

## ***SITE DEVELOPMENT PROPOSAL REQUEST***



**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**

**Proposal Due Date: October 10<sup>th</sup>, 2014 at 12:30 PM**

**ECIDA 95 Perry Street, Suite 403, Buffalo, NY 14203**

**Attn: Phil Riggs**



Erie County Industrial Development Agency  
143 Genesee Street  
Buffalo, NY 14203  
[www.ecidany.com](http://www.ecidany.com)

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Soil Management Plan (not included due to the document size).  
You can view or download a copy of the SMP on our website;  
[www.ecidany.com](http://www.ecidany.com) or stop at the ECIDA office to request a paper copy.

## **Request for Purchase and Development Proposal**

For 3445 River Road, Town of Tonawanda

September 12, 2014

Buffalo and Erie County Industrial Land Development Corporation (ILDC)

c/o

Erie County Industrial Development Agency (ECIDA)

95 Perry Street, Suite# 403

Buffalo, New York 14203

### **1. Overview and Background**

The Buffalo and Erie County Industrial Land Development Corporation owns, through Erie County foreclosure and transfer to the Buffalo and Erie County Industrial Land Development Corporation, an industrial parcel on River Road, in the Town of Tonawanda. The parcel is approximately six and one half acres in size with no buildings on the site. The site is a former brownfield that was remediated by the New York State Department of Environmental Conservation under the Superfund Program.

The site is located at 3445 River Road, north of Sheridan Drive and across from the Huntley Power plant. (Please see Attachment 1, Location Map) The site is a former manufacturing facility which dates back to 1940's. Activities at the site ceased in the 1980's. Adjacent properties include Goodyear/Dunlop to the south and east, the NRG owned Huntley Power plant to the west and Peroxy Chem. to the northeast.

Polymer Applications operated at the site from 1968 to 1998, with activities including the manufacture of phenolic resins, phenol-formaldehyde resins, plastics and various rubber products for use in the automotive, paint and coatings industry. In July 1988, a major fire severely damaged the process and tank farm area of the site. In 1991, the NYSDEC listed the site as a class 2 site (superfund site) in the State Registry.

### **2. Remediation Process**

In 1995, NYSDEC completed a Remedial Investigation and Feasibility Study which characterized the nature and extent of contamination. In 1996, the U.S. EPA conducted an emergency removal action which included the classification and removal of drums and various hazardous materials.

The NYSDEC obtained access to the site by court order in 2002 and began an on-site bio-treatment from 2005 to 2007. Sampling showed limited progress from this

remediation methodology and therefore it was cancelled. A new plan was developed from 2009 to 2011, calling for excavation and removal of contaminated soils. Excavation and removal began in February 2011 and was completed in December 2011. Partial demolition of some of the structures also took place as part of this work.

The parcel is 6.4 acres in size (SBL 65.13-2-1) and was characteristic of many brownfield sites in that some of the structures and equipment associated with the past manufacturing activity remained on site after the environmental cleanup. The buildings were in disrepair and had been condemned by the Town of Tonawanda. The area of the main structure was 66,000 square feet.

In 2012 the ECIDA, acting as agent for the Town of Tonawanda, contracted for demolition and remediation of the buildings on the site, which had been declared unsafe by the Town Building Department. The demolition and remediation work took place in late 2012 to early 2013. In the spring/summer of 2013 the ECIDA retained a contractor to remove all building foundations and grade the site.

In July of 2013, Erie County foreclosed on the property due to past due taxes. The property was then transferred to the Buffalo and Erie County Industrial Land Development Corporation.

In September 2013, NYSDEC prepared the Site Management Plan for 3445 River Road, NYSDEC Site Number 915044.

In October 2013, the Environmental Easement between New York State and the Buffalo and Erie County Industrial Land Development Corporation attached as Attachment 2 was executed and filed with the Erie County Clerk. Copies of the recently revised Site Management Plan are summarized and included as attachment #3

The Town of Tonawanda in 2013 retained an architecture/engineering firm to prepare landscape plans for the River Road corridor. A plan was prepared for 3445 River Road, which has been implemented and will be periodically maintained..

### 3. Redevelopment Goals

It is the intent of the ILDC to see this property redeveloped for industrial/commercial use in accordance with Town's Comprehensive Plan, existing zoning and the redevelopment uses stated in the Site Management Plan which is now reflecting a de-listing status from NYSDEC. No residential or day care uses will be allowed on site.

**The ILDC has had performed an appraisal of the market value of this parcel and does reserve the right to reject any or all proposals.**

### 4. Evaluation of Proposals

Proposals will be evaluated on a combination of factors including:

a. Purchase price offer.	25%
b. Investment in property by new owner. Investment could include new buildings or capital investment at or near the site.	20%
c. A neighboring company purchase with the intent on strengthening their local existence and provide expansion opportunities.	10%
d. Investment in equipment or machinery on or near the property.	10%
e. Number of new jobs to be created on or near the site.	15%
f. Ability of company to carry out its development and investment plans within one year of purchase.	20%
TOTAL	100%

## 5. Submission of Proposals

Three copies of the proposal including any attachments or supporting materials should be submitted to the Erie County Industrial Development Agency, 95 Perry Street, Suite# 403, Buffalo, New York 14203. The deadline for submission is 4:00 pm on October 10<sup>th</sup>, 2014.

Proposals should be marked as "3445 River Rd. Purchase & Development". The ECIDA Procurement Policy requires that all communications pertaining to this proposal must through only the authorized personnel listed below. **Any communications with ECIDA staff or board members pertaining to this request for proposals may result in a bidder disqualification unless they are directed to the authorized representatives. A Procurement form is added as part of your submission and must be completed in full.**

**For additional information please contact only these authorized personnel:**

John Cappellino, Vice President, ECIDA, 856-6525, [jcappell@ecidany.com](mailto:jcappell@ecidany.com)  
Or Phil Riggs, Project Manager, ECIDA, 856-6525 [priggs@ecidany.com](mailto:priggs@ecidany.com)

## 6. Proposal Form

Each proposal should provide detailed explanations for all items listed in the form. Should you require more space or to add additional documentation in support of your proposal form, any and all additional documents will be considered as part of your submission. The attached form must be filled out completely and signed by the intended purchaser's authorized representative. The accompanying procurement forms are included as a requirement for bidding and should be filled out, signed and included with the proposal form.

## 7 Selection Process and Anticipated Schedule

A review team led by the Erie County Industrial Development Agency will review the proposals and make a final recommendation to the ILDC Board of Directors. The ILDC will have final authority to approve any property sale

Advertise for Proposals	Sept. 12 <sup>th</sup> , 2014
Bids Due at ECIDA	Oct. 10 <sup>th</sup> , 2014 at 4:00 PM
Selection by Committee on or about	Oct. 17 <sup>th</sup> , 2014
ECIDA Board Approval anticipated on	Nov. 19 <sup>th</sup> , 2014

## Proposal Form

## **Proposal Form**

**For Purchase and Redevelopment of 3445 River Rd.**

**1. Firm Name** \_\_\_\_\_

**2. Total Purchase Price Offer** \$ \_\_\_\_\_

**3. My firm intends on improving this site within a two year time frame in the following manner:**

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**4. The schedule for these improvements will be as follows:**

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**5. The improvements will increase the amount of jobs within the county in the amount of** \_\_\_\_\_.

**6. The private investment total for these improvements \$** \_\_\_\_\_.

**7. The percentage of improvements that can be completed within the two year time frame is** \_\_\_\_\_ % **of the total intended improvements.**

**8. The total equipment investment on or near the site \$** \_\_\_\_\_.

**9. There will be no immediate improvements to the site however the purchase of this parcel will bring great benefits to our firm in providing the following:**

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\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



## Permissible Contacts

Pursuant to State Finance Law §§139-j and 139-k, this Solicitation/Request for Proposal includes and imposes certain restrictions on communications between the ECIDA and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit Request for Proposals through the final award and approval of the Procurement Contract by the ECIDA and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified as John Cappellino and Philip Riggs. ECIDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

## Offer/Bidder's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

State Finance Law §139-j(6)(b) provides that the ECIDA seek written affirmations from all Offerers/Bidders as to the Offerer's/Bidder's understanding of and agreement to comply with the ECIDA's procedures relating to permissible contacts (described above) during a Governmental Procurement pursuant to subdivision three of this section.

The ECIDA must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. It is recommended that this affirmation be provided to the ECIDA as early as possible in the procurement process, such as when the Offerer/bidder submits its proposal or bid. The following language may be used for the affirmation.

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the ECIDA relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contractor Name:

\_\_\_\_\_

Contractor Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Offer's/Bidder's Certification of Compliance with State Finance Law §139-k(5)**

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer/Bidder that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate. It is recommended that the certification be provided to the ECIDA as early as possible in the process, such as when an Offerer/Bidder submits its proposal, bid or other form of offer. The following language may be used for the certification.

<u>Offerer/Bidder Certification:</u>
<p>I certify that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate.</p>
<p>By: _____ Date: _____</p>
<p>Name: _____ Title: _____ _____</p>
<p>Contractor Name: _____ _____</p>
<p>Contractor Address: _____ _____ _____ _____</p>

### **Offerer/Bidder Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k(2) obligates the ECIDA to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer/bidder must disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer/bidder fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer/bidder that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer/bidder is necessary to protect public property or public health safety, and that the Offerer/bidder is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The ECIDA must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached "Offerer Disclosure of Prior Non-Responsibility Determinations" form is to be completed and submitted by the Offer/Bidder and submitted to the ECIDA.

### **Contract Termination Provision**

New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j contain a provision authorizing the ECIDA to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. "Governmental Entity" and "procurement contract" are defined in State Finance Law §139-k(1). If a contract is terminated in accordance with State Finance Law §139-k(5), the ECIDA is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

Accordingly,

The ECIDA reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139k was intentionally false or intentionally incomplete. Upon such finding, the ECIDA may exercise its termination right by providing written notification to the Offerer/Bidder in accordance with the written notification terms of this contract.

## **Form 2: Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):                      No                      Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):                      No                      Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):                      No                      Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

\_\_\_\_\_

Date of Finding of Non-responsibility:

\_\_\_\_\_

Basis of Finding of Non-Responsibility:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

(Please circle):      No      Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract:

\_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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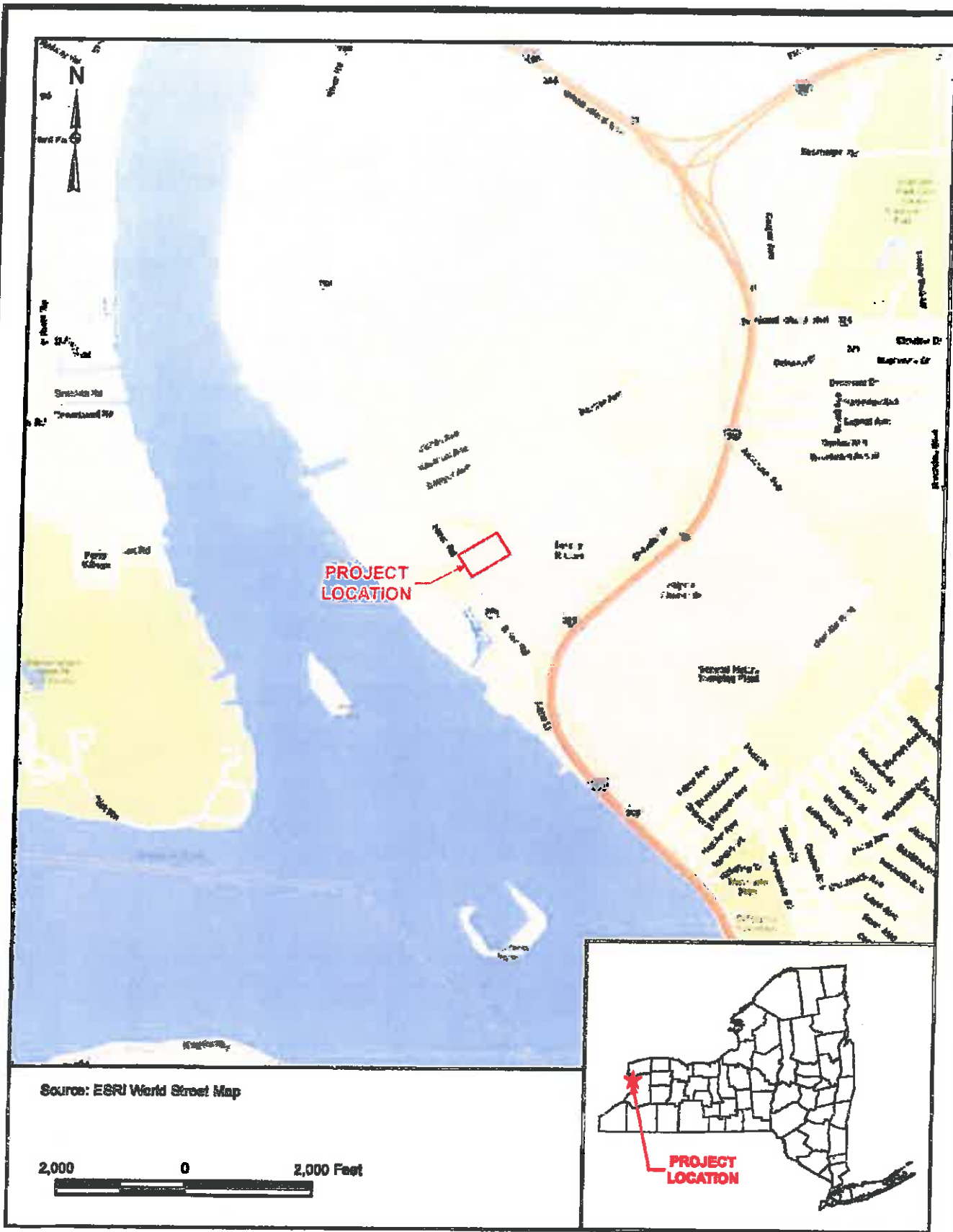
(Add additional pages as necessary)

Offerer certifies that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_ Title: \_\_\_\_\_

## Site Maps



**URS**

**POLYMER APPLICATIONS SITE  
SITE LOCATION MAP  
3445 RIVER ROAD, TOWN OF TONAWANDA, NY**

**FIGURE 1-1**





Source: Bing Maps Hybrid © 2010 Microsoft Corporation

1,000 0 1,000 Feet

**URS**

**POLYMER APPLICATIONS SITE  
SITE AERIAL VIEW**

**FIGURE 1-2**



## **Environmental Easement**

G-77

# ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 17th day of December, 2013 between Owner(s) BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, a New York State local development corporation, having an office at 275 Oak Street, Buffalo, New York, 14203 (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233.

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties that threaten the health and vitality of the communities they burden while ensuring the protection of public health and the environment; and

DEC 23 2013

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program which includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 3445 River Road in the Town of Tonawanda, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 55.130 Block 2 Lot 1, being the same as that property conveyed to Grantor by deed dated July 01, 2013 and recorded in the Erie County Clerk's Office in Liber 11249 at Page 5998, comprising approximately 6.353 ± acres, and hereinafter more fully described in the Land Title Survey dated September 23, 2013 prepared by Fisher Associates, which will be attached to the Site Management Plan. The property description (the "Controlled Property") is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessors and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the institutional controls and/or engineering controls employed at such site;

- (i) are in-place;
- (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
- (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (2) the owner will continue to allow access to such real property;
- (3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls; and
- (4) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: 915044  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12235-5500

With a copy to:      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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

Buffalo and Erie County Industrial Land Development Corporation:

By: John Cappellaro

Print Name: John Cappellaro

Title: Gen. Vice President Date: 11/21/13

Grantor's Acknowledgment

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

On the 21 day of November in the year 2013, before me, the undersigned, personally appeared John Cappellaro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Dawn M. Boudreau  
Notary Public - State of New York

DAWN M. BOUDREAU  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires May 27, 2015

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

By: 

Robert W. Schick, Director  
Division of Environmental Remediation

## Grantor's Acknowledgment

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

On the 17<sup>th</sup> day of December, in the year 2013 before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public, State of New York

David J. Chiusano  
Notary Public, State of New York  
No. 01CE5032146  
Qualified in Schoharie County  
Commission Expires August 22, 2014



SCHEDULE "A" PROPERTY DESCRIPTION

Property Address: 3445 River Road, Town of Tonawanda, NY.  
Tax Map: 65.13 - 2- 1

SURVEYOR'S PARCEL/ENVIRONMENTAL EASEMENT DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE TOWN OF TONAWANDA, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOT NO. 100 OF THE NIAGARA RIVER MILE STRIP, SO-CALLED, BEING BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE CENTER OF RIVER ROAD AT THE DIVISION LINE BETWEEN THE PROPERTY OF NIAGARA MOHAWK POWER CORPORATION (REPUTED OWNER) ON THE NORTH, SAID PROPERTY BEING DESIGNATED BY TAX ID. NO. 65.09-6-4, AND THE PROPERTY OF POLYMER APPLICATIONS INC. (REPUTED OWNER) ON THE SOUTH, SAID PROPERTY BEING DESIGNATED BY TAX ID. NO. 65.13-2-1;

THENCE NORTH 59°31'04" EAST, ALONG SAID DIVISION LINE, A DISTANCE OF THIRTY-THREE AND EIGHT HUNDREDTHS FEET (33.08') TO A POINT IN THE NORTHEASTERLY LINE OF RIVER ROAD, 66 FEET WIDE, SAID POINT BEING THE POINT OF BEGINNING;

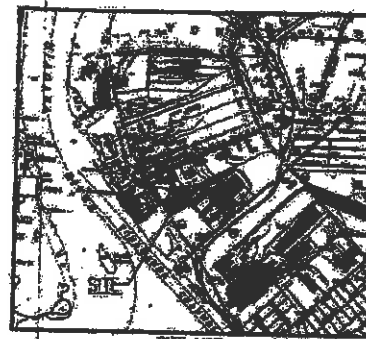
THENCE NORTH 59°31'04" EAST, ALONG SAID DIVISION LINE, A DISTANCE OF SIX HUNDRED NINETY-THREE AND SIXTY-TWO HUNDREDTHS FEET (693.62') TO A POINT;

THENCE SOUTH 34°34'31" EAST, A DISTANCE OF FOUR HUNDRED AND ZERO HUNDREDTHS FEET (400.00') TO A POINT;

THENCE SOUTH 59°31'04" WEST, A DISTANCE OF SIX HUNDRED NINETY-THREE AND SIXTY-TWO HUNDREDTHS FEET (693.62') TO A POINT IN THE NORTHEASTERLY LINE OF SAID RIVER ROAD;

THENCE NORTH 34°34'31" WEST, ALONG SAID NORTHEASTERLY LINE OF RIVER ROAD, A DISTANCE OF FOUR HUNDRED AND ZERO HUNDREDTHS FEET (400.00') TO THE POINT OR PLACE OF BEGINNING, CONTAINING 6.353 ACRES OF LAND, MORE OR LESS.

SURVEY



he use and development of the site is commercial and industrial uses only as NYCRR Part 375-1.8 (g)(2)(iii) and (iv).

[illegible]

- ☐ WORKING SET
- ☐ INQUIRY
- ☐ UTILITY FILE
- ☐ CONSOLE COMMAND
- ☐ COMMAND
- ☐ PROGRAM DATA
- ☐ PROPERTY LIST
- ☐ CHAIN LIST INDEX
- ☐ SOLUTIONS MANUAL

34 NORTH  
35 EAST  
36 SOUTH  
37 WEST  
38 JORDA  
39 FINE  
40 OFFICE CODE  
41 NUMBER  
42 DISTANCE  
43 PROPERTY CODE  
44 POINT OF VIEW  
45 POINT OF ORIGIN  
46 POINT OF ORIGIN

10

1. The following are some major points:
2. THE NATIONAL DEFENSE SCIENCE AND ENGINEERING RESEARCH SOCIETY (NDSERS) is a non-profit organization that was established in 1950. Its purpose is to promote research and development in the field of defense science and engineering.
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[illegible]

24

- [illegible]


03/21/14

THE UNITED STATES OF AMERICA, BY AND THROUGH THE ATTORNEY GENERAL, DO hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the Department of the Interior, Bureau of Land Management, at Washington, D.C.



This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the New York Environmental Conservation Law.

THE DEC OR THEIR AGENT MAY ACCESS THE ENVIRONMENTAL  
EASEMENT AREA AS SHOWN HEREON THROUGHOUT ANY EXISTING  
STREET ACCESS OR BUILDING INGRESS/EGRESS ACCESS POINT

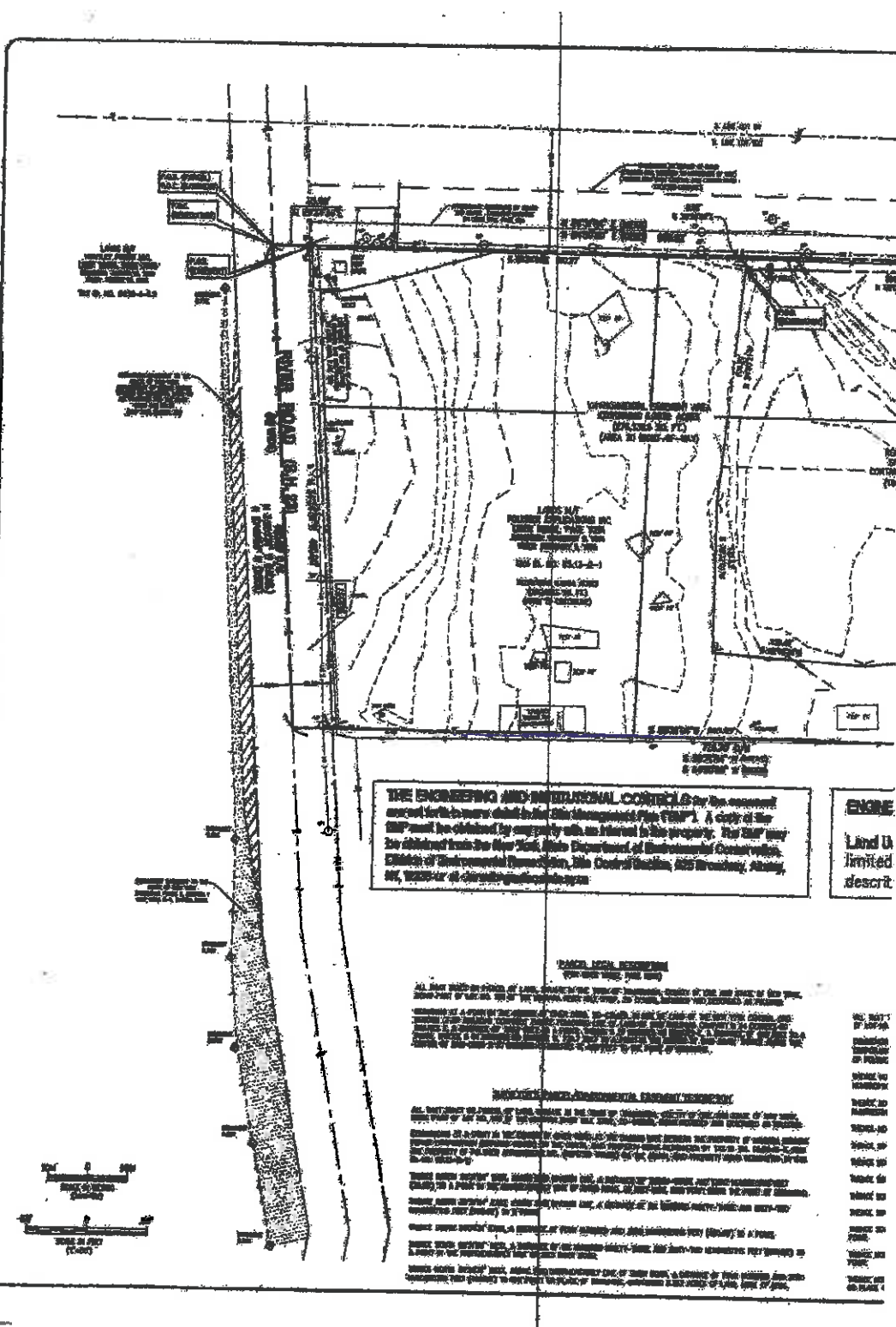
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**THE UNIVERSITY OF CHICAGO PRESS**

WILLIAMSON COUNTY, TENNESSEE, 1890.

WILLIAMSON COUNTY, TENNESSEE, 1890.

NO. 1  
SHEET 1 OF 1



## **Site Management Plan (SMP) Summary**

## **Site Management Plan (SMP) Summary**

### **3445 River Road, Tonawanda, New York**

The 6.4 acre site (SBL #65.13-2-1), located at 3445 River Road in the Town of Tonawanda, is a fully remediated and delisted New York State hazardous waste site (NYSDEC Site #915044), formerly known as Polymer Applications. The removal of all contamination above NYCRR 375 Commercial Soil Cleanup Objectives was completed in December, 2011. Due to site history, future ownership and redevelopment must conform to reporting requirements and site institutional controls which are stipulated in the **Site Management Plan, approved August 8, 2014**, and the associated **Environmental Easement (Appendix H)**. A requirement summary is provided below, however, *any questions regarding owner and site management responsibilities must defer to the above referenced documents for final clarification.*

#### **Engineering and Institutional Control Plan (SMP 2.0)**

##### **Engineering Controls (SMP 2.2)**

The site remedy does not include any engineering controls

##### **Institutional Controls (SMP 2.3)**

Future use is restricted to commercial or industrial (no residential)

Groundwater use is prohibited

Annual certification of SMP compliance to be submitted to NYSDEC

##### **Excavation Work Plan (SMP 2.3.1)**

Site excavation must be conducted in accordance with SMP (Appendix C)

Site excavation must meet Health and Safety Plan and Community Air

Monitoring Plan requirements (Appendix D)

##### **Soil Vapor Intrusion Evaluation (SMP 2.3.2)**

Prior to the construction of an enclosed structure over areas of existing contamination (see SMP Figure 1-10), a soil vapor intrusion evaluation is required and mitigation system installation as needed.

#### **Site Inspections and Reporting (SMP 2.4, 3.2 and 5.0)**

Annual site inspections for compliance with SMP Institutional Controls

Completion of annual inspection form (SMP Appendix G)

Forms and pertinent documentation to be submitted to the NYSDEC

Annual inspection forms and documentation to be retained by owner

#### **Operation and Maintenance Plan (SMP 4.0)**

There are no operational and maintenance requirements

#### **Periodic Review Report (SMP 5.3)**

To be submitted as required per NYSDEC at an anticipated rate of every five years. (To be clarified by NYSDEC Region 9 Buffalo).

#### **Corrective Measures Plan (SMP 5.4)**

To be submitted to the NYSDEC for approval as needed for any site work necessary to comply with SMP institutional controls