

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director

625 Broadway, 12th Floor, Albany, New York 12233-7011

P: (518) 402-9706 | F: (518) 402-9020

www.dec.ny.gov

April 8, 2024

WB 30 Water Street, LLC
William Balter
480 Bedford Road, 300 Building
First Floor, West Wing
Chappaqua, NY 10514

RE: Site Name: Ossining Gas Works DPW Site
Site No.: C360172
Location of Site: 30 Water Street, Ossining, Westchester County, NY 10562

Dear William Balter,

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Ossining Gas Works DPW site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Michael Murphy, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway Albany, NY 12233-1500 or by email at michael.murphy1@dec.ny.gov.

Sincerely,



Andrew O. Guglielmi, Director
Division of Environmental Remediation

Enclosure

ec: Matt Hubicki, Project Manager

cc: Michael Murphy, Esq./Cheryl Salem



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C360172-10-23**

Ossining Gas Works DPW Site

DEC Site No: C360172

Located at: 30 Water Street
Westchester County
Ossining, NY 10562

Hereinafter referred to as "Site"

by:

WB 30 Water Street, LLC
480 Bedford Road, 300 Building, First Floor, West Wing, Chappaqua, NY 10514

HAC Water Street Corporation
55 South Broadway, 2nd Floor, Tarrytown, New York 10591
Hereinafter referred to as "Applicants"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicants submitted an application received by the Department on June 8, 2023; and

WHEREAS, the Department has determined that the Site and Applicants are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicants, WB 30 Water Street, LLC and HAW Water Street Corporation are participating in the BCP as a Volunteers as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is not located in a City having a population of one million or more. It is therefore presumed that the Site is eligible for tangible property tax credits.

III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 2.815 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 89.19_6_26
Street Number: Water Street, Ossining
Owner: Village of Ossining

Tax Map/Parcel No.: 89.19_6_p/o27
Street Number: Portion of Central Avenue, Ossining
Owner: Village of Ossining

Tax Map/Parcel No.: 89.19_6_p/o29
Street Number: Portion of Central Avenue, Ossining
Owner: Village of Ossining

Tax Map/Parcel No.: 89.19_6_p/o28
Street Number: Portion of Water Street, Ossining
Owner: Village of Ossining

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Matthew Hubicki
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
matthew.hubicki@dec.ny.gov

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Christine Vooris (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237

christine.vooris@health.ny.gov

Michael Murphy, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233
michael.murphy1@dec.ny.gov

2. Communication from the Department to Applicants shall be sent to:

WB 30 Water Street, LLC
Attn: William Balter
480 Bedford Road, 300 Building
First Floor, West Wing
Chappaqua, NY 10514
bbalter@wbpdev.com

Rosemarie Noonan
c/o Housing Action Council
55 South Broadway, 2nd Floor
Tarrytown, New York 10591
rnoonan@affordablehomes.org

B. The Department and Applicants reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicants provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The Applicants have certified to the Department that it will develop the brownfield site with the dedication of 100 percent of the residential rental or home ownership units in an affordable housing project to tenants or homeowners at a defined

maximum percentage of area median income based on the occupants' household's annual income. The Department has granted a waiver of the program fee based upon this certification. If the Applicant fails to provide documentation deemed acceptable by the Department that the residential component of the development is a 100 percent affordable housing project prior to the issuance of a Certificate of Completion, the Department may terminate this agreement in accordance with the provisions of 6 NYCRR 375-3.5 (c)(3).

D. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: 4/8/24

THIS BROWNFIELD CLEANUP AGREEMENT IS
HEREBY APPROVED, Acting by and through the
Department of Environmental Conservation as Designee
of the Commissioner,

By: *Andrew Guglielmi*
Andrew O. Guglielmi, Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

WB 30 Water Street, LLC

By: [Signature]

Title: Managing Member

Date: 11/21/23

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 21st day of November in the year 2023, before me, the undersigned, personally appeared William Balter, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Signature and Office of individual
taking acknowledgment

Christine A. Crisci
Notary Public, State of New York
LIC # 01CR6365109
Qualified in Westchester County
Comm. Exp. September 25, 2025

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

HAC Water Street Corporation

By: Rosemarie Noonan

Title: President

Date: 2/9/24

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

On the 9th day of FEBRUARY in the year 2024 before me, the undersigned, personally appeared Rosemarie Noonan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Signature and Office of Individual
Taking acknowledgement

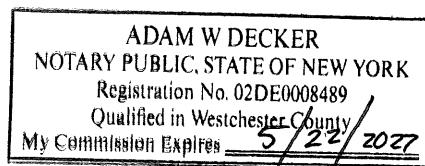


EXHIBIT A
SITE MAP

FIELDWORK COMPLETED: July 1, 2021

TITLE COMMITMENT
Title No. B7A80078
Effective Date: March 13, 2021

CERTIFICATIONS:
Wilder Balter
Stewart Title Insurance Company
Benchmark Title Agency, LLC

DEED REFERENCE:
AS TO SECTION 89.19 BLOCK 6 LOT 22:
Liber 4245 Page 116 (Premises and More)
Recorded: April 20, 1945
Grantor: Albert W. Hendrickson, Esq., Referee
Grantee: Village of Ossining

DEED REFERENCE:
AS TO SECTION 89.19 BLOCK 6 LOTS 26, 27, 28 and 29:
Liber 5770 Page 275
Recorded: December 30, 1957
Grantor: Consolidated Edison Company of New York, Inc.
Grantee: Village of Ossining

MAP REFERENCE:
Map Entitled "Survey of Property", situate in the Village of Ossining, Westchester County, New York, Belonging to Village of Ossining dated April 1958 prepared by W.A. Slater, P.E. & L.S.

GENERAL NOTES:
Property corner monuments were not placed as part of this survey.

This map may not be used in connection with a "Survey Affidavit" or similar document, statement or mechanism to obtain title insurance for any subsequent or future grantees.

Unauthorized alteration or addition to this survey is a violation of Section 7209, subdivision 2 of the New York State Education Law.

The alteration of survey maps by anyone other than the original preparer is misleading, confusing and not in the general welfare and benefit of the public. Licensed Land Surveyors shall not alter survey maps, survey plans, or survey plats prepared by others.

Underground structures, if any exist, are not shown hereon, except as noted. The location of underground improvements or encroachments are not always known and often must be estimated. If underground improvements, easements, or encroachments exist and are neither visible during normal field survey operations nor described in instruments provided to this surveyor, they may not be shown on this map and are not certified.

Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, Inc. Said certifications shall run only to the person or entity for whom this survey was prepared and on their behalf to the title company, governmental agency and/or lending institution listed hereon, and to the assignees thereof.

Certifications are not transferable to additional lending institutions or subsequent owners.

This property may be affected by instruments which have not been provided to this surveyor. Users of this map should verify title with their attorney or a qualified title examiner.

Only copies from the original of this survey marked with the surveyor's embossed seal are genuine, true and correct copies of the surveyor's original work and opinion. A copy of this document without a proper application of the surveyor's embossed seal should be assumed to be an unauthorized copy.

Planimetric details shown hereon were derived from Aerial Photography dated: December 7, 2017 by GEO Mpas International.

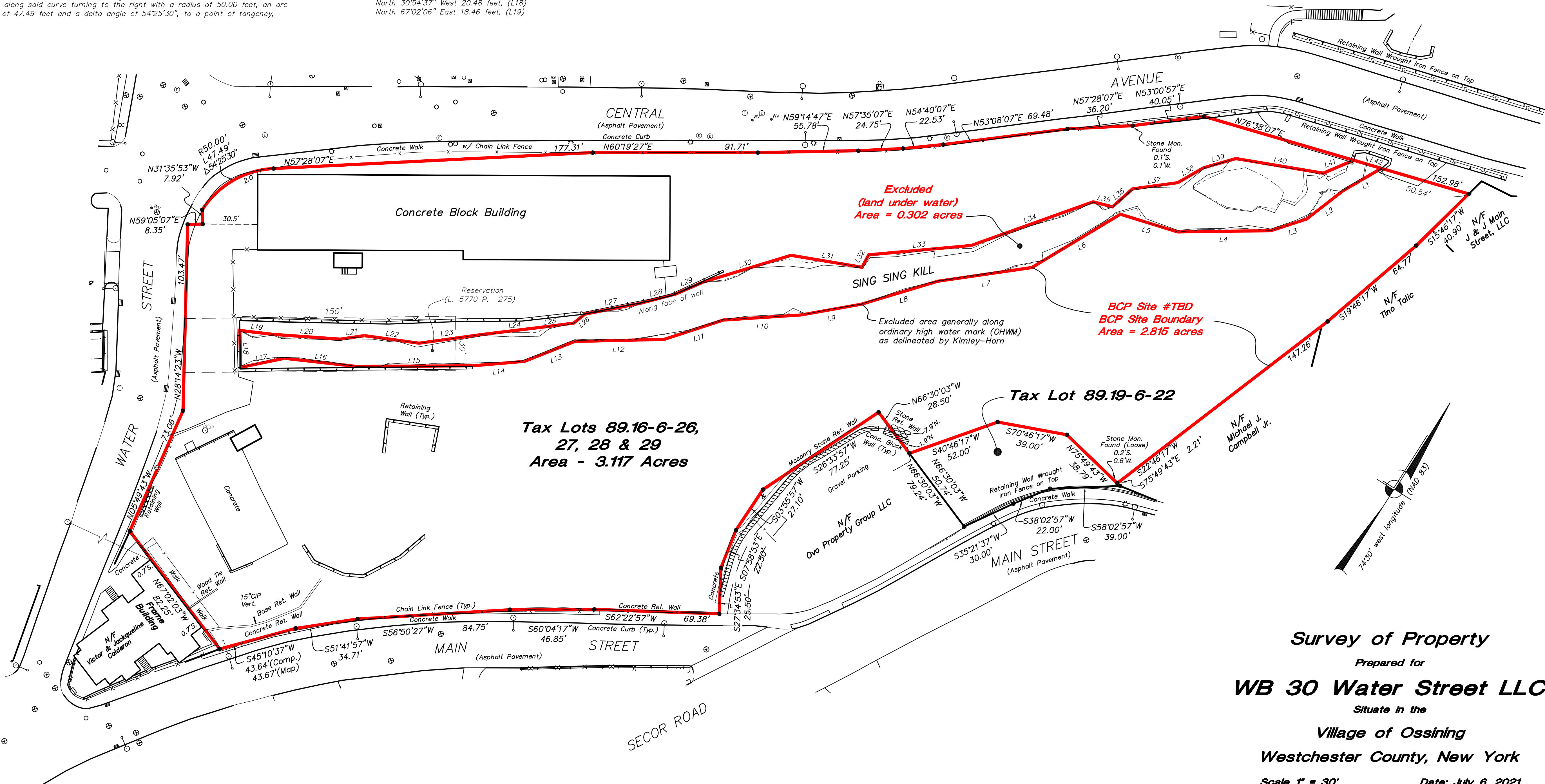
ALL that certain piece or parcel of land situate, lying and being in the Village of Ossining, County of Westchester, and State of New York, bounded and described as follows:
BEGINNING at a point on the southerly line of Central Avenue, said point being on the common boundary line of lands now or formerly belonging to J & J Main Street, LLC on the east and lands now or formerly belonging to Village of Ossining on the west; running thence along the easterly line of said lands of Village of Ossining and the westerly line of said lands of J & J Main Street, LLC, lands now or formerly belonging to Tino Talic and lands now or formerly belonging to Michael J. Campbell Jr.
South 15°46'17" West 40.90 feet,
South 19°46'17" West 64.77 feet, and
South 22°46'17" West 147.26 feet to the northerly line of other lands now or formerly belonging to Village of Ossining;
thence along the northerly line of said lands,
North 75°49'43" West 38.79 feet,
South 70°46'17" West 39.00 feet, and
South 40°46'17" West 52.00 feet to the northerly line of lands now or formerly belonging to Ovo Property Group LLC;
thence along said lands,
North 66°30'03" West 28.50 feet,
South 26°33'57" West 77.25 feet,
South 03°55'57" West 27.10 feet,
South 07°58'53" East 22.50 feet, and
South 27°34'53" East 25.50 feet to the northerly line of Main Street;
thence along the northerly line of Main Street,
South 62°22'57" West 69.38 feet,
South 60°04'17" West 46.85 feet,
South 56°50'27" West 84.75 feet,
South 51°41'57" West 34.71 feet, and
South 45°10'37" West 43.64 feet to the northeasterly line of lands now or formerly belonging to Victor & Jacqueline Calderon;
thence along said line North 67°02'03" West 82.25 feet to the easterly line of Water Street;
thence along said easterly line of Water Street,
North 05°49'43" West 73.06 feet,
North 28°14'23" West 103.47 feet,
North 59°05'07" East 8.35 feet, and
North 31°35'53" West 7.92 feet to a non-tangent curve connecting the easterly line of Water Street with the southerly line of Central Avenue;
thence along said curve turning to the right with a radius of 50.00 feet, an arc length of 47.49 feet and a delta angle of 54°25'30", to a point of tangency,

thence continuing along said southerly line of Central Avenue,
North 57°28'07" East 177.31 feet,
North 60°19'27" East 91.71 feet,
North 59°14'47" East 55.78 feet,
North 57°35'07" East 24.75 feet,
North 54°40'07" East 22.53 feet,
North 53°08'07" East 69.48 feet,
North 57°28'07" East 36.20 feet, and
North 53°00'57" East 40.05 feet, to the point or place of Beginning.

EXCLUDING THEREFROM all that certain piece or parcel of land situate, lying and being in the Village of Ossining, County of Westchester, and State of New York, bounded and described as follows:
BEGINNING at a point on the southerly line of Central Avenue, said point being South 76°38'07" West 50.54 feet from the common boundary line of lands now or formerly belonging to J & J Main Street, LLC on the east and lands now or formerly belonging to Village of Ossining on the west;
thence through said lands of Village of Ossining the following bearings and distances:
South 30°00'53" West 24.83 feet, (L1)
South 22°25'29" West 25.41 feet, (L2)
South 42°16'29" West 20.86 feet, (L3)
South 59°34'32" West 51.74 feet, (L4)
South 77°27'28" West 33.26 feet, (L5)
South 29°18'00" West 57.41 feet, (L6)
South 52°02'54" West 52.75 feet, (L7)
South 43°35'29" West 44.28 feet, (L8)
South 50°12'02" West 33.93 feet, (L9)
South 56°34'06" West 43.26 feet, (L10)
South 42°15'37" West 34.61 feet, (L11)
South 59°01'25" West 49.50 feet, (L12)
South 38°43'18" West 30.01 feet, (L13)
South 55°26'19" West 28.95 feet, (L14)
South 60°00'28" West 64.50 feet, (L15)
South 66°43'01" West 40.16 feet, (L16)
South 48°43'48" West 24.87 feet, (L17)
North 30°54'37" West 20.48 feet, (L18)
North 67°02'06" East 18.46 feet, (L19)

North 64°24'02" East 37.47 feet, (L20)
North 52°09'10" East 13.59 feet, (L21)
North 68°11'06" East 30.56 feet, (L22)
North 52°27'26" East 35.90 feet, (L23)
North 53°24'31" East 36.40 feet, (L24)
North 52°50'25" East 14.29 feet, (L25)
North 21°42'53" East 7.99 feet, (L26)
North 49°18'59" East 30.98 feet, (L27)
North 45°35'19" East 20.69 feet, (L28)
North 36°49'24" East 16.49 feet, (L29)
North 43°23'00" East 51.06 feet, (L30)
North 69°52'07" East 39.93 feet, (L31)
North 01°13'35" West 7.84 feet, (L32)
North 55°06'41" East 57.09 feet, (L33)
North 40°38'26" East 71.88 feet, (L34)
North 74°40'45" East 11.10 feet, (L35)
North 18°26'58" East 14.92 feet, (L36)
North 52°30'15" East 25.37 feet, (L37)
North 30°20'12" East 16.54 feet, (L38)
North 44°21'59" East 18.64 feet, (L39)
North 69°51'21" East 49.21 feet, (L40) and
North 37°05'31" East 18.29 feet (L41) to the southerly line of Central Avenue,
North 76°38'07" East 16.05 feet (L42) along said southerly line of Central Avenue to the point or place of Beginning.

Containing a total area, after exclusion, of 2.815 acres



Legend	
■	CATCH BASIN
⊗	MANHOLE
○	POLE
⊕	HYDRANT
⊙	LIGHT POLE
—○—	UTILITY POLE W/LIGHT
⊙	SEWER MANHOLE
○	VALVE
—X—X—	FENCE LINE
— — —	OVERHEAD WIRES
—▲—▲—	RETAINING WALL
—	ANCHOR WIRE
⊙	ELECTRIC MANHOLE
⊠	VALVE
• ^w	WATER VALVE
⊠	GAS VALVE

JEFFREY B. DeROSA
New York State License No. 050749
© 2021 Insite Engineering, Surveying & Landscape Architecture, P.C. All Rights Reserved.

INSITE
ENGINEERING, SURVEYING &
LANDSCAPE ARCHITECTURE, P.C.

3 Garrett Place
Carmel, NY 10512
(845) 225-9690
(845) 225-9717 fax
www.insite-eng.com

Survey of Property
Prepared for
WB 30 Water Street LLC
Situate in the
Village of Ossining
Westchester County, New York
Scale 1" = 30'
Scale 1" = 98.43 meters
Date: July 6, 2021
Rev.: July 7, 2021



20190.100
Survey Topo.dwg

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the Site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for

contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein. All work undertaken as part of a remedial

program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any

subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law. All work undertaken as part of a remedial program, including work undertaken pursuant to submittals other than Work Plans, must be approved by the department prior to implementation by the Applicant.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such

determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a

result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the Site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5(b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Division of Management and Budget
New York State Department of Environmental
Conservation
625 Broadway, 10th Floor
Albany, New York 12233-4900

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that

Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's

approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this

Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use “best efforts” to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant’s obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant’s best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant’s inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted

pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department’s project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department’s project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term “Applicant” shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the

obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are

defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.