Ken W. Kloeber
Consulting Engineers ENVIRONMENTAL SOLUTIONS • CIVIL & SANITARY ENGINEERING • PLANNING & DESIGN
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June 1, 2015

David P. Locey
NYS DEC Region 9
Division of Environmental Remediation
270 Michigan Avenue
Buffalo NY 14203-2999

RE: **Construction Completion Report for 210 French Road Building SVI Remediation**
Site # 915168 - CMS Associates Remediation Site

Dear Mr. Locey:

This report is submitted on behalf of CMS Property Associates for the completed Soil Vapor Intrusion remediation project for the warehouse at 210 French Road on the CMS Property Associates Remediation Site in the town of Cheektowaga; Erie County, NY. The building is owned by Cugini Ventures LLC and operated by Rosina Food Products, Inc.

Pre-Remediation Construction Conditions

The 210 French Road building previously had two sub-slab depressurizations systems that were installed in, and have been operating since, fall 2005. These consist of blower/trench-type systems located:

- Near the northwest corner of the building (commonly called the "West SSD System.")
- Near the east-center side of the building (commonly called the "East SSD System.")

The SVI remediation was conducted according to the January 3, 2015, *Design Plan for Soil Vapor Intrusion Remediation – 210 French Road Building; CMS Associates Remediation Site; Site # 91516* that the NYSDEC Region 9 approved on January 23, 2015.

For the purpose of the SVI remediation program, the building was divided into three zones because the existing conditions and the proposed remediation differed according to the location within the building footprint:

- The central warehouse, located within a foundation footer that restrained the effect of two existing sub-slab depressurization systems that were installed in 2005.
- Two rooms on the north side of the building that lie outside that footer, and received virtually no effect from the two previously installed SSD Systems.

- The southern-most portion of the building footprint (commonly called "Former Office Area," which also lies outside the central footer, and that additionally received no effect from the previously installed SSD Systems.

Figure 1 shows the SSD Systems installed in 2005, the three portions of the building footprint as designated/described above, and the portions of the building that experienced a reduced pressure zone under the sub-slab from the two existing SSD Systems. The SSDSs effectively covered approximately 80-precent of the central warehouse, and left the extreme southwest and northeast portions unremediated.

Approved Remediation Construction Plan

The approved SVI remediation plan consisted of the following key items:

Central warehouse and northern two rooms:

1. Disconnecting the two existing sub-slab depressurization systems from their existing fans in order to remove any pressurized piping from inside the building.
2. Installing two new model GBR89-UD fans on the roof of the building.
3. Piping each existing SSDS to new roof fan.
4. Installing 4-inch, schedule 40 PVC, overhead suction manifold piping from each roof fan.
5. Installing eight, 4-inch suction drops from the floor slab to the manifold system.
6. Sealing any additional observed leaks around the slab perimeter and/or interior of the slab at column locations or floor joints.

South end Former Office Area:

1. Moving pallets stored in the area and inspecting the slab for potentially leaking perimeter joints, floor cracks, pipe and other utility penetrations.
2. Sealing all observed potential leak points.

Completed Remediation Construction

On March 21, 2015, CMS retained Mitigation Tech to install the SVI remediation components, and during March and April 2015, the specified soil vapor intrusion mitigation components were installed;

Central Warehouse and North Rooms

Two roof fans were installed, the 4" overhead manifold system completed, and eight suction drops were installed in the central warehouse and in the two northern rooms. Each fan is on a separate circuit breaker in the distribution panel in the "Carbtrol Room," so that if either unit has a problem the other can be operated.
Additionally, a 4-inch PVC gate valve was installed between the east and west manifolds in order to be able to isolate the east and west sides of the suction manifold for testing or other

purposes. For instance, if one fan were to go down in the future, that side of the building SSD System could be isolated so that the remaining side could continue in operation.

The suction drops that were well protected from damage were specified to be schedule 80 PVC, solvent welded to the schedule 40 overhead suction manifold. The floor slab was drilled with a diamond bit and once the drop pipe installed, was sealed with concrete. For locations that were exposed to potential forklift operations, the suction drop was specified to be steel pipe, coupled to overhead suction manifold with rubber Fernco couplings.

The completed system has been labeled as a SSD System to warn workers not to modify or change the suction piping, and two vacuum gauges were installed—one on the east side of the system, and one on the west side (see Figure 2 for the completed system components.)

South Former Office Area

At the south end, we arranged for Rosina Food Products to move in stages, the pallets covering the footprint so that we could inspect the slab perimeter, beginning with the south wall. A wide joint (> 1/2" gap) between the floor slab and concrete block wall was observed along nearly all the perimeter of the south area. Therefore virtually the entire perimeter consisted of a potential source of soil vapor intrusion. At times, the joint was too wide (3/4" to 1" or greater gap) to seal using backer rod and urethane caulk. On the south wall two forced air floor ducts remained and were marked for permanent closure.

Nearly identical slab perimeter conditions were observed along the north wall. Additionally, we located slab penetrations at two former restrooms that were on the north wall. Remains of two cast iron toilet floor flanges and two floor drains were noted and marked for permanent sealing. This was done because there was no way of knowing the competency of the cast iron pipes, and if broken or leaking, could be a potential source of SVI. The remaining floor exhibited no potential leak points.

In the eastern end (record storage rooms) of the south former office area, the slab perimeter conditions mirrored what we found on the west end, and nearly the entire perimeter joint was a potential source of SVI. There was only one slab penetration—a similar forced air floor duct—which was also marked for permanent sealing. The east and north wall of this area was blocked by high shelving covered with business records, and we arranged with Rosina to move these to provide access for inspections. Afterward, the east concrete block wall was found to be covered by built-up flake board, gypsum board, and plywood paneling—but a wide gap in the slab could be seen under the bottom of the covering.

MitigationTech sealed the narrower perimeter gaps in the south area using closed-cell-foam backer rod and urethane caulk, leveled to the concrete slab. Wider gaps were sealed using a sand-mortar mix, again leveled to the concrete floor slab. The forced-air floor ducts were permanently sealed by filling them with crushed stone to within six-inches of the slab, with concrete above that to the slab level. The slab penetrations at the former restrooms were sealed by creating a plug in the pipe using expanding foam, with concrete poured above that to the slab level.

In the east rooms of the south portion of the building, Mitigation Tech sealed the perimeter joint and floor duct in the same manner as in the west side. On the east wall, the lower six-inches of the wall covering was cut away to expose the perimeter joint so it could be sealed.

The construction of the remediation components in the south, central, and north portions of the footprint was deemed to be substantially complete as of April 15, 2015 (see Certificate of Substantial Completion in the attachments.) Figure 2 shows the completed remediation work and installed SSD System components.)

During the installation of the suction drops, sub-slab conditions were observed to consist of very damp to wet soil. This contrasted with conditions observed during the SVI investigations conducted during fall 2010, spring 2011, and spring 2013—which were found to be typically dry sub-slab material. The unusually severe 2014-2015 winter contributed to greater than usual moisture below the building slab, which remained at least during the period of installing the SSDS suction drops.

Upon initial testing of the sub-slab vacuum soon after the suction drops were completed, the effect of that excessive moisture was evident. Low vacuum was observed in several locations across the slab—some below the standard of -0.004 inches water column, which was the established goal of the SVI remediation effort.

Approximately 11-inches of vacuum was available in the manifold system, which reinforced the conclusion that the sub-slab was too wet in order to allow air flow (i.e., the wet conditions prevented appreciable movement, so the vacuum in the manifold system remained very high.)

At that point, a decision was necessary whether to allow time for the completed system to 'burn in' and dry out the soil pored, and then re-test the sub-slab vacuum. However, the time necessary to accomplish this was uncertain, and could involve a month or more. Additionally, the extreme limits of the reduced pressure zone exhibited lower vacuum than anticipated, and it was uncertain whether, until the remainder of the slab footprint was allowed to dry out, sufficient vacuum would be extended to those outlying areas during the 'burn-in' period.

Therefore, CMS decided to install additional suction drops in order to make use of the high vacuum available in the manifold system, and extend greater vacuum the outer areas of the footprint. This would accelerate drying of the sub-slab soil pores, hasten the 'burning in' of the system, and allow the sub-slab air flow spider network to develop more rapidly. A contract Change Order was approved on April 16, 2015, to install six additional suction drops, spread across the building footprint. These supplemental drops were specified to be steel pipe because they were located in areas subject to forklift operations.

These additional suction drops were determined to be substantially complete as of May 4, 2015 (see Certificate of Substantial Completion in the attachments.) Soon thereafter, a complete set of sub-slab vacuum readings were taken to determine the baseline conditions prior to allowing the SSDS to burn in. As was expected, there were low vacuum readings (~ 0.004" w.c.) at some points, and many locations exhibited lower readings than would be anticipated, had the SSDS been installed for a long period and allowed to remove the latent soil moisture.

The initial vacuum in the manifold system were observed to be:

West Side (at the suction drop at building column J-5.5) ~ 11.2" w.c.
East Side (at the suction drop at building column K-1.5) ~ 3.5" w.c.

The initial sub-slab vacuum values are shown by Figure 3, and as can be seen some values were marginal (-0.004" w.c. to -0.007" w.c.). The decision was therefore made to run the SSD System for at least two weeks to allow the sub-slab soil pores to dry out such that the reduced pressure zone could reinforced across the footprint.

On May 21, 2015, after the SSD System was operated for nearly three weeks after the additional suction drops were completed, and a final set of tests were run to determine if the sub-slab vacuum had increased to acceptable levels. The result of those tests are also shown on Figure 3.

As can be seen virtually all the test locations exhibited significantly increased vacuum, and all points exceeded -0.004" w.c. sub-slab vacuum. The remediation goal was therefore met and in most locations substantially exceeded.

Health and Safety

KWKCE performed spot VOC monitoring during remediation activities utilizing a ppb-RAE 3000 and No readings above background were observed. Likewise, when sub-slab suction cavities were drilled through the floor slab, no increase in VOCs at the breathing zone were observed at the location. Installed suction piping locations were permanently sealed tight with concrete such that potential sources of sub-slab vapor intrusion were sealed.

The SSDS is currently being operated continuously with the isolation valve open such that the available vacuum in the manifold system is shared by the east and west suction drops.

Cordially,
Ken W. Kloeber Consulting Engineers

Ken W. Kloeber, PE
Principal Engineer

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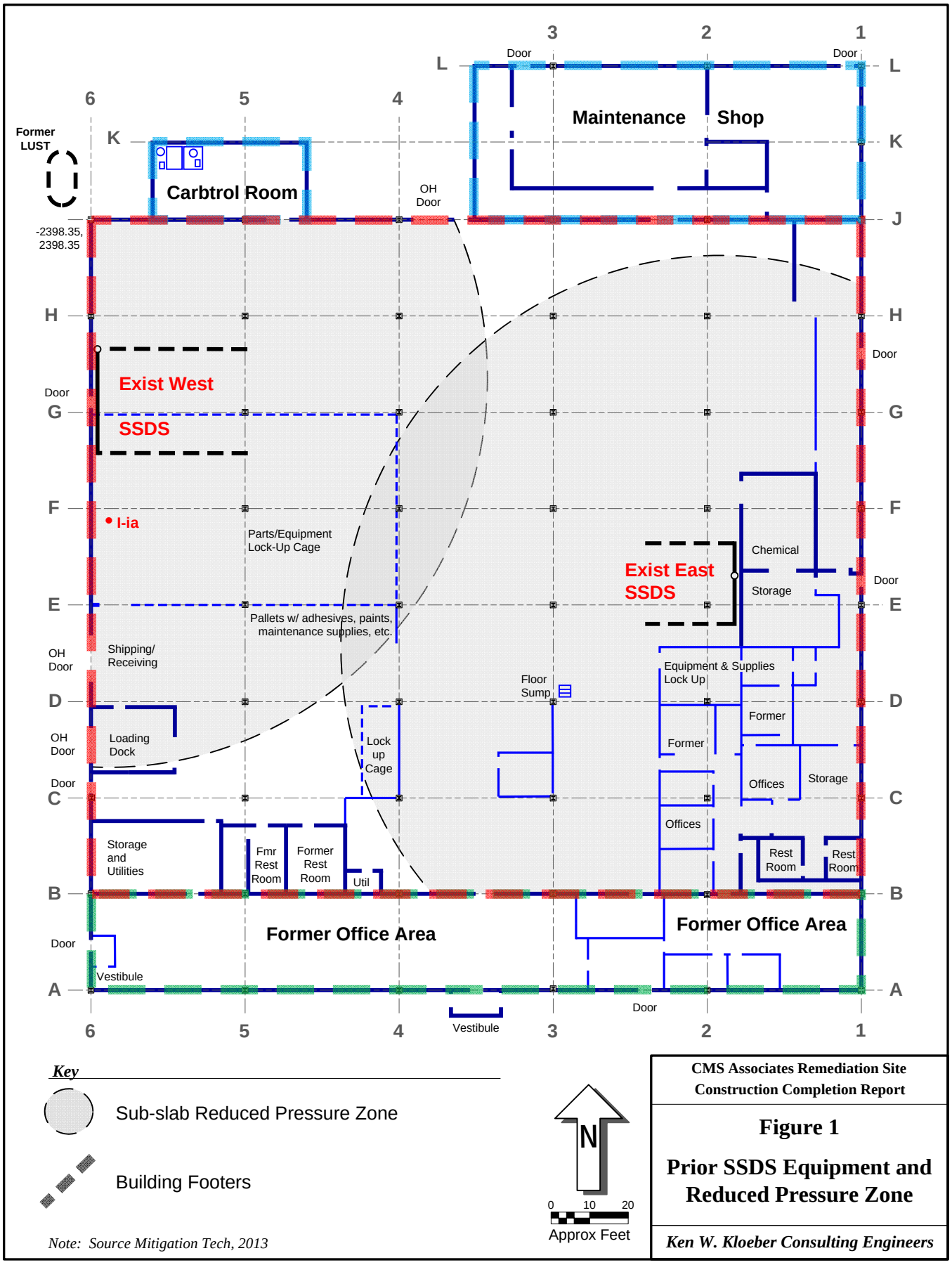
FIGURES



Key

Sub-slab Reduced Pressure Zone

Building Footers

Note: Source Mitigation Tech, 2013

N

0 10 20

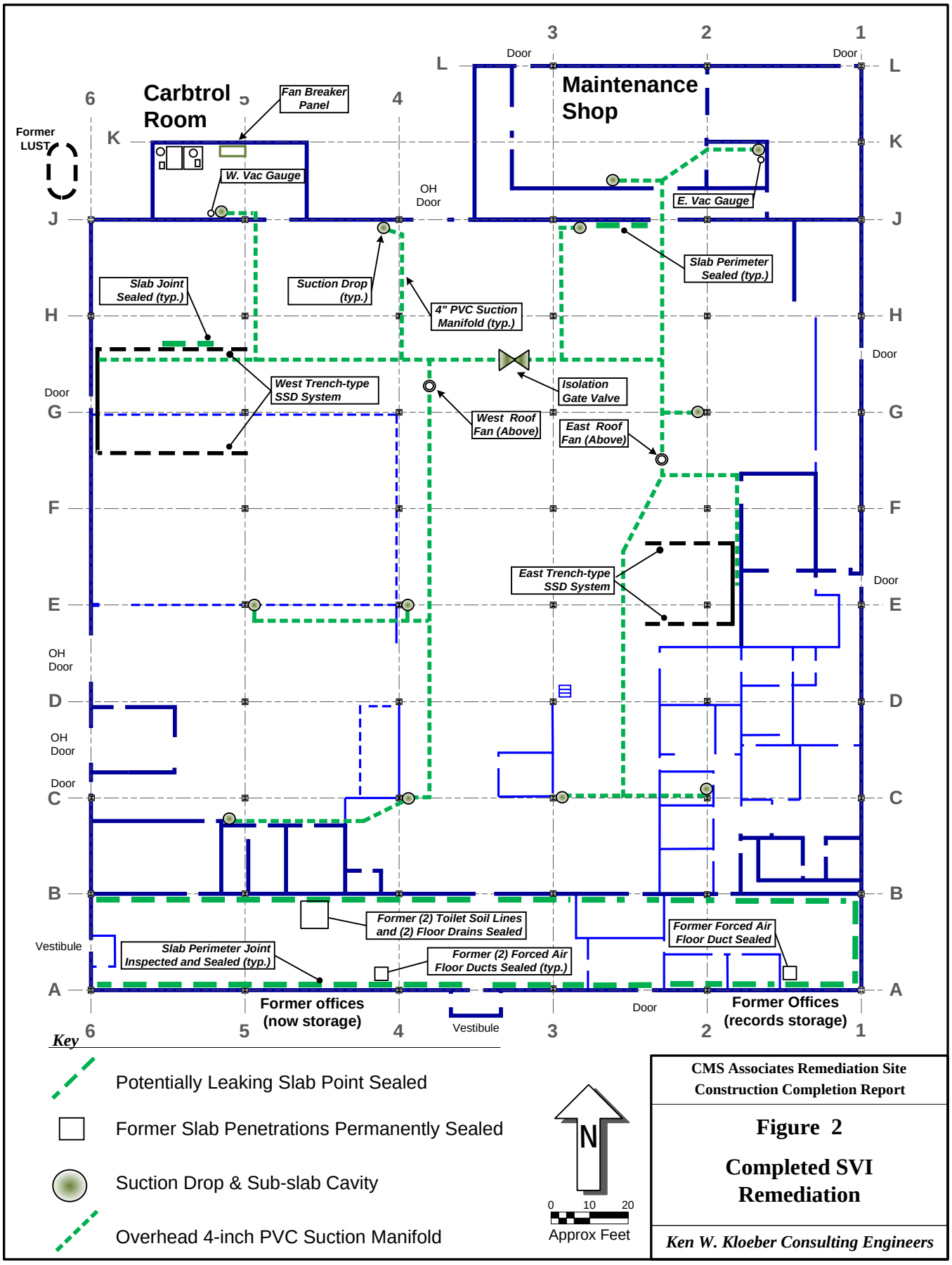
Approx Feet

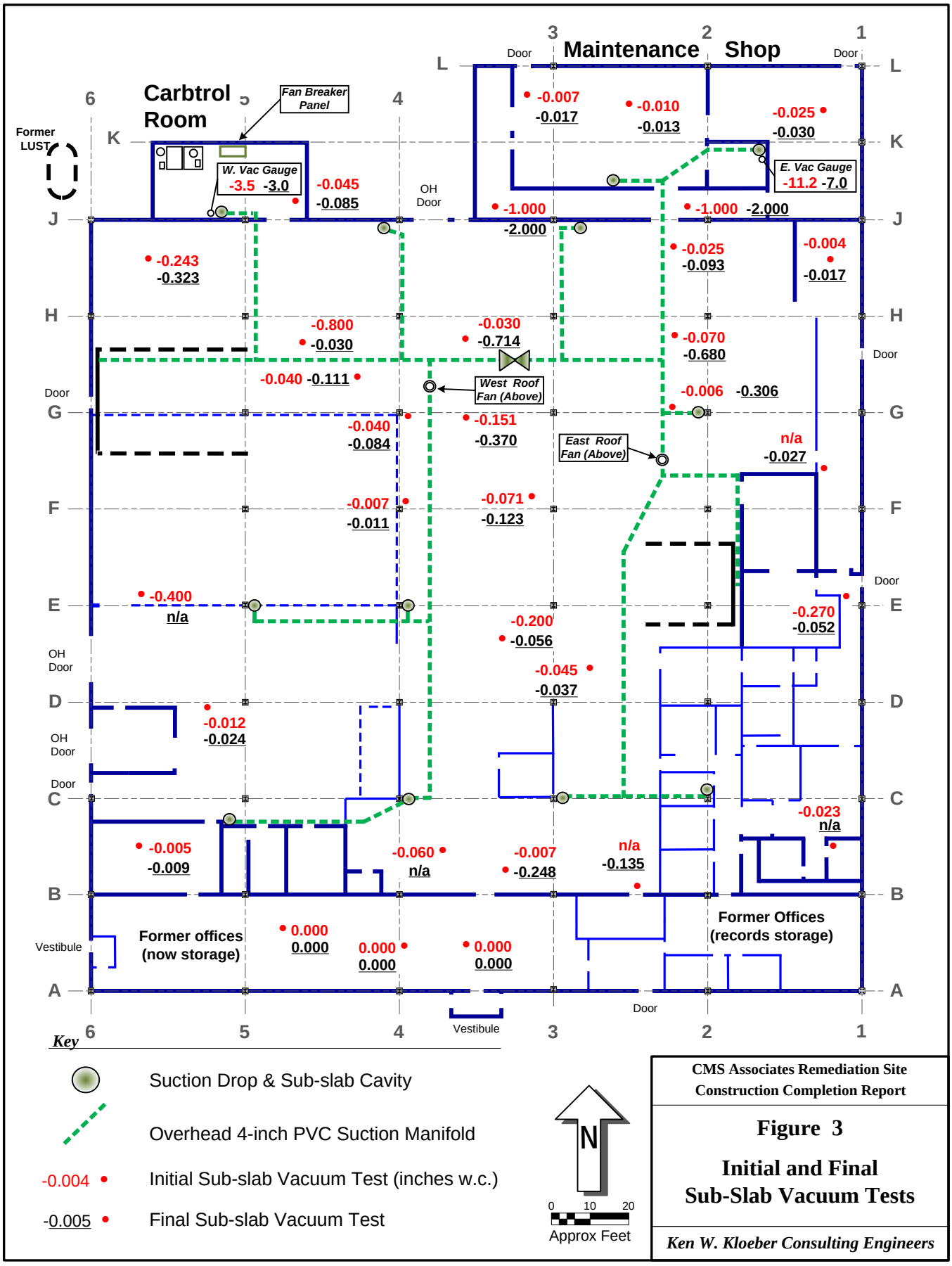
CMS Associates Remediation Site
Construction Completion Report

Figure 1

Prior SSDS Equipment and Reduced Pressure Zone

Ken W. Kloeber Consulting Engineers





PHOTOGRAPHS

EAST ROOF FAN (TYP.)

TYPICAL COMPLETED SUCTION DROP

Column C-3

TYPICAL OPEN PERIMETER JOINT BEFORE SEALING

(West - South end of building)

TYPICAL COMPLETED PERIMETER JOINT SEAL

(Concrete mortar - east - south end of building)

TYPICAL COMPLETED PERIMETER JOINT SEAL

(Backer Rod/Urethane Sealant - east south end building)

ATTACHMENTS

ACCESS AGREEMENT

This Agreement is made as of the 29th day of November 2005, by and between CMS PROPERTY ASSOCIATES, L.L.C., a New York limited liability company having offices at 210 French Road Cheektowaga, New York 14225 (hereinafter referred to as "CMS") with CUGINI VENTURES, LLC, a New York limited liability company with offices at 170 French Road, Buffalo, New York 14227 (hereinafter referred to as the "Owner").

RECITALS

A. The Owner is the owner of certain premises commonly known as 210 French Road in the Town of Cheektowaga, County of Erie and State of New York (which premises is hereinafter referred to as the "Premises").

B. The Premises is improved by, among other things, single story light manufacturing and warehouse building containing approximately 44,800 square feet of space (which building is hereinafter referred to as the "Building").

C. The Premises was purchased by the Owner from CMS pursuant to a purchase agreement dated August 13, 2004 between CMS, as seller, and the Owner, as purchaser (hereinafter referred to as the "Purchase Agreement").

D. The Purchase Agreement requires CMS to perform certain continuing environmental remediation with respect to the Premises (which environmental remediation is defined in the Purchase Agreement as the "Project" and is defined in this Agreement as the "Project") and to have access to the Premises and the Building for purposes of performing the same.

E. CMS and the Owner are desirous of setting forth their agreement as to such access.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties agree as follows:

1. Access to be Afforded. The Owner shall provide, and require its tenants of the Premises to provide, access to CMS and its members, employees, agents, contractors and other persons under its control for purposes of continuing work with respect to the Project as set forth in the Purchase Agreement; provided, however, that in exercising such access neither CMS nor any other person set forth in this paragraph shall have access to, or any right to use, any confidential processes or methods of the Owner or any occupant of the Premises (e.g., any manufacturing or production process that is being undertaken at the Premises) and, provided that CMS has access to the equipment that is being utilized for the Project, CMS shall avoid contact with respect to any such processes or methods.

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2. Indemnification. CMS shall indemnify, defend and hold the Owner and such tenants harmless from and against each and every loss, liability, damage, injury and expense (including reasonable attorneys' fees) incurred by the Owner and such tenants directly or indirectly arising from or in connection with any act of willful misconduct, negligence, or other act or omission, by or on behalf of CMS its agents, employees, representatives or any person under its control, which occurs (i) on or in, or while in transit to or from, the Premises, or (ii) in connection with any activity of CMS related to the performance of the Project.

3. Insurance. At all times during which CMS is performing the Project, CMS shall maintain insurance of the following types and in the following minimum amounts, with the Owner and such tenants named as additional insureds with respect to all liability coverages:

(a) Workers Compensation and Disability Benefits-statutory limits; and

(b) Comprehensive General Liability & Contractual Liability for bodily injury, death and/or property damage- $1,000,000/2,000,000.

Certificates of such insurance shall be delivered to the Owner and each tenant prior to the performance of any work with respect to the Project. Such certificates shall provide that such insurance will not be cancelled unless at least ten (10) business days prior written notice thereof has been given to Owner and each such tenant by the insurer.

4. Miscellaneous. This Agreement shall be binding upon CMS, and its successors, assignees and transferees. This Agreement may not be revoked, modified, altered or amended, except by further writing, signed by CMS and the Owner. This Agreement shall be construed and interpreted in accordance with the laws of this State of New York.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written by the respective duly authorized representatives of the parties.

CMS:

CMS PROPERTY ASSOCIATES, L.L.C.

By: _____
Robert E. Mariacher, Member

Owner:

CUGINI VENTURES, LLC

By: _____
Name: Frank J. Cugliano
Title: President + CEO

Frank J. Cugliano

C.M.S. Property Associates, LLC
228 Linwood Avenue
Buffalo, New York 14209
716-881-1700

March 21, 2015

Nicholas E. Mouganis
Mitigation Tech
55 Shumway Road
Brockport, NY 14420

Dear Mr. Mouganis,

I have enclosed two original notarized, signed, and dated copies of our Agreement for the Soil Vapor Intrusion Remediation System to be installed at 210 French Rd.

Please initial Exhibit A pages; 2, 3, 5, where I have on both sets and return one set to me in the enclosed pre-addressed envelope. I have also enclosed a signed Form ST-124 Certificate of Capital Improvement as the "purchaser" to certify this project as real property improvement.

Please call me to confirm receipt of the complete executed agreement. Thank you.

Sincerely,

James C. Muffoletto
Anthony H. Santiago Revocable Living Trust, Manager
JCM/rc

cc: Guy J. Agostinelli via email
Ken Kloeber via email

Enclosure
F:\CLIENTS\CMS\2015\2015.03.21 Ltr to Mitigation Tech re signed agreement.wpd

AGREEMENT

This agreement ("AGREEMENT") is made as of the 27th day of MARCH 2015, by and between Nicholas E. Mouganis doing business as Mitigation Tech, a Sole Proprietorship whose principal business address is 55 Shumway Road, Brockport, NY 14420 (the "CONTRACTOR") and CMS Property Associates, LLC, a Limited Liability Company whose principal business address is 228 Linwood Avenue; Buffalo, NY 14209 ("CMS",) collectively called the "PARTIES."

RECITALS

CONTRACTOR has provided CMS a proposal, attached as Exhibit A, to install a complete and operating Soil Vapor Intrusion Remediation System intended to depressurize the sub-slab of all of the building(s) (except the storage area at the south end of the building) (the "BUILDING") at the real property located at 210 French Road; Cheektowaga, NY 14227 (the "SITE") to install certain remediation equipment (the "WORK, as more fully defined below").

During installation of the WORK, Ken W. Kloeber Consulting Engineers (the "ENGINEER") will provide services during construction and be CMS's on SITE representative.

The SITE is currently owned by Cugini Ventures, LLC ("CUGINI") and leased to Rosina Food Products, Inc. ("ROSINA") by CUGINI. ROSINA uses the BUILDING to warehouse equipment, parts, materials and supplies in support of ROSINA's food products manufacturing and distribution business operating on the adjacent 170 French Road and 75 Industrial Parkway properties. CUGINI and ROSINA and have informed CMS that they require that CONTRACTOR keep strictly confidential all information that CMS may learn or acquire regarding the manufacturing, production and/or distribution processes that are being undertaken at the BUILDING or SITE, or the properties adjacent to the SITE.

ROSINA and CUGINI have informed CMS that they require CONTRACTOR to:

1. Have and maintain certain types of insurance while performing the WORK on the SITE which CUGINI owns and ROSINA leases, and that ROSINA and CUGINI be named as additional insureds with respect to all general liability coverages to be maintained by CONTRACTOR during the performance of the WORK, and CMS informed CONTRACTOR that CMS also requires that CMS be named as an additional insured.

2. Indemnify and hold them harmless from any and all losses, liabilities, costs, damages, injury and/or expenses sustained by ROSINA and/or CUGINI for personal injuries, death and/or property damage directly or indirectly arising out of, in connection with or caused by CONTRACTOR either on or in or while in transit to or from the Site, or in the performance of, or the failure to perform, the WORK, and CMS informed CONTRACTOR that CMS also requires such indemnity in favor of CMS.

CONTRACTOR has agreed to provide the forgoing covenant, insurance and indemnity to ROSINA, CUGINI and CMS as an inducement for CMS to accept CONTRACTOR's proposal.

NOW, THEREFORE for good and valuable consideration,
the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

A. SCOPE and PERFORMANCE OF THE WORK

"WORK" also includes the following:

1. Activities, labor, methods, tools and materials, and finished products generally described in Exhibit B, including any preparatory activities thereto.

2. Activities, labor, methods, tools and materials, and finished products as additionally described and detailed by certain clarifications, drawings, or specifications that are consistent with Exhibit B, that from time to time the ENGINEER may issue to CONTRACTOR.

3. All items necessary for the proper execution and completion of the WORK by the CONTRACTOR, whether temporary or permanent and whether or not incorporated or to be incorporated in the WORK, including without limitation all cutting, fitting or patching required to complete the WORK or to make its parts fit together properly.

4. Any written modification to the WORK that increase or decrease the original scope of the WORK, otherwise referred to as a Change Order.

The CONTRACTOR shall perform all WORK in a neat and professional manner, using utmost care, and shall install all WORK components using precautions, and materials and methods adequate to prevent damage or injury to the BUILDING and/or SITE, or any of ROSINA'S/CUGINI'S employees, equipment, materials, supplies and other personal property located therein, and shall not unreasonably encumber the SITE with materials or equipment.

The WORK includes the CONTRACTOR's adhering to all applicable federal, state, and local law and regulations, and obtaining all necessary permits and approvals, and any subsequent inspections of work outside those observations of the WORK performed by the ENGINEER.

B. COMPENSATION and PAYMENT for THE WORK

CONTRACTOR compensation for the WORK shall be a firm fixed cost of:
thirty-four-thousand-four-hundred dollars ($34,400.00) for the WORK as presented in Exhibit A, the CONTRACTOR'S proposal to perform the WORK, plus any Change Orders or other negotiated adjustment to the compensation.

CONTRACTOR shall provide complete and accurate billing invoices in order to receive payment, and invoices submitted must contain all information and supporting documentation required and necessary to support the amount of WORK in place and completed, and claimed for payment.

1. **PROGRESS PAYMENT:**

Contractor may submit to the ENGINEER, an Application for Payment for twenty-five-percent (25%) of the Contractor's PROPOSAL (Exhibit A) upon execution of this AGREEMENT, which CMS shall pay within three days.

2. **CHANGE ORDERS:**

The PARTIES acknowledge that the CONTRACTOR'S proposal is to install a complete and operating remediation system that is intended to provide a minimum 0.004 inches water column, (0.001 kPa) negative pressure under the entire concrete floor slab except the storage area on the south end of the building, and also acknowledge that there may be unforeseen soil and other conditions encountered beneath the slab.

The CONTRACTOR or the ENGINEER may, from time to time during the duration of the AGREEMENT, initiate a Request for Change Order, which, if approved by the ENGINEER and the PARTIES, shall become a part of the WORK as if it was included in the original WORK scope.

It is acknowledged, understood by, and agreed to by the PARTIES, that the installation of the remedial components is on a design-install-test basis, and that, due to the variability in sub-slab conditions and vapor communication across the building footprint, the CONTRACTOR does not guarantee that the remediation system described in Exhibit A will completely capture all sub-slab vapors. Should additional remediation be necessary to capture sub-slab VOCs, the scope of WORK may therefore be increased and additional WORK components added by Change Order.

Likewise, after initial testing of an installed component, if VOC capture is greater than expected due to sub-slab conditions and greater then expected vapor communication across the building footprint, some components described in Exhibit A may be deleted from the WORK scope by Change Order.

Compensation for WORK included in a Change Order, shall be on a negotiated basis between the CONTRACTOR and ENGINEER, and as subsequently approved by the PARTIES in writing in a manner and on forms provided by the ENGINEER.

If any Change Order is approved, the CONTRACTOR shall be due neither an additional premium nor supplemental compensation, other than the compensation amount (increase or decrease) contained in the Change Order, for any increase or decrease of the WORK for additional time or effort for components added or the WORK, or to recover lost profit for components deleted from the WORK. The Change Order will represent the entire agreement between the PARTIES for any change in compensation that is due the CONTRACTOR for changes in the WORK scope.

3. **FINAL PAYMENT:**

Upon substantial completion and acceptance of the WORK by the ENGINEER and CMS, the CONTRACTOR may submit a final invoice and Application for Payment, which will represent the net payment due CONTRACTOR, adjusting for prior payments and (if any) changes or adjustments in the WORK, negotiated Change Orders, or agreed-upon adjustments in compensation, and in which case CMS shall pay the remainder of the compensation due CONTRACTOR within 30 days.

In the event that any portion of the WORK is substantially complete, but such portion remains incomplete due to necessary minor corrections to the WORK, restoration of minor work area(s), or are similarly otherwise incomplete due to any incidental reason(s) that do not affect the start-up, operation, testing, or acceptance of the WORK, a retainage will be deducted from the Final Payment equal to two-hundred percent (200%) of the ENGINEER'S estimate to complete the WORK or to perform the corrections such that the WORK can be accepted as complete by the Engineer and CMS.

Upon final completion of all WORK, the CONTRACTOR may submit an Application for Payment for the retained amount, which CMS will pay within 30 days.

Payments shall be subject to the CONTRACTOR providing requested documentation including but not limited to certifications that CONTRACTOR has fully paid all wages due WORKERS, and all payments due to equipment and material suppliers, and any subcontractors.

C. SALES AND USE TAX

The WORK constitutes a Capital Improvement and further involves an installation of pollution control equipment that may be exempt from NYS Sales and Use tax. The CONTRACTOR shall treat all applicable NYS Sales and Use taxes accordingly, if CMS provides appropriate exemption certificates.

D. TIME IS OF THE ESSENCE

Execution of this AGREEMENT represents a Notice to Proceed to CONTRACTOR, who hereby acknowledges that time is of the essence, and that all WORK shall be Substantially Completed by April 23, 2015. CONTRACTOR expressly acknowledges CMS may incur substantial penalties imposed by the State of New York if the WORK is not complete by that date:

For day:

- 1 through 14 after April 23, 2015: $100.00 per day;
- 15 through 30 after April 23, 2015: $250.00 per day;
- 31 after April 23, 2015, until the date the WORK is substantially complete: $500.00 per day.

CONTRACTOR agrees to pay all of CMS's actual damages that arise due to CONTRACTOR'S delay in installing the WORK. These actual damages shall include, but not limited to, delay damage settlements or awards related to penalties or fines imposed by regulatory agencies, and other actual costs incurred by CMS due to delays in competing the WORK, provided that the CONTRACTOR liability for damages is limited to the value of this AGREEMENT including any Change Orders or other negotiated adjustments to the compensation.

The PARTIES agree that no benefit will accrue to CMS if the CONTRACTOR completes the work earlier than April 23, 2015, and that in that event the CONTRACTOR is due no bonus or other additional payment or compensation.

E. STATUS of PARTIES DURING THE WORK

"CONTRACTOR" shall mean to include the legal business entity that is a party to this AGREEMENT. Contractor's "WORKERS" shall mean its owner(s) and employees (whether directly employed full or part time or under any subcontract or temporary worker arrangement,) and additionally any agent reasonably considered under the CONTRACTOR'S control and or direction (including material suppliers and others necessary to complete the WORK,) all of which individually or collectively may from time to time, be on the SITE and performing any function whatsoever related to, or supervising, the installation of the WORK.

The ENGINEER will provide services during construction and be CMS's on-site representative, and coordinate with Rosina/Cugini on any issues that arise that affect the CONTRACTOR's installation of the work.

The CONTRACTOR shall, at all times in all actions while on and off the SITE, clearly maintain its status as an independent contractor. CONTRACTOR and WORKERS shall not represent themselves in whatsoever manner or way, as employees of, or as associated with, CMS, ENGINEER, ROSINA, and/or CUGINI.

F. STRICT CONFIDENTIALITY

The CONTRACTOR shall have no right of access to, or any right to use, any process or method of CUGINI and/or ROSINA (e.g., any manufacturing or production process that is being undertaken at the BUILDING or SITE, or adjacent to the SITE). CONTRACTOR shall avoid contact with respect to any such processes or methods; provided, however, that CONTRACTOR nevertheless shall have reasonable access to the BUILDING and SITE to the extent necessary to install the WORK.

CONTRACTOR and its WORKERS shall maintain strict confidentiality and shall not disclose to anyone, any observations made, information gained, or documents received related to the methods, processes, or equipment used by ROSINA.

ROSINA and/or CUGINI may from time to time have employees, officers, directors, agents, representatives, invitees, licensees, consultants and contractors working, or who may otherwise be, inside the BUILDING and around the SITE (collectively, the "R/C REPRESENTATIVES"). CONTRACTOR and its WORKERS shall perform all WORK in a manner to avoid, insofar as possible, any and all interference with the R/C REPRESENTATIVES.

CONTRACTOR shall promptly deliver to the ENGINEER, originals of all data, reports, assessments, analyses, test results, photographs, documentation, record drawings and information (sometimes commonly called "as-built" drawing and information,) and any other information related to the WORK that is written or otherwise recorded in any manner whatsoever (collectively the "WORK DOCUMENTS".)

"SITE INFORMATION" shall mean WORK DOCUMENTS, PLUS any and all information and knowledge that CONTRACTOR and WORKERS possess about the SITE and its conditions, including but not limited to any and all data, observations, and conclusions, PLUS any and all other information and knowledge personally gained during performance of the WORK or during prior work engagements during the commonly called "Soil Vapor Intrusion Evaluation" of the SITE.

CONTRACTOR and WORKERS shall not disclose to any party (including and specifically to the R/C REPRESENTATIVES) any SITE INFORMATION, nor the nature nor reason for performing the WORK or any portion or component thereof, nor offer any opinions or advice, nor disclose any details related to the WORK, nor disclose any information about prior activities undertaken on the SITE.

CONTRACTOR shall direct to the ENGINEER, any party asking questions or otherwise inquiring about the WORK or any component of the WORK or relative to any SITE INFORMATION.

Except for WORK DOCUMENTS delivered to the ENGINEER, or as may be required by law, the CONTRACTOR and WORKERS shall not disclose to anyone (including and specifically to R/C REPRESENTATIVES) any SITE INFORMATION unless authorized in writing by the ENGINER.

G. CONTRACTOR COOPERATION and COORDINATION of THE WORK

CONTRACTOR and WORKERS shall perform all WORK in a manner to avoid disrupting the business or operations of ROSINA, CUGINI, and R/C REPRESENTATIVES, and CONTRACTOR shall adhere to reasonable rules and scheduling requirements of ROSINA and/or CUGINI for conducting the WORK so as to not unreasonably interfere with ROSINA'S business operations.

ROSINA/CUGINI requires the coordination and approval of all proposed WORK component locations, and materials and methods for completing components of the WORK. The ENGINEER will coordinate with ROSINA/CUGINI, the CONTRACTORS proposed WORK schedule and locations.

CONTRACTOR shall provide prior notice to ENGINEER of intended locations, and materials and methods to install remediation system components such that ENGINEER may coordinate with ROSINA/CUGINI before CONTRACTOR begins work.

CONTRACTOR shall perform no component of the WORK without the ENGINEER notifying CONTRACTOR that the WORK component has been coordinated with ROSINA/CUGINI. The ENGINEER may, at the CONTRACTOR'S sole expense, require the CONTRACTOR to remove any or all WORK that is installed without such coordination notification, and to reinstall it in a location and manner as directed by the ENGINEER.

If the CONTRACTOR fails to correct WORK that is not in accordance with the requirements of this AGREEMENT or repeatedly fails to carry out WORK in accordance with this AGREEMENT, CMS through ENGINEER may issue a written order to the CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated. If CONTRACTOR defaults or neglects to carry out the WORK in accordance with this AGREEMENT and fails within a ten-day period after receipt of written notice from CMS through ENGINEER to commence and continue correction of such default or neglect with diligence and promptness, CMS may, without prejudice to other remedies CMS may have, correct such deficiencies.

To the extent that the WORK is required to be inspected or approved by a public authority other than the NYS Department of Environmental Conservation or NYS Department of Health, the CONTRACTOR shall cause such inspection or approval to be performed. However, no inspection performed or failed to be performed hereunder shall be a waiver of any of the CONTRACTOR's obligations hereunder or be construed as an approval or acceptance of the WORK or any part thereof.

CONTRACTOR shall procure all building permits and other authorizations required to perform the WORK.

H. HEALTH and SAFETY

CONTRACTOR shall comply with all applicable environmental, health and safety laws, regulations, and guidance, including, without limitation, any administered by NYS Department of Labor, the NYS DEC, the USEPA, or by OSHA.

CONTRACTOR shall comply with the Health and Safety Plan ("HASP") for the SITE, the prior receipt and review of which the CONTRACTOR hereby acknowledges. CONTRACTOR and WORKERS shall use utmost care to protect human health during the WORK, and shall immediately report to the ENGINEER any condition or situation that has a potential to jeopardize health or safety.

CONTRACTOR acknowledges and certifies that its WORKERS are adequately trained in health and safety procedures and precautions, have read and are familiar with the requirements of the HASP, and meet all OSHA requirements in order to install the WORK.

CONTRACTOR shall afford the ENGINER the opportunity to monitor environmental conditions at the SITE, including but not limited to intermittent or continuous readings of volatile organic compounds ("VOCs") vapors in the indoor air and under the floor slab, without additional compensation for any time or delay associated with the monitoring or preparation to monitor. ENGINEER may direct the CONTRACTOR to stop work if unsafe conditions are determined to persist on the SITE, and may require the CONTRACT to ventilate the premises before returning to the WORK (see "Compensation".)

I. RESTORATION of WORK LOCATIONS

CONTRACTOR shall, in a neat and professional manner, promptly restore WORK locations to the same or better than pre-WORK conditions. CONTRACTOR shall keep the BUILDING and SITE free from accumulated waste or rubbish caused by operations under this AGREEMENT. At completion of the WORK, CONTRACTOR shall remove waste materials, rubbish, CONTRACTOR's tools, equipment, machinery, and surplus materials from and about the SITE. ENGINEER shall solely make the determination as to CONTRACTOR'S adequacy of daily and final clean up, and restoration.

J. CONTRACTOR INSURANCE

At all times during the WORK, including without limitation when at, on or in, or transit to or from the SITE, CONTRACTOR and, if any, its subcontractors, shall maintain a commercial, occurrence basis insurance with an insurer licensed to do business in the State of New York of the form and types and in the following minimum amounts, with the additional insured parties below, each named as additional insured with respect to all liability coverage:

1. Workers Compensation and Disability Benefits: Statutory limits;

2. Comprehensive General Liability & Contractual Liability for bodily injury, death and/or property damage:
   $1,000,000 per occurrence / $2,000,000 aggregate;

3. Automobile Liability:
   $1,000,000 combined single limit per occurrence;

4. Pollution Liability and Errors and Omissions Liability:
   $2,000,000 aggregate / $2,000,000 Completed Operations aggregate;

5. Umbrella Liability:
   $3,000,000 per occurrence / $3,000,000 aggregate.

Additional insured parties:

1. CMS Property Associates, LLC
   228 Linwood Avenue
   Buffalo, NY 14202

2. Ken W. Kloeber Consulting Engineers d/b/a
   PO Box 140
   Boston NY 14025

3. Rosina Food Products, Inc.
   170 French Road
   Cheektowaga, NY 14227

4. Cugini Ventures, LLC
   170 French Road
   Cheektowaga, NY 14227

CONTRACTOR and, if any, its subcontractors, shall cause certificates evidencing such insurance to be delivered to ENGINEER within five (5) business days of the date of this AGREEMENT, and shall provide that such insurance will not be amended, modified, be permitted to lapse or cancelled unless at

least ten (10) business days prior written notice thereof has been given to each of the named additional insured parties. In addition, CONTRACTOR and, if any, its subcontractors, shall deliver to ENGINEER within five (5) business days of the date of this AGREEMENT a copy of the applicable additional insured endorsement from each liability coverage confirming that it can provide additional insured coverage.

K. INDEMNITY

CONTRACTOR agrees to defend, indemnify and hold harmless CMS, ENGINEER, CUGINI and ROSINA (the "INDEMNIFIED PARTIES"), singularly and in the aggregate, against each and every claim, action, proceeding, loss, liability, damage, personal injury, amount in contribution, cost and expense (including reasonable attorney's fees and expenses) incurred, suffered or paid directly or indirectly arising out of, resulting from, in connection with or related to any breach of this AGREEMENT, any claims asserted against an INDEMNIFIED PARTY pursuant to a provision of the New York State Labor Law, any claim asserted against an INDEMNIFIED PARTY alleging vicarious or strict liability, or any act of willful misconduct, any negligence, or any other act or omission, by or on behalf of the CONTRACTOR, its WORKERS, or if any, its subcontractors, which occurs: (i) at, on or in, or while in transit to or from, the SITE, (ii) in connection with any activity by the CONTRACTOR, its WORKERS, or if any, its subcontractors, that is related to the performance of, or the failure to perform, the WORK.

In addition to the foregoing, the term INDEMNIFIED PARTIES shall also mean and include any and all of their respective shareholders, members, directors, officers, employees, representatives and agents, and successors and assigns, of each of the foregoing. In addition, CONTRACTOR shall defend, indemnify, and hold harmless CUGINI against all claims for and/or filings of mechanics' liens related to the WORK, and against any security interests by suppliers of goods, services or materials related to the WORK.

L. PARTIES BOUND and BENEFITS; THIRD PARTY BENEFICIARIES

This AGREEMENT shall be binding upon the PARTIES, and their successors, assignees and transferees, and inure to the benefit of ENGINEER, CUGINI and ROSINA. This AGREEMENT may be revoked, modified, altered or amended, only in writing, and agreed to by both Parties. This AGREEMENT shall be construed and interpreted accordance to the laws of this State of New York. The PARTIES expressly acknowledge that each of ROSINA and CUGINI are third party beneficiaries of this AGREEMENT and shall be entitled to enforce it against the PARTIES, including by way of example only all indemnification provisions of this AGREEMENT which are or are intended to be for their respective benefit.

M. AUTHORIZATION

The person executing this AGREEMENT on behalf of CONTRACTOR and CMS warrants and represents that he or she is legally authorized to execute and deliver this AGREEMENT on behalf of each party.

N. ENTIRE AGREEMENT

This AGREEMENT on the part of CONTRACTOR contains the entire agreement with respect to the WORK to be performed, compensation, and all other matters set forth herein, and supersedes all prior negotiations and agreements as to these matters.

O. FORCE MAJEURE

Neither of the PARTIES shall be liable for failure to perform its obligations if such failure is reasonably beyond its control, and the party has acted in good faith and it has, as necessary, quickly and reasonably attempted to minimize any adverse effect of the event(s.) Such event(s) may be or may be a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war (whether or not declared,) invasion, acts of foreign enemies, hostilities, rebellion or revolution or insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute, including strike or lockout, or interruption or failure of utility service(s) necessary to perform its duties, or failure of the other Party to perform it's obligations, or failure to afford the CONTRACTOR reasonable access to the SITE in order to complete the WORK.

If a party asserts Force Majeure as a reason for failure to perform its obligation, it must prove that it took reasonable steps to minimize delay and damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that it has notified the other party of the likelihood or actual occurrence of the event as soon as it became aware of, or could reasonably foresee the event(s).

CONTRACTOR agrees to reasonably work within the SITE and accommodate R/C REPRESENTATIVES' activities on the SITE. Therefore, being afforded reasonable access to some, but not all portions of the SITE, will not be a cause for CONRACTOR assert Force Majeure over installation of the WORK in those areas of the SITE in which CONTRACTOR was afforded reasonable access.

P. ARBITRATION of DISPUTES

If there is any dispute under this Contract that cannot be settled by good faith negotiation between the PARTIES, it shall be settled by arbitration in Buffalo NY, before a single arbitrator pursuant to the rules of the American Arbitration Association, which may be commenced at any time by either PARTY by giving written notice to the other that such dispute has been referred to arbitration. The arbitrator shall be selected by the agreement of the parties, but if they cannot agree within 20 days after giving notice above, the selection shall be made pursuant to the rules from the panels of arbitrators maintained by the Association. Any award rendered by the arbitrator shall be conclusive and binding upon the PARTIES; provided, however, that any such award shall be accompanied by a written opinion of the arbitrator giving the reason for the award.

This provision for arbitration shall be specifically enforceable by the PARTIES and the decision of the arbitrator shall be final and binding and there shall be no right of appeal.

IN WITNESS WHEREOF, this AGREEMENT has been executed as of the day and year first above written by the respective duly authorized representatives of the PARTIES.

For the CONTRACTOR:

By: Nicholas E. Mouganis dba MitigationTech

Nicholas E. Mouganis, Owner

3/13/15
Date

STATE OF NEW YORK)
Monroe) §:
COUNTY OF ~~ERIE~~

On the 13th day of MARCH in the year 2015, before me, the undersigned, personally appeared Nicholas E. Mouganis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Donna M. Moore
01MO5055088
Notary Public, State of New York
Qualified in Orleans County
My commission expires MAY 17th, 20 18

For CMS:

CMS PROPERTY ASSOCIATES, L.L.C.
By: A&L Holding Company, LLC, Member
By: Anthony H. Santiago Revocable Living Trust, Manager

James C. Muffoletto

3-21-15
Date

STATE OF NEW YORK)
) §:
COUNTY OF ERIE)

On the 21st day of MARCH in the year 2015, before me, the undersigned, personally appeared James C. Muffoletto, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Rachele Cruz
Notary Public - State of New York
No. 01CR5040510
Qualified in Erie County
My Commission Expires March 13, 2019

Exhibit A

[See attached copy of Dec 3, 2014, Mitigation Tech Proposal]

EXHIBIT A

mitigation tech *vapor intrusion specialists*

December 3, 2014

Mr. Ken W. Kloeber
Ken W. Kloeber Consulting Engineers
PO Box 140
Boston, NY 14025
Via email: KloeberEng@aol.com

Re: 210 French Rd., Buffalo NY
Soil Vapor Intrusion Mitigation System Proposal

Dear Mr. Kloeber,

For you review and comment, we submit the following work plan:

1.0 Introduction

Soil vapor containing chlorinated volatile organic compounds has been detected at or near this site. This document presents a Work Plan that consists of the modification of the existing sub-slab depressurization system (SSDS) that is designed to mitigate the migration or potential migration of sub surface vapors into the building interiors. The subject area of the base proposal is the footprint currently occupied by Rosina Foods, excluding the separate former south office section. A system to provide coverage for the former south office section is shown as a separate item. The SSDS is intended to protect the occupants of the subject area and is not intended to remove or diminish the source of the contamination. After start-up, demonstration of SSDS effectiveness will be confirmed and thereafter, periodic maintenance and monitoring will be performed.

2.0 Objectives

This work plan was developed in general accordance with the NYS DOH document, "Guidance for Evaluating Soil Vapor Intrusion in the State of New York, October 2006". This document prohibits vacuum fans located within occupied space; therefore, a significant component of this plan is reestablishment of fan location from the building interior to the building roof.

The objective of the SSDS is to create and maintain a minimum negative pressure differential of .004 inches of water column (wci) below all concrete slabs in the subject area which function as boundaries between sub-slab space and occupied interior space. Once the SSDS has been installed, testing will be performed to determine the extent of the pressure field and results will be presented for review. If and where necessary, additional measures will be furnished at no additional charge by Mitigation Tech to ensure that performance objectives are met.

3.0 Work Plan Design and Specifications

3.1 Overview

Work descriptions are based on certain assumptions identified herein and are subject to modification based on further field observations and measurements before and during construction. In the interest of achieving efficiency of design and optimized cost, this Work Plan is presented on a Design/Build basis which allows for adjustment to quantity and type of system components.

3.2 Predesign Communication Testing

Sub-slab air communication testing was performed to assess the performance of the existing system and determine the most efficient system configuration. Small diameter test holes were established to measure vacuum influence. The test procedure included drilling core borings into the concrete at likely suction cavity locations. Because of relatively high resistance to airflow in the sub-slab and limited suction cavity placement opportunities, it was determined that high performance high suction blowers were necessary for comprehensive coverage.

3.3 Scope of Work

The Scope of Work is to furnish and install two multi-point an active sub-slab depressurization systems at designated locations. The Scope of Work is based on the minimum construction necessary to achieve the design objective of furnishing a minimum .004 wci pressure differential at all areas of the subject area.

Furnish and Install:

- **SYSTEM 1**: West System
- Remove existing blower
- Re-plumb existing pipe and trench network to new fan location on roof - 4" and or 6" PVC
- System configuration - (1) GBR89-UD Universal Drive HO Blower, or as field selected, roof mount over riser over riser to existing w trench system, to provide sub-slab depressurization via schedule 40 PVC pipe to roof exhaust; minimum 10"[feet] from any air intake to occupied space
- Suction point location as follows: (1) "Carbtrol" room (NW corner), (1) Loading dock, (1) south wall former SW restroom area
- Additional suction cavities as field determined for warranty performance
- **SYSTEM 2** : East System
- Remove existing blower
- Re-plumb existing pipe and trench network to new fan location on roof - 4" and or 6" PVC
- System configuration - (1) GBR89-UD Universal Drive HO Blower, or as field selected, roof mount over riser to existing E trench system, to provide sub-slab depressurization via schedule 40 PVC pipe to roof exhaust; minimum 10" from any air intake to occupied space
- Suction point location as follows: (4) Maintenance room NE corner, (1) north wall main section, (1) south wall former SE restroom area
- Additional suction cavities as field determined for warranty performance
- ~~**SYSTEM 3:** South System (former South Office area)~~
- ~~System configuration - (1) GBR76-UD Universal Drive HO Blower, roof mount~~
- ~~(8) Suction points – suction cavities at section perimeter, (4) on section north wall, (4) on section south wall~~
- **COMMON ELEMENTS:**

(Deleted from Work Scope)

2 3/21/15

- Pre-construction consultation to obtain approval for component placements
- Client to clear work areas where required
- Scissors lift use permitted on site
- Suction cavity design: connection via 3" or 4" Schedule 40 PVC pipe, to cavity in sub-slab, with urethane seal; access hole to suction cavity by 5"core drill or hand drill; suction cavity to consist of approximately 1 cu. ft. excavated material in sub-slab
- Proportioning valves for suction risers where required
- 4" PVC bridge line connecting East and West systems, with ball valve; intended for to provide redundancy in the event of temporary single fan outage; valve normally closed
- All exhaust points minimum 10" [feet] from any air intakes
- Permanent roof flashings for all roof penetrations
- Final placements of all components subject to approval by client
- ~~Exterior disconnect and weatherproof conduit at each fan location, with permanent connection to building electric panels (cost shown as separate line item)~~
- Magnahelic or U-tube style vacuum indicator per system, on vertical pipe run; location TBD
- Urethane sealant at slab joints, accessible cracks and penetrations, where required
- Horizontal pipe above drop ceiling , with metal bracketing, sloped as required, with valves or restrictor plates as required
- At completion, perform backdraft testing, measure pressure differentials and document; label components and provide system description and operational instructions
- Consult with client engineering representatives to develop operation, maintenance and periodic inspection plan
- One year warranty; labor and installed components (extended warranty available)

3/2/15

3.4 Post Installation Pressure Field Extension Testing

A digital micromanometer will be used to measure pressure differentials and values will be recorded on a floor plan. All test holes will be repaired with urethane caulk (MSDS available) applied over a closed cell backer rod. Smoke tubes will be used to identify floor cracks and other openings to the sub-slab that could "short circuit" the pressure field. Backdrafting testing will be performed.

3.5 System Operation Following Power Loss

The systems will restart automatically after power restoration.

3.6 General Work Plan Provisions

- Daily tailgate meeting for safety review
- Hazwoper trained personnel to perform drilling operations
- PID monitoring not included
- Level 4 PPE for on-site personnel
- Procedures to follow site specific HASP

3.7 IRM Construction Completion Report

At conclusion of construction, a Construction Completion Report (CCR) will be submitted. This report will include an as-built drawing, showing SSDS locations and components. The CCR will include measurements of created sub-slab to ambient air static pressure differentials, detailed descriptions of SSDS components, and post-installation sampling results.

An Operations, Maintenance, and Monitoring (OM&M) Plan will be submitted with the CCR. The OM&M Plan will be provided to the owner and occupants to facilitate their understanding of the system's operation, maintenance and monitoring. The OM&M Plan will include the following:

- a description of the SSDS Installed and its basic operating principles, with diagram;
- how the owner or tenant can check that the SSDS is operating properly;
- how the SSDS will be maintained and monitored and by whom;
- a description of long-term reporting and annual SSDS certification requirements;
- a list of appropriate actions for the owner or tenant to take if a SSDS warning device (manometer) indicates system degradation or failure;
- a description of the proper operating procedures for the SSDS, including manufacturer's operation and maintenance instructions and warrantees; and
- contact information if the owner or tenant has questions, comments, or concerns.

3.8 Maintenance and Monitoring

Future monitoring will be proposed to monitor system communication via differential pressure measurements. The monitoring will be performed annually until a less-frequent monitoring frequency is approved. This routine monitoring will include:

- visual inspection of the equipment and piping;
- inspection of exhaust points to verify that no air intakes have been located nearby;
- identification and subsequent repair of any leaks;
- audible operational status check of vent fans;
- damper adjustments as required to balance parallel branches of system;
- measurement of differential pressure between the indoor air and the sub-slab to ensure a lower pressure is being maintained in the sub-slab relative to indoor ambient, as indicated by the pressure gauge on the fan suction pipe.

In addition, non-routine maintenance may be conducted should it appear that the SSDS has reduced its effectiveness due to malfunction, renovation, or other unplanned circumstance. Examples of such circumstances include the following:

- the building's owner or tenants report that a warning device indicates that the SSDS is not operating properly;
- the system is accidentally damaged;
- the building has undergone renovations that may reduce the effectiveness of the system.

The SSDS will be operated until such time as permission in writing is received from NYSDEC to terminate operation of the system and remove the equipment.

3.9 Schedule

Client shall provide notification to tenants for timing of construction and shall obtain any necessary access agreements.

It is anticipated that work can be completed within thirty days of receipt of order. It is anticipated that portions of the work involving considerable noise or intrusion will take place after hours.

3.10 Discharge Permitting

It is understood that an air discharge permit to discharge treated vapors will not be required. It is further understood that all discharges will be direct to the atmosphere and that a Community Air Monitoring Plan is not required.

4.0 Projected cost

Base System, Labor and material.....$34,400.00

Line Item Extras 3/21/15 (South office SSDS deleted from Work Scope)

~~**SSD System – former south office area.....$ 8,700.00**~~
~~**Electrical Connection incl. permits $ 6,600.00**~~

(Electrical deleted from Work Scope, proposed cost retained as possible Change Order)

Qualifications

NEHA NRPP ID certification #100722 RMT (mitigation)
NYS Listed for Radon Mitigation
AARST Membership
Installers are HAZWOPER and OSHA trained
25 years direct experience in Soil Vapor Intrusion Mitigation
Over 10,000,000 square feet accumulated depressurized sub-slabs
Over 5,000 completed work sites since 1991
Extensive experience with high suction fans (to 50 wci) and manifolded SSD systems
Expertise in ASTM E-2121-03 and NYS DOH VI Guidance
Comprehensive Insurance

- $5,000,000 General Liability
- $2,000,000 Pollution Liability
- $2,000,000 Professional Liability
- $1,000,000 Automobile Liability
- Statutory Worker's Comp

Thank you.

Nicholas E. Mouganis EPA listing # 15415-I; NEHA ID# 100722

Exhibit B

[See attached copy of Jan 3, 2015, Design Work Plan]

Ken W. Kloeber
Consulting Engineers ENVIRONMENTAL SOLUTIONS • CIVIL & SANITARY ENGINEERING • PLANNING & DESIGN
PO BOX 140 • BOSTON NY 14025 • 716-864-0012 • Fax 775-860-3804 • KloeberEng@aol.com

January 3, 2015

Submitted Via Email

David P. Locey
NYS DEC Region 9
Division of Environmental Remediation
270 Michigan Avenue
Buffalo NY 14203-2999

RE: Design Plan for Soil Vapor Intrusion Remediation – 210 French Road Building
CMS Associates Remediation Site; Site # 915168

Dear Dave:

This *Design Plan* is submitted on behalf of CMS Property Associates for the proposed remediation of the warehouse at 210 French Road on the CMS Property Associates Remediation Site in the town of Cheektowaga; Erie County, NY. The building is owned by Cugini Ventures LLC and operated by Rosina Food Products, Inc.

The proposed SVI remediation is subsequent to, and follows the recommendations contained in, the September 2014 *Soil Vapor Intrusion Evaluation For CMS Associates Remediation Site 210 French Road Building,* as revised on November 24, 2014. The revised SVIE report was approved by Region 9 on December 19, 2014 (see the Appendix.)

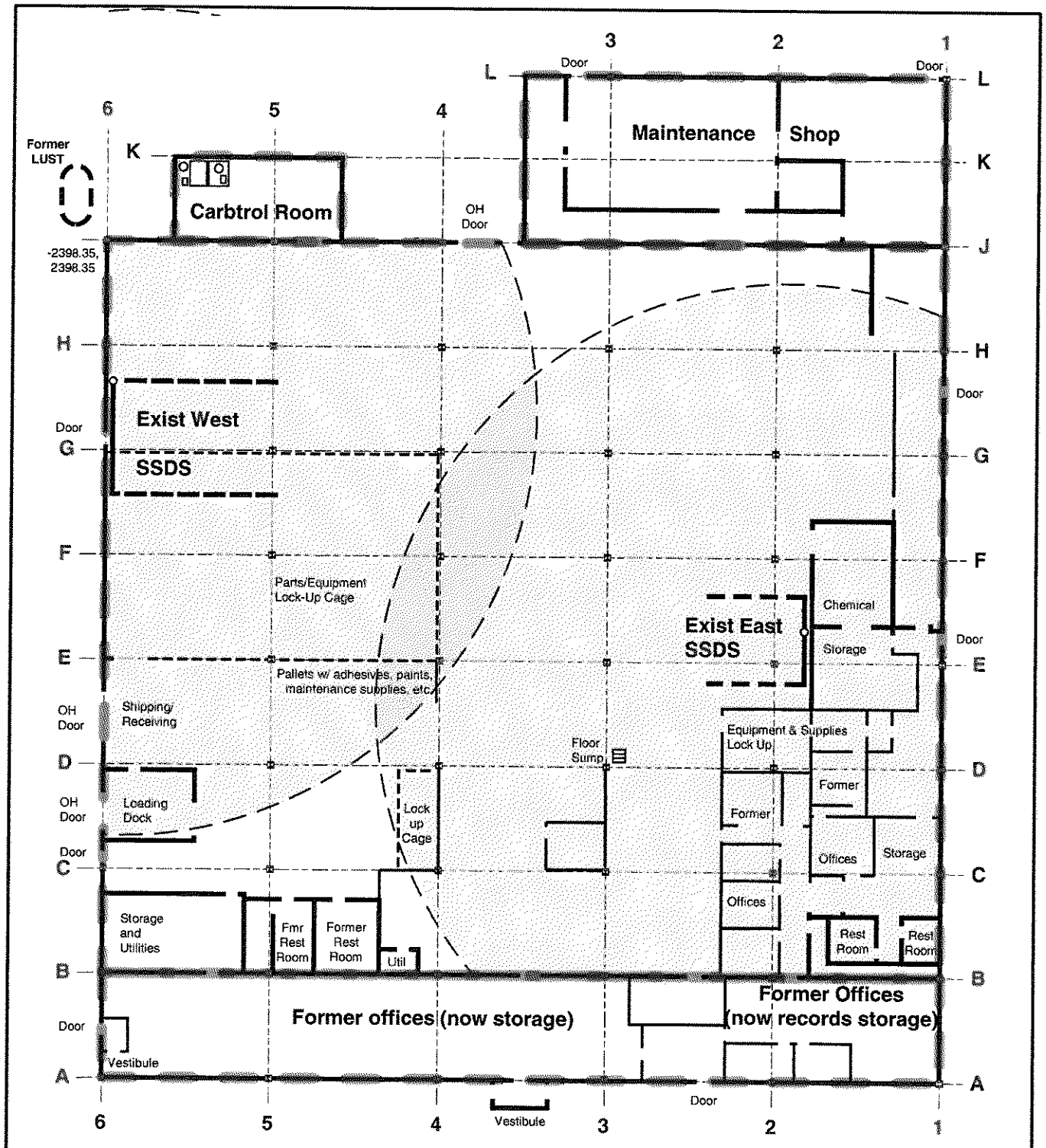
Background

The 210 French Road building currently has two sub-slab depressurizations systems installed that have been operating since 2005. These consist of trench-blower systems located in the:

- Northwest area of the central warehouse (*West SSDS.*)
- East-center area of the central warehouse (*East SSDS.*)

These systems produce a reduced pressure zone covering approximately 80-precent of the central warehouse, but leave sections in the extreme southwest and northeast without remediation (see Exhibit 1, *Current Reduced Pressure Zone.)* In addition, the two SSDSs exclude these areas:

1. Former offices at the south of the building.
2. Maintenance Shop at the northeast corner.
3. Room housing the groundwater treatment system (*Carbtrol Room*) in the northwest corner.



Approved Remediation

The recommended SVI remediation contained in the approved SVI Evaluation Report consists of:

1. Augmenting the two existing sub-slab depressurization systems to extend the low pressure zone into the:

    - Carbtrol Room at the northwest corner of the building.
    - Maintenance Room at the northeast corner of the building.
    - Portions of the sub slab toward the northeast and southwest that are not currently covered by the two SSDSs.

2. Inspecting for and sealing locations of potential SVI intrusion into the Storage Area (former offices) at the south end of the 210 French Road building.

Active SVI Remediation Design - Central warehouse and room additions

The initial plan was to maintain the current SSDS trench systems, and relocate their current blowers to the roof and use them to expand the reduced pressure zones. This was to make the best use of the existing facilities and reduce the capital cost. The sub-slab trenching method was not to be utilized to expand the remediation. Rather, new overhead suction manifolds from the relocated blowers would be dropped to the sub slab, and suction cavities developing to extend the reduced pressure zone.

Additional pre-design, sub-slab communication testing was performed by the remediation contractor to determine the feasibility of using the current SSDS blowers and to determine appropriate locations for pipe drops and sub-slab suction cavities. After reviewing the results, we determined that it was infeasible for the existing blowers to provide sufficient vacuum to both cover the entire central warehouse footprint, and to extend the reduced pressure zone into the Carbtrol and Maintenance Rooms to the north. Several additional smaller fans would be required to cover each, or pairs of, pipe drops/suction cavities. Although this would be feasible and reusing the current blowers would result in the least capital cost, that plan would result in higher operating, and future maintenance and fan replacement costs. The ideal situation was to balance the number of fans needed (and resulting maintenance,) against the capacity and capital cost of the total number of units required.

Therefore, the current blowers will be replaced with new, larger roof-mounted fans, sized to handle the total building footprint to be remediated. Although this increases the capital cost, it lowers the anticipated maintenance and replacement expenditures, and total future cost. Using individual fans on pipe drops/suction cavities could require maintaining up to ten (albeit lower-cost) fans over time, which was undesirable from the standpoint of both CMS and Cugini Ventures (the building owner.)

The schematic design parameters consist of:

1. Covering the entire footprint of the central warehouse area with a reduced pressure zone.
2. Providing a reduced pressure zone across the footprints of the Maintenance and Carbtrol Rooms,
3. Providing a minimum negative pressure of 0.004" water column (0.001 kPa.)
4. Having the ability to balance negative pressures across the footprint in order to maximize the efficiency to capture sub-slab VOCs.
5. Having all positive pressure piping located outside the building envelope

The chosen active SVI remediation design consists of (see Exhibit 2):

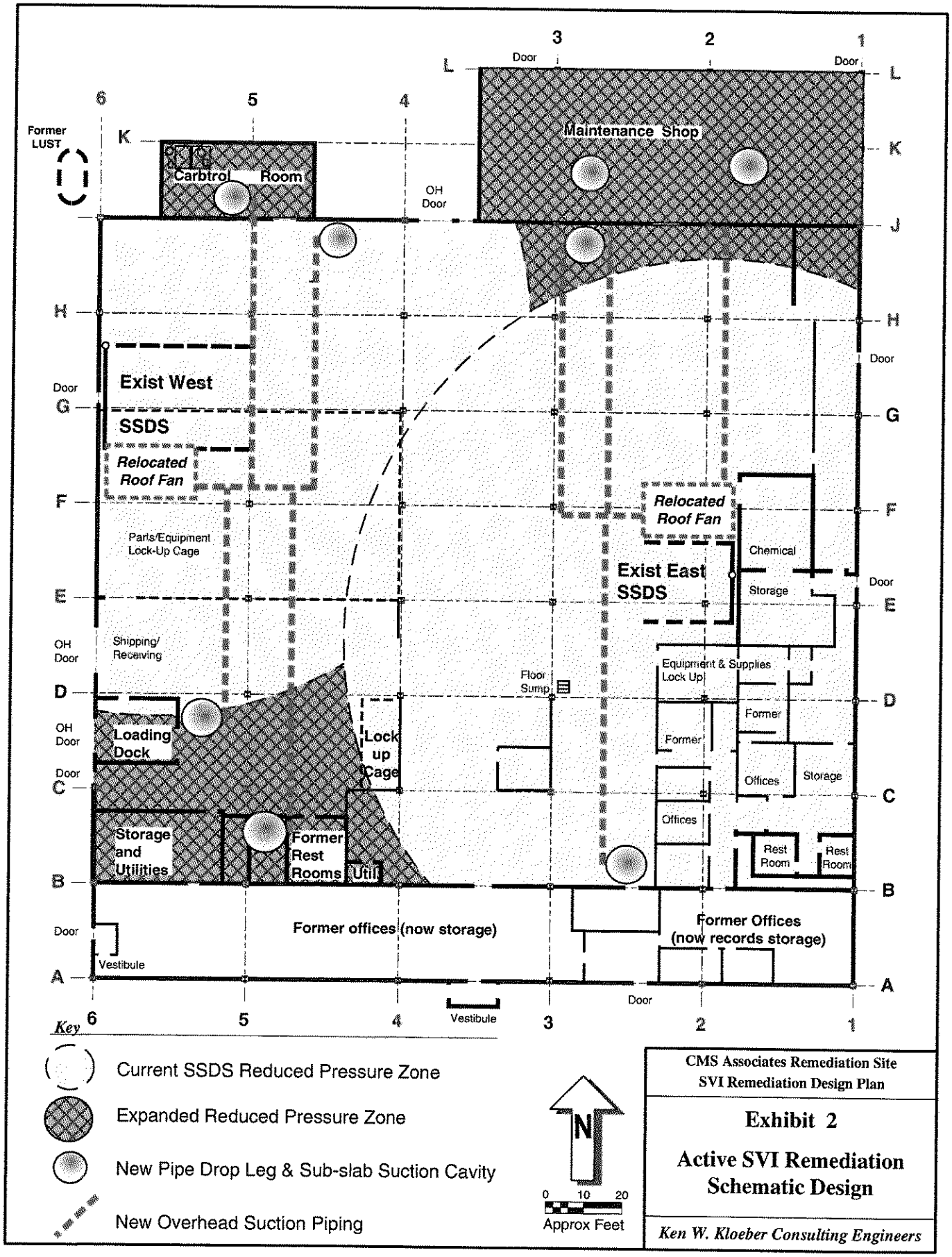
1. Two roof-mounted, GBR89-UD, Universal Drive HO blowers, mounted so as to utilize the current trench system SSDSs.
2. Piping the current SSDSs to the new high-capacity blowers on the roof.
3. Blower discharges to be located a min one-foot from any opening or other vent/piping/roof penetration.
4. Eight, new suction leg drops, and below floor suction cavities to capture sub-slab VOCs.
5. 4-inch, schedule 40 PVC suction manifolds, hung from the interior roof bar-joist system and steel columns.
6. 4-inch, schedule 80 PVC exterior suction piping and blower venting.
7. All vertical piping to be protected with painted steel protective casings to prevent damage from fork-lift and other warehouse hazards.
8. Sealing remaining cracks in the slab, floor and perimeter joints, and utility, pipe and other floor slab protrusions that are located and determined to be potential SVI sources.
9. Monitoring sub-slab differential pressures and the extent of the reduced pressure zone as suction cavities are installed/completed.
10. Upon completion, backdraft testing, labeling the SVI piping, and installing vacuum indicators on vertical runs to identify proper system operation.

If necessary, the number and location(s) of sub-slab suction cavities will be adjusted in the field to obtain the required schematic design parameters. Precise locations of the final suction cavities and pipe runs will be documented, and transferred to and archived on, the AutoCAD 2D drawing of the building.

<u>Passive SVI Remediation</u> - South storage area

The southerly storage area in the building (formerly offices) requires no active SSDS or other SVI remediation system (see the Appendix.)

That location will be thoroughly inspected for potential sources of soil vapor intrusion into the building envelope, such as cracks in the slab, floor and perimeter joints, and utility, pipe and other floor slab protrusions, and sealed with urethane caulk or urethane with backer rod as appropriate for the precise location. In an extreme cases of a large penetration the opening will be concrete filled.



To confirm that the remediation of the south end is appropriate and adequate.
After the active remediation is installed, the south area will be retested for:

- Sub-slab differential pressure.
- Sub-slab VOCs.
- Indoor-air VOCs.

Health and Safety

The remediation contractor will be required to follow the Draft *Health and Safety Plan* for the CMS Remediation Site (prepared under separate cover.)

KWKCE will perform continuous indoor air monitoring for VOCs in the location where the contractor opens sub-slab cavities or where installed manifold piping will allow sub-slab VOCs to enter the building envelope.

Installed suction piping will be temporarily capped at the end of each workday, such that sources of sub-slab vapor intrusion will be sealed.

KWKCE will perform spot VOC monitoring utilizing a ppb-level PID (ppb-RAE 3000 or equivalent) when sub-slab suction cavities are opened. Readings above background will be noted and if levels exceed OSHA threshold, construction will be stopped and the area ventilated until VOCs are reduced.

Proposed Schedule

The precise locations of the roof-mounted blowers and electrical runs to them are under discussion with the building owner and operator. As soon as this Design Plan is approved, we will prepare a working drawing to supply the remediation contractor, have the necessary contracts executed, and issue a *Notice to Proceed*. Electrical modifications may be made during construction, depending on the needs/requirements finalized with the building owner.

The contractor will be required to have the remediation substantially complete within 90 days of Region 9 approving this Design Plan.

Dave, please email me if you have any questions about this *Work Plan* or need any additional information on this matter.

Cordially,
Ken W. Kloeber Consulting Engineers

Ken W. Kloeber, PE
Principal Engineer

APPENDIX

New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 9
270 Michigan Avenue, Buffalo, New York 14203-2915
Phone: (716) 851-7220 **Fax:** (716) 851-7226
Website: www.dec.ny.gov

Joe Martens
Commissioner

December 19, 2014

Mr. James C. Muffoletto
CMS Property Associates, L.L.C.
228 Linwood Avenue
Buffalo, New York 14209

Dear Mr. Muffloletto,

CMS Property Associate, L.L.C.
Cheektowaga, Erie County
Site #915168

The New York State Department of Environmental Conservation (DEC) and Department of Health (DOH) have reviewed the November 24, 2014 revision to the SVI evaluation report for the 210 French Road building and accept the assessment and recommendations therein. No active remediation is required in the south end of the building. However, the floor in that portion of the building will be inspected and cracks and seams will be sealed. After the reduced pressure zone is extended to the remainder of the building, the sub-slab pressure and indoor air in the south portion of the building will be retested. In the next ten days, please submit for DEC review and approval, a design plan to extend the reduced pressure zone beneath the building.

As noted in our letter of November 7, 2014, (attached), you were to convey the results of the SVI evaluations to the property owners, and copy the Department on the correspondence. Correspondence with the owner of the 210 French Road building was attached to the revised evaluation report. However, the DEC has yet to receive copies of correspondence to indicate that the off-site property owners were similarly notified of the SVI results.

If you have any questions or comments, please contact David Locey at <david.locey@dec.ny.gov> or telephone (716) 851-7220.

Sincerely,

Martin L. Doster, P.E.
Regional Hazardous Waste Remediation Engineer

MLD/bb

Enclosure

e.c. (without attachment):
Karen Draves – DEC Region 9
Matthew Forcucci – DOH

e.c. (with attachment):
Ken Kloeber, Ken W. Kloeber Consulting Engineers
Guy J. Agostinelli, Esq., Zdarsky Sawicki, & Agostinelli, LLP

New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 9
270 Michigan Avenue, Buffalo, New York 14203-2915
Phone: (716) 851-7220 • **Fax:** (716) 851-7226
Website: www.dec.ny.gov

Joe Martens
Commissioner

November 7, 2014

Mr. James Muffoletto
CMS Property Associates, L.L.C.
228 Linwood Avenue
Buffalo, New York 14209

Dear Mr. Muffoletto:

CMS Property Associates, L.L.C.
Cheektowaga, Erie County
Site #915168

The New York State Department of Environmental Conservation (DEC) and the New York State Department of Health (DOH) have reviewed the reports for the soil vapor intrusion evaluation of the subject site and surrounding properties (dated September 2014 and October 2013, by Ken W. Kloeber Consulting Engineers) and accepts the findings and recommendations of both. In accordance with State law (ECL, Article 27, Title 24), within the next ten days, convey the results of the evaluations to the property owners, taking note of the comments below, and copy the Department on the correspondence.

The evaluation conducted by Kloeber of the off-site buildings addressed as 40 Boxwood Lane and 240 French Road indicated that the concentrations of site-related, chlorinated volatile organic compounds were below levels that would require any further action. However, elevated levels of gasoline-related compounds were found in the sub-slab vapor and indoor air of the buildings on both properties. DEC and DOH require that you notify the owners of both properties that DOH guidance recommends the property owner take appropriate measures to reduce exposure to these contaminants in the indoor air. Please include Mr. Matthew Forcucci of DOH as a contact.

The evaluations of the off-site buildings located at 1 Scrivner Drive and 56 Boxwood Lane found no need for further action. Again, you are required to share the results with the property owners and provide evidence to DEC of the transmittal.

Test results indicate that the reduced pressure zone beneath the building at 210 French Road does not extend to the entire footprint of the building. In accordance with the Order of Consent, a plan for SVI mitigation, or in this case, modification to the existing sub-slab depressurization system, must be submitted to the Department within ten days of approval of the SVI evaluation reports. The modifications will need to be completed as soon as possible due to the heating season, however, in no case later than 90 days of the Department's approval of that plan. The plan must include a re-evaluation of the reduced pressure zone after the modifications have been made, with all the work documented in a completion report to be submitted to the Department ten days after the repairs are completed.

If you have any questions or comments, please contact Mr. David Locey at david.locey@dec.ny.gov or by telephone at (716) 851-7220.

Sincerely,

Martin L. Doster, P.E.
Regional Hazardous Waste Remediation Engineer

MLD:sz

cc: Guy Agostinelli, Esq. - Zdarsky, Sawicki & Agostinelli, LLP

ec: Karen Draves, Esq. - DEC
Mr. Matthew Forcucci - DOH

CHANGE ORDER #2 to Contractor Agreement

SOUTH BUILDING AREA REMEDIATION

Project: 210 French Road Soil Vapor Intrusion Remediation

The following CHANGE ORDER is agreed to by MitigationTech (hereinafter "Contractor") and CMS Property Associates, LLC (hereinafter "CMS") pursuant to a negotiated Change Order proposal presented by the Contractor, initiated according to paragraph A.4., B.1., B.2., and other applicable provisions of the AGREEMENT between the parties that is dated March 21, 2015.

All provisions of the AGREEMENT shall remain in force, unless specifically modified by this CHANGE ORDER.

The Contractor agrees to complete the Work Scope below for the negotiated price of (see Contractor's proposal, attached):

Work Scope**:**

1. Inspect the floor slab visually and by other test methods as appropriate, specifically including the entire perimeter joint, all pipe, HVAC, and other slab penetrations for potential sources of soil vapor intrusion into the building envelope.

2. Assist as needed to access the work areas.

3. Gather loose floor tile and place in designated area(s)/containers for the building owner.

4. Seal all observed potential SVI sources using urethane sealant, mortar, concrete, or other means and materials as approved by the Engineer.

5. Restore all work areas to a "broom-clean" and neat appearance (no replacement or restoration of removed building materials,) with all rubbish and other waste material disposed of in the on-site dumpsters.

   The Contractor agrees to complete the Work Scope items above for the negotiated price of (see Contractor's proposal, attached):

Labor	(1-5)	1900.00
Materials	(4)	$440.00
Total value of this Change Order:		$2.340.00
Prior contract amount:		$41,922.00
New total contract amount:		$44,262.00

CHANGE ORDER #2 to Contractor Agreement

SOUTH BUILDING AREA REMEDIATION

Project: 210 French Road Soil Vapor Intrusion Remediation

AGREEMENT Provision D. TIME IS OF THE ESSENCE – there is no change in the date for Substantial Completion due to this CHANGE ORDER.

For the CONTRACTOR:

By: Nicholas E. Mouganis dba MitigationTech

Nicholas E. Mouganis, Owner — Date: 4/15/15

For CMS:

CMS PROPERTY ASSOCIATES, L.L.C.
By: A&L Holding Company, LLC, Member
By: Anthony H. Santiago Revocable Living Trust, Manager

James C. Muffoletto — Date

CHANGE ORDER #2 to Contractor Agreement

SOUTH BUILDING AREA REMEDIATION

Project: **210 French Road Soil Vapor Intrusion Remediation**

AGREEMENT Provision D. TIME IS OF THE ESSENCE – there is no change in the date for Substantial Completion due to this CHANGE ORDER.

For the CONTRACTOR:

By: Nicholas E. Mouganis dba MitigationTech

Nicholas E. Mouganis, Owner — Date: 4/15/15

For CMS:

CMS PROPERTY ASSOCIATES, L.L.C.
By: A&L Holding Company, LLC, Member
By: Anthony H. Santiago Revocable Living Trust, Manager

James C. Muffoletto — Date: 4/15/15

From: Nick Mouganis
To: Ken Kloeber
Subject: change order #2
Date: Thu Apr 9, 2015 4:45:51 PM

Ken,

Based on our discussions and records, following is a summary of expenditures to accomplish the scope detailed in Change Order #2.

1. 16 tubes gun grade urethane caulk; 5 tubes flowable urethane caulk; 200' 1.25" backer rod; 10 60# bags gravel; 5 60# bags concrete mix; 4 cans expandable foam;
   NET MATERIAL = $440.00

2. Labor to demolish and scrap materials blocking areas to be sealed, seal (5) floor heat ducts, seal (4) plumbing rough openings, access and clean surfaces to be sealed, apply sealant to approx. 400 lin feet of openings to sub-slab; 38 man hours @$50.00 over 6 days;
   NET LABOR = $1900.00

Thanks

Nick Mouganis
Mitigation tech

CHANGE ORDER #1 to Contractor Agreement
SUCTION DROP UPGRADES
SIX SUPPLEMENTAL SUCTION POINTS

Project: 210 French Road Soil Vapor Intrusion Remediation

The following CHANGE ORDER is hereby agreed to by MitigationTech (hereinafter "Contractor") and CMS Property Associates, LLC (hereinafter "CMS") pursuant to a negotiated Change Order proposal presented by the Contractor, initiated according to paragraph A.4., B.1., B.2., and other applicable provisions of the AGREEMENT between the parties that is dated March 21, 2015.

All provisions of the AGREEMENT currently in force, shall remain in force, unless specifically modified by this CHANGE ORDER.

Work Scope:

1. Upgrade Sch 40 PVC suction drops to Steel drops.
2. Upgrade Sch 40 PVC suction drops to Sch 80 PVC drops.
3. Add six (6) supplemental steel suction drops.

The Contractor agrees to complete the Work Scope items above for the negotiated price of (see Contractor's proposal, attached):

Material	(1) $570.00
Material	(2) 52.00
Labor and material	(3) 6900.00
Total value of Change order:	$7,522.00
Prior contract amount:	$34,400.00
New total contract amount:	$41,922.00

The AGREEMENT Provision D. TIME IS OF THE ESSENCE is hereby modified to extend the date of Substantial Completion by 10 calendar days.

For the CONTRACTOR:

By: Nicholas E. Mouganis dba MitigationTech

Nicholas E. Mouganis

Nicholas E. Mouganis, Owner

4/15/15

Date

CHANGE ORDER #1 to Contractor Agreement
SUCTION DROP UPGRADES
SIX SUPPLEMENTAL SUCTION POINTS

Project: **210 French Road Soil Vapor Intrusion Remediation**

For CMS:

CMS PROPERTY ASSOCIATES, L.L.C.
By: A&L Holding Company, LLC, Member
By: Anthony H. Santiago Revocable Living Trust, Manager

James C. Muffoletto

4/16/16
Date

From:	Nick Mouganis
To:	Ken Kloeber
Subject:	Re: Change order 1 - supplemental drops
Date:	Thu Apr 9, 2015 4:17:52 PM

Ken,

Based on our discussions and measurements, please see below proposed upgrades and additions to pipe grid:

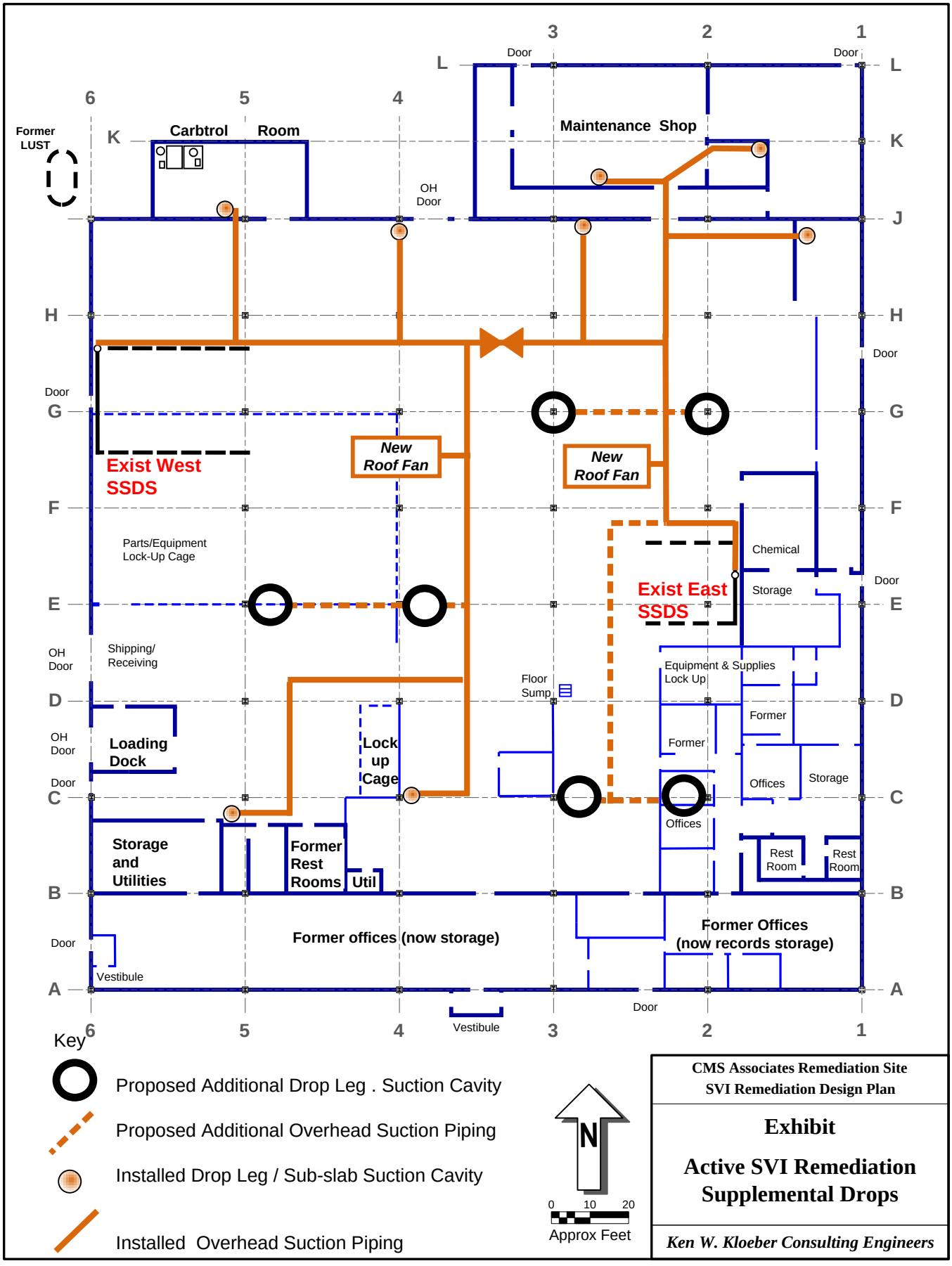
1. Delete 60' 3" PVC; Add 60" SCH 40 steel pipe for vertical suction cavity risers in placements considered susceptible to physical damage; per foot incremental material cost is $9.50;
   NET MATERIAL = $570.00

2. Delete 40' 3" PVC; Add 40' SCH 80 PVC for designated pipe run;
   NET MATERIAL = $52.00

3. Add (6) suction cavities per attached plan; associated risers via 2" SCH 40 steel; connect to existing system via horizontal PVC pipe at ceiling, size as determined for proper performance, approx. 250', with metal mounting hardware and fittings as required; assess performance;
   NET MATERIAL, LABOR, EQUIPMENT= $6900.00

Thanks

Nick Mouganis
Mitigation tech



Ken W. Kloeber
Consulting Engineers ENVIRONMENTAL SOLUTIONS • CIVIL & SANITARY ENGINEERING • PLANNING & DESIGN
PO BOX 140 • BOSTON NY 14025 • 716-864-0012 • Fax 775-860-3804 • KloeberEng@aol.com

April 15, 2015

James C. Muffoletto
CMS Property Associates LLC
228 Linwood Avenue
Buffalo NY 14209

Certificate of Substantial Completion

CMS Remediation Site; 210 French Road
210 French Road Building SVI Remediation

Dear Jim:

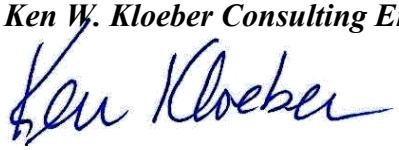
This letter acknowledges that the work that Mitigation Tech was to perform under the construction contract to install a Sub-Slab Depressurization System at 210 French Road is substantially complete, with minor "Punch List" items remaining, such as, but not necessarily limited to, the following:

- Installation of manometers to display system vacuum.
- Marking of all suction lines to identify that they are part of a SSD System.
- Final walk-through with Rosina Food Products.
- Final clean up and removal of all tools, supplies, and materials.
- Submittal of Record Drawing(s) of the installed work.

While the construction under the contract is substantially complete, as you know and as we discussed on the phone, there are two pending Change Orders. Therefore, separate *Certificate(s) of Substantial Completion* will be issued when those Change Orders are executed and the covered work is completed, and inspected and determined to be acceptable.

Please call if you have any questions on this.

Sincerely,
Ken W. Kloeber Consulting Engineers



Ken W. Kloeber, PE
Principal Engineer

cc (via email): Guy J. Agostinelli

Ken W. Kloeber
Consulting Engineers ENVIRONMENTAL SOLUTIONS • CIVIL & SANITARY ENGINEERING • PLANNING & DESIGN
PO BOX 140 • BOSTON NY 14025 • 716-864-0012 • Fax 775-860-3804 • KloeberEng@aol.com

May 4, 2015

James C. Muffoletto
CMS Property Associates LLC
228 Linwood Avenue
Buffalo NY 14209

Certificate of Substantial Completion – Change Orders #1 and #2
CMS Remediation Site; 210 French Road
210 French Road Building SVI Remediation

Dear Jim:

This letter acknowledges that the work that Mitigation Tech was to perform under Change Order #1 and #2 to the construction contract to install a Sub-Slab Depressurization System at 210 French Road was substantially complete as of May 1, 2015, with minor "Punch List" items remaining, such as, but not necessarily limited to, the following:

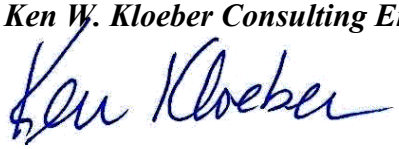
- Submittal of Record Drawing(s) of the installed work.
- Valving to balance (if necessary) the east and west vacuum manifolds.

The construction under the contract is substantially complete and the preliminary sub-slab vacuum numbers are good, but we are watching the manifold and sub-slab vacuums to determine if any further balancing of the system is warranted. The east side of the building maintains several more inches of vacuum on the manifold than does the west side. This is likely due to differences in material beneath the slab (more air flow resulting in lower vacuum) or how the east-side versus west-side prior (2005) SSDS trenches were backfilled.

We will continue to monitor this while the systems "burn in," and the soil under the slab continues to dry out.

Please call if you have any questions on this.

Sincerely,
Ken W. Kloeber Consulting Engineers



Ken W. Kloeber, PE
Principal Engineer

cc (via email): Guy J. Agostinelli