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NEW JERSEY SCHOOLS CONSTRUCTION CORPORATION

MEMORANDUM

TO: Jeanne Herb, Director
Department of Environmental Protection

FROM: Lori Alvarez *LA*
Senior Administrative Coordinator

SUBJECT: Memorandum of Understanding
SCC/DEP

DATE: September 3, 2003

*Copy to
to Steve
Gov. L
Enr. L
Pot. Carro
Cathy
Liam*

Attached please find a fully executed MOU between the New Jersey Schools Construction Corporation and the Department of Environmental Protection. Should you have any questions, please do not hesitate to contact me. Thank you.

Attachment

*ent 9/9
TC 9-17*

**MEMORANDUM OF AGREEMENT BETWEEN
THE NEW JERSEY SCHOOLS CONSTRUCTION CORPORATION AND
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

This Memorandum of Agreement (MOA), made this 2nd day of September, 2003, by and between the New Jersey Schools Construction Corporation ("Corporation"), a subsidiary of the New Jersey Economic Development Authority, and the New Jersey Department of Environmental Protection ("DEP") will confirm the mutual understanding and intention of the parties hereto as to the following:

WHEREAS, the Legislature in July 2000 enacted the "Educational Facilities Construction and Financing Act," P.L.2000, c.72 ("the Act") to address the inadequacies in the quality, utility and safety of educational facilities throughout the State of New Jersey and to meet the constitutional requirement for a thorough and efficient system of free public schools; and

WHEREAS, pursuant to the Act, the State of New Jersey has embarked on an ambitious program to address the compelling, urgent need to construct new school facilities and rehabilitate existing school facilities; and

WHEREAS, the Act provides that the New Jersey Economic Development Authority ("NJEDA") is responsible for funding and undertaking the repair, renovation and construction of all the school facilities projects, including acquisition of school sites for such projects, determined by the Commissioner of the Department of Education ("DOE") to meet the school facilities efficiency standards in the Abbott Districts (Abbott Districts), as defined pursuant to the Act; and

WHEREAS, in accordance with Executive Order No. 24 (2002), and pursuant to N.J.S.A. 34:1B-159, the New Jersey Economic Development Authority (NJEDA) established a subsidiary corporation, the Corporation, which is charged with the responsibility to implement the School Construction Program, including, among other things, assisting the Abbott Districts with the evaluation of the feasibility and appropriateness of potential sites in the Abbott Districts for the construction and renovation of school facilities pursuant to the Act; and

WHEREAS, the pace of acquiring new sites for school construction will increase significantly over the next 18 - 24 months, with an estimated 100 properties to be acquired in 2003 and 2004; and

WHEREAS, many of the schools to be constructed in the Abbott Districts pursuant to the Act will be located in urban and industrial areas where adverse environmental conditions may impact the siting of new schools, and it is in the best interests of the people of New Jersey to ensure that such schools are located on sites to which proper consideration of such adverse environmental conditions have been given; and

WHEREAS, the DEP has the responsibility to regulate facilities that use, manage and release toxic substances, pollutants, and/or hazardous wastes and provide that all contaminated sites are fully investigated and remediated in order to protect the public health, safety and welfare; and

* WHEREAS, in order to avoid costly delays in the implementation of the construction of new schools, it is ~~necessary for the DEP to review a site proposed for use or acquisition by an Abbott District or acquisition by the Corporation on behalf of an Abbott District (a "Proposed Site")~~ early in the selection process for the purpose of identifying any environmental issues in or around the Proposed Site that may affect the Corporation's decision to acquire, or construct or rehabilitate on a Proposed Site; and

✓ WHEREAS, once a Proposed Site is selected and acquired by the Corporation (the "Site"), DEP will expedite and coordinate the permit and remediation process for such site so that construction of the school can commence; and

✓ WHEREAS, the Corporation intends to perform the due diligence required by N.J.S.A. 58:10-23.11g and its implementing regulations in order to obtain the "innocent purchaser defense" under the Spill Act for any hazardous substances that have been discharged on any of the Sites that the Corporation intends to acquire; and

✓ WHEREAS, the Corporation will provide funding for the performance of "specialized services" by the DEP in connection with the evaluation of a Proposed Site and the permitting and remediation of a Site; and

✓ WHEREAS, in addition, in order to protect the health and welfare of the children who will be attending the schools constructed and/or rehabilitated in the Abbott Districts and in certain other districts required to use the Corporation to construct their school facilities, the Corporation and DEP also have determined to establish certain design and construction guidelines that would minimize exposure to diesel and other fine particulates;

NOW, THEREFORE, the DEP and the Corporation do hereby agree as follows:

I. Specialized Services

1. The DEP will assist the Corporation in the evaluation of Proposed Sites and in the development and implementation of a coordinated, expedited permit and remediation process for Sites ("Specialized Services"). Such Specialized Services shall include, but shall not be limited to, review of an Environmental Site Report as developed by the Corporation pursuant to Section II.1. of the MOA; preparation of an analysis and recommendation with respect to the possible purchase of a Proposed Site in light of the environmental conditions thereof; reviewing, if necessary, environmental assessments or investigations of a Proposed Site or a Site; development of a coordinated and expedited review process for permits and remedial action work plans, and any other services considered appropriate by the parties in evaluating a Proposed Site or preparing a Site for construction, acquisition or rehabilitation of a new school.
2. The DEP will dedicate a total of eight (8) full time employees to perform the Specialized Services for or on behalf of the Corporation. In order to ensure that the broad purposes of the MOA are achieved, the DEP will work closely with the Corporation so that the eight (8) employees are fully dedicated to performing Specialized Services and so that the

* responsibilities of such employees may be modified from time to time to meet the Corporation's changing needs under the School Construction Program and the MOA.

(a) Two (2) of such employees shall be assigned from the DEP's Division of Remedial Management and Response in accordance with a Memorandum of Agreement executed by the EDA and DEP on July 1, 2001 (the "Original MOA") to provide guidance and oversight of any remediation performed on a Site.

* (b) Six (6) of such employees shall be either assigned by the DEP from existing DEP staff or hired by DEP for the purpose of providing Specialized Services for the School Construction Program. If DEP is unable to assign or hire the 6 employees within sixty (60) days of the effective date of the MOA, the Corporation, in consultation with the DEP, will recruit and hire the six (6) employees on behalf of the DEP and shall assign such employees to the DEP, which shall be responsible for supervising such employees, at the earliest date mutually convenient to the parties.

✓ 3. The Corporation will pay for approved personnel costs, which include salary and fringe benefits, for the two employees assigned from the DEP's Division of Remediation Management and Response and for the six (6) additional employees directly hired either by the Corporation or by the DEP to provide the Specialized Services under the MOA, as well as any equipment necessary to support the Specialized Services. The DEP may not purchase any equipment in excess of \$500 without the prior written consent of the Corporation.

4. The DEP will provide to the Corporation, on a quarterly basis, an itemization of all direct personnel and equipment costs that the DEP has incurred pursuant to the MOA. The DEP will provide the Corporation with detailed cost accounting for each project involving a Proposed Site or a Site, identifying the project number and all relevant direct costs incurred. Such itemized billings will be presented to the Corporation within 20 business days after the close of the quarter to which such billings relate. The Corporation will make best efforts to pay the DEP within 30 business days of receiving the itemization referenced in this paragraph.

II. Evaluation of Proposed Sites

1. The SCC will conduct a preliminary environmental review of the Proposed Site as part of the application and approval process for a land acquisition approval (the "Environmental Site Report") by the Department of Education pursuant to N.J.A.C. 6A:26-7.1. The Environmental Site Report shall include:

- (a) An inventory of environmental conditions at the proposed site as follows:
- (i) a consistency determination with respect to sewer service;
 - (ii) availability of potable water supply;
 - (iii) the existence of any coastal and/or freshwater wetlands on the proposed site;

- (iv) whether the site or any portion thereof has been purchased with Green Acres funding or has otherwise been deed restricted for conservation or preservation purposes;
- (v) the presence of any stream or other water bodies on the site that would necessitate a stream encroachment permit;
- (vi) the presence of any historic or archeological structures or resources on the proposed site;
- (vii) the presence of any threatened or endangered species or habitats on the proposed site;
- (viii) the prior use of the proposed site and an assessment of anticipated contamination of soils and groundwater resulting therefrom; *NO sampling received*
- (ix) a history of any prior or current remediation performed on the site or any portion thereof, as well as a history of any prior or current environmental violations or enforcement actions associated with or connected to the proposed site by a prior or current owner thereof; and
- (x) American Society for Testing and Materials ("ASTM") standard environmental site assessment known as Phase I ESA Process (E-1527) with additional scope requirement of lead and asbestos to verify if there is potential contamination on the land. *Minimum protection - No asbestos investigation limited sampling*
- (xi) Information relevant to a particular site from the DEP inventory, provided for in II (1)(b), below

(b) Within 60 days of the effective date of this MOA, the DEP will provide the SCC and the Abbott Districts an inventory of facilities or sites located in each Abbott district that are, or have been, involved with hazardous and toxic substances, as follows:

- (i) Sites on the known contaminated sites list;
- (ii) facilities that report under the Toxic Release Inventory;
- (iii) major facilities permitted for Hazardous Air Pollutants;
- (iv) facilities regulated under the Toxic Catastrophe Prevention Act;
- (v) facilities regulated under the Discharge Prevention Control and Countermeasure Program;
- (vi) hazardous waste treatment, storage and/or disposal facilities; and
- (vii) pipelines transmitting hazardous substances.

DEP provides Info only - Not new regulatory standards for school sites

2. The DEP shall review such Report and shall use its best efforts to provide written comments to the Corporation within 30 days of its receipt of the report, unless the complexity and circumstances of the site requires additional review time. The DEP will work with the Corporation to establish shorter review times for priority sites identified by the Corporation. In all instances the DEP will work closely with the Corporation to coordinate review times with the Corporation's schedule for approval of the Proposed Site.

← NOT Binding

3. The DEP's written comments shall include an assessment of environmental issues affecting or pertaining to the Proposed Site; the anticipated permits that would have to be obtained in the event that the Corporation determines to purchase the Proposed Site; the extent to which further environmental assessment and testing is needed to identify and develop an environmental work plan to remediate the Proposed Site, if necessary; an estimated schedule for completing the permit and remediation process (to the extent the same can be determined based on the preliminary information provided); and any other information pertaining to the environmental conditions on or around the Proposed Site that the DEP believes is necessary or appropriate for the Corporation to consider with respect to the purchase of the Proposed Site. Upon request by the Corporation, the DEP will assist in the development and review of additional, more in-depth assessments or investigations into the environmental condition of a Proposed Site.

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4. The DEP shall provide the Corporation with specific information and/or data that must be collected by the district as part of the Environmental Site Report.

DEP Prescribes data

III. Permit Review and Remediation of a Site

1. For each Site purchased by the Corporation, the DEP will coordinate and expedite all Specialized Services related to permitting and remediation activities related to the Site; including, but not limited to, further pre-development activities beyond the preliminary environmental assessment, such as identification of all necessary permits that must be acquired for or in connection with the Site, development and review of a formal environmental assessment and/or investigation, and development and implementation of a remedial action work plan for which the Corporation will conduct additional remedial investigations. Dedicated DEP staff performing such Specialized Services shall (a) expedite technical review, comment and make recommendations on remedial investigations and remedial actions; (b) identify and explain State requirements related to site assessment and remediation; (c) conduct Site visits and participate, in conjunction with the Corporation and DOE, in public meetings and meetings with District representatives as deemed appropriate by the Corporation; (d) act as a liaison between the Corporation, DOE and other DEP programs to obtain permits and approvals; and (e) do or perform such other activities mutually agreed on by the DEP and the Corporation in connection with the preparation of a Site for construction of a school.

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SCC Controls Public Participation

SCC has veto Power

2. Each Site shall be remediated in accordance with all applicable laws and regulations. All such activities and the reports and documentation submitted in connection therewith shall be conducted in accordance with all applicable DEP regulations and programs, including the Technical Requirements for Site Remediation, codified at N.J.A.C. 7:26E-1 et seq., the DEP Oversight of the Remediation of Contaminated Sites, codified at N.J.A.C. 7:26C-1 et seq. and, where applicable, the DEP Guidance for Environmental Assessments as per Executive Order No. 215. DEP will issue the appropriate No Further Action letters when the Corporation successfully completes the necessary remediation of the Site in accordance with the above-cited regulations and guidance, where applicable.

VI. Diesel and Fine Particulate Matter

1. The Corporation, in consultation with the DEP, will develop design and construction guidelines consistent with applicable Uniform Construction Code Standards to reduce potential impacts from diesel and fine particulate emissions, including an assessment of building vent locations and student pickup and drop off areas.
2. The guidelines pertain to Abbott Districts and other districts required to use the Corporation for the construction of their school facilities projects.

VII. Miscellaneous

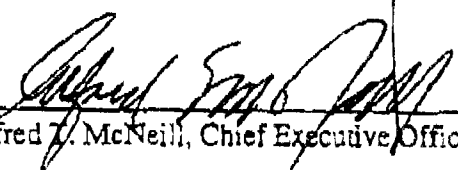
1. This MOA shall be effective as of the date last executed by the parties, and as of that date, this MOA shall supersede and terminate the Original MOA; provided, however, that any work performed by the DEP pursuant to the Original MOA shall continue and survive the termination thereof.
2. This MOA is being entered into for the sole purpose of evidencing the mutual understanding and intention of the parties. It may be amended, modified, supplemented at any time by mutual consent and in writing signed by the undersigned or their designees. This MOA may also be superseded or terminated by mutual consent of the parties upon 45 days notice. There are no third party beneficiaries of this MOA.
3. The DEP's contact for Permit Coordination is the Bureau Chief or designee (609-292-3600) of the Office of Pollution Prevention and Permit Coordination at 401 East State Street, P.O. Box 423, Trenton, New Jersey. The DEP's contact for Site Remediation is the Bureau Chief or designee (609-633-1455) of Case Management in the Division of Remediation Management and Response, 401 East State Street, P.O. Box 028, Trenton, New Jersey.

* The Corporation's contact is Paul Hamilton (609-943-4874) at New Jersey Schools Construction Corporation at 1 West State Street, Trenton, New Jersey.

The contacts designated herein may be changed at any time upon written notice to the other Party.

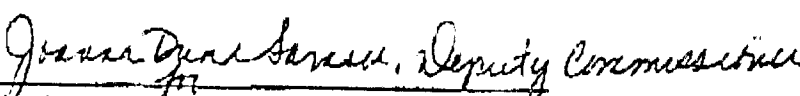
IN WITNESS WHEREOF, the DEP and the Corporation have executed this Agreement as of the dates first written hereinabove:

**NEW JERSEY SCHOOLS
CONSTRUCTION CORPORATION:**



Alfred T. McNeill, Chief Executive Officer

**NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION:**



Bradley M. Campbell, Commissioner