

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a Remedial
Response Program for
"Parcel E" located on the City of Yonkers
Downtown Waterfront, by

AGREEMENT

INDEX NUMBER: W3-0825-98-10

The City of Yonkers and
Yonkers Community Development Agency,
Volunteer.

DEFINITIONS

For purposes of this Agreement, the following terms have the following definitions:

A. "Contemplated Use": The Volunteer intends to develop the Site as part of the proposed Master Plan of the City of Yonkers Downtown Waterfront Redevelopment. The Site will be used for one or a combination of the following: multi-unit, residential housing, townhouses, offices, retail uses, restaurants, transportation uses, cultural, civic or educational facilities contained within buildings, private or public indoor recreational facilities contained within buildings, parking, streets, public safety facilities, and parks (singly and collectively, the "Contemplated Use").

B. The Site's "Covered Contamination": the concentrations of Existing Contamination to which the Existing Contamination shall have been remediated in accordance with the requirements of the Work Plan.

C. "ECL": the Environmental Conservation Law.

D. "Day": a calendar day unless otherwise specified.

E. "Department": the New York State Department of Environmental Conservation.

F. The Site's "Existing Contamination": Semi-volatile compounds found in on site soils above soil cleanup objectives including, but not limited to dibenz (a,h) anthracene, benzo (a) pyrene, benzo (a) anthracene, chrysene, benzo (b) fluoranthene, benzo (k) fluoranthene, and benzo (a) pyrene. This soil contamination is delineated in the report entitled "Site Investigation for Phase I, Parcels E and F, Yonkers Downtown Waterfront Project Site" prepared by AKRF, Inc. and dated August 1998. The term also includes contamination encountered during the course of the Work Plan's implementation, the nature and extent of which were unknown or inadequately characterized at the time the Work Plan was submitted to the Department for approval but shall have been fully characterized to the Department's

satisfaction.

G. "Professional engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

H. "Site": that property which is part of the Yonkers Downtown Waterfront Area known as "Parcel E" and is approximately 44,773 square feet included in a parcel of land described on the official tax map of the City of Yonkers as Block 2600, Lot 1 and more particularly described by the metes and bounds description attached as Schedule "A" of this Agreement. Exhibit "A" of this Agreement is a map of the Site showing its general location. The Site as described in Exhibit "A" also includes (1) the portion of "Parcel J" lying west of "Parcel E" adjacent to the Hudson River, (2) the portion of "Van der Donck Street" adjacent to "Parcel E" to the east, and (3) the municipal street and plaza area shown on the Master Plan between Parcels "E" and "F" all as shown on Exhibit "A."

I. "Trustee": the Trustee of New York State's natural resources.

J. "Volunteer": The City of Yonkers, a municipal corporation and the Yonkers Community Development Agency, a corporate governmental agency and public benefit corporation with offices at City Hall, 40 Broadway, Suite 414, Yonkers, New York 10701-3886.

K. "Work Plan": the Department-approved remedial work plan pertaining to the Site that Volunteer shall implement and that is attached to this Agreement as Exhibit "B", as may be modified under the terms of this Agreement and, as a result, may appear in such other identified exhibit in this Agreement as this Agreement may provide, and is an enforceable part of this Agreement.

CONSIDERING

1. The Department is responsible for enforcement of the ECL. This Agreement is entered into pursuant to the Department's authority under that law and constitutes an administrative settlement for purposes of 42 USC 9613(f).

2. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site is limited to the following: Volunteer is the owner and former operator of the Site and is responsible under law to remediate the Existing Contamination.

3. The Department has the power, *inter alia*, to provide for the prevention and

abatement of all water, land, and air pollution. ECL 3-0301.1.i.

4. A. ECL 27-1313.3 provides that the Department shall be responsible for inactive hazardous waste disposal site remedial programs, except as provided in Section 1389-b of the Public Health Law. ECL 27-1313.3.a provides that whenever the Commissioner of Environmental Conservation finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site

1. to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and

2. to implement such program within reasonable time limits specified in the order.

B. The regulations implementing ECL Article 27, Title 13 authorize at 6 NYCRR 375-1.2(e)(2)(ii) the proponents of any activity to demonstrate to the Department that such activity will not have the effect described in 6 NYCRR 375-1.2(e)(2)(i) by such demonstration as the Department may find acceptable.

C. Volunteer wishes to enter into this Agreement in order to ensure, and the Department hereby determines that this Agreement constitutes a demonstration, that the response action undertaken under this Agreement will be in compliance with the ECL and will not:

1. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

2. expose the public health or the environment to a significantly increased threat of harm or damage.

5. A. Volunteer also wishes to enter into this Agreement in order to resolve Volunteer's potential liability for remediating the Existing Contamination as an owner of the Site under ECL Article 27, Title 13. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

B. Volunteer, desirous of implementing a remedial program acceptable to the Department sufficient to allow Volunteer to proceed with Volunteer's plans to use the Site for the Contemplated Use, consents to the terms and conditions of this Agreement.

6. The Department and Volunteer agree that the goals of this Agreement are:

A. for Volunteer to,

1. implement the Work Plan; and
2. reimburse the State's administrative costs as provided in this Agreement, and

B. for the Department to release Volunteer and its successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings by the Department, which may arise under any applicable law as a result of the Covered Contamination.

7. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Work Plan

A. 1. Within 21 days after the Department's approval of the Volunteer's Work Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the execution of this Agreement and of the public's opportunity to submit comments to the Department by no later than 30 days after the issue of the Environmental Notice Bulletin in which such notice shall appear on the Work Plan; and shall mail an equivalent notice to the County of Westchester. If, as a result of its review of the comments received, the Department determines that the Work Plan must be revised:

- i. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan; or
- ii. due to information received, in whole or in part, after the execution of this Agreement, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use,

then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the Work Plan and, if necessary, other components of this Agreement accordingly. However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to

- iii. Volunteer's obligations under Paragraphs VI and VIII of this

Agreement; and

iv. Volunteer's obligation, here incurred, to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any remedial activities were commenced; and

v. the Department's right to enforce the obligations described in Subparagraphs I.A.1.iii and I.A.1.iv of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the approved Work Plan; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement. If both parties agree to a revised approved Work Plan, the revised approved Work Plan shall be attached to this Agreement as Exhibit "B-1;" Volunteer shall implement that Work Plan instead of the one contained in Exhibit "B;" and, unless revised as provided in Subparagraph I.B.2 of this Agreement, all references to "approved Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1."

2. Within 30 days after the determination of the final form of the Work Plan after completion of public comment, Volunteer shall commence its implementation in accordance with its provisions. As used in this subparagraph I.A.2, the word "implementation" shall be deemed to include the design, engineering, obtaining of permits, preparation of contract documents, and the letting, negotiation and award of contracts for (a) the remedial work required in the Work Plan, or (b) site work, utility installation and/or construction work that includes such remedial work.

B. 1. Volunteer shall carry out the Work Plan in accordance with its terms.

2. The parties agree that the Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation and that such modification(s) shall appear in Exhibit "B-2" and all references to "Work Plan" in this Agreement shall refer to the one that will be inserted as Exhibit "B-2" However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to

i. Volunteer's obligations under Paragraphs VI and VIII of this Agreement; and

ii. Volunteer's obligation, here incurred, to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental

protection, worse than that which prevailed before any remedial activities were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs I.B.2.i and I.B.2.ii of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the Work Plan; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

3. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto and shall not modify any obligation unless first approved by the Department.

C. During implementation of all construction activities identified in the Work Plan, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

D. 1. In accordance with the schedule contained in the Work Plan, as may be modified by agreement in writing between the Department and Volunteer, Volunteer shall submit to the Department a final engineering report that shall include "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all activities were completed in full accordance with the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

2. Respondent shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("O&M Plan"), if needed, along with the final engineering report.

3. A professional engineer must prepare, sign, and seal the O&M Plan, "as built" drawings, final engineering report, and certification.

E. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteer shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

F. 1. i. Within 60 days after receipt of the final engineering report, the Department shall notify Volunteer in writing whether the Department is satisfied with

the implementation of the Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

ii. Within 60 days after completion of the Department-approved O&M Plan, if any, Volunteer shall submit to the Department a final engineering report and certification that the post-remedial construction operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteer whether it is satisfied with the O&M Plan's implementation.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the Site based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or Volunteer's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages nor to any further investigation or remedial action the Department deems necessary:

i. due to the off-Site presence of contaminants, other than petroleum, that may have migrated off-Site from an on-Site source resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to the off-Site presence of petroleum that may have migrated off-Site from an on-Site source, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human

health and the environment for the Contemplated Use;

iv. due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or

v. due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer if Volunteer causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or if Volunteer causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteer's lessees, sublessees, successors, or assigns who causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of this Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from this Agreement's execution.

3. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

G. If the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to the Work Plan, and Department-approved details, documents, and specifications prepared by or on behalf of Volunteer pursuant thereto, the Department shall provide Volunteer with a written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "C;"

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of

the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in a “no further action” letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in the “no further action” letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.F and in the “no further action” letter issued under Subparagraph I.G of this Agreement shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

II. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XI.A.1 in the numbers specified in that Subparagraph copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;
2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;
3. identify all work plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of the Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under this Agreement, and efforts made to mitigate those delays or anticipated delays; and

6. include any modifications to the Work Plan that Volunteer has proposed to the Department and any that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan's implementation. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

III. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and with generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days (60 days, in the case of the final engineering report) after its receipt of the submittal and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval. If the Department disapproves the revised submittal, the Department and Volunteer may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this

Agreement.

B. Within 30 days after the Department's approval of the final engineering report, Volunteer shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

IV. Enforcement

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within five working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the matters addressed in the Work Plan for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to the effective date of this Agreement, as well as for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.F.2 of this Agreement of its approval of the final engineering report pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.F.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

B. Nothing contained in this Agreement shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary

abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteer fails to comply substantially with this Agreement's terms and conditions.

E. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Departmental assertion of remedial liability against Volunteer; and reserves all rights Volunteer may have respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with this Agreement shall not be construed as an admission of liability, fault, or wrongdoing by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns.

IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Westchester County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement and

2. provide the Department with evidence of such filing.

Volunteer may terminate the Notice when the Department notifies Volunteer in writing pursuant to Subparagraph I.F.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the approved Work Plan have been reached and that the O&M Plan has been successfully implemented.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

X. Deed Restriction

A. Within 30 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall record an instrument with the Westchester County Clerk, to run with the land, that:

1. shall prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

2. shall prohibit the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

3. shall require Volunteer and Volunteer's successors and assigns to continue in full force and effect any institutional and engineering controls the Work Plan may require; and

4. shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 30 days after Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall provide the Department with a copy of such instrument certified by the Westchester County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Westchester County Clerk.

XI. Communications

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

1. Communication from Volunteer shall be sent to:

Robert Cozzy, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
547 River Street
Flanigan Square
Troy, New York 12180-2216

Rosalie K. Rusinko, Esq.
Senior Attorney
New York State Department of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road - 5th Floor
Tarrytown, New York 10951-5805

Copies of work plans and reports shall be submitted as follows:

- Four copies (one unbound) to Mr. Cozzy
- Two copies to Dr. Carlson

2. Communication to be made from the Department to Volunteer shall be sent to:

AKRF, Inc.
Michelle Lapin, P.E., Vice President
34 South Broadway
White Plains, New York 10601-4400

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XI.

XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that Volunteer has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's officers, directors, employees, contractors, and agents which relates in any way to the contamination existing

on the effective date of this Agreement, and to any past or potential future release of hazardous substances, pollutants, or contaminants, at or from the Site and to their application for this Agreement.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void *ab initio* except with respect to the provisions of Paragraphs VI and VIII and except with respect to the Department's right to enforce those obligations under this Agreement, and the Department shall reserve all rights that it may have.

B. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteer, and the Department also shall have the right to take its own samples. Volunteer shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement.

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteer from the requirement to obtain any Department permit for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's officers, directors, employees, servants, and agents shall be

obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. 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 of the provisions of this Agreement.

I. 1. 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 regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Cozzy and to Ms. Rusinko.

J. This Agreement and the remedial activities to be undertaken under the terms of this Agreement are subject to review under the State Environmental Quality Review Act (SEQR), ECL Article 8, and its implementing regulations, 6 NYCRR Part 617. ECL 8-0105.5(i), 6 NYCRR 617.5(c)(29).

K. Except as provided in Subparagraph XII.L, the provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs.

L. Volunteer and Volunteer's officers, employees, servants, agents, lessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against the State of New York or the New York State Environmental Protection and Spill Compensation Fund pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental

Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

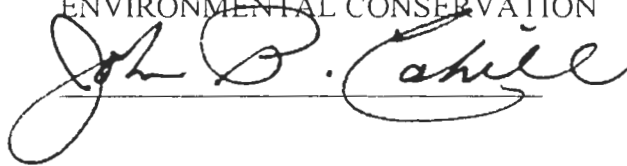
M. Notwithstanding anything to the contrary set forth in this Agreement, it is agreed that any provisions of this Agreement (or of any instrument recorded in accordance with this Agreement) that are binding, under this Agreement, upon any lessee or successor in title of the Volunteer, shall be binding upon such lessee or successor only with respect to the portion of the Site leased or conveyed to such lessee or successor.

N. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED:

MAY 17 2000

JOHN P. CAHILL, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

A handwritten signature in cursive script, reading "John P. Cahill", written over a horizontal line.

CONSENT BY
THE CITY OF YONKERS

The City of Yonkers hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

The City of Yonkers

By: *Julio A. Suarez*

Title: *Mayor*

Date: *10/1/99*

STATE OF NEW YORK)
) s.s.:
COUNTY OF WESTCHESTER)

On this *1st* day of *October*, 1999, before me personally came *Julio A. Suarez*, to me known, who being duly sworn, did depose and say that he resides in *Yonkers, NY*; that he is the *Mayor*, of the City of Yonkers the political subdivision or agency described in and which executed the foregoing instrument; and that *he* signed *his* name by that authority.

RICHARD A. KATZIVE
Notary Public, State of New York
No. 02KA6027923
Qualified in Westchester County
Commission Expires July 19, 20 *00*

Richard A. Katzive
Notary Public

The Yonkers Community Development Agency hereby consents to the issuing and entering of this Agreement, waives the Yonkers Community Development Agency's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

By: AKO here

Title: 247-17

Date: 11/11/2011

STATE OF NEW YORK)
) s.s.:
COUNTY OF WESTCHESTER)

On this 12 day of June, 1999, before me personally came James J. [redacted], to me known, who being duly sworn, did depose and say that he resides in Yonkers, New York; that he is the Executive Director, of the Yonkers Community Development Agency the political subdivision or agency described in and which executed the foregoing instrument; and that James J. [redacted] signed James J. [redacted] name by that authority.

RICHARD A. KATZIVE
Notary Public, State of New York
No. 02KA6027923
Qualified in Westchester County
Commission Expires July 19, 2012

Notary Public

SCHEDULE "A"
DESCRIPTION OF
PARCEL E

ALL that plot, piece or parcel of land, situate, lying and being in the City of Yonkers, County of Westchester and State of New York, being more particularly bounded and described as follows:

Beginning at a point being northwesterly 96.09 ft. from a bolt set in the face of a concrete abutment wall, said bolt being on the westerly boundary of lands now or formerly New York Central Railroad; Hudson Division; said bolt having a radial of S 70° 42' 45" E to the center of curvature of said westerly boundary line, said bolt also being approximately 14 ft. from the corner of the Main Street Underpass, said point of beginning being the following courses and distances from said bolt;

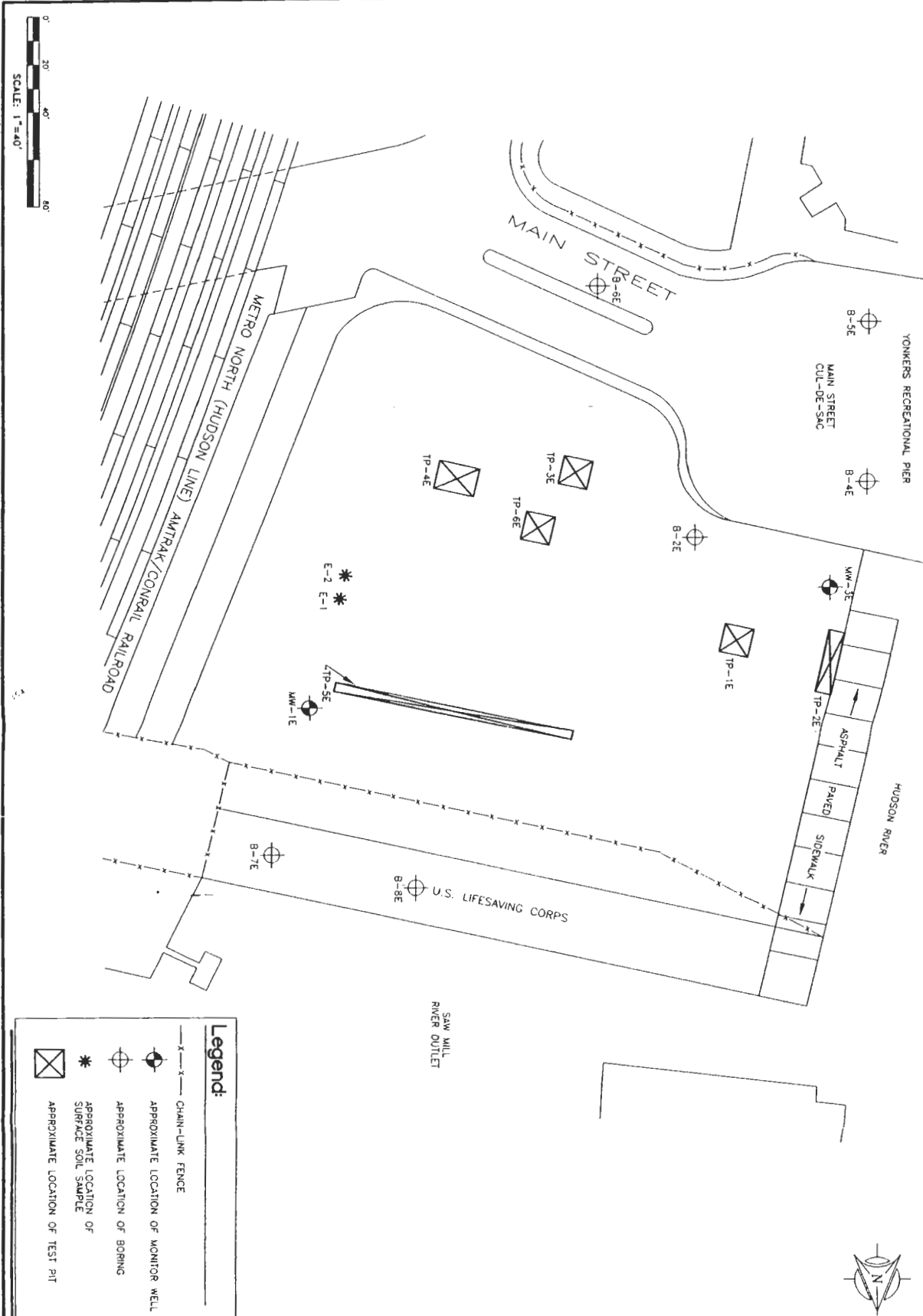
N 70° 33' 29" W, 22.00 ft.,

N 22° 52' 41" W, 74.09 ft.; thence proceed from said point of beginning the following courses and distances;

N 61° 34' 51" W, 140.58 ft., thence on a curve to the right having a radius of 30.00 ft. and a length of 39.13 ft.;

N 13° 09' 23" E, 179.69 ft.;

S 78° 51' 44" E, 217.31 ft.; thence on a curve to the left having a radius of 4188.91 ft., a radial of S 66° 56' 50" E and a length of 238.82 ft.; thence on a curve to the right having a radius of 20.00 ft and a length of 34.43 ft. to the point and place of BEGINNING.



Legend:

- X—X— CHAIN-LINK FENCE
- ⊙ APPROXIMATE LOCATION OF MONITOR WELL
- ⊙ APPROXIMATE LOCATION OF BORING
- * APPROXIMATE LOCATION OF SURFACE SOIL SAMPLE
- ⊗ APPROXIMATE LOCATION OF TEST PIT

<div style="font-size: 2em; font-weight: bold;">2</div>	YONKERS WATERFRONT DEVELOPMENT YONKERS, NEW YORK	AKRF, Inc. Environmental Consultants 34 South Broadway White Plains, N.Y. 10601
	PARCEL E SITE PLAN	

