSICAL INSPECTION OF LINE	\$ 5000
3. EVALUATION ALTERNATIVES	\$10000
4. CALCULATIONS /FINAL REPORT/ESTIMATES	\$10000

TOTAL PROJECT \$30,000

AGREEMENT

**BETWEEN CITY OF CORTLAND, NEW YORK
AND
CEDARWOOD ENGINEERING SERVICES PLLC**

**FOR PROFESSIONAL SERVICES RELATED TO
CLINTON STREET SEWER EVALUATION**

CFA #31745

THIS IS AN AGREEMENT made as of _____, 20____, between the City of Cortland, located at 25 Court Street, Cortland, New York 13045 (“OWNER”), and Cedarwood Engineering Services PLLC, located at 8-12 Dietz Street, Suite 303, Oneonta, New York 13820 (“ENGINEER”).

“OWNER” intends to enlist the professional services of the “ENGINEER” to provide engineering services.

“OWNER” and “ENGINEER”, in consideration of their mutual covenants, herein agree in respect of the performance or furnishing of professional engineering services by “ENGINEER” with respect to the Project and the payment for those services by “OWNER” as set forth below. Execution of this Agreement by “ENGINEER” and “OWNER” constitutes “OWNER’s” written authorization to “ENGINEER” to proceed on the date first above written with the services detailed in the Scope of Professional Services and Deliverables.

GENERAL

With this agreement, the “OWNER” is retaining the “ENGINEER” to provide the necessary planning, evaluation, review and report services related to the Clinton sewer evaluation

SCOPE OF PROFESSIONAL SERVICES AND DELIVERABLES

The “ENGINEER” will provide the following professional services:

- **Task I: Engineering Study Evaluation of the Clinton Street sewer and Infiltration**
-

. The “ENGINEER” shall provide all engineering design, regulatory support, attend all meetings and prepare all study documents to complete these tasks All correspondence and the exchange of documents shall be through **Bruce Adams, Chief Operator** with the “OWNER”.

Schedule in effect (for the year) at the time of the work. We have included a 2014 rate schedule for reference. Compensation shall commence for services provided from the date of execution and proceed until completion of the work.

“ENGINEER” invoices will be submitted to the “OWNER” on a monthly basis. Payment shall be made to the “ENGINEER” within forty-five (45) calendar days of the date of the invoice. Checks shall be forwarded to Cedarwood Engineering Services PLLC, 8-12 Dietz Street, Suite 303, Oneonta, New York 13820.

INSURANCE

The “ENGINEER” shall maintain and keep current all insurances:

1. Errors and Omissions: \$1/ \$3,000,000
2. General Liability: \$1/\$2,000,000
3. Auto Liability: \$1,000,000
4. Workers Compensation: State Limits
5. Excess Umbrella: \$5,000,000

All valid ACORD insurance certificates must be included with this contract agreement.

STANDARD CONTRACT TERMS AND CONDITIONS

The terms and conditions contained on the attached sheet apply to this contract*.

ATTACHMENTS

- 2014 Rate Schedule
- Standard Terms and Conditions
- ACORD Insurance Certificate

*Any condition not addressed in the attachments, or in conflict with EJCDC conditions, the EJCDC shall prevail.

Task I –ENGINEERING STUDY CLINTON STREET

The “ENGINEER” shall prepare all documents and design calculations to execute the Clinton Street Sewer project including:

1. EVALUATION OF EXISTING CONDITIONS
2. PHYSICAL SURVEY OF LINE
3. EVALUATION ALTERNATIVES
4. CALCULATIONS /FINAL REPORT/ESTIMATES

M/WBE Requirements

The “ENGINEER” recognizes and accepts that 20% of the total fee needs to be set aside for retaining M/WBE subcontractors. The “ENGINEER” shall also comply with all the recordkeeping and related obligations of the “**NYS Revolving Fund Requirements, October 2012**”.

SUMMARY OF COSTS

The “ENGINEER” will complete the above listed professional services for each option at a not-to-exceed cost as follows:

Summary of Professional Services Costs

Task I – Clinton Street Sewer	\$30,000.00
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ADDITIONAL SERVICES

Additional services can be provided by the “ENGINEER” if deemed necessary and approved by the “OWNER”. Compensation for additional services can be negotiated as needed.

Services not indicated or included in the above-listed scope of services or which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or an hourly basis at rates in effect at the time the services are performed, plus subcontracts and reimbursable expenses as outlined in the Rate Schedule for the year in which the work is being performed.

COMPENSATION

Compensation shall be based upon the hours spent on each task by the various categories of personnel, plus subcontractors and direct expenses in accordance with the Rate

ENDORSEMENTS

The following signatures establish the foregoing:

**BRUCE ADAMS
CITY OF CORTLAND**

By: _____
(Signature)

Print Name: Bruce Adams

Title: Chief Operator

Date: _____

(“ENGINEER”)
CEDARWOOD ENGINEERING SERVICES PLLC

By: _____
(Signature)

Print Name: James F. Suozzo, P.E.

Title: President

Date: _____

2014 Rate Schedule

LABOR

<u>PERSONNEL</u>	<u>Rate \$/Hour</u>
• Principal/Project Manager	\$115
• Project Engineer	\$100
• Process Engineer	\$100
• Technical Manager	\$100
• Mech/Elec/Instrumentation	\$85

- Construction Resident \$85
- Planner/Funding \$85
- Staff/Design Engineer \$75-\$95
- Technician \$70
- Clerical \$40

DIRECT SUBCONTRACT COSTS

- Archeological @ Cost
- Survey @ Cost
- Borings @ Cost
- Construction Inspection @ Cost plus 10%
- Other Services @ Cost

DIRECT EXPENSES

- Copy Service [estimate] bound 8 ½ x 11 @ \$0.070 per page
Drawings @ \$0.44 per SF
- In-house Copies 8 ½ x 11 @ \$0.037 per page
Drawings @ \$2.75 per page
- Overnight [estimate based on weight – FedEx, UPS, Courier] – actual cost of items to be invoiced
 - Letter Doc Pack @ \$17.00 per pack
 - Prelim Dwg Set @ \$100.00 per tube set
 - Full Doc Sets @ \$85.00 per box
 - Full Dwg Set @ \$275.00 per tube set
- US Mail @ Cost
- Mileage @ IRS Rate

Standard Terms and Conditions



879 McLean Road
Cortland, NY 13045
(607) 753-9386
www.cortlandspca.org

CCSPCA Agreement

THIS AGREEMENT made this 1st day of January 2014 between the **Cortland County Society for the Prevention of Cruelty to Animals, Inc. (CCSPCA)**, a domestic membership corporation created and existing under and by virtue of the laws of the State of New York, and having its office at 879 McLean Road, Cortland, New York, party of the first part and the **City of Cortland**, a city corporation of the State of New York having its office at 25 Court Street, Cortland, New York, party of the second part.

Witnesseth:

WHEREAS, the Common Council of the City of Cortland has appropriated the sum of Seventy-Five Thousand Five Hundred and 00/100 Dollars (\$75,500.00) for the year 2014 for the purpose of furnishing public dog related services pursuant to the provisions of section 1215, subsection (2) of the Agriculture and Market Law, in the City of Cortland, New York.

NOW, THEREFORE, for the purpose of carrying out the intentions of the parties, the party of the first part does hereby, in consideration of the sum of Seventy-Five Thousand Five Hundred and 00/100 Dollars (\$75,500.00), agrees to furnish said public dog related services to the citizens of the City of Cortland, and the City of Cortland, for the year 2014, and the party of the second part hereby covenants and agrees to pay the party of the first part for such services, the said sum to be paid in eleven (11) monthly payments of Six Thousand Two Hundred Ninety-One Dollars and Sixty-Six Cents (\$6,291.66) and one payment of Six Thousand Two Hundred Ninety-One Dollars and Seventy-Four Cents (\$6,291.74), with payment to be made on or before the first day of each and every month.

A. Dog Control Services, Pick Up Of Injured/Infirm Stray Cats.

In consideration of the payment to it by the City of Cortland in the sum of Seventy-Five Thousand Five Hundred and 00/100 Dollars (\$75,500.00) to be paid as specified above the CCSPCA hereby covenant and agrees that it shall, through its duly appointed agents, employees and subcontractors, within the corporate limits of said City, carry out the duties and responsibilities of Dog Control Officer in the enforcement of the provisions of Article 7 of the New York State Agriculture and Markets Law and its rules and regulations and of the provisions of the City of Cortland Dog Control Ordinances and amendments thereto.

1. The CCSPCA will through its duly appointed agents and employees, within the corporate limits of the City of Cortland, carry out the duties and responsibilities of Dog Control Officer in the enforcement of the provisions of Article 7 of the New

Mission Statement:

To strive to prevent cruelty to animals. To stop pet overpopulation. To promote public responsibility for the humane care, treatment and well-being of all animals through adoption, education, investigation and action.

York State Agriculture and Markets Law and any rules and regulations promulgated pursuant thereto, and of the provisions of the City of Cortland Dog Control Ordinance and amendments thereto to the City of Cortland from January 1, 2014 through December 31, 2014. The CCSPCA's responsibilities shall include periodic patrols within the municipality. The CCSPCA shall enforce the provisions of Article 7 of the New York State Agriculture and Market Law and the provisions of the City of Cortland Dog Control Ordinances. In accordance with these laws, the CCSPCA shall seize "at large" dogs that are off their owners' property. The CCSPCA shall respond to calls to pick up unlicensed and injured dogs and shall seize dogs that are determined to be dangerous according to law, commence Dangerous Dogs Proceedings and enforce violations of New York State and City of Cortland Dog Control Laws and Ordinances. A copy of the most recent City of Cortland Dog Control Ordinance and amendments thereto will be sent to the party of the first part upon signing of this agreement or by January 1, 2014.

2. The CCSPCA shall provide dog control on all business days for eight hours per day between 7:30 a.m. to 3:30 p.m. Business days shall be defined as those days in which the City of Cortland municipal offices are open for business.
3. The CCSPCA shall provide a vehicle for the use of its authorized agents and staff. Under the contract, the CCSPCA shall also assume responsibility for staff uniforms, vehicle fuel, upkeep and repair, as well as auto liability coverage. The CCSPCA shall maintain peace officer liability coverage and mandatory worker compensation coverage.
4. The CCSPCA shall maintain and file records pertaining to the seizure and disposition of all animals. The CCSPCA shall maintain an accounting of all impoundment fees and other monies collected in carrying out the provisions of the contract. Monthly reports shall be provided by the CCSPCA to the municipality in which dog control activities, including seizure and disposition information is included. Information pertaining to the collection of impoundment fees shall also be reported to the municipality each month. Those fees shall be turned over to the municipality in accordance with Article 7.
5. The CCSPCA shall pick up extremely injured/ill stray cats (exigent life threatening injury/illness).

B. Emergency Services

1. Emergency Services shall be defined as, but not limited to; responding to calls for the seizure of dangerous dogs, injured abandoned dogs or dog attacks on farm and domestic animals.
2. The CCSPCA shall provide Emergency Services during business hours and after hours upon request.

Mission Statement:

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3. The CCSPCA shall provide an emergency telephone number for the use of the municipality, if it chooses to contract for after hour services.

C. Sheltering Services

1. The CCSPCA shall provide and maintain a shelter for seized dogs that conforms to the requirements of New York State Agriculture and Market Laws. Within those requirements, the CCSPCA shall provide proper care for all dogs, including adequate shelter, food and medical care.
2. The CCSPCA may test dogs for Parvo virus and shall provide Parvo and Rabies vaccinations for any dog with an unknown vaccination record.
3. The CCSPCA shall assess all seized and unredeemed dogs to determine their suitability for adoption.
4. The CCSPCA will meet the requirements of law to ensure that all adoptable dogs are spayed or neutered.
5. Those dogs whose temperament or serious health conditions do not permit adoption may be euthanized in a manner permitted by Article 7 of the law.
6. The CCSPCA shall open its shelter to the public for a reasonable number of hours each week to facilitate the adoption of seized, yet unredeemed dogs. It will make reasonable effort to screen adoption applicants to assure that all adopted dogs are appropriately placed.

D. This agreement may not be enlarged, modified or altered except by a written instrument signed and endorsed by both parties.

IN WITNESS WHERE OF the parties have caused their respective corporate seals to be hereunto affixed and these presents to be signed by their duly authorized officers the day and year first written above.

City of Cortland

Cortland County Society for the Prevention of Cruelty to Animals, Inc.

By: _____
Mayor

By:  _____
CCSPCA Treasurer - Shawn Roser

Mission Statement:

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, entered into by and between the City of Cortland Police Department and the SUNY Cortland University Police Department, sets out the respective duties and obligations with regard to the coordination of law enforcement efforts between the University and the city.

The parties to this Memorandum of Understanding hereby agree as follows:

1. The State University of New York has primary law enforcement jurisdiction on all property owned, leased, or under the control of the University and will provide police services on said property, except as otherwise specified in the Memorandum of Understanding.
2. The University Police Department, when appropriate and reasonable, will notify the City Police Department of any incident or situation on any property owned, leased, or under the control of the State University that may affect the safety of the residents of the city.
3. The City Police Department, when appropriate and reasonable, will notify the University Police Department of any incident or situation on any property within the jurisdiction of the city that may affect the safety of the staff and residents on any property owned, leased, or under the control of the University.
4. When the City Police Department executes an arrest or search warrant on any property owned, leased or under the control of the University, the City Police Department will contact the University Police Department and request a University Police officer to accompany the City Police Department officer. When such request would interfere with an investigation, notification of such action will take place as soon as possible. Efforts will be taken to refrain from interrupting a class to affect an arrest or execute a search warrant. In the event of continuous close pursuit beginning in the jurisdiction of the City, the City Police Department, through the County 911 Center, will notify the University Police Department as soon as possible and the University Police Department will assist as necessary.
5. When the University Police Department executes a warrant within the City, excluding any property owned, leased, or under the control of the University, the University Police Department will contact the City Police Department and request a City Police Department officer to accompany the University Police Department officer. When such request would interfere with an investigation, notification of such action will take place as soon as possible. In the event of continuous pursuit, the University Police Department communications unit will notify the County 911 Center as soon as possible and the University Police Department officer will proceed as necessary.

6. The University Police Department will transfer requests for police services originating on any property owned, leased, or under the control of the City to the County 911 Center. In like manner, the County 911 Center will transfer requests for police services originating on any property, owned, leased or under the control of the University, to the University Police Department communications center.
7. For emergency situations including requests for backup within the jurisdiction of the City, the City Police supervisor, officer-in-charge, or County 911 Center may request the assistance of the University Police Department. The University Police supervisor or officer-in-charge must grant permission before such assistance is rendered. In like manner, for emergency situations and requests for backup within the jurisdiction of the University, the University Police supervisor or officer-in-charge may request assistance through the County 911 Center.
8. In the event that an agency needs to pursue an investigation or conduct an interview within the other's community, that investigative agency will notify the host department. When such notification would interfere with an investigation, notification of such action will take place as soon as possible.
9. For major non-emergency events affecting both jurisdictions, the command staff or designees from the City and University Police Departments will meet in a timely manner to review various operations issues.
10. Under Chapter 22 of the 1999 Campus Safety Act, "Suzanne's Law" the University Police Department and the City of Cortland Police Department shall address violent felony offenses and missing college students as follows:

Missing Student- When a report of a missing student is received by the University Police Department or the Cortland City Police Department, the receiving department will conduct a preliminary investigation in order to verify the complaint and to determine the circumstances which exist relating to the reported missing student. If the student's absence is verified, the incident will be reported and shared between departments. Both departments will continue the investigation to locate the missing student. If, after further investigation, the missing student is not located, both departments will determine the most efficient manner of continuing the investigation. In any event, information relating to any report of a missing student shall be shared by both parties no later than twelve (12) hours from the time of the initial report. If the missing student is located or returns to the College at any time after the matter has been reported, each party shall notify the other immediately.

Violent Felony Offenses- When any report of an on-campus violent felony offense is received by the University Police Department or when a report of a violent offense involving a college student is received by the Cortland City Police Department, the recipient shall notify the other police department as soon as possible. The police departments will carry out appropriate investigative procedures, will determine the most efficient manner of continuing the investigation and shall provide mutual assistance when requested.

Definitions:

“Missing Student”, means any student of the College subject to the provisions of Section 355(17) of the New York State Education Law, who resides in a facility owned or operated by the College and who is reported to the College as missing from his or her residence.

“Violent Felony Offense”, means a violent felony offense as defined in Section 70.02(1) of the Penal Law of the State of New York.

11. The Chief of the University Police Department and the Chief of the City Police Department may enter into more specific and detailed operational procedures and guidelines, provided that such additional items are consistent with the above provisions.
12. Either party may terminate this agreement by a 30-day notification in writing to the other party.

IN WITNESS THEREOF TO THIS MEMORANDUM OF UNDERSTANDING

has been executed on the _____ day of _____, 20 _____

STATE UNIVERSITY OF
NEW YORK COLLEGE
AT CORTLAND

CITY OF CORTLAND

Erik J. Bitterbaum
President

Brian Tobin
Mayor

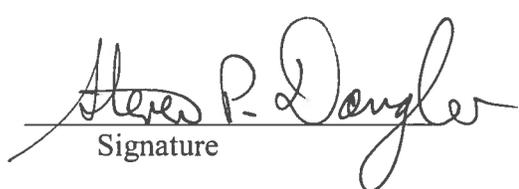
Signature



Signature

Steven P. Dangler
Police Chief

F. Michael Catalano
Police Chief



Signature



Signature

APPROVED AS TO
FORM:

CORPORATION COUNSEL

AGREEMENT BY AND BETWEEN
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
AND CITY OF CORTLAND, NEW YORK, REGARDING BUCKBEE-MEARS CO. SITE

WHEREAS, the United States Environmental Protection Agency (“EPA”) performed a cleanup response action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” or “Superfund”), 42 U.S.C. §§ 9601-9675, at the Buckbee-Mears Co. Site, a former manufacturing facility including approximately 50 acres of real property and any buildings and improvements located thereon, at 30 Kellogg Road, Cortland County, City of Cortland, New York (hereinafter the “Site”); and

WHEREAS, the City of Cortland (“City”) has a lien against real property included within the Site more particularly described as Tax Map Parcel Number 87.78-01-01.000 on the Cortland County Tax Map, street address 30 Kellogg Road, City of Cortland, State of New York (the “City Property”) for unpaid ad valorem real property taxes, which totaled approximately \$1.2 million (hereinafter, “City’s Tax Lien”) as of December 31, 2011; and

WHEREAS, this City Property has been in the wholly exempt section of the tax rolls since September 15, 2009; and

WHEREAS, the County of Cortland (“County”) has a lien against real property more particularly described as Tax Map Parcel Number 97.00-01-02.000 on the Cortland County Tax Map, street address 3727 Kellogg Road, Town of Cortlandville, State of New York, (the “Town Property”), for unpaid ad valorem real property taxes, which totaled approximately \$5,727.28 (hereinafter, “County’s Tax Lien”) as of December 31, 2011. In addition to the City Property, the Site encompasses a portion of the Town Property. The City Property and Town Property are collectively referred to herein as the “Properties”; and

WHEREAS, the State Bank of India, New York Branch (the “Bank”) has alleged that IED owes it approximately \$8.4 million under a Credit Agreement, that the Bank holds a Mortgage and Security Agreement given by IED on the Properties, and that IED is in default on such loans, and the Bank has initiated a foreclosure action on the Properties in the Cortland County Supreme Court; and

WHEREAS, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), the United States of America, on behalf of EPA, has a lien against each of the Properties in the amount of the total response costs it has incurred in connection with EPA’s response action at the Site, which lien amount, exclusive of interest, was, as of December 31, 2011, approximately \$8.3 million (hereinafter, “CERCLA Lien”); and

WHEREAS, pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), a windfall lien may arise against the Properties in the amount of any increase in the Properties’ fair market value due to EPA’s response action at the Site (hereinafter, “Windfall Lien”); and

WHEREAS, the Properties are owned by International Electron Devices (USA), LLC (“IED”), IED has abandoned the Properties, and neither IED nor its principals or their representatives have resolved the City’s Tax Lien, the County’s Tax Lien, EPA’s CERCLA Lien, or EPA’s potential Windfall Lien; and

WHEREAS, pursuant to federal statutes codified at 28 U.S.C § 2410(c), the United States would have a one-year right to redeem if the City Property or the Town Property was sold to satisfy the City’s Tax Lien or the County’s Tax Lien, respectively; and

WHEREAS, EPA and the Bank may enter into a settlement agreement ("Bank Agreement"), and EPA and the County may enter into a settlement agreement ("County Agreement"), in an effort to facilitate the foreclosure, sale, and redevelopment of the Properties; and

WHEREAS, the City will cooperate with the Bank, the County, and/or EPA, as applicable, to facilitate the sale of the Properties, in accordance with this agreement ("Municipality Agreement"), and with the County Agreement and/or Bank Agreement, whichever has been finalized; and

WHEREAS, the City desires that EPA remove its CERCLA Lien, waive its right of redemption in order to facilitate recovery of response costs and redevelopment through the sale of the Properties, and waive its potential Windfall Lien; and

WHEREAS, EPA supports the redevelopment of former Superfund sites and is willing to remove its lien and waive its right of redemption in consideration of the payments for reimbursement of response costs required pursuant to the Bank Agreement, the County Agreement, and this Municipality Agreement, as applicable,

NOW THEREFORE, the parties hereby agree as follows:

1. Release of EPA's Liens and Waiver of Right of Redemption.
 - a. In the event that the City Property or the Town Property is transferred pursuant to the Bank Agreement, on the date specified in the Bank Agreement for delivery of a notice of release of lien to the Bank, EPA will send a copy of such notice to the City.
 - b. In the event that the Bank does not foreclose on the Properties (or portion thereof) pursuant to the Bank Agreement, EPA will so notify the City and County and will execute and deliver to the City and County a release of lien for the purpose of releasing EPA's CERCLA Lien and causing the lien to be discharged of record, and EPA consents that the City or County, as applicable, may cause the release of lien to be duly recorded to discharge the lien of record.
 - c. EPA agrees that effective upon the release and discharge of EPA's CERCLA Lien, pursuant to subparagraph 1.a. or 1.b. of this Municipality Agreement, EPA waives any right that it might have with respect to the lien, including, without limitation, the right to redeem the City Property or Town Property, as applicable, pursuant to federal law codified at 28 U.S.C. § 2410(c), but excepting any rights to compensation due to EPA pursuant to Paragraph 5 of this Municipality Agreement and the comparable provisions of the Bank Agreement and/or the County Agreement, whichever is finalized. Additionally, the United States agrees to release and waive any Windfall Lien it may have on such Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r).
2. Foreclosure by Bank of its Lien. The City acknowledges and agrees that the Bank may foreclose on the Properties through its action in the Cortland County Supreme Court, and the City agrees to cooperate with the Bank and EPA as needed to facilitate the sale and redevelopment of the Properties pursuant to the Bank Agreement. In the event that the Properties are sold for a sufficient amount pursuant to Section VI of the Bank Agreement, then, on the date of the transfer of the Properties, the Bank will pay to the City, in full satisfaction of the City's Tax Lien, the greater of \$302,881 (being the amount of City Taxes in arrears as of September 29, 2006) or fifteen percent (15%) of the proceeds from the sale of the Properties, after the Bank is paid \$150,000 attributable to the costs of marketing and selling the Properties. Any proceeds from the Bank's foreclosure sale remaining after the above payments to the Bank and the City, shall be distributed in proportion to the percentage

that the following amounts represent in relation to the combined total of said amounts: (1) for EPA, \$8,323,204; (2) for the Bank, \$8,434,911; (3) for the City, \$1,194,043 minus the greater of \$302,881 or fifteen percent (15%) of the proceeds from the sale of the Properties. If the City Property has not been sold through the Bank's foreclosure action in accordance with the terms set forth in this Paragraph 2, upon written notice by EPA, the City will foreclose its tax lien on the Property and shall, thereafter, transfer the Property to another entity, pursuant to Paragraph 4 below.

3. Proposals for Purchase and Redevelopment of the Properties. In the event that the City forecloses on the City Property, the City agrees to issue requests for proposals for purchase and redevelopment of the foreclosed-upon Property by qualified redevelopers.
4. Transfer of Properties.
 - a. The City agrees that it shall, except as may otherwise be agreed to in writing by EPA or as otherwise provided in subparagraph 4.b of this Municipality Agreement, transfer the City Property, for the highest sales price received in response to solicitations for proposals for sale or bids in a public auction in accordance with applicable law; provided that the City shall not be required to accept proposals or bids except from persons which it believes to be credible and responsible purchasers meeting the standards included in the solicitations for proposals or in the bidding package.
 - b. If the City does not transfer the City Property pursuant to Paragraph 4.a, the City may transfer the City Property to the County or to another local governmental entity within the County (such as another city, town or village), in connection with plans for redevelopment of the Property, which transfer may be for nominal consideration, provided that, in the event of such transfer, the City will require that such other local governmental entity agree to transfer the Property for the highest sales price received in public solicitations for proposals for sale or bids in a public auction in accordance with applicable law (provided that such local governmental entity shall not be required to accept proposals or bids except from persons which it believes to be credible and responsible purchasers meeting the standards included in the solicitations for proposals or in the bidding package) and the City shall require that such local governmental entity also agree to comply with all other provisions of this Municipality Agreement, including without limitation the payment provisions in Paragraph 5 and the notice provisions in Paragraph 6.
 - i. If the City or County, or the other local governmental entity, wishes to accept a proposal for less than the highest sales price, such transfer may be permitted with prior written approval of EPA.
 - ii. The City shall provide written notice to EPA, at 290 Broadway, 17th Floor, New York, New York 10007-1866, Attention: Buckbee-Mears Co. Site Attorney, of each offer to purchase all or a portion of the Properties received by the City within seven (7) business days of its receipt. The City shall provide written notice to EPA of the price for which it proposes to sell all or a portion of the Properties at least fifteen (15) days prior to the closing on the sale.
5. Payment to EPA.
 - a. The City, if it is the party selling a Property (or portion thereof), agrees that it shall, within sixty (60) days following the transfer of the Property, pay to EPA 50% of the selling price payable to the City, by the buyer(s) of the Property, after the City's actual

transaction costs associated with the sale have been paid to the City, which amounts shall not exceed a total of \$150,000.

- b. All such payments required to be made pursuant to this Paragraph 5 shall be made by check or wire transfer to the EPA Hazardous Substances Superfund in accordance with instructions provided by EPA to the City prior to the due date of such payment.
- 6. Notification to EPA of Status. Until such time as full payment has been made to EPA as provided by Paragraph 5 of this Municipality Agreement, the City shall advise EPA in writing at the address provided in Paragraph 4.c., not less than every ninety (90) days following the full execution of this Municipality Agreement until the date that full payment has been made pursuant to Paragraph 5, as to the status of the foreclosure of the City's Tax Lien, and the status of other significant related events including the solicitation of requests for proposals and responses thereto, and the transfer of the City Property to a developer or end user.
- 7. Public Comment. This Municipality Agreement shall be subject to a public comment period of not less than 30 days. EPA may modify or withdraw its consent to this Municipality Agreement if comments received disclose facts or considerations which indicate that this Municipality Agreement is inappropriate, improper, or inadequate.
- 8. Attorney General Approval. The Attorney General or his designee has approved the settlement embodied in this Municipality Agreement.

IN WITNESS WHEREOF, this Municipality Agreement has been signed by duly authorized representatives of the Parties.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By _____
Walter E. Mugdan
Director, Emergency and Remedial Response Division, Region 2

Date: _____

CITY OF CORTLAND

By _____
Brian Tobin, Mayor

Date: _____