



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

January 9, 2018

EXPRESS MAIL AND EMAIL

Stephen M. Dorsey, Esq.
Saratoga County Attorney
40 McMaster Street
Ballston Spa, New York 12020
sdorsey@saratogacountyny.gov

Re: Memorandum of Agreement Between U.S. Environmental Protection Agency and the County of Saratoga Relating to EPA CERCLA Liens at Old Saratoga Hospital Superfund Site, Town of Providence, Saratoga County, New York

Dear Mr. Dorsey:

Enclosed is the original, fully-executed Memorandum of Agreement ("MOA") related to the Old Saratoga Hospital Superfund Site in the Town of Providence, New York. Unfortunately, EPA cannot provide you with two original copies as you requested.

As stated in Paragraph 1a) of the MOA, however, EPA will provide the County of Saratoga a release of liens document within 15 days of execution of the MOA. If you should have any questions, please do not hesitate to contact me at (212) 637-3177.

Sincerely,

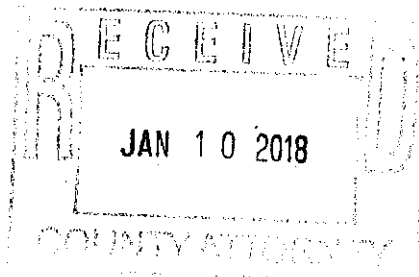
A handwritten signature in black ink, appearing to read "Walter Sainsbury".

Walter Sainsbury, Esq.
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

CC:

Gary S. Bowitch, Esq (via email only)
bowitch@bcalbany.com



1990 1991

MEMORANDUM OF AGREEMENT BY AND BETWEEN UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY AND THE COUNTY OF SARATOGA

WHEREAS, the United States Environmental Protection Agency ("EPA") performed cleanup response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), 42 U.S.C. §§ 9601-9675, at the Old Saratoga Hospital Superfund Site, which includes approximately 30 acres of real property with buildings and improvements thereon, located at 7239 Barkersville Road, Town of Providence, Saratoga County, New York (hereinafter, "Site");

WHEREAS, the County of Saratoga ("County") has a lien for unpaid real property taxes, including interest and penalties thereon, (hereinafter "Tax Lien"), which continue to accrue and are subject to a final accounting at the time of sale, against real property on which the Site is located and that is identified by the County as tax parcel number 147-1-38.3 (hereinafter, the "Property"). As of December 1, 2017, the unpaid Tax Lien was in the amount of \$62,390.15;

WHEREAS, pursuant to Section 107(1) of CERCLA, 42 U.S.C. §9607(1), the United States of America, on behalf of EPA, has a lien against the Property in the amount of the total response costs paid by EPA in performance of response actions at the Site, which lien amount, exclusive of interest but subject to final accounting reconciliation by EPA, was, as of September 30, 2017, \$1,688,766.19;

WHEREAS, pursuant to Section 107(r) of CERCLA, 42 U.S.C. §9607(r), the United States of America, on behalf of EPA, may have a windfall lien against the Property for any unrecovered response costs as a result of the increase in the fair market value of the Property due to EPA's response actions (hereinafter, the CERCLA §§ 107(l) and (r) liens are collectively referred to as, "CERCLA Liens");

WHEREAS, pursuant to 28 U.S.C §2410(c), the United States would have a one-year right to redeem if the Property was sold to satisfy the County's Tax Lien;

WHEREAS, the County plans to seek the private redevelopment of the Property through sale of the Property by auction;

WHEREAS, the County plans to foreclose its Tax Lien and cause the Property to be sold to another entity and/or end user;

WHEREAS, the County desires that EPA remove its CERCLA Liens and waive its right of redemption in order to facilitate the potential redevelopment of the Property; and

WHEREAS, EPA supports the redevelopment of former Superfund sites and is willing to remove its CERCLA Liens and waive its right of redemption in consideration of compensation on account of EPA's CERCLA Liens,

NOW THEREFORE, the parties hereby agree as follows:

1. Release of EPA's CERCLA Liens and Waiver of Right of Redemption.
 - a. Within 15 days following the execution of this Memorandum of Agreement ("Agreement") by all of the parties hereto, EPA will execute and deliver to the County a release of liens for the purpose of releasing EPA's CERCLA Liens and causing the liens to be discharged of record, and EPA consents that the County may cause the release of liens to be duly recorded to discharge the liens.
 - b. EPA agrees that effective upon the release and discharge of EPA's CERCLA Liens pursuant to subparagraph 1.a. of this Agreement, EPA waives any right that it might have with respect to the liens, including, without limitation, the right to redeem the Property pursuant to federal law codified at 28 U.S.C. §2410(c), but excepting any rights to compensation due to EPA pursuant to Paragraph 5 of this Agreement.
2. Foreclosure of the County's Tax Lien. The County agrees that it shall either seek to foreclose its Tax Lien or receive from the current Property owner a deed in lieu of foreclosure, and have the Property sold at auction.
3. Sale of the Property by Auction. The County agrees that it will require the responsible developer with the highest bid at auction to pay in cash.
4. Transfer of Property.
 - a. The County agrees that it shall, except as may otherwise be agreed to in writing by EPA, or as otherwise provided in subparagraph 4.b or 4.c of this Agreement, sell or transfer the Property for redevelopment for the highest sales price received at auction, provided that the County shall not be required to accept bids except from persons which it believes to be credible and responsible developers.
 - b. The County may transfer the Property to a local governmental entity within the County, such as a town, village, economic development agency, or other entity, in connection with plans for redevelopment, if any, of the Property, which transfer may be for nominal consideration, provided that, in the event of such transfer, the County will require that such local governmental entity agree to sell or transfer the Property for redevelopment for the highest sales price received (provided that such local governmental entity shall not be required to accept redevelopment proposals except from persons which it believes to be credible and responsible developers) and the County shall require that such local governmental entity also agree to make payment to EPA as provided by Paragraph 5 of this Agreement.
 - c. Notwithstanding anything to the contrary provided herein, the County or

the local governmental entity, as the case may be, shall be permitted to sell the Property to any party that the County or the local governmental entity believes will use or redevelop the Property in the best interest of the County or the local governmental entity, notwithstanding that such sale does not yield the highest selling price. In such case, the selling price, for purposes of Paragraph 5 of this Agreement, shall be deemed to be the highest price received from a credible and responsible developer that the County or the local governmental entity believes will use or redevelop the Property in the best interest of the County or the local governmental entity.

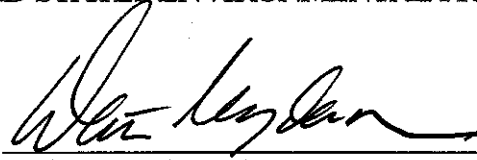
- d. The County or the local governmental entity, as the case may be, shall provide written notice to EPA, at 290 Broadway, New York, NY 10007, Attention: Walter Sainsbury, or via email: sainsbury.walter@epa.gov, of each offer received by the County or the local governmental entity, including the price for which the County or the local governmental entity proposes to sell the Property.
5. Payment to EPA.
- a. The County agrees, if it is the party selling the Property (or the County shall require that the local governmental entity, if it is the party selling the Property, to agree) that it shall pay to EPA, within 60 days following closing of title, 50% of the proceeds from the sale of the Property until the County receives at such closing proceeds from the sale of the Property up to the total amount of the Tax Lien, which shall continue to accrue until March 31, 2019 (hereinafter "County Tax Amount").
 - b. If the County receives proceeds from the sale of the Property pursuant to the terms of Paragraph 5a that are greater than the County Tax Amount, then the County agrees, if it is the party selling the Property (or the County shall require that the local governmental entity, if it is the party selling the Property, to agree), that it shall pay to EPA, within 60 days following closing of title, in addition to the share pursuant to Paragraph 5a, 90% of the proceeds from the sale of the Property that exceed the County Tax Amount.
 - c. The amount paid to EPA by the County, or any other selling party pursuant to Paragraphs 5(a) and (b) shall not exceed EPA's response costs, including interest, that were either incurred or will be incurred at the Site.
 - d. All such payments required to be made pursuant to this Paragraph 5 shall be made by check or wire transfer to the EPA Hazardous Substances Superfund in accordance with instructions provided by EPA to the County or the local governmental entity prior to the due date of such payment.
6. Notification to EPA of Status. Until such time as full payment has been made to EPA as provided by Paragraph 5 of this Agreement, the County shall advise EPA in writing at the address or email provided in Paragraph 4.d, not less than every 90 days following the full execution hereof until the date that full payment has been made pursuant to Paragraph 5, as to the status of the foreclosure of the County's Tax Lien and the status of other significant related

events including the solicitation of requests for proposals and responses thereto, and the sale or transfer of the Property from the County or the local governmental entity to a developer or end user.

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By



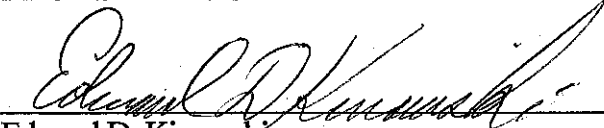
Walter Mugdan, Director
Emergency and Remedial Response Division, Region 2

Date:

1/8/2018

COUNTY OF SARATOGA

By



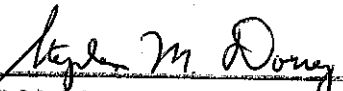
Edward D. Kinowski
Chairman, Saratoga County Board of Supervisors
Pursuant to Resolution 282-2017

Date:

29 Dec 17

APPROVED:

12/28/17



SARATOGA COUNTY ATTORNEY