Memorandum of Agreement Between the New York State Department of Environmental Conservation and the New York City Office of Environmental Remediation

I. Purpose

On May 11, 2009 implementation of the New York City Brownfield and Community Revitalization Act vested the New York City (NYC) Mayor's Office of Environmental Remediation (OER) with the authority to create and operate the NYC Local Brownfield Cleanup Program (LBCP).

Pursuant to New York State Environmental Conservation Law (ECL) 3-0301(2)(p), the New York State Department of Environmental Conservation (NYSDEC) is empowered to "delegate to municipal health or environmental departments or agencies or other appropriate governmental entities including the state soil and water conservation committee and the soil and water conservation districts, any of which shall meet such qualifications relating to adequate authority, expertise, staff, funding and other matters as may be prescribed, such functions of review, approval of plans, issuance of licenses, certificates or approvals required or authorized by this chapter as the commissioner may deem appropriate in order to expedite the review of matters within the jurisdiction of the department, to provide for better coordination among different levels of government or to enhance environmental protection, subject to conditions as he may establish."

OER and NYSDEC (collectively; the Government Entities) now enter into this Memorandum of Agreement (MOA or Agreement) to facilitate OER's implementation of brownfield cleanup and redevelopment in NYC (the MOA is not a delegation of any program from NYSDEC to OER). NYSDEC and OER seek to promote the cleanup of contaminated sites in NYC by working together to achieve cleanups that protect public health and the environment by making greater use of all available authorities, and selecting the optimum programmatic tools to increase the pace, effectiveness, efficiency, and quality of cleanups.

The revitalization of existing contaminated or potentially contaminated brownfield properties will provide a significant benefit to the environment, public health and the economy of affected local communities. The Government Entities enter into this Agreement to promote and facilitate the cleanup and appropriate reuse of such contaminated properties.

II. Applicability

a. This Agreement is applicable to properties and persons for which eligibility is established under regulations promulgated by OER, authorized by NYC local law, and enrolled in the LBCP. Additionally, this Agreement is applicable to certain activities during the application process for the LBCP [e.g., coordination requirements for eligibility in paragraph III.c and for obligation to report potential inactive hazardous waste

disposal sites in paragraph III.d(i)]. This Agreement only covers the topics expressly set forth herein.

b. This Agreement does not in any way grant or otherwise create any rights, obligations, responsibilities, expectations, or benefits for any person, and does not in any way affect either NYSDEC's or OER's authority under State or federal law.

III. General Provisions for the New York City Local Brownfield Cleanup Program

a. OER shall, except as provided in III.b. below, observe the program elements of the NYS Brownfield Cleanup Program (BCP) defined in 6 NYCRR 375-1 and 375-3, and shall:

i. provide oversight authorities or other mechanisms, and resources, adequate to ensure that a response action will protect human health and the environment; and be conducted in accordance with applicable Federal and State law;

ii. provide remedy selection in accordance with regulations for the LBCP; 6 NYCRR 375-1 and 375-3; and NYSDEC standards, criteria and guidance. Presumptive remedies will be consistent with *DER-15 Presumptive/Proven Remedial Technologies* (February 27, 2007) or as otherwise approved by NYSDEC;

iii. ensure that cleanup levels are achieved as set forth in regulations for the LBCP; 6 NYCRR 375; and NYSDEC standards, criteria and guidance. Remedies shall not be inconsistent with the current, intended and reasonably anticipated use except as provided in 6 NYCRR 375;

iv. review and approve every cleanup plan and report and require verification and certification or other similar documentation that the remedial work is complete;

v. ensure that use restrictions are recorded in the official records of the county in which the site is located and that such records will be available in an institutional control registry accessible to the public; and

vi. ensure that petroleum releases and suspected inactive hazardous wast disposal sites identified by OER during operation of the LBCP are promptly reported to NYSDEC.

b. For petroleum releases managed by OER pursuant to this MOA and the

Addendum hereto, OER shall ensure that the cleanup is performed in accordance with NYSDEC Petroleum Spill Guidance Manual and *DER-10 Technical Guidance for Site Investigation and Remediation* (May 3, 2010). The cleanup goal shall be pre-release. To the extent that such goal cannot be achieved, OER may consider applicable NYSDEC guidance to determine the appropriate cleanup levels. Further, it may employ use restrictions so long as they are recorded as provided in III.a, above.

c. Upon receipt of an application for the LBCP, OER will review public databases established by NYSDEC and United States Environmental Protection Agency to identify potential remedial programs on a property. In instances where the potential exists for DEC involvement at a property, OER agrees to coordinate with NYSDEC on eligibility determinations for the LBCP. OER will contact the designated NYSDEC representative and share information and data about the site. Such information will include historical property use reports, site characterization and remedial investigation reports and other pertinent environmental data. OER will provide such information as NYSDEC may request relative to the application under review. Coordination by OER will be performed in accordance with the terms and conditions for oversight and coordination set forth in this Agreement and will continue throughout the duration of the project as required by this Agreement.

Coordinated Brownfield Sites: A coordinated brownfield site is real property in NYC set forth on a schedule attached to this Agreement for which this Agreement authorizes participation in the LBCP in accordance with the terms and conditions for oversight and coordination set forth in this Agreement. Generally, a coordinated brownfield site is one in which the federal or state government is involved in the remedial program for a part of the site. Coordination of these sites will start with communication by OER of an applicant's intent to enroll in the LBCP. OER and NYSDEC will designate project contacts to be used for all correspondence, transmittal of all data and information pertinent to the remedial program contemplated under the LBCP including work plans and reports, and establishment of a program for communications, including meetings as determined by the Government Entities. The remedial program for the site in the LBCP shall not be inconsistent with, interfere with, or otherwise impair remedial actions that may be developed or implemented for sites being managed by NYSDEC.

d. Communications

i. OER agrees to promptly communicate all suspected inactive hazardous waste disposal sites that it becomes aware of during the course of its administration of the LBCP pursuant to ECL 27-1303.

Correspondence of a suspected inactive hazardous waste disposal site shall be sent to:

Regional Remediation Engineer
NYSDEC
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101

and

Site Control Section
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7020

ii. The communication shall include site address, tax block and lots(s), the reason for OER's belief that the site may be an inactive hazardous waste disposal site, and any additional data or information supportive of this belief.

iii. The format for reporting this information will be established by the Government Entities. OER will include a summary of all properties for which notification has been provided under this provision in an annual report to NYSDEC pursuant to ECL 27-1303. OER will not admit a property that OER suspects poses a significant threat to public health or the environment into the LBCP, and will promptly terminate all sites that NYSDEC has determined poses a significant threat to public health or the environment, as evidenced by classifying the property as a Class 2 property on the State Registry of Inactive Hazardous Waste Disposal Sites, that are identified after enrollment in the LBCP.

e. OER agrees to coordinate with NYSDEC as provided in subsection III.a of the Addendum to this Agreement to ensure that its selection of remedial actions shall not be inconsistent with, interfere with, or otherwise impair remedial actions that may be developed or implemented by NYSDEC on or near the property.

f. OER agrees to coordinate with NYSDEC as provided in subsection III.b of the Addendum to this Agreement relative to properties seeking enrollment in the LBCP with contamination from sources located off-site, or where such circumstances are believed by OER to exist.

g. For a coordinated brownfield site, OER agrees to coordinate with NYSDEC as provided in subsection III(c)(ii)(1) of the Addendum to this Agreement.

h. OER shall transmit all fact sheets and notices under the LBCP to NYSDEC. Such fact sheets and notices will, in addition to any site specific contacts designated pursuant to this Agreement, be sent to:

Regional Director
NYSDEC
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101

IV. Statement of Liability by New York State Department of Environmental Conservation for the properties that are in the New York City Local Brownfield Cleanup Program

a. Generally, NYSDEC agrees that a site is of no further interest and it does not plan or anticipate taking administrative or judicial enforcement action seeking to require a removal or remedial action under CERLCA, 42 U.S.C. §9601 et seq. or the ECL at a site addressed by this Agreement while (1) the site remains in compliance with the LBCP and the terms of any local brownfield cleanup agreement with OER, or (2) when a site investigation or remediation has been completed in accordance with the LBCP and if the site is the subject of a notice of completion.

b. NYSDEC is not granting liability releases under the LBCP program.

c. Nothing herein limits NYSDEC's authority to take action where it deems appropriate.

V. Technical Assistance by OER on Petroleum Spills

a. OER may, subject to NYSDEC approval, provide technical assistance to NYSDEC in the oversight of petroleum spills on qualified local brownfield sites enrolled in the LBCP.

b. NYSDEC will retain full authority, including making final closure determinations, over all petroleum spills.

c. The procedures for OER technical assistance are set forth in Section V of the Addendum to this Agreement.

VI. Implementation

a. Site Specific Implementation

i. NYSDEC will meet periodically with OER for the purpose of program coordination and management and to review OER's implementation of the LBCP. Such meetings shall occur at least annually but may be held more frequently at the discretion of the NYSDEC.

ii. OER will provide or make available to NYSDEC information regarding enrollees in the LBCP in a format acceptable to NYSDEC.

b. LBCP Program-wide Implementation

i. OER agrees to a periodic audit by NYSDEC of its implementation of the LBCP and this MOA, for the purpose of determining conformance with the terms of this Agreement.

ii. OER shall provide NYSDEC with an annual report of the status of the LBCP. Such report shall be submitted to the Director of Environmental Remediation, NYSDEC, 625 Broadway, Albany, NY 12233 on or before March 1 for the immediately preceding calendar year. The annual report shall contain the following elements:

1. the number, names and types of sites that have executed an agreement with OER under the LBCP and the status of site remediation at those sites;

2. information on sites that received a notice of completion from OER in the previous calendar year; and

3. such other information as NYSDEC may require.

iii. OER will make all remedial program documents available to NYSDEC, including the remedial investigation data and reports, remedial action work plans, and remedial action reports. Government Entities shall in a timely manner keep each other informed of proposed modifications to its statutory or regulatory authority for the LBCP and BCP.

VII. Community Participation (CP)

a. OER agrees to abide by the CP requirements defined in the LBCP regulations.

VIII. Modification and Termination

a. This Agreement will be in effect for two years following its execution.

   i. OER may request an extension of this Agreement within 3 months prior to the expiration of this Agreement.

   ii. NYSDEC will not unreasonably withhold an extension.

   iii. Terms of this Agreement, and Addendum hereto, can only be modified in writing, signed by both parties.

   iv. This Agreement can be terminated upon 90 days notice by either party, or less than 90 days in the event of cause to dispense with the 90 day period.

DATED: AUGUST 5 , 2010

New York State Department of Environmental Conservation

New York City Mayor's Office

Addendum to Memorandum of Agreement Between the New York State Department of Environmental Conservation and the New York City Office of Environmental Remediation

Preamble

This Addendum provides additional information on process and procedure for items that are identified in the Memorandum of Agreement (MOA) between the New York State Department of Environmental Conservation (NYSDEC) and the New York City Office of Environmental Remediation (OER), Sections I-VIII. It is anticipated that this addendum will be modified periodically to refine this document.

I. Section I

Not applicable since no provisions in Section I (Purpose) of the MOA require additional detail.

II. Section II

Not applicable since no provisions in Section II (Applicability) of the MOA require additional detail.

III. Section III: General Provisions for the New York City Local Brownfield Cleanup Program (LBCP)

With the exception of Paragraph III(c)(ii)(1), the provisions in this Paragraph provide for general coordination by OER.

a. **OER actions where NYSDEC has projects on nearby real property.** In order to ensure that remedial activities on sites enrolled in the LBCP do not interfere with remedial activities on nearby remedial sites being managed by NYSDEC, OER will implement the following procedures.

    i. OER will review available NYSDEC databases to identify properties that are being managed in NYSDEC remedial programs.

    ii. OER will coordinate on the proposed remedy for the LBCP site with the NYSDEC project manager relative to remedy selection at an LBCP site where there is a NYSDEC site nearby that may be impacted by such remedy. Coordination will include communication by OER with NYSDEC's project manager, providing a description of the proposed remedy, sharing of data and reports, and may include meetings. OER shall

provide NYSDEC such information as it requests in furtherance of the required coordination.

iii. OER shall ensure that its selection of remedial actions shall not be inconsistent with, interfere with, or otherwise impair remedial actions that may be developed or implemented by NYSDEC on or near the property.

iv. OER will communicate all planned active engineering controls for each LBCP project with the NYSDEC project manager as part of its obligations under this subsection.

b. **OER actions where migration of contamination is occurring onto a LBCP site.** In order to properly administer LBCP sites where contamination is migrating from an off-site source onto the site, OER will follow the following protocol.

i. OER will notify NYSDEC of instances where contaminant migration onto a LBCP site from an off-site source has been identified, including contaminant plumes in groundwater or contaminant plumes in soil vapor.

ii. If such contaminant migration is believed to constitute a suspected inactive hazardous waste site, OER will notify NYSDEC.

iii. OER will provide NYSDEC with information in its possession regarding contaminant migration from off-site sources.

iv. If the off-site source is in a NYSDEC remedial program, OER will coordinate the proposed remedy for the LBCP site with the designated NYSDEC project manager to ensure that the remedial activities for the LBCP site do not prevent or interfere significantly with any proposed, ongoing, or completed remedial program that may be established by NYSDEC for the off-site source.

v. If required, OER will confirm contamination is from an off-site source.

vi. OER will ensure that the remedial program addresses exposures on the LBCP site from contaminants that have migrated from an off-site source under the LBCP remedial program.

vii. Where appropriate, OER will include a groundwater use restriction institutional control on the property as part of the LBCP remedial action.

viii. OER will make the remedial decision document and other remedial program documents available to NYSDEC.

c. OER actions where there is migration from a LBCP site.

i. OER will coordinate with NYSDEC for sites with off-site groundwater contamination prior to enrollment into the LBCP. Coordination will include communication by OER with NYSDEC's project manager, providing a description of the off-site contamination, sharing of data and reports, and may include meetings. OER shall provide NYSDEC such information as it requests in furtherance of the required coordination. NYSDEC may, subject to such terms and conditions on sharing of information and involvement as NYSDEC deems appropriate, concur with OER admitting sites with off-site impacts to enter the LBCP as follows:

1. Chlorinated hydrocarbons: Properties with low-level migration of chlorinated hydrocarbons such that the contamination does not rise to the level of being suspected to be an inactive hazardous waste disposal site and further where communities and sensitive receptors are not affected.

2. Petroleum spills: Properties with petroleum spills will be managed according to the terms defined in Section V of this Agreement.

3. Metals: Properties with low level metal contamination, such that the contamination does not rise to the level of being suspected to be an inactive hazardous waste disposal site.

If NYSDEC does not concur that a proposed site meets the criteria in 1 though 3 above, OER will not admit it.

ii. For real property admitted into the LBCP, OER will coordinate with NYSDEC on the proposed remedial program for sites with contamination migration off-site. Coordination will include communication by OER with NYSDEC's project manager, providing a description of the proposed remedy, sharing of data and reports, and may include meetings. OER shall provide NYSDEC such information as it requests in furtherance of the required coordination. OER shall ensure that its selection of remedial actions shall not be inconsistent with, interfere with, or otherwise impair remedial actions that may be developed or implemented by NYSDEC on or near the property. The remedial action will include elements such as source management and control of future off-site migration.

1. For Coordinated Brownfield Sites, in addition to the provisions in subsections a, b and c above, OER will, unless otherwise directed by NYSDEC, transmit all data and information

pertinent to the remedial program contemplated under the LBCP. Further, OER shall obtain documentation from NYSDEC that establishes that the remedial construction required by NYSDEC at a coordinated brownfield site has been completed to NYSDEC's satisfaction prior to issuance of a notice of completion as defined in Section 43-1402 of the Rules of the City of New York.

d. To the extent that a site falls into two or more subparagraphs under III(c), then the most restrictive provisions shall apply relative to coordination with NYSDEC.

IV. Section IV

Not applicable since no provisions in Section IV (Statement of Liability) of the MOA require additional detail.

V. Section V: Technical Assistance by OER on Petroleum Spills

a. OER may, subject to NYSDEC approval, provide technical assistance for Petroleum Spills for sites enrolled in the LBCP. Regardless of OER's involvement as agreed to by NYSDEC, NYSDEC retains full authority for the spill, including spill closures. This addendum sets forth two paths. The level of technical assistance that may be provided may include scoping and oversight of investigations and scoping and development of work plans, oversight of field activities, oversight of document and record management, and oversight of development of reports. The types of petroleum spills admitted to each path and the procedures to be followed are defined below. OER shall provide NYSDEC information relative to petroleum sites addressed under this MOU when such information obtained subsequent to the NYSDEC decision to allow the site to be addressed under this MOA and addendum is materially different than known at the time of the decision to allow the spill to be managed by OER. NYSDEC may change the path for any spill at any time during the remedial program or withdraw its approval to have OER provide technical assistance. NYSDEC will manage, without OER assistance, all spills unless otherwise approved by NYSDEC and assigned Path 1 or Path 2 below.

Path 1: Maximum Technical Assistance by OER

Spills managed under this path may, subject to NYSDEC approval, include spills from: (i) heating oil tanks; (ii) older spills; and (iii) viscous petroleum (for instance, No. 4 and 6 oil); provided such spills are only causing on-site impacts.

For sites in Path 1, NYSDEC will generally not be actively involved in the development and implementation of work plans. NYSDEC will review the project at the closure stage to ascertain that the spill has been appropriately addressed and is ready for closure. The NYSDEC may require additional investigative and/or remedial activities without limitation in order to advance the site to closure. The following process will be followed by the Government Entities for petroleum spills under Path 1.

Investigation Plan

- Party develops investigation plan consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER approves the work plan, if appropriate, and notifies the Party.
- OER notifies NYSDEC of the start of field work.
- OER conducts field inspection and oversight for the investigation.
- OER ensures reporting of any open petroleum spills that are discovered on the LBCP site.
- OER ensures registration of any unregistered tanks.

Investigation Report

- Party develops and submits an investigation report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC applicable guidance.
- Repeat of investigation steps by the Party as necessary.
- OER provides comments to the Party and instructs the Party to revise/finalize the investigation report.
- OER arranges for site specific project meetings with NYSDEC (as necessary).

Remedial Action Plan

- Party develops and submits a remedial action plan to OER consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance, including *DER-15 Presumptive/Proven Remedial Technologies* (February 27, 2007).
- OER arranges for site specific project meetings with NYSDEC (as necessary).
- OER approves the work plan, if appropriate.
- OER notifies NYSDEC of the start of field work.
- OER conducts field inspection for the remedial activities
- OER can institute permanent institutional and engineering controls to the extent that it is not feasible to obtain a pre-release cleanup. Note: NYSDEC will determine, during its review in conjunction with a closure request, whether the cleanup satisfies NYSDEC requirements.
- OER provides project updates, if requested, to NYSDEC in an acceptable format.
- OER notifies DER of any site that does not complete the approved cleanup under OER oversight.

Remedial Action Report

- Party develops and submits a remedial action report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER communicates the results set forth in the remedial action report to NYSDEC. NYSDEC may request to see the report at this time.
- OER submits all project related documents to the NYSDEC in a format acceptable to NYSDEC.
- OER will transmit to the NYSDEC its recommendation relative to closure of the spill.
- NYSDEC reviews the reports and site related information.
- NYSDEC advises OER whether closure of the spill is appropriate or whether additional work is necessary.

Path 2: Intermediate Technical Assistance by OER

Petroleum spills managed under this path include: (i) spills that include non-aqueous phase liquid (NAPL) that is limited to on-site; (ii) spills that result in soil vapor that is limited to the site; and (iii) spills with limited off-site impacts.

For sites in Path 2, NYSDEC will review and approve the remedial action plan but generally will not be actively involved in the implementation of work plans. NYSDEC may review and approve each work plan and report, including the closure report. NYSDEC will advise OER what work plans and reports that will be approved by the NYSDEC on a site-specific basis. Where NYSDEC is approving a work plan or report, OER shall provide such work plan or report to NYSDEC for review/approval and NYSDEC will communicate to OER the outcome of the review. The NYSDEC may require additional investigative or remedial activities without limitation in order to advance the site to closure. The following process will be followed by the Government Entities for petroleum spills administered under Path 2.

Investigation Plan

- Party develops investigation plan consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER approves the work plan, if appropriate, and notifies the Party.
- OER notifies NYSDEC of the start of field work.
- OER conducts field inspection and oversight for investigation.
- OER ensures reporting of any open petroleum spills that are discovered on the LBCP site.
- OER ensures registration of any unregistered tanks.

Investigation Report

- Party develops and submits an investigation report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC applicable guidance.
- OER provides comments to the Party and instructs the Party to revise the investigation report.
- Repeat of investigation steps by the Party as necessary.
- OER shall provide the NYSDEC with a copy of the proposed final investigation report along with the proposed remedial action plan.
- NYSDEC will review the investigation report in conjunction with the remedial action plan as identified below.

Remedial Action Plan

- NYSDEC reassesses Path and may change to Path 1 or remove the site from review by OER at its discretion.
- Party develops and submits a remedial action plan consistent with the requirements of the LBCP, NYSDEC Petroleum Spills Manual and NYSDEC guidance, including *DER-15 Presumptive/Proven Remedial Technologies* (February 27, 2007).
- OER provides a copy of the remedial action plan, investigation report and OER's recommendation for approval of proposed remedy.
- OER arranges for site specific project meetings with NYSDEC (as necessary).
- NYSDEC notifies OER whether the work plan is approved or rejected.
- OER notifies the Party of the NYSDEC's approval or rejection of the remedial action plan.
- OER submits all documents in an electronic format acceptable to the NYSDEC.
- OER, after notification by NYSDEC that a remedial action plan is approved, notifies NYSDEC of the start of field work.
- OER conducts field inspection and oversight for remedial activities.
- OER can institute permanent institutional and engineering controls to the extent that it is not feasible to obtain a pre-release cleanup. Note: NYSDEC will determine, during its review in conjunction with a closure request, whether the cleanup satisfies NYSDEC requirements.
- OER provides project updates to NYSDEC in an acceptable format.
- OER notifies DER of any site that does not complete the approved cleanup under OER oversight.

Remedial Action Report

- Party develops and submits a remedial action report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER transmits the remedial action report to NYSDEC for review and approval with its recommendation to accept or reject the report. OER may elect to work

with the Party on various drafts of the remedial action report before submitting a version to the NYSDEC with an approval recommendation; in which event the drafts do not need to be shared with the NYSDEC.

- OER submits all documents in an electronic format acceptable to the NYSDEC.
- NYSDEC notifies OER if the report is approved or rejected.
- OER notifies the Party whether the report is approved or rejected.
- NYSDEC project manager will close the spill, if appropriate.

VI. Section VI

Not applicable since no provisions in Section VI (Implementation) of the MOA require additional detail.

VII. Section VII

Not applicable since no provisions in Section VII (Community Participation) of the MOA require additional detail.

VIII. Section VIII

Not applicable since no provisions in Section VIII (Modification and Termination) of the MOA require additional detail.