

**City of Rochester, New York
Department of Environmental Services
Division of Environmental Quality**

Request for Proposal (RFP)

**Remedy Implementation Oversight - Former Vacuum Oil Site
NYSDEC Brownfield Cleanup Program (BCP) Site No. C828190**

[1 Cottage Street, 13 Cottage Street, 31 Cottage Street, 49 Cottage Street
69 Cottage Street, 75 Cottage Street, 100 Riverview Place, Portion of 102 Violetta Street,
Portion of 1320 South Plymouth Avenue, and Portion of 10 Flint Street]

**Proposals Due by 4:00 PM
December 20, 2024**

Submit Proposals to:

Jane MH Forbes - Associate Environmental Specialist
City of Rochester – Division of Environmental Quality
30 Church Street Room 300B
Rochester, NY 14614
Jane.Forbes@CityofRochester.Gov

REQUEST FOR PROPOSAL

The City of Rochester (City) is seeking proposals from qualified Consultants (“Consultant(s)”), to provide project oversight during the City BCP Site Remedy (Cleanup), at the former Vacuum Oil (VO) Brownfield Cleanup Project (BCP Site #C828190), as described in the New York State Department of Environmental Conservation (NYSDEC) Decision Document, September 2023 (Appendix A).

The Site consists of ten (10) City owned parcels, (1 Cottage Street, 13 Cottage Street, 31 Cottage Street, 49 Cottage Street, 69 Cottage Street, 75 Cottage Street, 100 Riverview Place, a portion of 102 Violetta Street, a portion of 1320 South Plymouth Avenue, and a portion of 10 Flint Street), hereinafter referred to as “Site”, with a combined area of approximately 15 acres. A Site Location Map (“Figure 5 – Alternative 2”) is provided as Appendix B.

Project oversight will be completed with funding provided by the City. All work for this project will be completed in accordance with the NYSDEC BCP regulations, guidelines, and plan approvals.

BACKGROUND

The Site consists of ten (10) parcels of land, owned by the City. All of the City parcels are currently vacant land with no existing buildings; however, remnants of former buildings and other structures are present on portions of the Site. The current zoning in the area of the Site includes a mix of Low to High Density Residential, Industrial and Open Space. Under the City’s new Zoning Alignment Program (ZAP), scheduled for adoption in early 2025, zoning will include Low to High Density Residential, Flexible Mixed Use and Open Space. The Site will be also be subject to an Environmental Protection Overlay District that imposes additional restrictions on future redevelopment. More information about the City’s Zoning Realignment Plan can be found at [RochesterZAP.com](https://www.rochesterzoning.com).

The Site was historically operated as the Vacuum Oil Refinery (VO) from approximately 1866 until the 1930s. Kerosene, naphtha, finished lubricants, and containers for these products (e.g., wooden barrels, tin cans, and drums) were manufactured and stored on Site. VO operations and facilities that formerly occupied the Site include bulk storage tanks, former canal bed, two railroad lines and yards, a barrel manufacturing plant, numerous storage areas, and underground facilities that previously serviced VO Site operations (e.g., utilities, sewers, and piping). The Site also contains some debris, monitoring wells, manholes associated with former or current utilities, a retaining wall associated with a former canal and an abandoned railroad located on 1320 South Plymouth Avenue, and a public trail and path. The majority of the Site is heavily vegetated. Detailed information regarding current Site characteristics, past Environmental Investigations, Remedial Alternatives Analysis and remedy selection can be found on the [project web page](#) or on the [NYSDEC InfoLocator](#) web page.

The anticipated future use of the Site will include green space, parkland, limited mixed-use development, and potential infrastructure and utilities consistent with the Vacuum Oil Brownfield Area master plans. The general purpose and goals for redevelopment include, but are not limited to:

- Promote the growth of business opportunities in the City
- Retain and create jobs in the City.
- Maximize the financial return to the City for the sale of the land.
- Return the project site to the City’s tax rolls.
- Foster additional private redevelopment on adjacent properties

Timeline

The following table illustrates the key dates and deadlines associated with this RFP.

Activity	Time	Date
RFP Release	8:00 a.m.	November 22, 2024
Deadline for questions	4:00 p.m.	December 4, 2024
Response for questions submitted	4:00 p.m.	December 6, 2024
Proposals due	4:00 p.m.	December 20, 2024
Consultant Selection and Award Notification		February 2025
City Council Approval of agreement with Consultant		February 2025
Agreement Start Date		March 2025

The dates shown above may be subject to change within the City of Rochester’s sole discretion and upon written notification as set forth herein.

Communications

All communications by parties who have indicated an intent to submit, or who have submitted a proposal in response to this RFP (“Respondents”), including any questions or requests for clarifications, submission of the proposal, requests for status updates about the proposal selection process, and any other inquiries concerning this RFP, shall be sent in writing (e-mail correspondence is acceptable) to:

Jane MH Forbes - Associate Environmental Specialist
City of Rochester – Division of Environmental Quality
30 Church Street Room 300B
Rochester, NY 14614
(585) 428-7892
Jane.Forbes@CityofRochester.Gov

Contact with any other City staff member with regard to this RFP, during the RFP process, is prohibited, unless specifically authorized in writing. Prohibited contact may be grounds for disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all questions, submitted to the City Contact, by the question deadline stated above. Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the City’s web page for this RFP. The City’s failure to timely respond or provide responses to any questions shall not delay or invalidate the City’s right to make a decision to award an agreement pursuant to this RFP.

The City will make every reasonable effort to keep Respondents informed about the RFP process. Notifications about Timeline date changes, amendments to the RFP and other information about the RFP will be sent by e-mail to Respondents who have provided an e-mail address to the City Contact and will be posted on the City’s website for this RFP. The City’s failure to provide such information shall not delay or invalidate the City’s right to make a decision to award an agreement pursuant to this RFP.

SCOPE OF SERVICES

The City is seeking the services of a Consultant to provide project oversight during the implementation of the City BCP Site Remedy (Cleanup), per the NYSDEC issued Decision Document (September 2023).

ExxonMobil Corporation (EM), in accordance with an executed agreement, will complete the majority of the Cleanup through use of a Volunteer, 5 Flint Street LLC, (“Volunteer”) to be added to the City’s Brownfield Site Cleanup Agreement with NYSDEC.

The elements of the Site Remedy include:

1. Remedial Design. Implementation of a remedial design program provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program.

2. Excavation. Excavation and off-site disposal of approximately 32,500 cubic yards of contaminant source soils, identified in four (4) targeted source areas (Appendix B - **Figure 5 - Alternative 2**).
3. Backfill. On-site soil, which does not exceed the excavation criteria, may be used below the cover system described in remedy element 4 to backfill the excavation. On-site soil which does not exceed the excavation criteria or the protection of groundwater SCOs for any constituent may be used anywhere beneath the cover system, including below the water table, to backfill the excavation or re-grade the site. Clean fill meeting the requirements of 6 NYCRR Part 375-6.7(d) will be brought in to replace excavated soil and to complete the backfilling of the excavation and establish the designed grades at the site.
4. Cover System. A site cover will be required in areas where the upper two feet of exposed surface soil exceeds Restricted Residential Soil Cleanup Objectives (RRSCOs). The cover system may include, but is not necessarily limited to: clean soil, pavement, concrete, paved surface parking areas, sidewalks, building foundations and building slabs. Where a soil cover is to be used, it will be a minimum of two feet of soil placed over a demarcation layer, with the upper six inches of soil of sufficient quality to maintain a vegetative layer. Soil cover material, including any fill material brought to the site, will meet the SCOs for cover material for the use of the site as set forth in 6 NYCRR Part 375-6.7(d).
5. Engineering and Institutional Controls. The remedy will achieve a Track 4 Restricted Residential cleanup at a minimum. An Environmental Easement will be attached to the properties once the Certificate of Completion for the cleanup is issued. In addition, a Site Management Plan (SMP) will be developed which meets the requirements of NYSDEC DER-10 and DER-31.

The following describes the scope of work to be completed by the Volunteer on behalf of EM, and at the expense of EM:

1. Preparation of the Remedial Action Work Plan (RAWP), Citizen Participation Plan (“CPP”), Site Management Plan (“SMP”), and/or Final Engineering Report (“FER”) (together the “Remediation Documents”), in accordance with the Decision Document. All remediation documents will be submitted to and approved by NYSDEC;
2. Clearing and grubbing of existing brush and vegetation limited to the areas necessary to accommodate the RAWP activities, consistent with prevailing standards in the commercial construction industry and applicable laws and regulations;
3. Stripping and stockpiling of uncontaminated soil for reuse, as appropriate;
4. Removal of any former refinery structures (or reuse of material as backfill, if suitable);
5. Excavation of the four “Targeted Excavation” areas identified in the Decision Document and AAR, as depicted in Figure 5 of the Decision Document, or as otherwise approved in the RAWP;
6. Backfill and installation of a 2-foot cover system in the four Targeted Excavation areas), subject to NYSDEC and other applicable agency consent; and
7. Completion of the City BCP Site Remedy in accordance with the RAWP, which does not include raising of grade further to accommodate the City Project and any future design grade.

The following describes the scope of services to be completed by the selected Consultant on behalf of the City:

1. Provide project oversight during all aspects of the cleanup including: site preparation, excavation of contaminated soils; management of impacted groundwater, waste management, backfilling and site restoration.
2. Review and comment, (when applicable) on all Remediation Documents, generated by the City or the Volunteer. The selected Consultant will create a comprehensive document repository for all cleanup related correspondence, reports, technical data, etc.,
3. Coordinate, on behalf of the City, with the Volunteer, involved government agencies, and other stakeholders, throughout the cleanup,
4. Provide support to the City with public meetings or outreach, including attendance at scheduled public meetings. (For the purpose of this proposal, five (5) public meetings should be anticipated),
5. Preparation of Beneficial Use Determination (BUD) petition(s) for sources of fill material identified by the City Project Manager,
6. Perform post cleanup groundwater monitoring and periodic reporting for a minimum of five (5) years after receipt of the Certificate of Completion, unless the City parcels are sold or otherwise transferred to another owner.

It is anticipated that the cleanup will commence in early 2025, and continue through March 2027, after which, the City expects to receive a Certificate of Completion from the NYSDEC for the Cleanup.

Respondent's proposal shall address each of the above described services, with a separate cost line details for **LABOR, DIRECT EXPENSES**, and **SUBCONTRACTED SERVICES**. The proposal shall address each of the requested services, using the same identifying language, including any paragraph or section numbers or letters as used in the RFP.

PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be received, by the City contact listed below, no later than **4:00 p.m. December 20, 2024**.

Jane MH Forbes - Associate Environmental Specialist
City of Rochester – Division of Environmental Quality
30 Church Street Room 300B
Rochester, NY 14614
(585) 428-7892
Jane.Forbes@CityofRochester.Gov

E-mail submissions are acceptable and a confirmation receipt will be returned once the proposal is successfully downloaded.

This RFP was designed to facilitate the evaluation and selection of the Consultant that is best able to achieve the City's objectives. Your proposal:

- Shall contain a table of contents.
- All pages shall be numbered and major sections and all attachments referenced in the table of contents.
- The information contained in the proposal (see PROPOSAL CONTENT below) shall reference the numbered and lettered sections of the RFP. Responses to each section shall be clearly indicated and addressed, or an explanation shall be provided for why the Respondent is not submitting a proposal for a specific section.
- Although not required, the proposal may include an executive summary of no more than two (2) pages.

Each proposal shall be signed by an individual authorized to enter into and execute contracts on the Respondent's behalf. Unless otherwise specified in its proposal, Respondent represents that it is capable of meeting or exceeding all requirements specified in this RFP.

Submission of a proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on such other available information that the City determines to be relevant. The evaluation of proposals may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Respondent selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City (see Attachment C, the City's standard PSA form). The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of \$20,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated in the proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this PSA. (Note: Attention is directed to the City's Living Wage requirements and MWBE and Workforce Utilization Goals)

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the responding Respondents or to conduct the Project described herein. The City may amend or withdraw the RFP at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a proposal or responding to the City's requests with respect to the proposal.

PROPOSAL CONTENT

The proposal should include the following information in the order specified:

- A. Project statement: A Project narrative that describes the Respondent's understanding of the City's needs and the unique value the Respondent will bring to the process. **[5 points]**.
- B. Description of Services: Methodology the Respondent will use to perform the services required in this RFP. The proposal should address, in detail, the tasks as described in the Scope of Services, identified by numbered or lettered sections. **[30 points]**.

- C. Respondent's Qualifications: Information about the Respondent and its qualifications for this Project. Include information about prior engagements similar to that being solicited herein by the City. Documented evidence of the Respondent's capacity to perform the work, including references, contact names, and phone numbers. **[20 points]**.
- D. Project Budget: An itemized budget including staff hours and billing rates, which addresses each of the tasks identified in the Scope of Services. **[30 points]**
- E. Project personnel: The name and resume of the Respondent's lead person for the Project. Names, resumes, and roles of all staff who will be involved in the Project. Provide data on the diversity of Respondent's overall workforce, including total number of employees, and percentages of minorities and females employed. **[10 points]**.
- F. Subcontractors: Names, resumes, and roles of sub-contractors, associates, or any non-employees who will be involved in the Project. **[5 points]**.
- G. Rochester presence: Information about Respondent's presence in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Project. (No base point award).
- H. MWBE: Statement as to whether or not the Respondent is a bona fide MWBE firm, will use bona fide MWBE subcontractors and the percentage of the workforce utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Consultant's workforce and that of any subcontractors who will be utilized. (No base point award).

EVALUATION CRITERIA

The following is a summary of the proposal evaluation criteria. It is within the City's sole discretion to determine the value assigned to each of these criteria.

Proposal: The Respondent's comprehension of the needs of the City as demonstrated by its description of its approach to the elements listed in the Scope of Services section of this RFP.

Experience: The Respondent's relevant experience in providing the same or similar services.

Cost: The total cost of the Respondent's proposal is important to the City, however, based on the evaluation of the other criteria, the City will not necessarily select the lowest bidder.

References: Evaluation of the Respondent's work for previous clients receiving similar services to those proposed in this RFP.

Commitment of key principals to the Project: Demonstration of availability of senior-level staff or associates to be assigned to this Project to ensure depth, accountability, and diversity of perspective.

MWBE and Workforce Goals: The City of Rochester desires to encourage minority and women owned (MWBE) businesses to participate in opportunities to enter into PSAs with the City and to encourage minorities and women in the workforce. Pursuant to Ordinance No. 2018-54, the City has a goal that 30% of the aggregate annual contract awards for professional service contracts over \$10,000 be awarded to minorities (M) (15%) and women (W) (15%). The City has also established minority workforce goals of 20% M and 6.9% W for professional services consulting contracts. For more information, please see cityofrochester.gov/mwbe.

Respondents shall be awarded MWBE bonus weighting as follows:

1. The City will give preference to Consultants who are New York State certified MWBEs. Consultants who meet this requirement shall receive **an additional weighting of 10%**.
2. The City will give preference to Consultants who utilize state certified MWBE subcontractors with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. State-certified MWBEs from outside the Region may be counted if there are insufficient businesses in the Region to perform the specialized work or consulting services required. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the consultant shall receive **an additional weighting of 5%**. If MWBE subcontractors will perform more than 20% of the work of the contract, the Consultant shall receive an **additional weighting of 10%**.
3. Respondents shall provide sufficient documentation with their proposal to support the additional preference weighting as an MWBE Consultant or for use of MWBE subcontractors. If one or more MWBE subcontractors are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. Once approved, the Utilization Plan shall be incorporated into the PSA.
 - a. If the total amount of a PSA is increased by 5% or more at any time during the term of the PSA, the Consultant shall submit a revised MWBE Utilization Plan for approval by the MWBE Officer. The MWBE Officer may also issue a revised MWBE Utilization Plan for unforeseen changes in the availability of MWBE subcontractors during the term of the PSA.
4. The City will give preference to Consultants who meet or exceed the City's workforce goals, which are: 20% M and 6.9% W. Consultants who demonstrate that their and/or their subcontractors' workforce on this Project meets or exceeds these goals shall receive an **additional weighting of 10%**. If selected, the Respondent shall submit a Workforce Staffing Plan on the City's Form for review by the MWBE Officer. Once reviewed, the Workforce Staffing Plan shall be incorporated into the PSA. The calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.
5. If selected, the Respondent shall provide MWBE utilization and subcontractor/supplier payment certification and/or workforce utilization reports on the City's forms. These reports shall be submitted with each invoice or as otherwise requested by the MWBE Officer.
6. A failure to submit the required subcontractor/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the most recent MWBE Utilization Plan and/or Workforce Staffing Plan, for which additional weight was awarded by the end of the PSA, such failure may result in disqualification from award of future contracts with the City.

7. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

Category of Additional Evaluation Points	Additional Weight Awarded
Respondent is New York State Certified MWBE	10%
Utilize MWBE Subcontractors for 10-20% of work	5%
Utilize MWBE Subcontractors for more than 20% of work	10%
Meet or exceed workforce goals of 20% M and 6.9% W	10%

City of Rochester location preference: The City favors contracting with firms located in the City of Rochester and a preference will be given to Consultants located in the City, through an additional weighting of 10%. Non-local firms may wish to consider partnerships or other collaborative arrangements with local firms as a strategy to address this criterion.

Other Criteria: Other criteria may be considered and evaluated by the City if it is determined to be in the best interest of the City and the success of the Project to do so.

The selection of a Consultant is within the City’s sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. Although costs are an important consideration, the decision will be based on qualifications and compliance with the requirements of this RFP and not solely on cost. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City further reserves the right to waive or modify minor irregularities in the proposals and negotiate with Consultants to serve the City’s best interest.

MISCELLANEOUS

The City reserves the right to amend or withdraw this RFP in the City's sole discretion, including any timeframes herein, upon notification of all Respondents as set forth above, and in such case, the City shall have no liability for any costs incurred by any Respondent.

The City may request additional information from any Respondent to assist the City in making its evaluation.

The proposal and all materials submitted with the proposal shall become property of the City and will be subject to NYS Freedom of Information Law. If any proprietary information is submitted with the proposal, it must be clearly identified and a request to keep such information confidential must be submitted.

Submission of a proposal shall constitute a binding offer by Respondent to provide the services at the prices described therein until such time as the parties enter into a PSA.

Attachment A

Decision Document

Portion of Former Vacuum Oil Refinery
Brownfield Cleanup Program - Site No. C828190
(September 2023)

DECISION DOCUMENT

Portion of Former Vacuum Oil Refinery
Brownfield Cleanup Program
Rochester, Monroe County
Site No. C828190
September 2023



**Department of
Environmental
Conservation**

Prepared by
Division of Environmental Remediation
New York State Department of Environmental Conservation

DECLARATION STATEMENT - DECISION DOCUMENT

Portion of Former Vacuum Oil Refinery
Brownfield Cleanup Program
Rochester, Monroe County
Site No. C828190
September 2023

Statement of Purpose and Basis

This document presents the remedy for the Portion of Former Vacuum Oil Refinery site, a brownfield cleanup site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR) Part 375.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the Portion of Former Vacuum Oil Refinery site and the public's input to the proposed remedy presented by the Department.

Description of Selected Remedy

The elements of the selected remedy are as follows:

1. Remedial Design:

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows:

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals;
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development; and

- Additionally, to incorporate green remediation principles and techniques to the extent feasible in the future development at this site, any future on-site buildings shall be constructed, at a minimum, to meet the 2020 Energy Conservation Construction Code of New York (or most recent edition) to improve energy efficiency as an element of construction.

As part of the remedial design program, to evaluate the remedy with respect to green and sustainable remediation principles, an environmental footprint analysis will be completed. The environmental footprint analysis will be completed using an accepted environmental footprint analysis calculator such as SEFA (Spreadsheets for Environmental Footprint Analysis, USEPA), SiteWise(TM) (available in the Sustainable Remediation Forum [SURF] library) or similar Department accepted tool. Water consumption, greenhouse gas emissions, renewable and non-renewable energy use, waste reduction and material use will be estimated, and goals for the project related to these green and sustainable remediation metrics, as well as for minimizing community impacts, protecting habitats and natural and cultural resources, and promoting environmental justice, will be incorporated into the remedial design program, as appropriate. The project design specifications will include detailed requirements to achieve the green and sustainable remediation goals. Further, progress with respect to green and sustainable remediation metrics will be tracked during implementation of the remedial action and reported in the Final Engineering Report (FER), including a comparison to the goals established during the remedial design program.

Additionally, the remedial design program will include a climate change vulnerability assessment, to evaluate the impact of climate change on the project site and the proposed remedy. Potential vulnerabilities associated with extreme weather events (e.g., hurricanes, lightning, heat stress and drought), flooding, and sea level rise will be identified, and the remedial design program will incorporate measures to minimize the impact of climate change on potential identified vulnerabilities.

2. Excavation

Excavation and off-site disposal of contaminant source areas, including:

- grossly contaminated soil, as defined in 6 NYCRR Part 375-1.2(u);
- concentrated solid or semi-solid hazardous substances per 6 NYCRR Part 375-1.2(au)(1);
- non-aqueous phase liquids;
- soil with visual waste material or non-aqueous phase liquid;
- soil containing total SVOCs exceeding 500 ppm;
- soils which exceed the protection of groundwater soil cleanup objectives (PGWSCOs), as defined by 6 NYCRR Part 375-6.8 for those contaminants found in site groundwater above standards; and
- soils that create a nuisance condition, as defined in Commissioner Policy CP-51 Section G.

All soils in the upper two feet which exceed the restricted residential SCOs will be excavated and transported off-site for disposal.

Excavation and removal of any underground storage tanks (USTs), fuel dispensers, underground piping or other structures associated with a source of contamination.

Approximately 32,500 cubic yards of contaminated soil will be removed from the site. Collection and analysis of confirmation samples at the remedial excavation depth will be used to verify that the above excavation goals have been achieved. If confirmation sampling indicates that these goals were not achieved at the stated remedial depth, the Applicant must notify DEC, submit the sample results and in consultation with DEC, determine if further remedial excavation is necessary. Further excavation for development will proceed after confirmation samples demonstrate that the above excavation goals have been achieved.

To ensure proper handling and disposal of excavated material, waste characterization sampling will be completed for all identified contaminated site material. Waste characterization sampling will be performed exclusively for the purposes of off-site disposal in a manner suitable to receiving facilities and in conformance with applicable federal, state, and local laws, rules, and regulations and facility-specific permits.

3. Backfill

On-site soil which does not exceed the above excavation criteria may be used below the cover system described in remedy element 4 to backfill the excavation to the extent that a sufficient volume of on-site soil is available and to establish the designed grades at the site.

On-site soil which does not exceed the above excavation criteria or the protection of groundwater SCOs for any constituent may be used anywhere beneath the cover system, including below the water table, to backfill the excavation or re-grade the site.

Clean fill meeting the requirements of 6 NYCRR Part 375-6.7(d) will be brought in to replace the excavated soil and to complete the backfilling of the excavation and establish the designed grades at the site.

The site will be re-graded to accommodate installation of a cover system as described in remedy element 4.

4. Cover System

A site cover will be required in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs), to allow for future restricted residential use of the site. Where a soil cover is to be used it will be a minimum of two feet of soil placed over a demarcation layer, with the upper six inches of soil of sufficient quality to maintain a vegetative layer. Soil cover material, including any fill material brought to the site, will meet the SCOs for cover material for the use of the site as set forth in 6 NYCRR Part 375-6.7(d). Substitution of other materials and components may be allowed where such components already exist or are a component of the tangible property to be placed as part of site redevelopment. Such components may include, but are not necessarily limited to: pavement, concrete, paved surface parking areas, sidewalks, building foundations and building slabs.

5. Engineering and Institutional Controls

Imposition of an institutional control in the form of an Environmental Easement and a Site Management Plan, as described below, will be required. The remedy will achieve a Track 4 restricted residential cleanup at a minimum.

Institutional Control

Imposition of an institutional control in the form of an Environmental Easement for the controlled property which will:

- require the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3);
- allow the use and development of the controlled property for restricted residential use as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restrict the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or the Monroe County Health Department; and
- require compliance with the Department approved Site Management Plan.

6. Site Management Plan

A Site Management Plan is required, which includes the following:

- A. An Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in remedy element 6 above.

Engineering Controls: The cover system discussed in remedy element 4.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- a provision for further investigation and remediation should large scale redevelopment occur, if any of the existing structures are demolished, or if the subsurface is otherwise made accessible. The nature and extent of contamination in areas where access was previously limited or unavailable will be immediately and thoroughly investigated pursuant to a plan approved by the Department. Based on the investigation results and the Department determination of the need for a remedy, a Remedial Action Work Plan (RAWP) will be developed for the final remedy for the site, including removal and/or treatment of any source areas to the extent feasible. Citizen Participation Plan (CPP) activities will continue through this process. Any necessary remediation will be completed prior to, or in association with, redevelopment.

- a provision should redevelopment occur to ensure no soil exceeding protection of groundwater concentrations will remain below storm water retention basin or infiltration structures.
- descriptions of the provisions of the environmental easement including any land use and groundwater use restrictions;
- a provision for evaluation of the potential for soil vapor intrusion for any occupied buildings on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;
- a provision that should a building foundation or building slab be removed in the future, a cover system consistent with that described in remedy element 4 above will be placed in any areas where the upper two feet of exposed surface soil exceed the applicable soil cleanup objectives (SCOs);
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

B. A Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

- Monitoring of groundwater to assess the performance and effectiveness of the remedy.
- A schedule of monitoring and frequency of submittals to the Department.
- Monitoring for vapor intrusion for any buildings on the site, as may be required by the Institutional and Engineering Control Plan discussed above.

Declaration

The remedy conforms with promulgated standards and criteria that are directly applicable, or that are relevant and appropriate and takes into consideration Department guidance, as appropriate. The remedy is protective of public health and the environment.

9/22/2023

Michael J Cruden

Date

Michael Cruden, Director
Remedial Bureau E

DECISION DOCUMENT

Portion of Former Vacuum Oil Refinery
Rochester, Monroe County
Site No. C828190
July 2023

SECTION 1: SUMMARY AND PURPOSE

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health (NYSDOH), has selected a remedy for the above referenced site. The disposal of contaminants at the site has resulted in threats to public health and the environment that would be addressed by the remedy. The disposal or release of contaminants at this site, as more fully described in this document, has contaminated various environmental media. Contaminants include hazardous waste and/or petroleum.

The New York State Brownfield Cleanup Program (BCP) is a voluntary program. The goal of the BCP is to enhance private-sector cleanups of brownfields and to reduce development pressure on "greenfields." A brownfield site is real property, where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria, or guidance, based on the reasonably anticipated use of the property.

The Department has issued this document in accordance with the requirements of New York State Environmental Conservation Law and 6 NYCRR Part 375. This document is a summary of the information that can be found in the site-related reports and documents.

SECTION 2: CITIZEN PARTICIPATION

The Department seeks input from the community on all remedies. A public comment period was held, during which the public was encouraged to submit comment on the proposed remedy. All comments on the remedy received during the comment period were considered by the Department in selecting a remedy for the site. Site-related reports and documents were made available for review by the public at the following document repositories:

DECInfo Locator - Web Application
<https://gisservices.dec.ny.gov/gis/dil/index.html?rs=C828190>

Phillis Wheatley Community Library
33 Dr Samuel McCree Way
Rochester, New York 14608
Phone: 585-428-8212

PLEX Neighborhood Association
Carlson Commons
70 Coretta Scott Crossing
Rochester, New York 14608
Phone: (585) 328-6916

Receive Site Citizen Participation Information By Email

Please note that the Department's Division of Environmental Remediation (DER) is "going paperless" relative to citizen participation information. The ultimate goal is to distribute citizen participation information about contaminated sites electronically by way of county email listservs. Information will be distributed for all sites that are being investigated and cleaned up in a particular county under the State Superfund Program, Environmental Restoration Program, Brownfield Cleanup Program and Resource Conservation and Recovery Act Program. We encourage the public to sign up for one or more county listservs at <http://www.dec.ny.gov/chemical/61092.html>

SECTION 3: SITE DESCRIPTION AND HISTORY

Location: The Portion of Former Vacuum Oil Refinery site is a 15.4-acre site located in an urban area. The site is in the southwestern quadrant of the City of Rochester in the Plymouth-Exchange (PLEX) neighborhood. The includes the following parcels or a portion of the parcels:

- 10 Flint Street – 121.77-1-86.001
- 1 Cottage Street – 136.21-1-1
- 13 Cottage Street – 136.21-1-3.001
- 31 Cottage Street – 136.21-1-4
- 49 Cottage Street – 136.21-1-3.002
- 69 Cottage Street – 135.28-2-45
- 75 Cottage Street – 135.28-2-44
- 100 Riverview Place – 136.21-1-2
- 102 Violetta Street – 121.70-1-39.001
- 1320 S. Plymouth Avenue – 135.28-2-63

Site Features: The site is currently undeveloped except for an asphalt-paved recreational trail that runs through the entire eastern side of the site from north to south. A grass-covered area is located east of the trail. The rest of the site is wooded and contains remnants of structures from the former refinery.

Current Zoning and Land Use: The site is vacant exception for a recreational trail. The site is currently zoned for single family residential houses. The City of Rochester has created an Environmental Protection Overlay District within the City's proposed new Zoning code restricting single family residences in future development. The Genesee River is just east of the site. Residential, commercial, and light industrial properties are located to the north, south, and west.

Past Use of the Site: A significant portion of the site was part of the former Vacuum Oil refinery that operated from about 1866 to 1930. Other historical uses of the site included railroads and canals for the shipment of raw materials and finished products. The Vacuum Oil Company was a predecessor of ExxonMobil Corporation.

In 1989, a tar-like substance was encountered on property south of the site. NYSDEC excavated and properly disposed of the tar off-site. In 1990, the City of Rochester prepared a report that describes property and traces the history of the Vacuum Oil Company. In 2001, NYSDEC completed an investigation of a 24-acre portion of the former Vacuum Oil facility south of Flint St. In 2005 and 2009 ExxonMobil performed work that expanded on the NYSDEC investigation and in 2012 an additional site assessment report was prepared for the City of Rochester.

The results of these investigations indicate the presence of various contaminants in soil and/or groundwater including volatile organic compounds, semi-volatile organic compounds, and metals. Based on these results, the Portion of Former Vacuum Oil Refinery site entered the Brownfield Cleanup Program in April 2015.

Site Geology and Hydrogeology: Both native soil and fill materials are present at the site. Native soils consist of sands, silts, and clays. Fill consists of bricks, slag, cinders, gravels, wood, and miscellaneous debris. Fill material extends from the surface to approximately 16.5 feet below ground surface. Groundwater is present at depths of approximately 3 to 8 feet. Groundwater flow in the northern portion of the site is relatively flat. Groundwater flow in the southern portion of the site is to the north northwest. Bedrock groundwater flow appears to be northeastern.

A site location map is attached as Figure 1.

SECTION 4: LAND USE AND PHYSICAL SETTING

The Department may consider the current, intended, and reasonably anticipated future land use of the site and its surroundings when evaluating a remedy for soil remediation. For this site, alternatives that restrict the use of the site to as described in Part 375-1.8(g) were evaluated in addition to an alternative which would allow for unrestricted use of the site.

A comparison of the results of the Remedial Investigation (RI) to the appropriate standards, criteria, and guidance values (SCGs) for the identified land use and the unrestricted use SCGs for the site contaminants is available in the RI Report.

SECTION 5: ENFORCEMENT STATUS

The Applicant under the Brownfield Cleanup Agreement is a Volunteer. The Applicant does not have an obligation to address off-site contamination. However, the Department has determined that this site does not pose a significant threat to public health or the environment; accordingly, no enforcement actions are necessary with respect to the Applicant.

SECTION 6: SITE CONTAMINATION

6.1: Summary of the Remedial Investigation

A remedial investigation (RI) serves as the mechanism for collecting data to:

- characterize site conditions;
- determine the nature of the contamination; and
- assess risk to human health and the environment.

The RI is intended to identify the nature (or type) of contamination which may be present at a site and the extent of that contamination in the environment on the site or leaving the site. The RI reports on data gathered to determine if the soil, groundwater, soil vapor, indoor air, surface water or sediments may have been contaminated. Monitoring wells are installed to assess groundwater and soil borings, or test pits are installed to sample soil and/or waste(s) identified. If other natural resources are present, such as surface water bodies or wetlands, the water and sediment may be sampled as well. Based on the presence of contaminants in soil and groundwater, soil vapor will also be sampled for the presence of contamination. Data collected in the RI influence the development of remedial alternatives. The RI report is available for review in the site document repository and the results are summarized in section 6.3.

The analytical data collected on this site includes data for:

- groundwater
- soil
- soil vapor

6.1.1: Standards, Criteria, and Guidance (SCGs)

The remedy must conform to promulgated standards and criteria that are directly applicable or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, Criteria and Guidance are hereafter called SCGs.

To determine whether the contaminants identified in various media are present at levels of concern, the data from the RI were compared to media specific SCGs. The Department has developed SCGs for groundwater, surface water, sediments, and soil. The NYSDOH has developed SCGs for drinking water and soil vapor intrusion. For a full listing of all SCGs see: <http://www.dec.ny.gov/regulations/61794.html>

6.1.2: RI Results

The data have identified contaminants of concern. A "contaminant of concern" is a contaminant that is sufficiently present in frequency and concentration in the environment to require evaluation for remedial action. Not all contaminants identified on the property are contaminants of concern. The nature and extent of contamination and environmental media requiring action are summarized below. Additionally, the RI Report contains a full discussion of the data. The contaminants of

concern identified at this site are:

benzo(a)pyrene	lead
benzo(a)anthracene	mercury
benzo(a)pyrene	naphthalene
benzo(b)fluoranthene	benzene
polychlorinated biphenyls (PCB)	xylene (mixed)
arsenic	toluene
copper	1,1-dichloroethane

The contaminants of concern exceed the applicable SCGs for:

- groundwater
- soil

6.2: Interim Remedial Measures

An interim remedial measure (IRM) is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before issuance of the Decision Document.

There were no IRMs performed at this site during the RI.

6.3: Summary of Environmental Assessment

This section summarizes the assessment of existing and potential future environmental impacts presented by the site. Environmental impacts may include existing and potential future exposure pathways to fish and wildlife receptors, wetlands, groundwater resources, and surface water. The RI report presents a detailed discussion of any existing and potential impacts from the site to fish and wildlife receptors.

Nature and Extent of Contamination: The nature and extent of contamination at the site has been defined under the remedial investigation completed as part of the Brownfield Cleanup Program. The primary contaminants of concern include volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and metals.

Surface Soil:

Surface soil samples were analyzed for TCL VOCs, TCL SVOCs, metals, PCBs, and pesticides. Surface soil sampling indicated that SVOCs, metals, and PCBs are the primary contaminants that exceed the restricted residential and protection of groundwater soil cleanup objectives (SCO).

SVOCs: Benzo(a)pyrene concentrations ranged from non-detect to 52.3 parts per million [ppm] (protection of groundwater SCO – 22 ppm). Benzo(a)anthracene concentrations ranged from non-detect to 59.3 ppm (protection of groundwater SCO – 1 ppm). Benzo(b)fluoranthene concentrations ranged from non-detect to 66 ppm (protection of groundwater SCO – 1.7 ppm). Chrysene concentrations ranged from non-detect to 58.7 ppm (protection of groundwater SCO – 1 ppm). Benzo(k)fluoranthene concentrations ranged from non-detect to 23.8 ppm (protection of groundwater SCO – 1.7 ppm). Indeno(1,2,3-cd)pyrene concentrations ranged from non-detect to

32.9 ppm (restricted residential SCO – 0.5 ppm). Dibenz(a,h)anthracene concentrations ranged from non-detect to 7.85 ppm (restricted residential SCO – 0.33 ppm).

PCB concentrations ranged from non-detect to 4.7 ppm (protection of groundwater SCO – 3.2 ppm).

Metals: Arsenic concentrations ranged from 2.3 to 65.4 ppm (protection of groundwater SCO – 16 ppm). Barium concentrations ranged from non-detect to 3,690 ppm (restricted residential SCO – 400 ppm). Copper concentrations ranged from 9.3 to 3,980 ppm (restricted residential SCO – 270 ppm). Lead concentrations ranged from 23.8 to 2,640 ppm (restricted residential SCO – 400 ppm). Mercury concentrations ranged from 0.002 to 16.4 ppm (restricted residential SCO – 0.81 ppm).

Surface soil data does not indicate a potential for off-site impacts in soil.

Subsurface Soil:

Sub-surface soil samples were analyzed for TCL VOCs, TCL SVOCs, metals, PCBs, and pesticides. Subsurface soil sampling indicated that VOCs, SVOCs, and metals are the primary contaminants that exceed the restricted residential and protection of groundwater soil cleanup objectives (SCO).

VOCs: Benzene concentrations ranged from non-detect to 4.4 ppm (protection of groundwater SCO – 0.6 ppm). 1,2,4-trimethylbenzene concentrations ranged from 0.00025 to 31 ppm (protection of groundwater SCO – 3.6 ppm). 1,3,5-trimethylbenzene concentrations ranged from 0.00053 to 22 ppm (protection of groundwater SCO – 8.4 ppm). Ethylbenzene concentrations ranged from 0.000086 to 12 ppm (protection of groundwater SCO – 1 ppm). Toluene concentrations ranged from 0.00074 to 35 ppm (protection of groundwater SCO – 0.7 ppm). Xylene (mixed) concentrations ranged from non-detect to 88.1 ppm (protection of groundwater SCO – 1.6 ppm).

SVOCs: Benzo(a)pyrene concentrations ranged from non-detect to 106 ppm (protection of groundwater SCO – 22 ppm). Benzo(a)anthracene concentrations ranged from non-detect to 112 ppm (protection of groundwater SCO – 1 ppm). Benzo(b)fluoranthene concentrations ranged from non-detect to 148 ppm (protection of groundwater SCO – 1.7 ppm). Chrysene concentrations ranged from non-detect to 115 ppm (protection of groundwater SCO – 1 ppm). Benzo(k)fluoranthene concentrations ranged from non-detect to 52.7 ppm (protection of groundwater SCO – 1.7 ppm). Indeno(1,2,3-cd)pyrene concentrations ranged from non-detect to 73.2 ppm (restricted residential SCO – 0.5 ppm). Dibenz(a,h)anthracene concentrations ranged from non-detect to 17.3 ppm (restricted residential SCO – 0.33 ppm). Fluoranthene concentrations ranged from non-detect to 230 ppm (restricted residential SCO – 100 ppm). Naphthalene concentrations ranged from non-detect to 359 ppm (protection of groundwater SCO – 12 ppm).

Metals: Arsenic concentrations ranged from 0.857 to 510 ppm (restricted residential SCO – 16 ppm). Copper concentrations ranged from 3.9 to 11,300 ppm (restricted residential SCO – 270 ppm). Lead concentrations ranged from non-detect to 1,080 ppm (restricted residential SCO – 400 ppm). Mercury concentrations ranged from non-detect to 44.2 ppm (restricted residential SCO – 0.81 ppm).

Subsurface soil data does not indicate a potential for off-site impacts in soil.

Groundwater:

Groundwater samples were analyzed for TCL VOCs, TCL SVOCs, TAL metals, PCBs, pesticides, PFOS, and PFOA. Groundwater sampling conducted indicated VOCs (chlorinated and petroleum), SVOCs, PFOS, PFOA, and metals that exceeded the State's standards and guidance values in overburden groundwater.

VOCs: 1,1-dichloroethane concentrations ranged from non-detect to 77 parts per billion [ppb] (groundwater standard – 5 ppb). 1,2,4-trimethylbenzene concentrations ranged from non-detect to 8.7 ppb (groundwater standard – 5 ppb). 1,3,5-trimethylbenzene concentrations ranged from non-detect to 11 ppb (groundwater standard – 5 ppb). Benzene concentrations ranged from non-detect to 7.7 ppb (groundwater standard – 1 ppb). Chloroethane concentrations ranged from non-detect to 54 ppb (groundwater standard – 5 ppb). Toluene concentrations ranged from non-detect to 22 ppb (groundwater standard – 5 ppb). Trichloroethene concentrations ranged from non-detect to 7.3 ppb (groundwater standard – 5 ppb). Xylenes (total) concentrations ranged from non-detect to 33.2 ppb (groundwater standard – 5 ppb). Perfluorooctanesulfonic acid concentrations ranged from non-detect to 16 parts per trillion [ppt] (groundwater standard – 10 ppt). Perfluorooctanoic acid concentrations ranged from non-detect to 17 ppt (groundwater standard – 10 ppt).

SVOCs: Benzo(a)anthracene concentrations ranged from 1.1 to 2.2 ppb (groundwater standard – 0.002 ppb). Benzo(a)pyrene concentrations ranged from 1 to 2.1 ppb (groundwater standard – 0 ppb). Benzo(b)fluoranthene concentrations ranged from 1.1 to 2.1 ppb (groundwater standard – 0.002 ppb). Benzo(k)fluoranthene concentrations ranged from 0 to 0.48 ppb (groundwater standard – 0.002 ppb). Chrysene concentrations ranged from 1.2 to 2.2 ppb (groundwater standard – 0.002 ppb). Indeno(1,2,3-cd)pyrene concentrations ranged from 0.66 to 2.2 ppb (groundwater standard – 0.002 ppb). Naphthalene concentrations ranged from 0.15 to 13.6 ppb (groundwater standard – 10 ppb).

Metals: Arsenic concentrations ranged from 5.1 to 408 ppb (groundwater standard – 25 ppb). Copper concentrations ranged from 0.9 to 484 ppb (groundwater standard – 200 ppb). Lead concentrations ranged from 2.1 to 335 ppb (groundwater standard – 25 ppb). Chromium concentrations ranged from 3.5 to 466 ppb (groundwater standard – 50 ppb). Thallium concentrations ranged from 10.3 to 26.1 ppb (groundwater standard – 0.5 ppb).

Groundwater data and flow direction does not indicate a potential for off-site impacts in groundwater.

Soil Vapor:

The remedial investigation soil gas sampling event included the collection of co-located groundwater and subsurface soil samples. The soil gas samples were analyzed using Method TO-15 for VOCs. The groundwater samples were analyzed for TCL VOCs and TCL SVOCs. The subsurface soil samples were analyzed for TCL VOCs. The soil gas and groundwater sampling indicated petroleum related compounds in the soil vapor and groundwater at the site boundary. 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, benzene, 4-ethyltoluene were detected at the

property boundary. Co-located groundwater samples indicated petroleum VOCs. Benzene was the only VOC in groundwater that exceeded SCGs. Benzene concentrations ranged from non-detect to 1.2 ppb (groundwater standard – 1 ppb). Co-located subsurface soil samples were non-detect for all VOCs. Concentrations of the petroleum related VOCs in soil gas ranged from non-detect to 15 microgram per cubic meter ($\mu\text{g}/\text{m}^3$). Soil vapor data does not indicate a potential for off-site impacts.

6.4: Summary of Human Exposure Pathways

This human exposure assessment identifies ways in which people may be exposed to site-related contaminants. Chemicals can enter the body through three major pathways (breathing, touching, or swallowing). This is referred to as *exposure*.

The site is not fenced and persons who enter the site could contact contaminants in the soil by walking on the soil, digging or otherwise disturbing the soil. Contaminated groundwater at the site is not used for drinking or other purposes and the site is served by a public water supply that obtains water from a different source not affected by this contamination. Volatile organic compounds in the soil vapor may move into overlying buildings and affect the indoor air quality. This process, which is similar to the movement of radon gas from the subsurface into the indoor air of buildings, is referred to as soil vapor intrusion. Because the site is vacant, inhalation of site contaminants in indoor air due to soil vapor intrusion does not represent a concern for the site in its current condition. However, the potential exists for inhalation of site contaminants due to soil vapor intrusion for any future on-site development. Environmental sampling indicates that soil vapor intrusion is not a concern for off-site structures.

6.5: Summary of the Remediation Objectives

The objectives for the remedial program have been established through the remedy selection process stated in 6 NYCRR Part 375. The goal for the remedial program is to restore the site to pre-disposal conditions to the extent feasible. At a minimum, the remedy shall eliminate or mitigate all significant threats to public health and the environment presented by the contamination identified at the site through the proper application of scientific and engineering principles.

The remedial action objectives for this site are:

Groundwater

RAOs for Public Health Protection

- Prevent ingestion of groundwater with contaminant levels exceeding drinking water standards.
- Prevent contact with, or inhalation of volatiles, from contaminated groundwater.

RAOs for Environmental Protection

- Restore ground water aquifer to pre-disposal/pre-release conditions, to the extent practicable.
- Prevent the discharge of contaminants to surface water.
- Remove the source of ground or surface water contamination.

Soil

RAOs for Public Health Protection

- Prevent ingestion/direct contact with contaminated soil.
- Prevent inhalation of or exposure from contaminants volatilizing from contaminants in soil.

RAOs for Environmental Protection

- Prevent migration of contaminants that would result in groundwater or surface water contamination.
- Prevent impacts to biota from ingestion/direct contact with soil causing toxicity or impacts from bioaccumulation through the terrestrial food chain.

Soil Vapor

RAOs for Public Health Protection

- Mitigate impacts to public health resulting from existing, or the potential for, soil vapor intrusion into buildings at a site.

SECTION 7: ELEMENTS OF THE SELECTED REMEDY

The alternatives developed for the site and the evaluation of the remedial criteria are presented in the Alternative Analysis. The remedy is selected pursuant to the remedy selection criteria set forth in DER-10, Technical Guidance for Site Investigation and Remediation and 6 NYCRR Part 375.

The selected remedy is a Track 4: Restricted use with site-specific soil cleanup objectives remedy.

The selected remedy is referred to as the Excavation and Cover remedy.

The elements of the selected remedy, as shown in Figure 2, are as follows:

1. Remedial Design:

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows:

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals;

- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development; and
- Additionally, to incorporate green remediation principles and techniques to the extent feasible in the future development at this site, any future on-site buildings shall be constructed, at a minimum, to meet the 2020 Energy Conservation Construction Code of New York (or most recent edition) to improve energy efficiency as an element of construction.

As part of the remedial design program, to evaluate the remedy with respect to green and sustainable remediation principles, an environmental footprint analysis will be completed. The environmental footprint analysis will be completed using an accepted environmental footprint analysis calculator such as SEFA (Spreadsheets for Environmental Footprint Analysis, USEPA), SiteWise(TM) (available in the Sustainable Remediation Forum [SURF] library) or similar Department accepted tool. Water consumption, greenhouse gas emissions, renewable and non-renewable energy use, waste reduction and material use will be estimated, and goals for the project related to these green and sustainable remediation metrics, as well as for minimizing community impacts, protecting habitats and natural and cultural resources, and promoting environmental justice, will be incorporated into the remedial design program, as appropriate. The project design specifications will include detailed requirements to achieve the green and sustainable remediation goals. Further, progress with respect to green and sustainable remediation metrics will be tracked during implementation of the remedial action and reported in the Final Engineering Report (FER), including a comparison to the goals established during the remedial design program.

Additionally, the remedial design program will include a climate change vulnerability assessment, to evaluate the impact of climate change on the project site and the proposed remedy. Potential vulnerabilities associated with extreme weather events (e.g., hurricanes, lightning, heat stress and drought), flooding, and sea level rise will be identified, and the remedial design program will incorporate measures to minimize the impact of climate change on potential identified vulnerabilities.

2. Excavation

Excavation and off-site disposal of contaminant source areas, including:

- grossly contaminated soil, as defined in 6 NYCRR Part 375-1.2(u);
- concentrated solid or semi-solid hazardous substances per 6 NYCRR Part 375-1.2(au)(1)
- non-aqueous phase liquids;
- soil with visual waste material or non-aqueous phase liquid;
- soil containing total SVOCs exceeding 500 ppm;
- soils which exceed the protection of groundwater soil cleanup objectives (PGWSCOs), as defined by 6 NYCRR Part 375-6.8 for those contaminants found in site groundwater above standards; and
- soils that create a nuisance condition, as defined in Commissioner Policy CP-51 Section G.

All soils in the upper two feet which exceed the restricted residential SCOs will be excavated and transported off-site for disposal.

Excavation and removal of any underground storage tanks (USTs), fuel dispensers, underground piping or other structures associated with a source of contamination.

Approximately 32,500 cubic yards of contaminated soil will be removed from the site. Collection and analysis of confirmation samples at the remedial excavation depth will be used to verify that the above excavation goals have been achieved. If confirmation sampling indicates that these goals were not achieved at the stated remedial depth, the Applicant must notify DEC, submit the sample results and in consultation with DEC, determine if further remedial excavation is necessary. Further excavation for development will proceed after confirmation samples demonstrate that the above excavation goals have been achieved.

To ensure proper handling and disposal of excavated material, waste characterization sampling will be completed for all identified contaminated site material. Waste characterization sampling will be performed exclusively for the purposes of off-site disposal in a manner suitable to receiving facilities and in conformance with applicable federal, state, and local laws, rules, and regulations and facility-specific permits.

3. Backfill

On-site soil which does not exceed the above excavation criteria may be used below the cover system described in remedy element 4 to backfill the excavation to the extent that a sufficient volume of on-site soil is available and to establish the designed grades at the site.

On-site soil which does not exceed the above excavation criteria or the protection of groundwater SCOs for any constituent may be used anywhere beneath the cover system, including below the water table, to backfill the excavation or re-grade the site.

Clean fill meeting the requirements of 6 NYCRR Part 375-6.7(d) will be brought in to replace the excavated soil and to complete the backfilling of the excavation and establish the designed grades at the site.

The site will be re-graded to accommodate installation of a cover system as described in remedy element 4.

4. Cover System

A site cover will be required in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs), to allow for future restricted residential use of the site. Where a soil cover is to be used it will be a minimum of two feet of soil placed over a demarcation layer, with the upper six inches of soil of sufficient quality to maintain a vegetative layer. Soil cover material, including any fill material brought to the site, will meet the SCOs for cover material for the use of the site as set forth in 6 NYCRR Part 375-6.7(d). Substitution of other materials and components may be allowed where such components already exist or are a component of the tangible property to be placed as part of site redevelopment. Such components may include, but are not necessarily limited to: pavement, concrete, paved surface parking areas, sidewalks, building foundations and building slabs.

5. Engineering and Institutional Controls

Imposition of an institutional control in the form of an Environmental Easement and a Site Management Plan, as described below, will be required. The remedy will achieve a Track 4 restricted residential cleanup at a minimum.

Institutional Control

Imposition of an institutional control in the form of an Environmental Easement for the controlled property which will:

- require the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3);
- allow the use and development of the controlled property for restricted residential use as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restrict the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or the Monroe County Health Department; and
- require compliance with the Department approved Site Management Plan.

6. Site Management Plan

A Site Management Plan is required, which includes the following:

- A. An Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in remedy element 6 above.

Engineering Controls: The cover system discussed in remedy element 4.

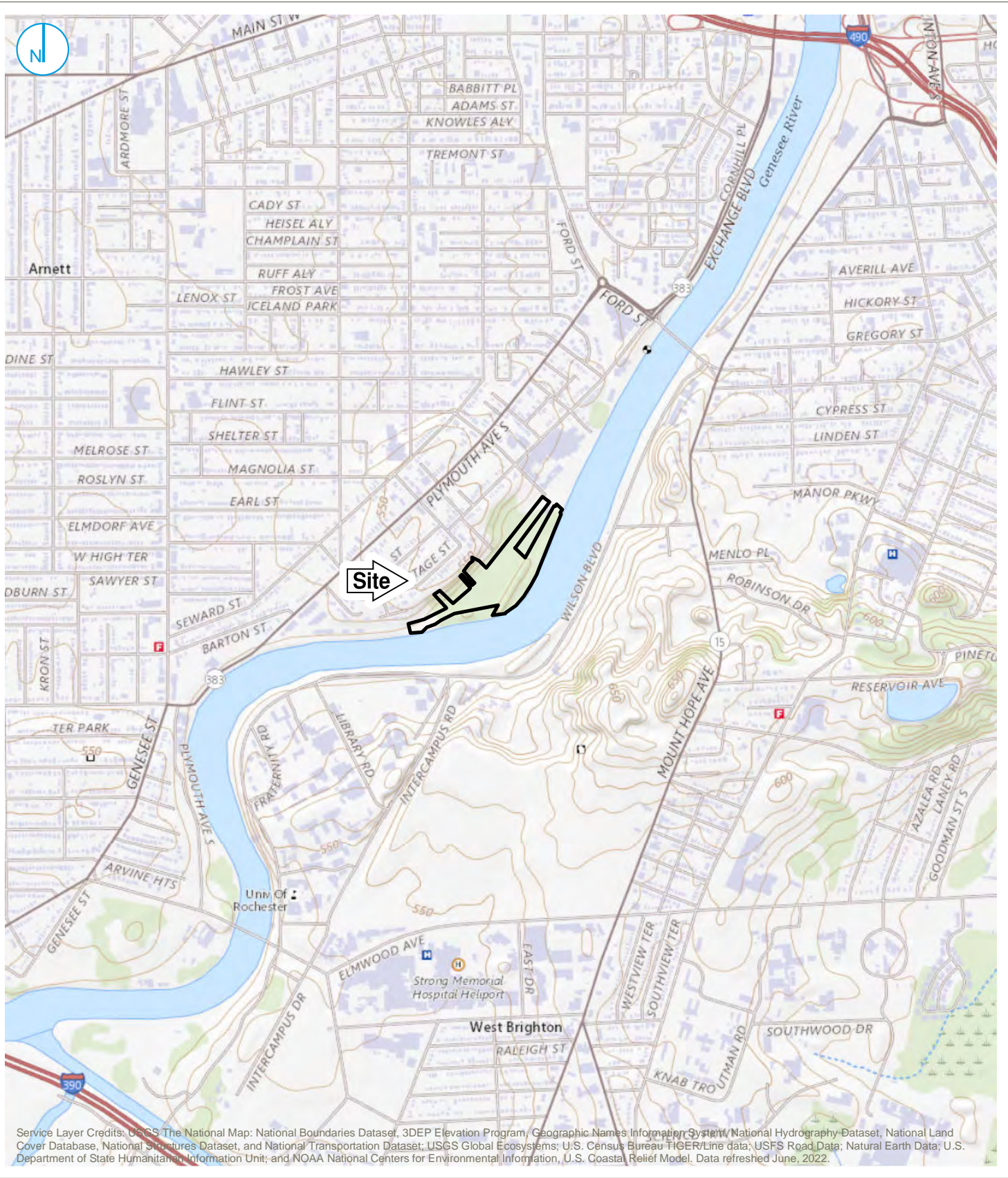
This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- a provision for further investigation and remediation should large scale redevelopment occur, if any of the existing structures are demolished, or if the subsurface is otherwise made accessible. The nature and extent of contamination in areas where access was previously limited or unavailable will be immediately and thoroughly investigated pursuant to a plan approved by the Department. Based on the investigation results and the Department determination of the need for a remedy, a Remedial Action Work Plan (RAWP) will be developed for the final remedy for the site, including removal and/or treatment of any source areas to the extent feasible. Citizen Participation Plan (CPP) activities will continue through this process. Any necessary remediation will be completed prior to, or in association with, redevelopment.

- a provision should redevelopment occur to ensure no soil exceeding protection of groundwater concentrations will remain below storm water retention basin or infiltration structures.
- descriptions of the provisions of the environmental easement including any land use and groundwater use restrictions;
- a provision for evaluation of the potential for soil vapor intrusion for any occupied buildings on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;
- a provision that should a building foundation or building slab be removed in the future, a cover system consistent with that described in remedy element 4 above will be placed in any areas where the upper two feet of exposed surface soil exceed the applicable soil cleanup objectives (SCOs)
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

B. A Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

- Monitoring of groundwater to assess the performance and effectiveness of the remedy.
- A schedule of monitoring and frequency of submittals to the Department.
- Monitoring for vapor intrusion for any buildings on the site, as may be required by the Institutional and Engineering Control Plan discussed above.



Map Scale: 1:24,000 | Map Center: 77°37'20"W 43°8'4"N



0 1,000 2,000 Feet

**BROWNFIELD CLEANUP PROGRAM
 REMEDIAL ALTERNATIVES ANALYSIS REPORT**

**PORTION OF FORMER VACUUM OIL REFINERY
 CITY OF ROCHESTER
 ROCHESTER, NEW YORK**

**FIGURE 1
 SITE LOCATION**
 JUNE 2023

RAMBOLL AMERICAS
 ENGINEERING SOLUTIONS, INC.
 A RAMBOLL COMPANY

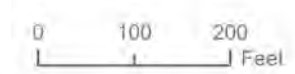




- LEGEND**
- FORMER VACUUM OIL REFINERY (APPROXIMATE)
 - BROWNFIELD CLEANUP PROGRAM SITE LIMITS (APPROXIMATELY 15.4 ACRES)
 - ASPHALT PAVED BIKE/PEDESTRIAN PATH

- R-1**
- CITY OF ROCHESTER ZONING CODE:
 M-1 = Industrial District
 O-S = Open Space
 R-1 = Low-Density Residential
 R-3 = High-Density Residential

- NOTE**
1. TAX PARCELS PROVIDED BY MONROE COUNTY DES. MARCH 2010.
 2. CITY PARCEL OWNERSHIP VERIFIED THROUGH THE CITY OF ROCHESTER PROPERTY INFORMATION WEBSITE ON JANUARY 11, 2022. (<http://www.cityofrochester.gov/propinfo/>)
 3. AERIAL IMAGERY PROVIDED BY NYS GIS CLEARINGHOUSE, DATED SPRING 2012.
 4. 10 FLINT STREET WAS FORMERLY IDENTIFIED AS 1320 S. PLYMOUTH AVENUE (TAX PARCEL 121.77-01-086) AND HAS SINCE BEEN DIVIDED INTO 2 PARCELS: 10 FLINT STREET (TAX PARCEL 121.77-1-86.001) AND 1320 S. PLYMOUTH AVENUE (TAX PARCEL 135.28-2-63). THESE PARCELS WERE FORMALLY IDENTIFIED AS 1315 S. PLYMOUTH AVENUE (TAX PARCEL 135.35-1-18.004).
 5. 31, 69, AND 75 COTTAGE STREET ARE NOT CURRENTLY KNOWN TO HAVE BEEN SITUATED WITHIN THE FORMER VACUUM OIL REFINERY FOOTPRINT, BUT ARE INCLUDED IN THE BCP APPLICATION AND PROPOSED REMEDIAL INVESTIGATION.
 6. 5 FLINT STREET AND 15 FLINT STREET INVESTIGATED BY OTHER ENTITIES (NYSDEC BCP SITE NO. C828162)



**BROWNFIELD CLEANUP PROGRAM
 REMEDIAL ALTERNATIVES
 ANALYSIS REPORT**

PORTION OF FORMER VACUUM OIL REFINERY
 13, 31, 49, 69, AND 75 COTTAGE STREET; 100 RIVERVIEW PLACE; AND PORTIONS OF 1 COTTAGE STREET; 10 FLINT STREET; 102 VIOLETTA STREET; AND 1320 S. PLYMOUTH AVENUE ROCHESTER, NEW YORK

CITY-OWNED PARCELS	
136.21-1-1	1 COTTAGE STREET
121.77-1-86.001	10 FLINT STREET
136.21-1-3	13 COTTAGE STREET
136.21-1-4	31 COTTAGE STREET
136.21-1-3.002	49 COTTAGE STREET
135.28-2-45	69 COTTAGE STREET
135.28-2-44	75 COTTAGE STREET
136.21-1-2	100 RIVERVIEW PLACE
121.70-1-39.001	102 VIOLETTA STREET
135.28-2-63	1320 S PLYMOUTH AVENUE

**FIGURE 2
 SITE PLAN**

JUNE 2023

RAMBOLL AMERICAS
 ENGINEERING SOLUTIONS, INC.
 A RAMBOLL COMPANY





LEGEND

- FORMER VACUUM OIL REFINERY (APPROXIMATE)
 - BROWNFIELD CLEANUP PROGRAM SITE LIMITS (APPROXIMATELY 15.4 ACRES)
 - 2 FOOT VEGETATED COVER (12.6 AC)
 - ASPHALT COVER (1 AC)
- APPROXIMATE OVERBURDEN THICKNESS (FT) FOR TARGETED EXCAVATION (APPROXIMATELY 1.1 AC, 22,300 CUBIC YARDS)**
- TARGETED EXCAVATION, 11' - 20'
 - TARGETED EXCAVATION, UP TO 21'

Notes

Additional soil may be excavated and disposed off-site based on presence of odors/staining, as encountered, during remedial actions and site redevelopment activities. For the purpose of developing the RAAR, an additional 20 percent by volume soil (approximately 4,500 cubic yards) was assumed for excavation and off-site disposal.



**BROWNFIELD CLEANUP PROGRAM
REMEDIAL ALTERNATIVES
ANALYSIS REPORT**

**PORTION OF FORMER
VACUUM OIL REFINERY**

13, 31, 49, 69, AND 75 COTTAGE STREET; 100 RIVERVIEW PLACE; AND PORTIONS OF 1 COTTAGE STREET; 10 FLINT STREET; 102 VIOLETTA STREET; AND 1320 S. PLYMOUTH AVENUE ROCHESTER, NEW YORK

**FIGURE 5
ALTERNATIVE - 2**

JUNE 2023

RAMBOLL AMERICAS
ENGINEERING SOLUTIONS, INC.
A RAMBOLL COMPANY



FIGURE 11B



NOTES:
 1. SOME SHAPEFILES OBTAINED FROM LABELLA ASSOCIATES, P.C. IN 2008/2009.
 2. INFORMATION SOURCES:
 - DATA SUMMARY PACKAGE, FORMER VACUUM OIL REFINERY SITE - 15 FLINT STREET, OCTOBER 2008, LABELLA ASSOCIATES, P.C.
 - SUBSURFACE INVESTIGATION SUMMARY REPORT, FORMER VACUUM OIL COMPANY REFINERY AREA, JANUARY 12, 2009, ROUX ASSOCIATES, INC.
 - PHASE I ENVIRONMENTAL SITE ASSESSMENTS 1, 13, 31, 69, AND 75 COTTAGE STREET, 100 RIVERVIEW PLACE, 102 VIOLETTA STREET, AND 1315 S. PLYMOUTH AVENUE, ROCHESTER, NEW YORK, DECEMBER 2012, OBG.
 3. 2015 AERIAL IMAGERY OBTAINED FROM NYS GIS CLEARINGHOUSE.
 4. EXISTING MULTI-USE TRAIL SHAPEFILE PROVIDED BY GENESSEE TRANSPORTATION COUNCIL, LOCATED IN ROCHESTER, NEW YORK ON MAY 28, 2015.
 5. SAMPLE LOCATION COORDINATES RECORDED USING A GPS UNIT.

CITY-OWNED PARCELS	
136.21-01-001	11 COTTAGE STREET
136.21-01-003	13 COTTAGE STREET
136.21-01-004	31 COTTAGE STREET
135.28-02-045	69 COTTAGE STREET
135.28-02-044	75 COTTAGE STREET
136.21-01-002	100 RIVERVIEW PLACE
121.70-01-039.1	102 VIOLETTA STREET
121.77-01-086	1320 S. PLYMOUTH AVENUE



LEGEND

SAMPLE LOCATION TYPE

- BED1-100 BEDROCK WELL
- OVR-106 OVERBURDEN MONITORING WELL
- TP-149 TEST PIT
- SB-100 SOIL BORING
- SS-100 SURFACE SOIL
- SV-100 SOIL VAPOR
- BIKE PATH
- BROWNFIELD CLEANUP PROGRAM SITE LIMITS (APPROXIMATELY 15.4 ACRES)
- FORMER VACUUM OIL REFINERY SITE (APPROXIMATE)
- NOT PART OF CITY OF ROCHESTER BROWNFIELD CLEANUP PROGRAM SITE; HOWEVER, THESE PARCELS ARE BEING INVESTIGATED BY OTHER ENTITIES.

CITY OF ROCHESTER
 BROWNFIELD CLEANUP PROGRAM
 REMEDIAL INVESTIGATION
 REPORT
 PORTION OF FORMER VACUUM OIL REFINERY

1, 13, 31, 69, AND 75 COTTAGE STREET;
 100 RIVERVIEW PLACE;
 102 VIOLETTA STREET; AND PORTION OF
 1320 S. PLYMOUTH AVENUE
 ROCHESTER, NEW YORK

SURFACE COVER EXCEEDANCES

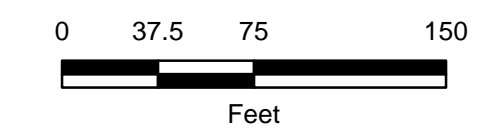
VOLATILE ORGANIC COMPOUNDS - EXCEEDS NY PART 375 - COMMERCIAL
 - EXCEEDS NY PART 375 - RESTRICTED RESIDENTIAL
 - EXCEEDS NY PART 375 - UNRESTRICTED
 - DOES NOT EXCEED CRITERIA
 - NOT SAMPLED

SEMI-VOLATILE ORGANIC COMPOUNDS - EXCEEDS NY PART 375 - COMMERCIAL
 - EXCEEDS NY PART 375 - RESTRICTED RESIDENTIAL
 - EXCEEDS NY PART 375 - UNRESTRICTED
 - DOES NOT EXCEED CRITERIA
 - NOT SAMPLED

METALS - EXCEEDS NY PART 375 - COMMERCIAL
 - EXCEEDS NY PART 375 - RESTRICTED RESIDENTIAL
 - EXCEEDS NY PART 375 - UNRESTRICTED
 - DOES NOT EXCEED CRITERIA
 - NOT SAMPLED

PESTICIDES/PCBs - EXCEEDS NY PART 375 - COMMERCIAL
 - EXCEEDS NY PART 375 - RESTRICTED RESIDENTIAL
 - EXCEEDS NY PART 375 - UNRESTRICTED
 - DOES NOT EXCEED CRITERIA
 - NOT SAMPLED

SAMPLE POINT LOCATION



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 OCTOBER 2019

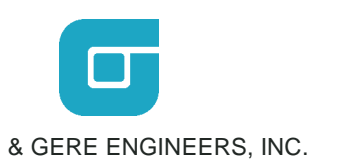


FIGURE 13



NOTES:
 1. SOME SHAPEFILES OBTAINED FROM LABELLA ASSOCIATES, P.C. IN 2008/2009.
 2. INFORMATION SOURCES:
 - DATA SUMMARY PACKAGE, FORMER VACUUM OIL REFINERY SITE - 15 FLINT STREET, OCTOBER 2008, LABELLA ASSOCIATES, P.C.
 - SUBSURFACE INVESTIGATION SUMMARY REPORT, FORMER VACUUM OIL COMPANY REFINERY AREA, JANUARY 12, 2009, ROUX ASSOCIATES, INC.
 - PHASE I ENVIRONMENTAL SITE ASSESSMENTS 1, 13, 31, 69, AND 75 COTTAGE STREET, 100 RIVERVIEW PLACE, 102 VIOLETTA STREET, AND 1315 S. PLYMOUTH AVENUE, ROCHESTER, NEW YORK, DECEMBER 2012, OBG.
 3. 2015 AERIAL IMAGERY OBTAINED FROM NYS GIS CLEARINGHOUSE.
 4. EXISTING MULTI-USE TRAIL SHAPEFILE PROVIDED BY GENESSEE TRANSPORTATION COUNCIL, LOCATED IN ROCHESTER, NEW YORK ON MAY 28, 2015.
 5. SAMPLE LOCATION COORDINATES RECORDED USING A GPS UNIT.

CITY-OWNED PARCELS	
136.21-01-001	11 COTTAGE STREET
136.21-01-003	13 COTTAGE STREET
136.21-01-004	31 COTTAGE STREET
135.28-02-045	69 COTTAGE STREET
135.28-02-044	75 COTTAGE STREET
136.21-01-002	100 RIVERVIEW PLACE
121.70-01-039.1	102 VIOLETTA STREET
121.77-01-086	1320 S. PLYMOUTH AVENUE



LEGEND

SAMPLE LOCATION TYPE

- BED1-100 BEDROCK WELL
- OVR-106 OVERBURDEN MONITORING WELL
- TP-149 TEST PIT
- SB-100 SOIL BORING
- SS-100 SURFACE SOIL
- BIKE PATH
- BROWNFIELD CLEANUP PROGRAM SITE LIMITS (APPROXIMATELY 15.4 ACRES)
- FORMER VACUUM OIL REFINERY SITE (APPROXIMATE)
- NOT PART OF CITY OF ROCHESTER BROWNFIELD CLEANUP PROGRAM SITE; HOWEVER, THESE PARCELS ARE BEING INVESTIGATED BY OTHER ENTITIES.

CITY OF ROCHESTER
 BROWNFIELD CLEANUP PROGRAM
 REMEDIAL INVESTIGATION
 REPORT
 PORTION OF FORMER VACUUM OIL REFINERY

1, 13, 31, 69, AND 75 COTTAGE STREET;
 100 RIVERVIEW PLACE;
 102 VIOLETTA STREET; AND PORTION OF
 1320 S. PLYMOUTH AVENUE
 ROCHESTER, NEW YORK

SUBSURFACE SOIL EXCEEDANCES

VOLATILE ORGANIC COMPOUNDS **SEMI-VOLATILE ORGANIC COMPOUNDS**

METALS **PESTICIDES**

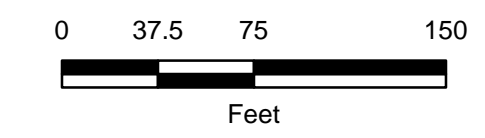
- EXCEEDS NY PART 375 - COMMERCIAL

- EXCEEDS NY PART 375 - RESTRICTED RESIDENTIAL

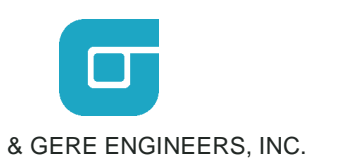
- EXCEEDS NY PART 375 - UNRESTRICTED

- DOES NOT EXCEED CRITERIA

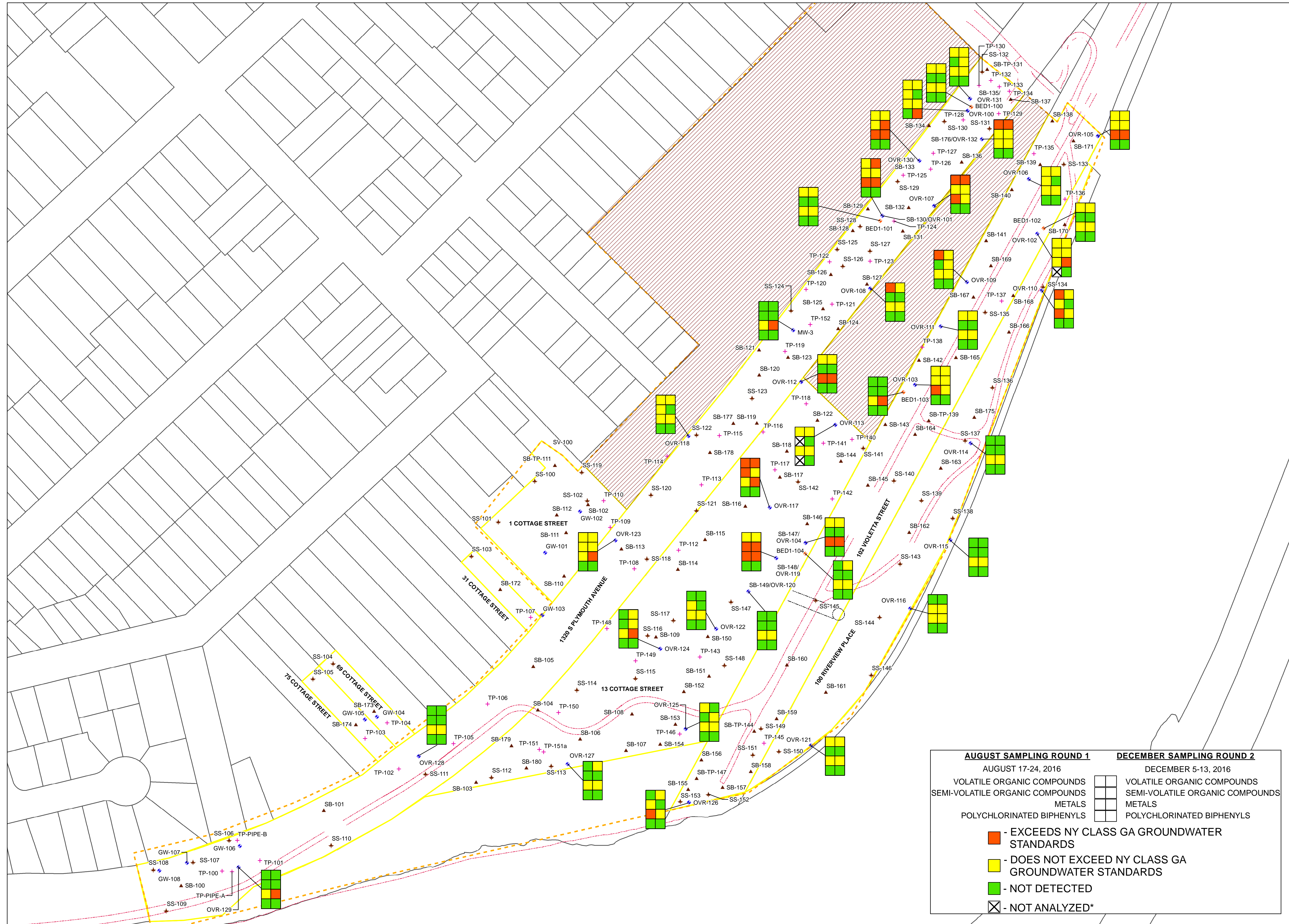
- NOT SAMPLED



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LEGEND

SAMPLE LOCATION TYPE

- ◆ BEDROCK WELL
- ◆ OVERBURDEN MONITORING WELL
- +
- ▲ SOIL BORING
- ◆ SURFACE SOIL

- - - DRAINPIPE
- BIKE PATH
- NOT PART OF CITY OF ROCHESTER BROWNFIELD CLEANUP PROGRAM SITE; HOWEVER, THESE PARCELS ARE BEING INVESTIGATED BY OTHER ENTITIES.
- FORMER VACUUM OIL REFINERY SITE (APPROXIMATE)
- BROWNFIELD CLEANUP PROGRAM SITE LIMITS (APPROXIMATELY 15.4 ACRES)
- MONROE COUNTY PARCEL BOUNDARY

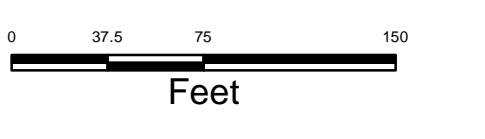
NOTES:
 -GW-101 THROUGH GW-108 ANALYTICAL RESULTS ARE NOT INCLUDED IN THIS FIGURE. PLEASE SEE RI REPORT FOR MORE INFORMATION.
 -DATA DOES NOT INCLUDE VOC/SVOC TICKS.
 -DATA WAS NOT ANALYZED DUE TO BROKEN BOTTLEWARE.

CITY OF ROCHESTER
 BROWNFIELD CLEANUP PROGRAM
 REMEDIAL INVESTIGATION
 REPORT
 PORTION OF FORMER VACUUM OIL REFINERY
 1, 13, 31, 69, AND 75 COTTAGE STREET;
 100 RIVERVIEW PLACE;
 102 VIOLETTA STREET; AND PORTION
 OF 1320 S. PLYMOUTH AVENUE
 ROCHESTER, NEW YORK

GROUNDWATER EXCEEDANCES
AUGUST 2016 AND DECEMBER 2016

AUGUST SAMPLING ROUND 1		DECEMBER SAMPLING ROUND 2	
AUGUST 17-24, 2016		DECEMBER 5-13, 2016	
VOLATILE ORGANIC COMPOUNDS		VOLATILE ORGANIC COMPOUNDS	
SEMI-VOLATILE ORGANIC COMPOUNDS		SEMI-VOLATILE ORGANIC COMPOUNDS	
METALS		METALS	
POLYCHLORINATED BIPHENYLS		POLYCHLORINATED BIPHENYLS	

- EXCEEDS NY CLASS GA GROUNDWATER STANDARDS
 - DOES NOT EXCEED NY CLASS GA GROUNDWATER STANDARDS
 - NOT DETECTED
 - NOT ANALYZED*



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OCTOBER 2016

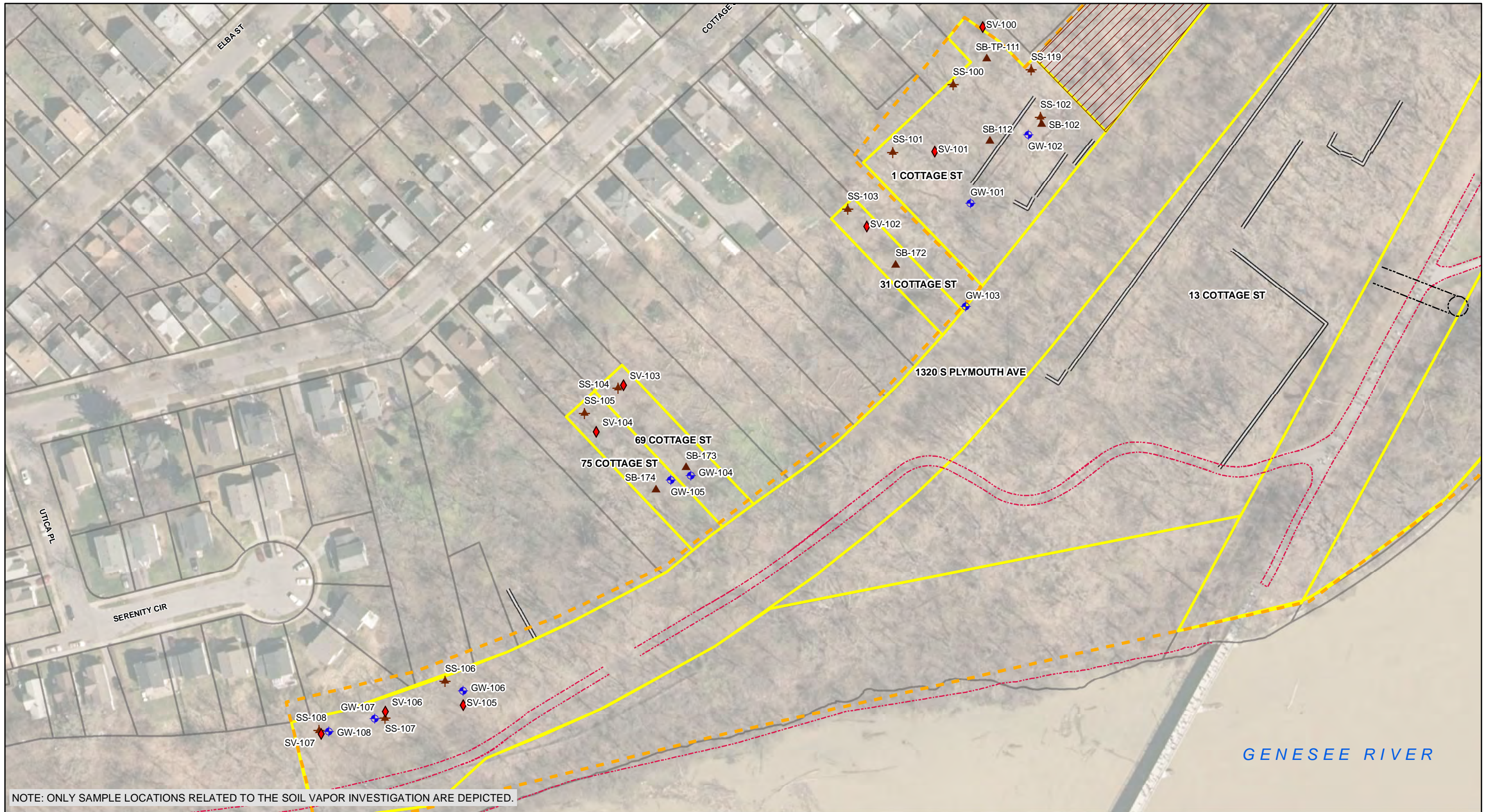


O'BRIEN & GERE ENGINEERS, INC.

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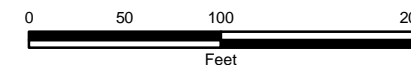
NOTE: ONLY SAMPLE LOCATIONS RELATED TO THE SOIL VAPOR INVESTIGATION ARE DEPICTED.

LEGEND

- OVERBURDEN MONITORING WELL
- SOIL BORING
- SURFACE SOIL
- SOIL VAPOR
- BIKE PATH
- WALL FOUNDATION
- CITY TAX PARCEL
- BROWNFIELD CLEANUP PROGRAM SITE LIMITS (APPROXIMATELY 15.4 ACRES)
- FORMER VACUUM OIL REFINERY SITE (APPROXIMATE)
- NOT PART OF CITY OF ROCHESTER BROWNFIELD CLEANUP PROGRAM SITE; HOWEVER, THESE PARCELS ARE BEING INVESTIGATED BY OTHER ENTITIES.

CITY OF ROCHESTER - BROWNFIELD CLEANUP PROGRAM
REMEDIAL INVESTIGATION REPORT - PORTION OF FORMER VACUUM OIL REFINERY

1, 13, 31, 69, AND 75 COTTAGE STREET;
100 RIVERVIEW PLACE;
102 VIOLETTA STREET; AND PORTION OF
1320 S. PLYMOUTH AVENUE
ROCHESTER, NEW YORK



SOIL VAPOR
SAMPLE LOCATIONS



O'BRIEN & GERE ENGINEERS, INC.

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OCTOBER 2019

Attachment B

Figure 5 – Alternative 2
(Site Location Map)



LEGEND

- FORMER VACUUM OIL REFINERY (APPROXIMATE)
 - BROWNFIELD CLEANUP PROGRAM SITE LIMITS (APPROXIMATELY 15.4 ACRES)
 - 2 FOOT VEGETATED COVER (12.6 AC)
 - ASPHALT COVER (1 AC)
- APPROXIMATE OVERBURDEN THICKNESS (FT) FOR TARGETED EXCAVATION (APPROXIMATELY 1.1 AC, 22,300 CUBIC YARDS)**
- TARGETED EXCAVATION, 11' - 20'
 - TARGETED EXCAVATION, UP TO 21'

Notes

Additional soil may be excavated and disposed off-site based on presence of odors/staining, as encountered, during remedial actions and site redevelopment activities. For the purpose of developing the RAAR, an additional 20 percent by volume soil (approximately 4,500 cubic yards) was assumed for excavation and off-site disposal.



**BROWNFIELD CLEANUP PROGRAM
REMEDIAL ALTERNATIVES
ANALYSIS REPORT**

**PORTION OF FORMER
VACUUM OIL REFINERY**

13, 31, 49, 69, AND 75 COTTAGE STREET; 100 RIVERVIEW PLACE; AND PORTIONS OF 1 COTTAGE STREET; 10 FLINT STREET; 102 VIOLETTA STREET; AND 1320 S. PLYMOUTH AVENUE ROCHESTER, NEW YORK

**FIGURE 5
ALTERNATIVE - 2**

JUNE 2023

RAMBOLL AMERICAS
ENGINEERING SOLUTIONS, INC.
A RAMBOLL COMPANY



Attachment C

January 2022 PSA Form

AGREEMENT FOR PROFESSIONAL SERVICES

Project Name:
Project Code:
Consultant Name:
Agreement #:
Authorizing Ordinance:

I N D E X

ARTICLE I

- Part 1. DESCRIPTION OF PROJECT

- Part 2. DESCRIPTION OF PROFESSIONAL SERVICES
 - Section 1.201 General
 - Section 1.202 Additional Services (if applicable)

- Part 3. SUBCONTRACTS

- Part 4. CITY RESPONSIBILITIES

- Part 5. FEES
 - Section 1.501 General
 - Section 1.502 Fee for Additional Services

- Part 6. TERM

- Part 7. REMOVAL OF PERSONNEL (if applicable)

- Part 8. AUTHORIZED AGENT

- Part 9. OWNERSHIP OF DOCUMENTS

- Part 10. CONFIDENTIALITY
 - Section 1.1001 General
 - Section 1.1002 Freedom of Information Law

- Part 11. ORGANIZATIONAL CONFLICT OF INTEREST

ARTICLE II

- Part 1. QUALIFICATIONS, INDEMNITY AND INSURANCE
- Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits
 - Section 2.102 Consultant's Liability
 - Section 2.103 Professional Liability Insurance
 - Section 2.104 General Liability Insurance
 - Section 2.105 Worker's Compensation and Disability Benefits Insurance
 - Section 2.106 Copyright or Patent Infringement
 - Section 2.107 No Individual Liability
- Part 2. SPECIFIC DESIGN RESTRICTIONS
- Section 2.201 Environmental Policy
- Part 3. EMPLOYMENT PRACTICES
- Section 2.301 Equal Employment Opportunity and MWBE and Workforce Utilization Goals
 - Section 2.302 Title VI of the Civil Rights Act of 1964
 - Section 2.303 The MacBride Principles
 - Section 2.304 Compliance with Labor Laws
 - Section 2.305 Living Wage Requirements
- Part 4. OPERATIONS
- Section 2.401 Compliance with Air and Water Acts
 - Section 2.402 Political Activity Prohibited
 - Section 2.403 Lobbying Prohibited
 - Section 2.404 Anti-Kickback Rules
 - Section 2.405 Withholding of Salaries
 - Section 2.406 Discrimination Because of Certain Labor Matters
 - Section 2.407 Status as Independent Contractor
- Part 5. DOCUMENTS
- Section 2.501 Patents and Copyrights
 - Section 2.502 Audit
 - Section 2.503 Content of Sub-Agreements
- Part 6. TERMINATION
- Section 2.601 Termination for Convenience of the City
 - Section 2.602 Termination for Default
- Part 7. GENERAL
- Section 2.701 Prohibition Against Assignment
 - Section 2.702 Compliance with All Laws
 - Section 2.703 Successors

Section 2.704	Interest of City and Consultant in Contract
Section 2.705	Permits, Laws and Taxes
Section 2.706	Obligations Limited to Funds Available
Section 2.707	Extent of Agreement
Section 2.708	Law and Forum
Section 2.709	No Waiver
Section 2.710	Severability

AGREEMENT

THIS AGREEMENT, entered into on the ___ day of _____, 200_, by and between the CITY OF ROCHESTER, a municipal corporation having its principal office located at CITY HALL, 30 Church Street, Rochester, New York, 14614, hereinafter referred to as the "City", and _____ with offices at _____, hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, the City desires to secure the professional services of the Consultant to _____, hereinafter referred to as the Project and;

WHEREAS, the Consultant covenants that it has the personnel, skills and expertise required and wishes to undertake the Project.

NOW THEREFORE, the City and the Consultant do mutually agree, in consideration of the covenants, terms and conditions contained herein, as follows:

ARTICLE I, Part 1. Description of Project

Section 1.101 General Description

ARTICLE I, Part 2. Description of Professional Services

Section 1.201 General

The Consultant shall provide the following services:

- A.

- B. The Consultant is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. The Consultant shall provide a list of its employees assigned to the project which provides the employee's name and title prior to the start of work. The Consultant shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City.

- C. The Consultant shall maintain an up-to-date, orderly, assembled file of Project notes and records. Notes shall include correspondence, calculations, documentation, references and other material necessary for the completion of the Project.
- D. The Consultant is responsible for the professional quality, technical accuracy, timely completion and appropriate coordination of all designs, drawings, specifications, testing, reports and other services furnished under this Agreement. The Consultant bears all responsibility for any errors, omissions or other deficiencies in the Consultant's designs, drawings, specifications, reports and other services and shall correct or revise any such errors, omissions or other deficiencies without additional compensation.
- E. The Consultant's obligations under this Section are in addition to the Consultant's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the City may have against the Consultant for faulty materials, equipment or work.
- F. The Consultant shall furnish promptly all equipment, labor and materials needed to perform in a safe and convenient manner, such inspections as the City requires.
- H. The Consultant shall keep the City informed of the progress of the work so that the City may inspect the Consultant's work as determined necessary by the City. In particular, the Consultant shall provide the City with at least forty-eight (48) hours notice prior to performing work which would prevent proper inspection of previously completed work.
- I. The Consultant shall meet with the City at the City's request to discuss the Assessment results and recommendations as may be deemed necessary by the City.

Section 1.202 Additional Services (if applicable)

ARTICLE I, Part 3. Subcontracts

All services to be performed under this Agreement shall be performed with the Consultant's own employees, unless the City agrees that the Consultant may subcontract such services. Copies of all proposed Agreements between the Consultant and subcontractors shall be submitted to the City along with a statement of the subcontractor's qualifications. Such Agreements shall be approved by the City in writing prior to initiation of work. All subcontracts under

this Agreement are subject to all applicable provisions of this Agreement unless otherwise directed in writing by the City. The Consultant is responsible for the completion of all services under this Agreement in an acceptable and timely manner, including any services performed by a subcontractor, supplier or other party with whom the Consultant has a contract.

ARTICLE I, Part 4. City Responsibilities

The City shall:

- A. Provide as complete information as is reasonably possible as to its requirements for the Project to the Consultant.
- B. Assist the Consultant by making available to the Consultant any information pertinent to the Project, including previous reports and any other relevant data.
- C. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals and other documents presented to the City by the Consultant for review and render decisions pertaining thereto within a reasonable period of time, so as not to delay the work of the Consultant.
- D. Designate a representative (Authorized Agent) to act as liaison between the City and the Consultant. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the City policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.
- E. Give written notice to the Consultant where the City observes or otherwise becomes aware of any default in the Consultant's performance hereunder or where the City does not concur with the design or other recommendations of the Consultant.
- F. Obtain any required easements with the assistance of the Consultant.
- G. Obtain or provide in a timely manner permission for the Consultant to enter upon any sites, buildings, and facilities as deemed necessary by the Consultant to perform the services required pursuant to this Agreement.

ARTICLE I, Part 5. Fees

Section 1.501 General

- A. In no event whatsoever shall the total fee payable to the Consultant pursuant to this Agreement, including all costs and disbursements whatsoever, exceed \$.
- B. The Consultant shall have the right to bill the City for services performed and not already billed on a (monthly basis) (upon completion of all work required under this Agreement) (upon completion of).
- C. Payment Request

The Consultant shall submit an invoice and any other supporting documentation in the manner prescribed by the City at a minimum of once every ninety (90) days during the term of the agreement unless a different schedule is approved by the City.

ARTICLE I, Part 6. Term

This Agreement shall commence (upon execution by the parties) (on DATE) and shall terminate (one year from such date) (on DATE).

ARTICLE I, Part 7. Removal of Personnel

All personnel assigned by the Consultant shall be subject to the approval of the City and be required to cooperate with the City project personnel. In the event that the Consultant's personnel fail to cooperate or perform their assigned tasks in a reasonable manner as determined by the City, the City may require the Consultant to replace such personnel.

ARTICLE I, Part 8. Authorized Agent

- A. The City hereby designates the:

[Title]
[Department]
30 Church Street
Rochester, New York 14614-1278

- B. The Consultant hereby designates:

or an authorized representative in case of absence, as Authorized Agents for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if

dispatched by registered or certified mail, postage prepaid, or delivered personally to the Authorized Agents designated herein.

The parties reserve the right to designate other or additional Authorized Agents upon written notice to the other.

ARTICLE I, Part 9. Ownership of Documents

All original notes, drawings, specifications and survey maps prepared by the Consultant under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual Assessment report will become the property of the City and shall be delivered to the City's Authorized Agent. The Consultant may provide a complete reproducible set of drawings, specifications, survey maps and all other documents in lieu of the originals.

ARTICLE I, Part 10. Confidentiality

Section 1.1001 General

The Consultant agrees that any and all data, analyses, materials or other information, oral or written, made available to the Consultant with respect to this Agreement, and any and all data, analyses, materials, reports or other information, oral or written, prepared by the Consultant with respect to this Agreement shall, except for information which has been or is publicly available, be treated as confidential; and shall not be utilized, released, published or disclosed by the Consultant at any time for any purpose whatsoever other than to provide consultation or other services to the City.

Section 1.1002 Freedom of Information Law

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should Consultant provide the City with any records it deems confidential and exempt from FOIL, Consultant shall clearly mark such portions of those records as confidential and exempt from FOIL disclosure. Upon any request for disclosure of information so marked, the City will inform Consultant of the request and give Consultant ten (10) business days to submit a written statement of necessity for exempting the records from disclosure pursuant to New York Public Officers Law 89(5). As required by the Public Officers Law, the City will issue a determination as to disclosure within seven (7) business days. If the City determines that the records must be disclosed, Consultant may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to Consultant's appeal within ten (10) business days. If the City issues an adverse determination, Consultant may appeal the decision within fifteen (15) days of service by commencing an Article Seventy-Eight (78) proceeding under New York's Civil Practice Law and Rules.

ARTICLE I, Part 11. Organizational Conflict of Interest

- A. The Consultant warrants that to the best of the Consultant's knowledge and belief, there are not relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Consultant has disclosed all such relevant information.
- B. An organizational conflict of interest exists when the Consultant performs or agrees to perform services for another party that could foreseeable implicate the City as a potentially responsible party in an environmental enforcement action or claim against the City or otherwise increase the potential liability of the City.
- C. The Consultant agrees that if an actual or potential organizational conflict of interest is discovered, the Consultant will make a full disclosure as soon as possible in writing to the City. This disclosure shall include a description of actions which the Consultant has taken or proposed to take, after consultation with the City, to avoid, mitigate, or neutralize the actual or potential conflict.
- D. The City may terminate this Agreement in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Consultant was aware of a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose it, or misrepresented relevant information to the City, the City may terminate the Agreement, debar the Consultant from contracting with the City, or pursue such other remedies as may be permitted by law or this Agreement. In such event, termination of this Agreement shall be deemed a termination for default pursuant to Section 2.602.
- E. The Consultant further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this Article.

ARTICLE II

ARTICLE II, Part 1. Qualifications, Indemnity and Insurance

Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits

- A. The Consultant hereby agrees that it has, or will have, on its staff and will retain during the performance of this service under this Agreement, all appropriate professional personnel necessary to completely and accurately perform the work and services under this Agreement.
- B. The Consultant further agrees that the design of architectural or engineering features of the work shall be accomplished by professionals licensed to practice in New York State.
- C. The Consultant further agrees to insure that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

Section 2.102 Consultant's Liability

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the Consultant, its employees, agents or subcontractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part, then the Consultant shall be notified and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

Section 2.103 Professional Liability Insurance

The Consultant shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring the Consultant against malpractice or errors and omissions of the Consultant, in the amount of One Million Dollars. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the City shall be notified not less than thirty (30) days prior to the

cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

Section 2.104 General Liability Insurance

The Consultant shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The amount of said insurance coverage shall be in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Consultant shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

Section 2.105 Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall require all the Consultant's subcontractors to keep insured, during the life of this Agreement, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event the Consultant hires its own employees to do any work called for by this Agreement, then the Consultant agrees to so insure its own employees. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting a completed New York State Workers' Compensation Board's form WC/DB-100.

Section 2.106 Copyright or Patent Infringement

The Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or

damage resulting therefrom, providing however, that the City within ten days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the Consultant in writing.

Section 2.107 No Individual Liability

Nothing contained in the Agreement shall be construed as creating any personal liability on the part of any officer or agent of the City.

ARTICLE II, Part 2. Specific Design Restrictions

Section 2.201 Environmental Policy

The City has an obligation to assess the environmental impact of the Project and to prepare any necessary state, federal, and/or local environmental impact statements under the State Environmental Quality Review Act and the national Environmental Protection Act. The City wishes to enhance the environment by minimizing environmental degradation and by maximizing the Project benefits.

The Consultant, therefore, shall assist the City in determining whether environmental impact statements ("EIS") should be prepared and shall assist the City or the City's Environmental Specialist in preparing any necessary EIS. The Consultant shall not be required to prepare an EIS, unless specifically required by Article I of this Agreement.

ARTICLE II, Part 3. Employment Practices

Section 2.301 Equal Employment Opportunity and MWBE and Workforce Utilization Goals

A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of handicap status in admission, or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

MINORITY GROUP PERSONS - shall mean a person of Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native ethnic or racial origin and identity.

C. Compliance

The Consultant shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. The Consultant agrees that it will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Consultant, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability or marital status discriminate against any person who is qualified and available to perform the work to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship.
2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.
3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity

laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

D. MWBE and Workforce Utilization Goals

The City of Rochester has established a policy to promote the growth and development of Minority and Women Business Enterprises (MWBE) and to improve employment opportunities for minorities and women and has adopted MWBE goals and minority workforce participation goals that apply to public works and professional services consulting agreements with a maximum compensation exceeding \$10,000 pursuant to Ordinance No. 2018-54.

Ordinance No. 2018-54 established the goal that MWBE's receive 30% of the total annual contract awards with aggregate minority and women award goals of 15% each. Ordinance No. 2018-54 further established annual aggregate workforce goals of 20% Minority and 6.9% Women.

The Consultant shall submit a workforce staffing plan, which, when reviewed by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit A, detailing the percentage of the workforce utilized to perform the work of this agreement who will be either minority or women, including both the Consultant's workforce and that of any subcontractors who will be utilized. Consultant shall submit workforce utilization reports on the City's forms with each invoice or as otherwise requested by the MWBE Officer. The Consultant understands and accepts that the calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.

The Consultant shall submit an MWBE Utilization Plan with respect to any subcontractors or suppliers used to perform the services under this Agreement, which, when approved by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit B. Consultant shall submit MWBE utilization and subcontractor/supplier payment certification on the City's forms with each invoice or as otherwise requested by the MWBE Officer.

During the term of the Agreement, the Consultant shall notify the City if a change occurs that will result in a significant (5% or more) increase or decrease in the workforce staffing plan and/or MWBE utilization plan goals incorporated as Exhibit A and/or Exhibit B of this Agreement. A revised workforce staffing plan and/or MWBE utilization plan must be approved by the MWBE Officer. Once signed by the Consultant and the MWBE Officer, such revised plan(s) shall be incorporated into the Agreement as an amendment pursuant to Section 2.707.

Consultant's failure to submit MWBE and subcontractor/supplier payment certification forms, if required, and the workforce utilization reports shall constitute a default in the performance of this Agreement. Failure to meet the goals stated in the most recent workforce staffing plan and/or the MWBE utilization plan incorporated into the Agreement may result in disqualification from award of future contracts with the City.

Section 2.302 Title VI of the Civil Rights Act of 1964

The City of Rochester hereby gives public notice that it is Municipality's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Municipality receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with Municipality. Any such complaint shall be in writing and filed with the City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at www.cityofrochester.gov, or by calling (585) 428-6185.

Section 2.303 The MacBride Principles

The Consultant agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride principles. A copy of the MacBride principles is on file in the Office of the Director of Finance.

Section 2.304 Compliance with Labor Laws

The Consultant specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction project. The foregoing requirements do not generally apply to professional staff, drafters, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. The Consultant shall, however, comply with all state, federal and local non-discrimination and equal employment opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that the Consultant has unlawfully discriminated because of the race, color, creed, national origin, sex or age of any applicant for employment or any employees.

Section 2.305 Living Wage Requirements

A. Applicability of Living Wage Requirements

This section shall apply and the Consultant shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance", in the event that payments by the City to the Consultant under this Agreement shall exceed fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to more than fifty thousand dollars (\$50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

The Consultant shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends their time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in

this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at www.cityofrochester.gov. Consultant shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Consultant's employees who are compensated in accordance with the terms of a collective bargaining agreement.

ARTICLE II, Part 4. Operations

Section 2.401 Compliance with Air and Water Acts

The Consultant and any and all subcontractors agree as follows:

- A. The Consultant, and its subcontractors warrant that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. The Consultant promises to comply with all of the requirements of Sections 144 of the Clean Air Act, as amended (47 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to the inspection, monitoring, entry, reports and information as well as all other requirements specified in Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A condition for the award of the Agreement is that prompt notice will be given to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Agreement is under consideration to be listed on the EPA list of Violating Facilities.
- D. The Consultant warrants to the City that it has not been convicted under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

Section 2.402 Political Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used during the performance of the Agreement for

any partisan political activity, or to further the election or defeat of any candidate for public office.

Section 2.403 Lobbying Prohibited

None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, the Legislature of the State of New York or the Council of the City of Rochester.

Section 2.404 Anti-Kickback Rules

Salaries of employees performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions that are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 108; title 18 U.S.C., section 874; and title 40 U.S.C., section 276c). The Consultant shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to insure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

Section 2.405 Withholding of Salaries

If, in the performance of this Agreement, there is notice to the City of any underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant out of payments due to it an amount sufficient to pay the employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the City for and on account of the Consultant or subcontractor to the respective employees to whom they are due.

Section 2.406 Discrimination Because of Certain Labor Matters

No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because the person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify at any proceeding relating to the labor standards applicable hereunder to that person's employer.

Section 2.407 Status as Independent Contractor

The Consultant, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.

ARTICLE II, Part 5. Documents

Section 2.501 Patents and Copyrights

The Consultant agrees that, in the event it, or any of its employees' develop any material for which a copyright can be obtained which material was developed as a result of or in connection with the work required pursuant to this Agreement, the City shall own the copyright to any copyrightable material and may, in its discretion, grant a royalty-free, non-exclusive license to use, reproduce and distribute such copyrightable material. The Consultant further agrees that in the event it, or any of its employees, develops any process, machinery or product for which a patent would be obtainable, the Consultant shall provide the necessary information to the City, so that the City can apply for such patent at its own expense. Such patent shall become the property of the City; provided, however, that the City, in its discretion, may grant to Consultant a royalty-free, non-exclusive license to produce or reproduce such patented product. The benefits of either a patent or a copyright shall also inure to any public agency which finances, in whole or in part, this project and such agency shall receive a royalty-free, non-exclusive license to use, reproduce, manufacture and distribute the product or mater which has been patented or copyrighted.

Section 2.502 Audit

The Consultant agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. The Consultant shall maintain all books, documents, papers and other evidence pertinent to the performance of work under this Agreement in accordance with generally acceptable accounting principles, and 40 CFR Part 30 in effect during the term of this Agreement. The Consultant agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized representatives of the City and further agrees to provide necessary staff support to the performance of such audit. The Consultant agrees to maintain for a period of six (6) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this Agreement; however, this period shall be extended beyond six years for any and all records and information pertaining to unresolved questions, which have been

brought to the Consultant's attention by written notice by the City. The Consultant agrees to furnish to the City data to include but not be limited to, intake records, status change notices, termination notices, and follow-up records. Said reports will be submitted periodically as required by the City.

Section 2.503 Content of Sub-Agreements

The Consultant agrees that all sub-agreements authorized by this Agreement shall be in written form. The Consultant shall require all subcontractors to comply with any of the following sections which may be in this Agreement: "Equal Employment Opportunity; Affirmative Action and Employment of Local Labor; Compliance with Labor Laws; Certifications Regarding Conflicts of Interest; Anti-Kickback Rules; Interest of City and Contractor in Contract." It is the purpose of this section to insure that all Agreements obligate all parties performing work under this Agreement to comply with necessary governmental programs and policies. The City may require the Consultant to submit copies of such sub-agreements to the City. If such copies are not submitted upon request, the City may have the right to withhold any and all payments to the Consultant to those items of work which have not complied with this section.

ARTICLE II, Part 6. Termination

Section 2.601 Termination for Convenience of the City

- A. This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Consultant. However, no such termination shall relieve the Consultant of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.
- B. If the Agreement is so terminated the City may take over the work and services and prosecute the same to completion by contract or otherwise. The Consultant, upon such termination, shall transfer title, and in the manner directed by the City, shall deliver to the City the completed or partially completed, plans, drawings information, other property and records of work being performed, which, if this Agreement had been completed, would be required to be furnished to the City.
- C. After receipt of written notice of termination, the Consultant shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than one year from the effective date of termination.

- D. In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay the Consultant the amount determined as the total of the following:
1. The cost of all work performed prior to the effective date of termination.
 2. The cost of settling and paying claims arising out of and as a direct result of the termination;
 3. A sum as profit on subdivision 1. above, determined to be fair and reasonable, provided however, that if the Consultant would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

Section 2.602 Termination for Default

- A. The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or, from time to time, in part, whenever the Consultant shall default in performance of this Agreement in accordance with its terms (including in the term "default" any failure by the Consultant to make progress in the prosecution of the work hereunder which endangers such performance) and shall fail to cure diligently such default within a period of ten days or (or such longer period as the City may allow) after delivery by the City of a notice specifying the default.
- B. If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.
- C. The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.
- D. This Agreement may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant.

- E. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Consultant was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."
- F. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE II, Part 7. General

Section 2.701 Prohibition Against Assignment

The Consultant agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to execute such contract to any other person or corporation without the previous consent in writing of the City.

Section 2.702 Compliance with All Laws

The Consultant agrees that during the performance of the work required pursuant to this Agreement, the Consultant, and all employees working under its direction, shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way their actions during their said performance of the work required by this Agreement. Furthermore, each and every provision of law, and contractual clause required by law to be inserted in this Agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

Section 2.703 Successors

The City and the Consultant each bind their successors, executors, administrators and assigns in respect of all covenants of this Agreement.

Section 2.704 Interest of City and Consultant in Contract

The City and the Consultant agree that no member, officer, or employee of the City or of the Consultant or assignees agents shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.

Section 2.705 Permits, Laws and Taxes

- A. In the event that services performed by the Consultant for the City are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) the Consultant shall receive from the City the material necessary to obtain a tax exempt certificate upon written request.
- B. The Consultant shall pay all taxes, applicable to the work and materials supplied under this Agreement, it being understood that in no case shall any such tax be borne by the City, except as provided in subparagraph A. above.

Section 2.706 Obligations Limited to Funds Available

The parties specifically agree that the Consultant's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Consultant, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

Section 2.707 Extent of Agreement

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, Agreements, and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by its authorized agent.

Section 2.708 Law and Forum

This Agreement shall be governed by and under the laws of the State of New York and the Charter of the City of Rochester. The parties further agree that Supreme Court of the State of New York, held in and for the County of Monroe shall be the forum to resolve disputes arising out of either this Agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.

Section 2.709 No Waiver

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement

prevent the City from enforcing each and every term of this Agreement thereafter.

Section 2.710 Severability

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day first written above.

THE CITY OF ROCHESTER

BY: _____
Malik D. Evans, Mayor

CONSULTANT

BY: _____
Name:

STATE OF NEW YORK
COUNTY OF MONROE

On this ___ day of _____, 200__, before me, the subscriber, personally came MALIK D. EVANS to me known, who being by me duly sworn, did depose and say that he resides in the City of Rochester, that he is the Mayor of the City of Rochester, the municipal corporation described in the above Agreement; that he signed his name thereto by authority of Ordinance No. ___.

Notary Public

STATE OF NEW YORK
COUNTY OF MONROE

On this _____ day of _____, 200_ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),

and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public