

**New York State Department of Environmental Conservation
Division of Environmental Enforcement, 14th Floor**

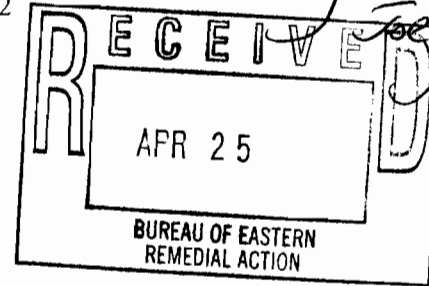
625 Broadway, Albany, New York 12233-5500
Phone: (518) 402-9509 • FAX: (518) 402-9019
Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

*Copy for you
Original went to
Joe Yavonditte*

April 17, 2002



Frederick J. Koelsch, Esq.
Shamberg, Marwell, Hocherman Davis & Hollis, P.C.
55 Smith Avenue
Mt. Kisco, New York 10549

Kevin G. Ryan, Esq.
10 Circle Avenue
Larchmont, New York 10538

Re: Hudson Park Investors, LLC.
Agreement to Remediate a Portion of Parcel F, Yonkers New York
Project No: B00045-3

Gentlemen:

Please find enclosed a fully executed copy of an Agreement to Remediate Property in Yonkers, New York between the New York State Department of Environmental Conservation and Hudson Park Investors, LLC. I look forward to receiving from you:

- 1) a recorded copy of the State Assistance Contract between the State of New York and the City of Yonkers/Yonkers Community Development Agency which provided 1996 Clean Water Clean Air Bond Act funds to investigate the property; and
- 2) a recorded copy of the Memorandum of Lease between the City of Yonkers/Yonkers Community Development Agency and Hudson Park Investors, LLC., incorporating Department-approved deed restriction language including engineering controls, permitted uses of the property, and language requiring Hudson Park Investors, LLC to implement and maintain such controls and to use the property consistent with those controls.

If you have any questions or comments about this document, please call me. In the event that you have any questions or comments concerning the project as it is completed, please call Joseph Yavonditte of the NYSDEC Bureau of Construction Services at (518) 402-9814, or me at (518) 402-9495.

Very truly yours,

Mary vonWergers
Bond Act Attorney

cc: J. Yavonditte

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
1996 CLEAN WATER/CLEAN AIR BOND ACT
ENVIRONMENTAL RESTORATION PROJECTS-TITLE 5
AGREEMENT TO REMEDIATE

PROJECT NO: B00045-3
PROJECT NAME: Yonkers Downtown Waterfront - Phase I - Portion of Parcel F
MUNICIPALITY: The City of Yonkers and Yonkers Community Development Agency
COUNTY: Westchester
REMEDIAL CONTRACTOR: HUDSON PARK INVESTORS, LLC.

This Agreement, made between the New York State Department of Environmental Conservation (hereinafter "the Department"), acting for and on behalf of the State, and Hudson Park Investors, LLC. (hereinafter "the Remedial Contractor"), a limited liability company formed under and in accordance with the provisions of Delaware State law, with offices located at 2001 West Main Street, Suite 175, Stamford, Connecticut 06902.

WITNESSETH:

WHEREAS, the Department is authorized by Article 56 of the New York State Environmental Conservation Law (the "ECL"), and the regulations and guidance developed pursuant to such law, to enter into agreements with municipalities to develop and implement projects to investigate and remediate property in accordance with the Environmental Restoration Program (the "Program") established pursuant to such law; and

WHEREAS, the Program allows a municipality which has completed a project to investigate property under the Environmental Restoration Program to have such property remediated by a non-municipal successor in title, lessee, or lender, referred to as "remedial contractors" under the Program, as long as the municipality remains responsible to ensure that the remediation objectives for the property are met; and

WHEREAS, pursuant to a State Assistance Contract (the "SAC") with the Department, The City of Yonkers and Yonkers Community Development Agency (the "Municipality") has investigated certain Property and pursuant to the SAC has proposed that the Remedial Contractor will conduct the remediation of such property; and

WHEREAS, the Remedial Contractor has agreed to conduct a remediation of the property consistent with the directives of the Department, the requirements of the Record of Decision (the "ROD") and the engineering and institutional controls directed therein, and has agreed to be bound by the terms and conditions contained within this Agreement as well as applicable law, regulations and guidance; and

WHEREAS, the Department's execution of this Agreement is made in reliance upon (a) the representations herein made by the Remedial Contractor of its undertaking to perform its covenants and promises set forth in this Agreement; (b) factual representations and information provided by the Remedial Contractor as set forth in its Remediation Workplan attached to this Agreement as Appendix "C"; (c) representations made by the Municipality, in its site investigation and remediation assistance contracts with the Department, of the Municipality's undertaking to perform its covenants and promises set forth in such agreements; and (d) factual representations and information provided to the Department by the Municipality with respect to the condition of the Property.

NOW, THEREFORE, in consideration of the promises and the mutual covenants, and conditions contained in this Agreement, the Department and the Remedial Contractor agree as follows:

1. Definitions:

- a. Except as expressly provided herein, terms used in this Agreement have the same meanings as those set forth in ECL Article 56.
- b. In addition, the following terms used in this Agreement shall have the meanings set forth below:
 - (i) "Approved Activity" means any Remediation activity which is part of the Project and has been approved in writing by the Department.
 - (ii) "Contemplated use" means the use that is defined in Appendix "A", which is attached hereto and incorporated herein.
 - (iii) "Day" means any calendar day .
 - (iii) "Disposition of the Property" means the leasing of the Property or the transfer of the Property's title through sale or other means.
 - (iv) "Engineering Controls" means any physical barrier or passive mechanism to contain or stabilize contamination, ensure the effectiveness of a remedial action or eliminate potential exposure pathways from any contaminated medium. Engineering controls may include, without limitation, caps, covers, vapor barriers, fences, slurry walls, access controls and demarcation barriers (e.g. geonets or other fabric).

- (v) “Engineering Control Maintenance Plan” means a plan that provides for post remedial construction, and maintenance of engineering controls on the Property.
- (vi) “Force Majeure Event” means an event which is brought on as a result of fire, lightning, earthquake flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, Department delay, or any other fact or circumstance beyond the reasonable control of the Remedial Contractor.
- (vii) “Institutional controls” means restrictive covenants in favor of the State of New York and the Department that affect the manner in which title interest may be transferred; and that govern the way the property may be used and altered, and the activities that may be conducted upon the property. The Department has approved transfer of title interest to the Remedial Contractor, subject to certain conditions, in a letter from the Commissioner of the Department to the Mayor of the City of Yonkers dated November 2000, which is attached hereto and incorporated into this agreement as Appendix “B”.
- (viii) “Parties” means the Department and the Remedial Contractor.
- (ix) “Property” means the real property which is the subject of the Remediation Project. The Property’s tax map identification number and legal description appears as Appendix “D” to this Agreement, which is attached hereto and incorporated herein.
- (x) “Remedial Contractor” is the successor in title and lessee of the municipality.
- (xi) “Remediation Project” means the remediation of the Property undertaken by the Remedial Contractor in accordance with the direction of the Department and in compliance with the terms and conditions of ECL article 56, title 5 and Department regulations and guidance and consists of the design and implementation of the remedy selected in the ROD and includes the implementation of such engineering and institutional controls implementation of the engineering controls.
- (xii) “Remediation Workplan” means the Department-approved plan attached to this Agreement as Appendix “C”, to carry out the Approved Activity. The Remediation Workplan describes the purpose, scope, estimated cost, and progress schedule of the Remediation Project and includes at a minimum a chronological description of the anticipated activities, a schedule for

performance of those activities, and milestones for delivery of Department-approved health and safety, soils management, operation and maintenance, and engineering control maintenance plans, as well as institutional controls, if deemed appropriate by the Department.

- (xiii) "ROD" means the Record of Decision issued by the Department.
- (xiv) "SAC" means State Assistance Contract between the State and the Municipality.
- (xv) "Termination Date" means the date on which the term of the Agreement ends under Section 16 of this Agreement.

2. Remediation Project:

a. Performance and Reporting of the Remediation Workplan.

i. The Remedial Contractor hereby agrees to undertake the Remedial Project including the Remediation Workplan which may be revised as set forth in this Agreement.

ii. During all Approved Activities, the Remedial Contractor shall have, on-site, a representative who is qualified to supervise the activities undertaken and who may be an outside consultant retained by the Remedial Contractor to perform such supervision. The qualifications of the Remedial Contractor's representative must be reviewed and approved by the Department prior to undertaking a supervisory role. The Remedial Contractor shall allow the Department to attend and shall notify the Department at least five calendar days in advance of any Approved Activity to be conducted pursuant to this agreement as well as any prebid meetings, job progress meetings, substantial completion meetings and inspection, final inspection and meetings.

iii. The Remedial Contractor shall provide to the Department unrestricted access to field work during the preparation and progress thereof and shall allow the Department to inspect the Remediation Project and Property to ensure that the use of the Property complies with the terms and conditions of this Agreement. The Remedial Contractor shall require that provisions be included in all contracts and subcontracts relating to the Remediation Project for unrestricted access and inspection by the Department.

iv. If revisions to the Remediation Workplan are required to satisfy the objectives of the Remediation Project, the parties will negotiate revisions which shall be attached to and incorporated into the Remediation Workplan and enforceable under this Agreement. If the parties cannot agree upon revisions to the Remediation Workplan, then unless the Remedial

Contractor invokes the dispute resolution provisions of this Agreement pursuant to Paragraph 11, the Department may terminate this Agreement pursuant to Paragraph 12.

v. In accordance with the schedule contained in the Remediation Workplan, the Remedial Contractor shall submit a draft final report. The draft final report pertaining to the Remediation Workplan's implementation shall include but not be limited to: all data generated relative to the Property and all other information obtained as part of the implementation of the Remediation Workplan; all of the assessments and evaluations required by the Remediation Workplan; a statement of any additional data that must be collected; "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the Engineering Control Maintenance Plan shall be submitted with the draft final report. After review of the draft final report by DEC, the Remedial Contractor shall submit a final report which addresses all of the Department's comments on the draft final report within thirty (30) days following receipt of the Department's comments on the draft final report. The final report shall contain a certification, signed and sealed by a Professional Engineer, licensed by the State of New York, that the remedial construction was performed in accordance with the Department-approved ROD.

vi. The Department shall review each of the submittals the Remedial Contractor makes pursuant to this Agreement to Remediate to determine whether it was prepared, and whether the work was done to generate the data and other information in the submittal was done, in accordance with this Agreement to Remediate and generally accepted technical and scientific principles. The Department shall notify Remedial Contractor in writing within five (5) calendar days of its approval or disapproval of each submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

vii. If the Department disapproves a submittal, it shall specify the reasons for its disapproval and may request the Remedial Contractor to modify or expand the submittal. Within 30 days after receiving written notice that Remedial Contractor's submittal has been disapproved, Remedial Contractor shall either make a revised submittal that corrects the stated deficiencies or elect to terminate the Agreement pursuant to Paragraph 12. If the Remedial Contractor submits a revised submittal and it is disapproved, the Department shall afford the Remedial Contractor a reasonable time within which to submit a revised submittal. If the parties cannot agree upon revisions to the submittal, then unless the Remedial Contractor invokes the dispute resolution provisions of this Agreement pursuant to Paragraph 11, the Department may terminate this Agreement pursuant to Paragraph 12.

viii. Within 30 days of the Department's approval of the final report and Engineering Control Maintenance Plan, the final report and Engineering Control Maintenance Plan must be submitted to the Department in an electronic format acceptable to the Department.

ix. The Remedial Contractor or its approved Consultant shall submit written monthly progress reports to the individuals identified in Paragraph 10 by the 10th day of each month commencing with the month subsequent to the approval of the first Remediation Workplan

Termination Date. Such reports shall, at a minimum, include: all actions taken pursuant to this Agreement during the previous month and those anticipated for the next month; all results of sampling and tests and all other data received or generated by the Remedial Contractor or the Remedial Contractor's contractors or agents, whether under this Agreement or otherwise, in the previous month, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays.

b. Satisfactory Completion of Technical Work

The Department shall provide Remedial Contractor with a Technical Completion Letter, substantially similar to the Generic Satisfactory Remediation Project Completion Letter that is attached to this Agreement as Appendix "E1", upon the Department's determination that Remedial Contractor has satisfactorily completed the technical work mandated by the Remediation Workplan; implemented the Department-approved engineering controls; and, the Contemplated Use may commence with protection of human health and the environment.

c. Recordation and Engineering/Institutional Controls

(i) No later than 45 days after receipt from the Department of a fully executed copy of this Agreement, the Remedial Contractor shall cause this Agreement to be indexed in the Grantor Index under the name of the Remedial Contractor if it is the owner, or the owner from whom the Remedial Contractor is to acquire the Property, and in the Grantee Index under the name of the Remedial Contractor, if it is not the owner, and the State, in the Office of the Recording Officer of the County or Counties where the property is located. After recording, the Remedial Contractor shall provide the Department with evidence of such recording by delivering a certified copy of the recorded Agreement to the Department within 10 days following its recording.

(ii) In the event that the Department makes a determination upon the completion of the technical work that additional engineering and /or institutional controls are necessary to allow the contemplated use of the property to commence, the Remedial Contractor shall, unless otherwise authorized by the Department in writing, cause to be recorded a Department-approved instrument, which is substantially similar to Appendix "F" attached to this Agreement, to run with the land. The Remedial Contractor shall cause this instrument to be indexed in the Grantor Index with the County Clerk in the county in which the Property is located, and shall provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy within 45 days of receipt of notice from the Department that such recorded instrument is necessary. The Remedial Contractor and its lessees and successors in title shall not challenge the imposition or continuance of such engineering and institutional controls, and failure to implement the Department-approved Engineering Control Maintenance Plan or to maintain such institutional controls shall constitute a violation of this Agreement and for the duration of such failure, ECL 56-0509.1 shall have no force and effect.

d. Satisfactory Completion of Remediation Project

The Department shall provide the Remedial Contractor with a Satisfactory Remediation Project Completion Letter which is substantially similar to the one attached hereto as Appendix "E2", upon the Department's determination that the Remedial Contractor has complied, if required, with Paragraph 2(c).

3. Recovery from Responsible Parties:

a. Except as provided in Subparagraph 15(e) Remedial Contractor reserves such rights as it may have to seek and obtain contribution and/or indemnification from its insurers and from other potentially responsible parties or their insurers for past or future response/cleanup costs or such other costs or damages arising from the contamination at the Property as provided under applicable State and federal law.

b. While the Remedial Contractor may make efforts to recover costs from responsible parties, it must provide the Department with timely advance written notice of any negotiations, proposed agreements, proposed settlements or legal action by which recovery is sought and must not commence such legal action nor enter into any such proposed agreement or settlement without prior written Department approval; and

c. The Remedial Contractor must assist the Department or other State agencies in compelling responsible parties to contribute to the cost of the environmental restoration Remediation Project at the property, such assistance encompassing, at a minimum, the provision of all information which the Remedial Contractor has or acquires relating to the identification of the responsible parties for the hazardous substances disposed at, or released from, the property.

4. Use of Property:

The Contemplated Use for this Property may be modified by the Department during the term of this Agreement based upon facts and circumstances that are discovered or developed during the course of the Remediation Project. The use of the Property, the way the Property may be altered, and the activities that may be conducted upon the Property are limited by the outcome of the remediation work undertaken as part of this Agreement. The Property shall not be used for any purpose before the Property's remediation is completed to the Department's satisfaction, except that the Property may continue to be used for the purpose for which it is being used at the start of this Agreement if the Department determines that the existing state of contamination is such as not to prohibit such use from continuing giving due regard for human health and environmental protection and the use described in the ROD and in any institutional controls. The Remedial Contractor agrees for itself and for its successors including successors in title and assigns and for its lessees that any proposed change of use at the Property, as defined in ECL 56-0511 (3) shall be governed by the provisions of ECL 56-0511 and any regulation of the Department implementing such statute.

The Remedial Contractor agrees for itself and for its successors including successors in title and assigns and for its lessees that any proposed change of use at the Property, as defined in ECL 56-0511 (3) shall be governed by the provisions of ECL 56-0511 and any regulation of the Department implementing such statute.

5. Compliance with Applicable Laws:

a. All work performed in relation to the Remediation Project by the Remedial Contractor or its agents, representatives, or contractors shall conform to all applicable Federal, State and local laws, ordinances, rules and regulations, standards including permit requirements. This Agreement does not constitute a permit and does not confer upon the applicant the right to engage in the Contemplated Use or any other use of the Property for any particular purpose.

b. The Remedial Contractor shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals or authorizations necessary to perform the Remedial Contractor's obligations under this Agreement, except that the Department may exempt the Remedial Contractor from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Property and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If an interest in property is needed to implement an institutional control required by a Remediation Workplan and such interest cannot be obtained, the Department may require the Remedial Contractor to modify the Remediation Workplan.

6. Enforcement:

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. The Remedial Contractor shall not suffer any penalty 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 provided it notifies the Department in writing within 10 calendar days of when it obtains knowledge of any such event. The Remedial Contractor shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or revision of this Agreement. The Remedial Contractor shall have the burden of proving by a preponderance of the evidence that an event qualifies as a defense to compliance pursuant to this Paragraph.

7. Entry upon Property:

The Remedial Contractor, on behalf of itself and its successors including successors in title and assigns and its lessees, hereby obligates itself to provide the Department with access to the Property, at times appropriate to the circumstances and subject to the Property's health and safety plan, if any, for the purpose of ensuring that the Property is remediated in accordance with the Department-approved Remediation Workplan; that the operation, maintenance, and monitoring plan for the Remediation is being implemented satisfactorily; and that the Engineering

Control Maintenance Plan is being implemented satisfactorily. Notwithstanding the above, the Department retains authority under ECL 56-0509.4 to carry out any measures necessary to return the Property to a condition sufficiently protective of human health. The Remedial Contractor its successors and assigns, lessees or successors in title shall not interfere with such access, and shall permit the Department full access to all non-privileged records relating to matters addressed by this Agreement and to job meetings. Raw data is not considered privileged and that portion of any privileged document containing raw data must still be provided to the Department.

8. Reservation of Rights:

Nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any party, including the Remedial Contractor.

9. Indemnification:

The Remedial Contractor 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 prior to the Termination Date except with respect to matters covered under ECL 56-0509, and except for liability arising from willful, wanton or malicious acts or acts constituting gross negligence 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.

10. 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 the Remedial Contractor shall be sent to:

Thomas Gibbons
Technical Remediation Project Manager
Bureau of Eastern Remediation, 11th Floor
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7015
Note: four copies (one unbound) of Remediation Workplans are required

Legal Contact

Mary vonWergers, Esq.
NYSDEC
625 Broadway
Albany, New York 12233-5500

NYS Health Department

Gary Litwin
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
Note: two copies of Remediation Workplans are required to be sent, and

2. Communication from the Department to the Remedial Contractor shall be sent to:

Michael Marcante
Hudson Park Investors, LLC
2001 West Main Street, Suite 175
Stamford, Connecticut 06902

with a copy to Arthur Collins, II. at the same address.

Legal Contact

Frederick J. Koelsch, Esq.
Shamberg Marwell Hoeherman Davis & Hollis P.C.
55 Smith Avenue
Mt. Kisco, New York 10549

Environmental Consultant

Christopher J. Kopley
Advanced Environmental Redevelopment, LLC.
904 Madison Avenue, Suite 203
Bridgeport, Connecticut 06606

b. The Department and the Remedial Contractor reserve the right to designate additional or different addressees for communication on written notice to the other.

11. Dispute Resolution

The Remedial Contractor may commence dispute resolution within 20 calendar days of the Remedial Contractor's receipt of the Department's notice of disapproval of a submittal or proposed Remediation Work Plan revision, disapproval of a final report, or termination of this Agreement pursuant to Subparagraph 12. Disputes regarding Remediation Workplan revisions shall be heard by the Director of the Division of Environmental Remediation's remedial bureau with jurisdiction over the county within which the Property is located. All other disputes subject to dispute resolution shall be heard by the Assistant Division Director of the Division of Environmental Remediation. The Remedial Contractor shall serve upon the Department a request for dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation upon which the Remedial Contractor relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position no later than 20 calendar days after receipt of the Remedial Contractor's Statement of Position. The Remedial Contractor shall have the burden of proving that the Department's position should not prevail. A meeting or telephone conference can be scheduled if it will promote a resolution of the issues. A final decision resolving the dispute will be issued timely. The final decision shall constitute a final agency action and the Remedial Contractor shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR if the Remedial Contractor commences such proceeding no later than 30 calendar days after receipt of a copy of the decision. The invocation of dispute resolution shall not extend, postpone or modify the Remedial Contractor's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a court determines otherwise. The Department shall keep an administrative record which shall be available consistent with Article 6 of the Public Officers Law.

12. Termination of Agreement:

In the event of the termination of this Agreement prior to completion of the Remediation Workplans for parcels E and F, the Remedial Contractor shall level any excavation areas and then cover all of Parcels E and F with surface paving or placement of a demarcation barrier and two feet of clean fill, as provided in the ROD and the Remediation Workplan. Nothing in this Paragraph shall be deemed to eliminate the obligation of the City of Yonkers to undertake this obligation in the event that the Remedial Contractor fails to fulfill its obligation. In addition, if the Department deems it necessary, the Remedial Contractor may be required to implement engineering controls and cause to be recorded institutional controls to be indexed in the Grantor Index under the name of the Remedial Contractor if it is the owner, or the owner from whom the Remedial Contractor is to acquire the Property, and in the Grantee Index under the name of the Remedial Contractor, if it is not the owner, and the State, in the Office of the Recording Officer of the County or Counties where the property is located. After recording, the Remedial Contractor

shall provide the Department with evidence of such recording by delivering a certified copy of the recorded Agreement to the Department within 10 calendar days following its recording. The Remedial Contractor and its lessees and successors in title shall not challenge the imposition or continuance of such engineering and institutional controls, and failure to carry out any Department-approved measures necessary to maintain sufficient protection of human health for such Property's use, failure to implement the Department-approved Engineering Control Maintenance Plan or failure to record and maintain Department-approved institutional controls shall constitute a violation of this Agreement and for the duration of such failure, ECL 56-0509 shall have no force and effect. These obligations shall survive the termination of this Agreement.

a. The Remedial Contractor may elect to terminate this Agreement, in which event this Agreement shall terminate effective the 5th calendar day after the written notification terminating this Agreement is received by the Department, except that such termination shall not affect the provisions contained in Paragraphs 3, 4, 6, 7, 8, 9, 10, 12, 13, and in Subparagraphs 15 (e) and (f).

b. If the Commissioner determines that the Remedial Contractor has failed to comply with any of the requirements of the applicable State or Federal laws and regulations, or with any of the requirements of this Agreement; or if without good cause, as determined by the Department, the Remedial Contractor has:

- (i) failed to proceed with the Remediation Project as scheduled;
- (ii) failed to complete the Remediation Project as approved;
- (iii) changed the Remediation Project or any portion thereof without the Department's prior written approval,

the Department shall notify the Remedial Contractor of such failure, setting forth in writing the reasons for such determination, and shall afford the Remedial Contractor a reasonable time within which to cure such failure. If such failure is not eliminated within such period of time, the Department shall notify the Remedial Contractor that it is in breach of this Agreement and that the Agreement is terminated. The termination of this Agreement shall be effective upon the mailing of the notice by the Department to the Remedial Contractor. In the event that this Agreement is terminated pursuant to the provisions of this Subparagraph, the Remedial Contractor is not entitled to claim the liability limitation benefit of ECL 56-0509; the Remedial Contractor is required by specific performance to carry out any measures deemed necessary by the Department to return the Property to a condition sufficiently protective of human health and to secure the Property; and, the Remedial Contractor is obligated to pay to the Department any costs reasonably associated with the Department's oversight and/or performance of the measures necessary to return the Property to a condition sufficiently protective of human health and to secure the Property.

13. Totality of Agreement; Severability:

This Agreement contains all of the provisions, conditions, and promises agreed to between the parties. If any section, paragraph, sentence, clause or word of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or lack of enforcement authority of such shall not affect the remainder of this Agreement; and this Agreement shall be construed and enforced consistent with this express purpose, as if such invalid or unenforceable section or paragraph, sentence, clause, or word had not been contained herein.

14. Amendments:

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 the Remedial Contractor of the Remedial Contractor's 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 Remediation Workplan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Remediation Workplan attached as Appendix "C". The Remedial Contractor consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

15. Miscellaneous:

a. If the information provided and certifications made by the Remedial Contractor are not materially accurate and complete, this Agreement, except with respect to the provisions of Paragraphs 3, 4, 6, 7, 8, 9, 10, 12, 13, and Subparagraph 15 (e) and (f) , at the sole discretion of the Department, and shall be null and void *ab initio* 15 days after the Department's notification of such inaccuracy or incompleteness.

b. Each party shall have the right to take samples and to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party.

c. The Remedial Contractor shall not be considered an operator of the Property solely by virtue of having executed and/or implemented this Agreement.

d. 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.

e. The Remedial Contractor on behalf of itself and its employees, servants, agents, lessees, sublessees, successors, successors in title, and assigns hereby waive any right to pursue reimbursement of monies expended by The Remedial Contractor prior to the Termination Date as

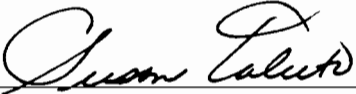
f. The Remedial Contractor, itself and its successors including successors in title and assigns and its lessees shall be bound by this Agreement. Any change in ownership of the Remedial Contractor including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Remedial Contractor's responsibilities under this Agreement. The Remedial Contractor's successors and assigns shall provide to the Department a certification that they agree to be bound by this Agreement within 30 Days of becoming a successor or assign.

16. Term and Effective Date

The term of this Agreement shall start on the effective date and shall end upon the date of the Department's issuance of the Satisfactory Project Completion Letter or upon the Remedial Contractor's satisfactory completion of the measures described in the Engineering Maintenance Control Plan, whichever is later; or pursuant to the provisions of Paragraph 12. The effective date of this Agreement shall be the date it is signed by the Commissioner or his/her designee.

DATED:

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

Susan Taluto
Deputy Commissioner

CONSENT BY The Remedial Contractor

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

HUDSON PARK INVESTORS, LLC.

By: *[Signature]*

Title: _____

Date: *2.14.02*

Connecticut
STATE OF ~~NEW YORK~~)
) s.s.: *Stamford*
COUNTY OF *Fairfield*)

On the *14th* day of *February*, in the year ^{*2002*}~~2001~~, before me, the undersigned, personally appeared *Arthur Collins*, 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. *Such individual had appeared before the undersignee in Stamford, Connecticut.*

Catherine Wendy Neiman
Signature and Office of individual
taking acknowledgment

CATHERINE WENDY NEIMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES APR. 30, 2005

Appendix "A"

Contemplated Use

The Property will be used for one or a combination of the following: multi-unit residential housing, townhouses, offices, retail uses, restaurants, cultural, civic or educational facilities contained within buildings, private or public indoor recreation facilities contained within buildings, and/or parking.

Appendix "B"

Letter from the Commissioner of the Department to the Mayor of the City of Yonkers
dated November 20, 2000



GEORGE E. PATAKI
GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

JOHN P. CAHILL
COMMISSIONER

November 20, 2000

The Honorable John D. Spencer
Mayor
City of Yonkers
City Hall
Yonkers, NY10701-3886

Re: Change of Use Notice for Phase 1, Operable Unit (Parcel F - *to be subdivided*) For Yonkers Downtown Waterfront Development
1996 Clean Water/Clean Air Bond Act ("Bond Act") Environmental
Restoration Program

Dear Mayor Spencer:

The purpose of this letter is to respond in writing to your notice of the proposed transfer of title to a subdivided part of program property identified as "Parcel F" ("Property") under State Assistance Contract ("SAC") No. C300984 entered into between the Department of Environmental Conservation ("Department"), the Yonkers Community Development Agency and the City of Yonkers (together referred to as "Yonkers") in accordance with Environmental Conservation Law ("ECL") Section 56-0511. I understand that you are seeking my approval of the transfer of title early in the proposed transaction in order to expedite the remediation and development of the Property consistent with the goals of the Environmental Restoration Program.

It is my understanding based upon your notice that Yonkers intends to enter into a lease with Collins Enterprises, L.L.C., the proposed developer of the Property ("Developer"), with a purchase option that could be exercised within approximately two years. It is also my understanding that although the Property has been investigated by Yonkers with Bond Act funds, the Property will not be remediated with Bond Act funds, but will be remediated by the Developer.

Based upon the information provided in your notice, I approve the proposed transfer of title to the Property from Yonkers to the Developer, subject to the following to be provided to the Department for approval prior to any closing to be held with respect to the lease of the Property to the Developer:

(1) The existing deed(s) for the Property or the alternative Department-approved instrument, incorporating the deed restriction language, including engineering controls and the uses approved for the Property as provided by the Department, together with proof of filing of such documents

in the Grantor Index under Yonkers name in the Office of the Recording Officer of the County or Counties where the Property is located; and

(2) A certified copy of the recorded SAC, evidencing its recording in the Grantor Index under Yonkers name in the Office of the Recording Officer of the County or Counties where the Property is located; and

(3) The property descriptions related to the proposed subdivision of Parcel F, including the specific metes and bounds descriptions for each of the new parcels; and

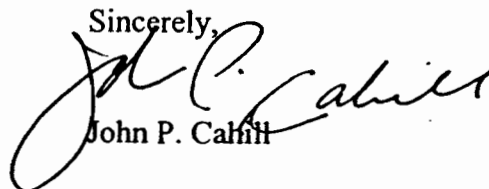
(4) A Memorandum of Lease incorporating the Department-approved deed restriction language including engineering controls and the uses approved for the Property, as well as language requiring the Developer to implement and maintain such controls and to use the Property consistent with those controls, together with proof of filing of such documents in the Grantor Index under Yonkers name in the Office of the Recording Officer of the County or Counties where the Property is located. A copy of the relevant provisions of the lease incorporating such terms shall also be provided; and

(5) An Agreement between the Department and the Developer and the Department and Yonkers to remediate the Property in accordance with the direction of the Department. Such Agreement, shall include, at a minimum, a Department-approved remedial workplan based upon the requirements of the ROD and the proposed construction activities to be undertaken on the property.

The Developer and his successors in title are not required to seek Department approval, as set forth in ECL Section 56-0511, with respect to future transfers of title of this Property, if the use of the Property remains the same as what is approved by the Department in the deed restriction and there is no contemplated physical alteration of the Property as defined in that section of the ECL. However, notice of all proposed future transfers of title must be filed by owners of the Property with the Department within a reasonable time in advance of the transfer.

Please note that this approval is limited to the above-defined circumstances and does not apply where the use of the Property is changed from what is specified in the deed restriction for the Property or where any of the activities defined by ECL Section 56-0511 are undertaken by the Developer, Yonkers, or any lessees or successors in title. In such cases, the required ECL Section 56-0511 notice must be sent to the Department, seeking approval of the transfer of title, as well as the proposed use and activities.

The Department wishes you much success in your efforts to develop this property and thanks you for your continued work on this important Bond Act project.

Sincerely,

John P. Cahill

Appendix "C"

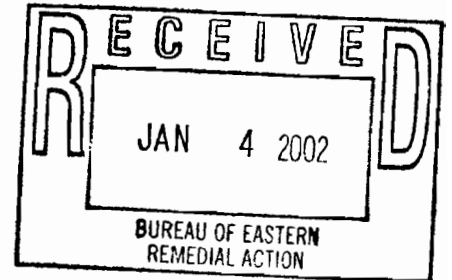
Department-Approved Remediation Workplan

AER

ADVANCED
ENVIRONMENTAL
REDEVELOPMENT, LLC

904 Madison Avenue - Room 213, Bridgeport, Connecticut 06606

Tel: 203-333-2767 Fax: 203-333-4770



**REMEDIAL WORK PLAN
YONKERS DOWNTOWN
WATERFRONT DEVELOPMENT
PARCELS E and F
YONKERS, NEW YORK
PROJECT #214**

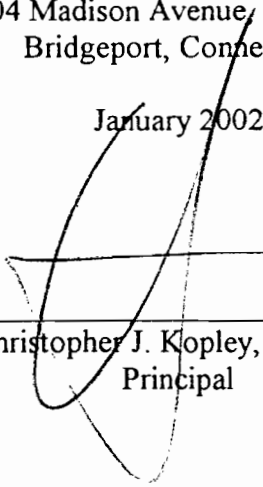
Prepared for:

On its own behalf and on behalf of
Hudson Park Investors, LLC
C/O Collins Yonkers, LLC
2001 West Main Street, Suite 175
Stamford, Connecticut 06902

Prepared by:

Advanced Environmental Redevelopment, LLC
904 Madison Avenue, Suite 213
Bridgeport, Connecticut

January 2002



Christopher J. Kopley, LEP, PG
Principal

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FIGURES

Figure 1 – Site Location Map

Figure 2 – Site Plan

1.0 INTRODUCTION

AER, LLC is pleased to submit this Remedial Work Plan for Parcels E and F of the Yonkers Downtown Waterfront Development Voluntary Cleanup Agreement (project number B0045-3). The site is located along the eastern shore of the Hudson River in Yonkers, New York, as shown on Figure 1 – Site Location Map. Parcel J is the proposed promenade of the redevelopment plan, and will be located west and adjacent to the waterfront parcels (Parcels A through I) along the Hudson River. In this work plan, Parcel J was not reported as a separate parcel, but was included with the adjacent Parcels E and F as shown on Figure 2 – Site Plan.

This Remedial Work Plan presents the conceptual remedial plan for Parcels E and F. The goal of this Work Plan is to carry out the recommendations included in AKRF's Site Investigation Report for Parcels E and F dated August 1998 and complies with the Record Of Decision for parcel F.

2.0 BACKGROUND

The study site is located in the downtown section of Yonkers, west of the New York Central Railroad right of way, and along the eastern bank of the Hudson River, as shown on Figure 1. The parcels have a history of industrial use dating back more than 100 years.

Parcel E (44,773 square feet) is abutted by: Sawmill River outlet to the north; MetroNorth Railroad to the east; Parcel F to the south; and The Hudson River to the west. Parcel F (52,846 square feet) is abutted by: Parcel E across the Main Street cul-de-sac to the north; the New York Central Railroad train tracks to the east; the Scrimshaw House condominium building to the south; and the Hudson River to the west.

Parcel E did not exist until some time between 1886 and 1917, at which time it was created with fill materials and utilized by the Water Department as a machine shop, stables and storage areas. The City of Yonkers Department of Public Works (DPW) occupied the site from 1951 until some time between 1971 and 1978, and included Water Bureau repairs, auto repairs and a boiler room. The Yonkers DPW leased the building to the Yonkers Post Office and was used for storage space by the Post Office until some time between 1978 and 1985. By 1991, the site was utilized as a wharf.

Parcel F was occupied by copper smiths and a sugar house from before 1886 until some time before 1917, at which time it was used as a sugar refining company. By 1951, the site was occupied by a wire drawing mill that remained on-site until some time between 1971 and 1975. The site was then occupied by Four Star Beer Distributors until the building was demolished sometime before 1980. The site is currently utilized as a parking lot for the Scrimshaw House condominium building.

3.0 OVERVIEW OF REMEDIATION PLAN

According to the “ Site Investigation Report of ‘Phase I’ Parcels E and F”, prepared by AKRF, dated August 1998, the identified contaminants of concern included levels of polynuclear aromatic hydrocarbons (PAHs), a class of semi-volatile organic compounds, and metals. AKRF collected 27 soil and 5 groundwater samples from test pits, soil borings and monitor wells, based on the results of preliminary surveys, including an electromagnetic survey, a soil gas survey, a ground penetrating radar (GPR) survey and on the known history of the two parcels. These activities helped to establish the extent of affected soil and groundwater on the site. Areas of affected soil are shown on Figure 2.

This proposed Remedial Work Plan involves capping the parcels with either a two-foot soil cover, buildings, or asphalt pavement. Soils needed to be excavated for the intended construction will be stockpiled on-site and tested to determine whether they can be used as on-site fill or require off-site disposal. This Work Plan includes a soil management plan component that sets forth how soils will be handled through excavation, stockpiling and if necessary, off-site disposal. Soil samples collected from any stockpile would be analyzed for PAHs and total Target Analyte List (TAL) metals in a New York State Department of Health certified laboratory.

Presently, the only planned non-capped areas would be limited landscaped areas within the promenade and limited planted areas along the building/sidewalk area. In the event that the elevations are such that a two-foot soil cover could not be placed in these areas, soil would be excavated to an elevation that would enable the two-foot soil cover to be placed. This soil would be stockpiled on-site for analytical testing to determine whether it can be utilized as on-site fill, or would require off-site disposal as a special waste.

The basic remediation methods for the site will be:

- Delineation of Areas of Affected Soil
- Delineation of Foundation Excavations
- Delineation of the Non-Capped Areas
- Excavation and Disposal of Contaminated Soil
- Capping of the Site

The project organization:

Project Manager-----Christopher Kopley
 Project Engineer-----James Moore
 Field Managers-----Todd Snowden/Craig Smolin

Remediation operations will be performed in accordance with the project site Health and Safety Plan (HASP) and the Community Air Monitoring Plan. These documents have been prepared under separate cover.

4.0 SOIL REMEDIATION**4.1 Soil Isolation**

The planned development for Parcels E and F include an esplanade along the Hudson River on the western side of the parcels, a building on the central portions of each parcel and associated sidewalks and roadways. The esplanade is to be developed by the city of Yonkers and any construction in that area is to be covered by their plans and specifications. The majority of the parcels will be covered by impermeable surfaces such as sidewalks roads and buildings. Some planted areas will be included in the esplanade along the roadways and sidewalks. The portions of the parcels that will be occupied by buildings must be raised to elevation 10.0 MSL, based on the National Geodetic Vertical Datum of 1929 (NGVD), to meet the 100-year flood elevation. However, the planned esplanade and roads will be below this elevation. In the regions of the proposed esplanade that will not be hardscaped, soil will be excavated to an elevation that would allow for a two-foot soil cap, bringing the final elevation of the landscaped areas of the esplanade to approximately 7.5 MSL, to align with the Yonkers Pier.

The final plans for the esplanade are not complete as of this Work Plan, however, minimal areas are proposed to be landscaped with the majority of the area hardscaped, and thus would require no additional remedial measures.

The area of land along the roadside currently varies from elevation 8.5 to 9.5 feet NGVD. The final elevation of the roadside will be 9.5 feet NGVD, therefore, in the landscaped areas along the road, if any, soil will be excavated to an elevation that would allow for a two-foot soil cap. In the areas of the proposed buildings, the final elevation will be approximately 10.0 feet NGVD. This area currently varies in elevation from 7.5 to 9.5 feet NGVD.

In those areas which will be landscaped (areas not below asphalt pavement or buildings), the soil will be excavated to up to approximately two feet below grade. A polyethylene high visibility barrier fence would then be placed as a marker layer followed by two feet of clean fill.

Excavated soil will be stockpiled on and covered with plastic sheeting. Soil samples will be collected from the stockpiles and analyzed by a certified laboratory for semi-volatile organic compounds (PAH's only) and TAL metals. Analytical results will be compared to TAGM 4046. TAGM 4046 guidelines will be used to determine whether off-site disposal or on-site reuse is appropriate. Based on the analytical results and physical soil characteristics, soils not exhibiting hazardous characteristics or grossly contaminated may be re-used as fill below one of the capping methods (soil, building or pavement).

Soils intended for reuse on site may consist of dry, non-hazardous granular soils that do not contain any free liquids or non-natural debris (paper, demolition debris, metals, etc). Headspace filed screening of these soils using a PID will not exceed 10 PID units above background conditions.

Grossly contaminated soils will consist of those soils that are laden with non-natural debris (excluding typical urban fill materials such as bricks, concrete, etc.), contain free product, register over 10 PID units above background using the PID headspace field screening method, are visibly stained or exhibit a strong odor.

During these construction and utility excavations, oversight will be conducted by AER to document field activities. Field screening will be conducted using a photoionization device (PID), however, soil staining and odors will primarily be used to delineate contaminated soil. The majority of the known contaminants are not detectable using a PID. Soil that is slated for removal will be sampled and analyzed for those compounds appropriate for the receiving facility.

4.2 Soil Management

Affected soil that would require off-site disposal, if any, would be removed in accordance with the requirements of the Occupational Safety and Health Act (OSHA) using conventional excavation techniques, such as the use of backhoes and excavators, and the resultant excavation would be backfilled using environmentally clean fill. To minimize the potential for post-construction settlement, the fill will be placed and mechanically compacted in layers or lifts to be determined by the site contractor.

During excavation and backfilling activities, proper surface water management measures would be implemented. Such measures may include:

- management and handling of precipitation and flow into the excavations using temporary ditches and berms to minimize run-on;
- diversion of collected surface water to off-site disposal points consistent with current surface water flow patterns;

- covering the interior of the excavations with temporary tarpaulins, to the extent practicable, during rainfall events; and
- management of excavation and filling activities such as that a localized low area or sump can be maintained, if needed.

Representative soil samples from each stockpile will be collected using dedicated sampling equipment and analyzed for TCLP RCRA metals, total TAL metals and semi-volatile organic compounds (EPA Method 8270 PAH's only). One grab soil sample will be collected for every 300 cubic yards of stockpiled material. Representative confirmatory samples will be collected and analyzed from those areas where soil disposed of off-site had been excavated (one sample each ± 20 linear feet of excavation). The stockpiled soil will be securely placed on and covered with plastic sheeting. Plastic sheeting will be sized and lapped to completely enclose the stockpiled soil and will be applied and secured to drain possible run-off. The stockpiled soil and plastic sheeting will be maintained in good condition until the soil is either used on-site or disposed of off-site.

If the analytical results indicate that the soil is not suitable for reuse, the affected soil will be transported off-site within applicable regulatory time frames to an appropriate disposal facility. Previous soil samples collected from the study site did not exceed the hazardous waste thresholds.

Soil samples from the impacted stockpile will be collected and submitted for analysis for possible off-site disposal characterization. The number, type of samples and the parameters analyzed will depend on the disposal facility requirements. Contingent on analytical results, the impacted soil may necessitate transportation off-site by a licensed hauler and disposal at a regulated disposal facility, in accordance with Federal, State and local regulations.

4.3 Additional Considerations

Site investigations have shown that only metals and semi-volatile compounds have been identified on-site. AER will review site soil conditions during this project and identify the need for any additional soil sampling or stockpiling. Encountered soils will be screened daily with a PID. Soils that are grossly contaminated soils will consist of those soils that are laden with non-natural debris (excluding typical urban fill materials such as bricks, concrete, etc.), contain free product, register over 10 PID units above background using the PID headspace field screening method, are visibly stained or exhibit a strong odor. These soils will likely be managed using excavation techniques and segregated from the typical site soil. If freestanding liquids are found they will be removed and affected site soils excavated. Excavated soils will be placed on and covered with plastic sheeting.

Any soils differing from those expected will be analyzed for the appropriate parameters based upon PID readings, color and odors. Representative confirmation soil samples (one sample each ± 20 linear feet of excavation) will be collected from the excavation verifying that the contaminants of concern have been removed. Additional samples will be collected for off-site disposal classification if necessary.

4.4 Capping of the Site

As part of the planned development, the majority of the study site will be capped with a building, paved roadways, sidewalks and hardscaping along the promenade. In the areas that will not be capped with impermeable surfaces, the contractor shall place at least two feet of clean fill to act as a soil cap. A high visibility barrier fence will be placed on top of the affected soil remaining in place and beneath the clean fill. This visual demarcation barrier should consist of a horizontal layer of a distinctively colored, durable, non-degradable, porous or open-mesh material such as orange snow fencing. These planted areas must be maintained to ensure the integrity of the soil cap. An Operations and Management (O&M) Plan will be developed to manage the planted areas.

4.5 Site Visits

At least one site visit per month will be performed, and initially, more frequent site visits will be conducted until a routine is established, during excavation, off-site disposal and cap installation activities; or wherever affected soils are to be handled or managed. AER will document field activities and observe the excavation and stockpiling of affected soils and demarcation of soils to remain in place. The DEC may enter upon Parcels E and F for inspecting, sampling or testing to ensure compliance with the Agreement to Remediate.

Air monitoring will be performed according to the Community Air Monitoring Plan each day when affected soils are exposed. Periodic measurements of volatile organic compounds and particulates will be conducted; background readings will be conducted prior to that day's activities. If the site is covered with gravel or other clean materials (pavement, geotextiles, clean fill, etc.) that control or prevent dust generation, air monitoring will not be conducted.

AER will prepare monthly progress reports when required by the NYDEC or when necessary during the project and submit them to the client and appropriate NYSDEC representative when requested or when field observation or sampling anomalies are observed. The Progress Reports, when generated, will include:

- Actions completed
- Actions anticipated
- Analytical results including any QA/QC data
- Information concerning the percent complete, anticipated delays, future schedule and efforts to mitigate delays or problems.

These reports will be submitted by the tenth of each month only if field activities related to the site remediation have been conducted. Additionally, the NYSDEC shall be provided a chronological description of any anticipated ground intrusive and remedial activities, a schedule for the performance of these activities and at least 10 business days advance notice of any intrusive or remedial activities. AER will provide the NYSDEC with the construction schedule for intrusive activities as soon as it is finalized by the site contractor.

5.0 QUALITY ASSURANCE/QUALITY CONTROL

5.1 Sample Methods

Soil samples will be collected from soil stockpiles and the excavation, where excavated affected soil (above TCLP regulatory thresholds) had been located. The soil samples will be collected as discrete grab samples. The samples will be collected using decontaminated stainless steel sampling equipment and placed directly into laboratory prepared containers. The samples for analysis will be placed directly into a field cooler with an internal temperature of approximately 4° C. The soil samples will be delivered to the laboratory at the end of each day. Handling requirements are summarized in section 5.3.

Sampling containers, preservation and holding times are tabulated for the contaminants of concern; semi volatile compounds and metals.

Sampling Containers, Preservation, and Holding Times

Parameter Soil	Container	Sample Size	Preservation	Max. Holding Time
Semi Volatile	Glass wide mouth with Teflon lined cap	4 oz.	Cool, 4°C Store in dark	5 days to extraction; 40 days after extraction
Metals excluding chromium+6 and Mercury	Plastic or Glass	4 oz.	None	6 Months
Chromium +6	Plastic or Glass	4 oz.	Cool, 4°C	24 hours
Mercury	Plastic or Glass	4 oz.	None	26 days

Soil samples will be collected according to the following schedule:

- 1) Stockpiled soil: 1 sample per each approximate 300 cubic yards
- 2) Confirmatory samples in excavated areas for TCLP metals (if necessary): 1 sample per each approximate 20 linear feet of excavation
- 3) Trip Blanks: 1 sample per each 10 sample batch

4) Matrix Spike: 1 sample per each 20 sample batch and matrix spike duplicate

5.2 Field Decontamination Procedures

To avoid contamination and cross-contamination of soil samples, sampling equipment will be cleaned before collection of each sample. The procedure to be used was derived from the United States Environmental Protection Agency (EPA) Region II, as published by the New Jersey Department of Environmental Protection *Field Sampling Procedures Manual*, dated 1992. This reference differs in allowing alternatives to acetone and in the use of HCL for stainless steel.

The following procedure will be followed for the samples:

- Step 1: Scrub equipment with a bristle brush using a non-phosphate detergent (alconox) in tap water.
- Step 2: Rinse with tap water.
- Step 3: Rinse with 0.1N nitric acid (HNO₃). For stainless steel equipment, rinse with 0.1N hydrochloric acid (HCL).
- Step 4: Rinse twice with deionized water.
- Step 5: Air dry.

5.3 Chain of Custody

To ensure the integrity of soil samples collected, a strict chain of custody record must be maintained on each sample. The procedure begins after initial sampling is conducted. The entry in the sampler's field logbook will include the following:

- a) Date and time of sampling;
- b) sample location (as specific as possible);
- c) the unique sample number, size and container(s) used;
- d) sample description;
- e) weather conditions (if applicable); and
- f) any additional comments.

In addition, a record must be kept of the soil sample's progress from the sample site to the laboratory, where it will be analyzed. A chain of custody form will accompany the samples delivered to the lab and will include:

- a) The sample number;
- b) the sampler's name;
- c) date and time of sampling;
- d) location at which the sample was collected, including the address, if possible;
- e) a description of the sample, as best known;
- f) signatures of people involved in the chain of possession; and
- g) inclusive dates of possession of each person in the chain.

The chain of custody form must accompany the sample(s) throughout its trip to the laboratory. If the sample(s) must be shipped to a laboratory, most shipping agents will refuse to sign or separately carry the chain of custody form. In this one case, it is permissible to put the chain of custody form into the box with the sample and then seal the box. The recipient of the box, the laboratory's sample custodian, can then attest to the box's arrival still sealed and unopened.

Accompanying the chain of custody record, or included in it, must be a request to the laboratory for sample analyses. Information required includes:

- a) Name of person receiving the sample;
- b) laboratory sample number;
- c) date of sample receipt;
- d) sample allocation; and
- e) analyses to be performed.

Finally, on arrival at the laboratory, the sample custodian must enter the sample in the laboratory's sample logbook. The chain of custody should be kept on file at the laboratory.

5.4 Laboratory Testing

AER will be using the laboratory services of American Analytical Laboratories located at 56 Toledo Street, Farmingdale, New York. American Analytical Laboratories is an ELAP certified

laboratory (NYS ELAP 11418). The American Analytical laboratory operates a Quality Assurance/Quality Control (QA/QC) program that consists of proper laboratory practices (including the required chain of custody), an internal quality control program and external quality control audits by New York State.

6.0 FINAL REPORT

AER will submit a final draft report which summarizes the data collected during the Work Plan's implementation including data relative to each parcel. The following items will be included in this remediation report:

- A narrative section describing the daily remedial activities on-site;
- Project photos;
- Copies of the laboratory data sheets and summary tables for the soil sample analysis and air testing (particulate and PID data);
- Maps showing locations of soil and air sample collection;
- Waste soil tracking and manifests, if applicable.

The draft final report will also include an Operations and Management Plan that describes the long term maintenance plan detailing how the engineering controls (pavement and a two foot soil cover in areas not covered by buildings) will be maintained. The plan will also include contingency procedures if the cap is accidentally or purposely breached.

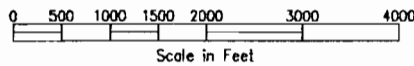
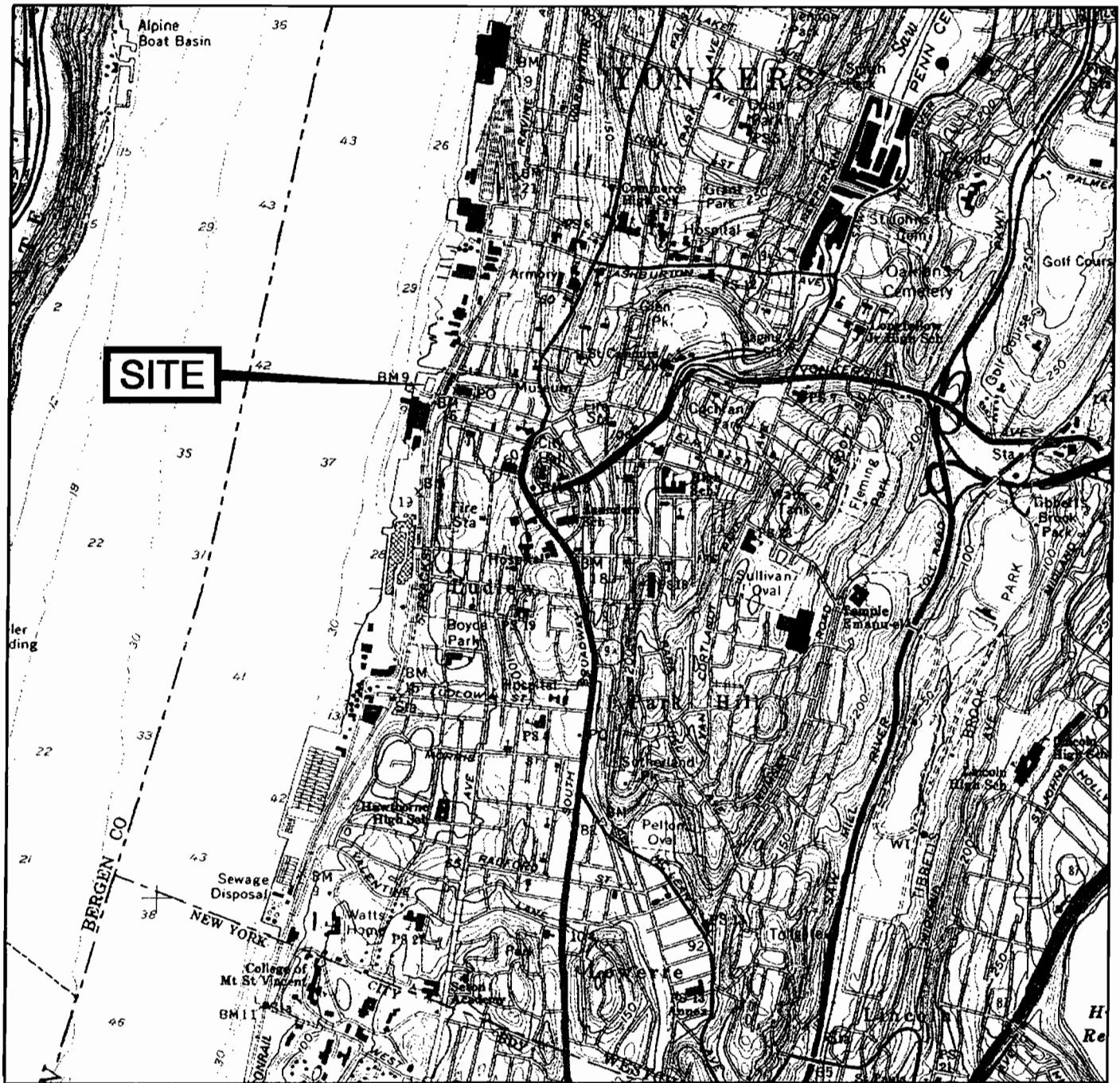
The report will be signed by a licensed New York Professional Engineer and document that remedial activities were completed in accordance with the remedial elements of the construction plans and the Record of Decision. He will be involved in daily decision making processes when necessary. Four copies of each report will be submitted; one will be unbound. The final report will be submitted in Microsoft Word and AutoCAD electronic format.

7.0 CONFORMANCE TO REMEDIATION PROJECT GOALS

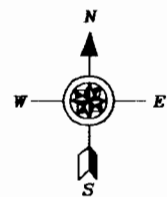
The remediation remedy, as described herein, can achieve the clean-up goals of the Agreement, which are to eliminate or mitigate threats to the public health and the environment presented by waste at the site through the proper application of scientific and engineering principles. The remedy conforms to the project goals by reducing the seven screening criteria listed in 6NYCRR Part 375-1.10. The remedy will achieve the goals, including protectiveness of public health and the environment, short term effectiveness, long term effectiveness and reduction of toxicity, mobility, and volume with treatment.

FIGURES

FIGURES



SOURCE:
 USGS TOPOGRAPHIC MAP - YONKERS,
 NEW YORK QUADRANGLE - DATED 1966
 PHOTOREVISED 1979



**YONKERS WATERFRONT
 DEVELOPEMENT
 YONKERS, NEW YORK**

SITE LOCATION MAP

AER ADVANCED
 ENVIRONMENTAL
 REDEVELOPMENT, LLC

904 MADISON AVENUE - SUITE 213
 BRIDGEPORT, CONNECTICUT 06606

DATE
11/8/01
 PROJECT No.
0214

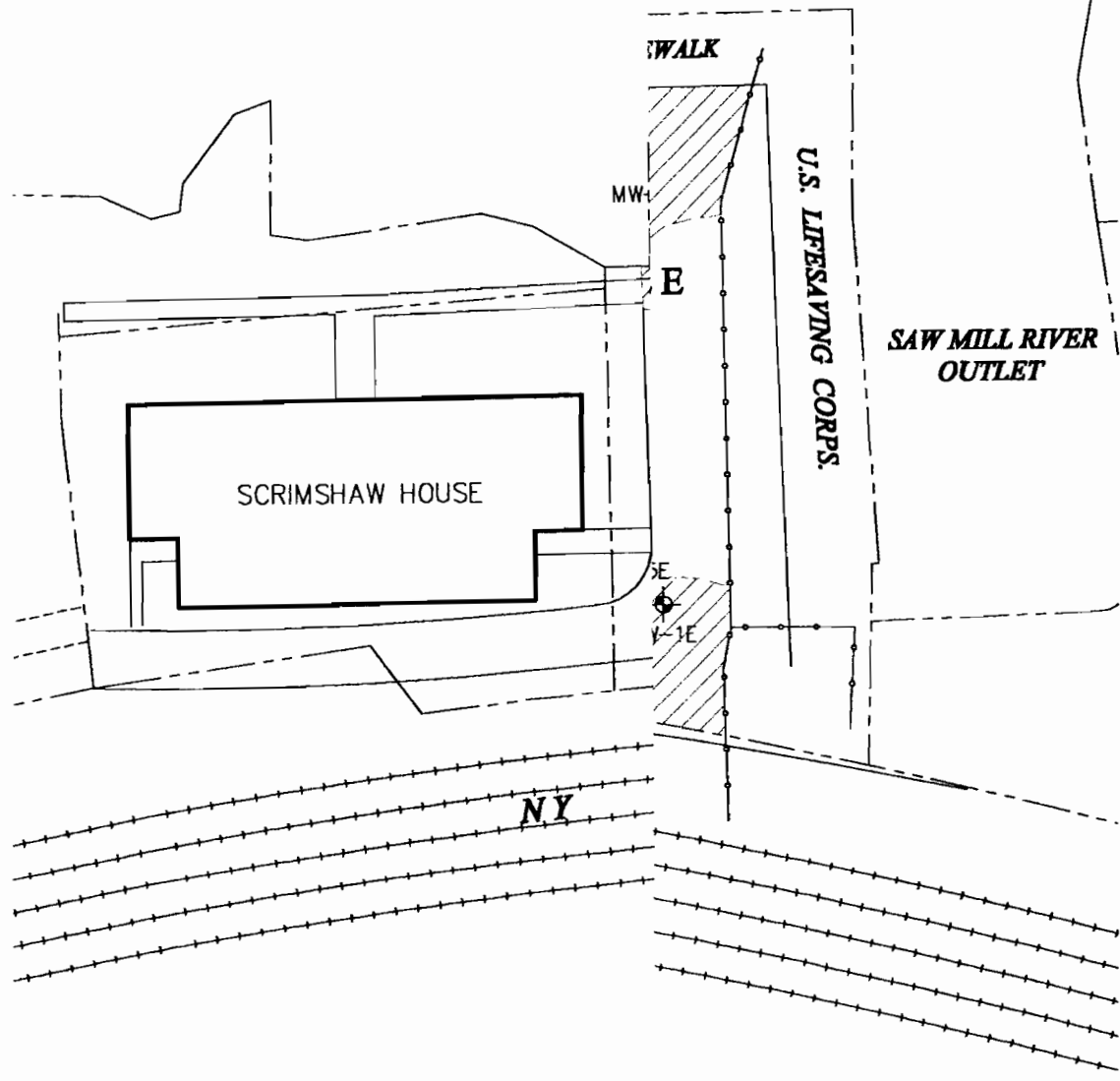
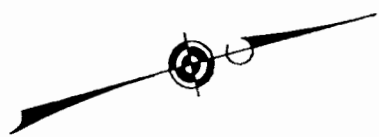
FIGURE No.

1

AER ADVANCED ENVIRONMENTAL REDEVELOPMENT, LLC
 904 MADISON AVENUE - SUITE 213
 BRIDGEPORT, CONNECTICUT 06606

YONKERS DOWNTOWN WATERFRONT DEVEL.
 127 SOUTH BROADWAY, YONKERS, NY
SITE PLAN

DRAWN BY:
JJS
 APPROVED BY:
CK
 REVISION DATE:
11/20/01
 FILE No.
0214-1B
 DATE CREATED
11/7/01
 SCALE
AS SHOWN
 PROJECT No.
0214
 FIGURE No.
2



60 90 120
 Scale in Feet

TICOR TITLE GUARANTEE COMPANY and TICOR TITLE INSURANCE COMPANY

Title No. (leasehold) 5101-60237

Title No. (loan) 5101-60153

PARCEL I

ALL that certain 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 which is distant,
North 70° 33' 29" West 22.00 feet; and

North 22° 52' 41" West 74.09 feet from a brass bolt in the railroad abutment wall, proceed the following courses and distances:

North 61° 34' 51" West 140.58 feet to a curve to the right having a radius of 30.00 feet and length of 39.13 feet;

North 13° 09' 23" East 179.69 feet;

South 78° 51' 44" East 217.31 feet to a reverse curve to the left having a radius of 4188.91 feet and a length of 238.82 feet;

Continuing on a curve to the right having a radius of 20.00 feet and a length of 34.43 feet to the point or place of BEGINNING.

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PARCEL II

ALL that certain 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 which is distant on a curve to the left having a radius of 2542.00 feet and length of 18.99 feet from a brass bolt in the railroad abutment wall, proceed the following courses and distances:

On a curve to the left having a radius of 2542 feet and a length of 370.50 feet;

North 76° 45' 47" West 129.55 feet to a curve to the right having a radius of 30.00 feet and a length of 47.09 feet;

North 13° 10' 13" East 263.07 feet;

North 78° 45' 42" East 185.91 feet to the point or place of BEGINNING.

TOGETHER with the permanent non-exclusive easement for ingress and egress for construction and repairs, each reserved by Yonkers Community Development Agency in that certain deed from Yonkers Community Development Agency to the City of Yonkers dated 12/19/83 recorded 12/28/83 in Liber 7889 cp 521, which easements shall run with the land and which easement area is more particularly described as follows:

BEGINNING at a point on the westerly side of lands of the New York Central Railroad, said point being distant 776.55 feet southerly from the southerly side of Polychrome Place (formerly Alexander Street);

THENCE westerly along the southerly side of Parcel B-2 the following courses and distances:

South 70° 34' 6" West 5.06 feet; and

North 64° 43' 46" West 137.38 feet to a point of tangency;

THENCE along a curve to the right having a radius of 30 feet, a chord bearing, North 42° 10' 54" West 23.01 feet, and an arc length of 23.61 feet to a point of reverse curve;

THENCE along a curve to the left having a radius of 55 feet, a chord bearing, North 56° 05' 23" West 65.37 feet, and an arc length of 70 feet to a point;

THENCE southerly the following courses and distances;

South 13° 00" West 7.60 feet;

South 11° 47' 45" West 60.16 feet; and

South 13° 38' 14" West 40.59 feet to a point;

THENCE easterly the following courses and distances; South 78° 15' 29" East 15.11 feet to a point;

THENCE along a curve to the left having a radius of 55 feet, a chord bearing, North 85° 57' 33" East 29.95 feet,

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and an arc length of 30.33 feet to a point of reverse curve;

THENCE easterly along a curve to the right having a radius of 30 feet, and an arc length of 23.61 feet to a point of tangency;

THENCE South $64^{\circ} 43' 47''$ East 54.37 feet to a point of curvature;

THENCE along a curve to the right having a radius of 30 feet, a chord bearing, South $23^{\circ} 14' 09''$ East 39.75 feet, and an arc length of 43.45 feet to a point of reverse curve;

THENCE along a curve to the left having a radius of 65 feet, a chord bearing, South $7^{\circ} 00' 38''$ East 55.49 feet, and an arc length of 57.33 feet to a point of reverse curve;

THENCE along a curve to the right having a radius of 68 feet, a chord bearing, South $7^{\circ} 52' 43''$ East 56.180 feet, and an arc length of 57.91 feet to a point of reverse curve;

THENCE along a curve to the left having a radius of 2,582.00 feet an arc length of 385.97 feet to a point;

THENCE southerly South $11^{\circ} 33' 42''$ West 193.35 feet to a point on the northerly line of Tax Lot 24, Block 643;

THENCE easterly South $82^{\circ} 28' 20''$ East 26.12 feet to the westerly side of lands of the New York Central Railroad;

THENCE northerly along the westerly side of lands of the New York Central Railroad and along a curve to the right having a radius of 962.40 feet and an arc length of 119.10 feet to a point;

THENCE North $63^{\circ} 7' 23''$ East 36.80 feet to a point;

THENCE along a curve to the right having a radius of 2,542 and arc length of 555.75 feet to a point;

THENCE North $70^{\circ} 33' 29''$ West 22 feet and northerly along a curve to the right having a radius of 2,564 feet and an arc length of 58.35 feet to the point and place of BEGINNING.

Appendix "E"

Generic Satisfactory Technical Completion Letter

Dear _____:

Based upon our inspection of the above referenced site and upon our review of documents that have been submitted, we have determined that the technical work required as set forth in the work plan which is a part of the above referenced Agreement to Remediate has been substantially completed.

This letter is sent to advise you of the following additional items in the work plan which must be completed in order to obtain a closeout letter in accordance with Environmental Conservation Law (ECL) 56-0509(1)(a)(i).

1. Prepare a new deed for the property associated with the project to include the language in Enclosure A to this letter, Restrictive Covenant in Favor of the State of New York and the New York State Department of Environmental Conservation (NYSDEC), and file it in the Grantor Index in the office of the recording officer of the county or counties where the real property is located.
2. Submit to my attention a copy of the recorded and indexed new deed.

Please be advised that ECL 56-0511 requires any person proposing to make a change of use at property remediated under an environmental restoration project to provide written notification to the Department. If you have any questions, please do not hesitate to call me at (518) _____.

Sincerely,

Project Manager
Division of Environmental Remediation

Enclosure

cc w/enc: Municipal Attorne
NYSDOH

Appendix "E"

Generic Satisfactory Remediation Project Completion Letter

Dear Remedial Contractor

Congratulations on having satisfactorily completed the environmental remediation restoration project that you undertook pursuant to the 1996 Clean Water/Clean Air Bond Act. Because the Department has determined, based upon our inspection of the above-referenced property and upon our review of the documents you have submitted, that you completed the project in accordance with the terms and conditions of the above-referenced State Assistance Contract(s) and Agreement to Remediate, you are entitled as a successor in title and/or lessee of the property to the benefit of the liability limitation provisions described in the New York State Environmental Conservation Law (ECL) 56-0509.

Please be advised that the significant benefits described in ECL 56-0509 are contingent upon fulfilling all continuing obligations set forth in ECL Article 56, Title 5, accompanying Regulations, the above-referenced SAC(s), and Agreement to Remediate including but not limited to the obligations involving maintaining use, activity and engineering controls; ensuring that NYSDEC has access to the property; maintaining institutional controls; and providing complete notice of any proposed change of use, as defined in ECL 56-0511.

If you have any questions, please do not hesitate to contact _____, the Department's project manager at ()_____.

Sincerely,

Michael J. O'Toole, Jr.
Director
Division of Environmental

Remediation

cc w/enc: Municipal Attorney
NYSDOH

Appendix "F"

Restrictive Covenant in Favor of the State of New York and
New York State Department of Environmental Conservation

The real property conveyed herein by this deed has been investigated and remediated in accordance with the terms and conditions of the "Environmental Restoration Program" established under the 1996 Clean Water/Clean Air Bond Act, as set forth in title 5 of article 56 of the New York State Environmental Conservation Law ("ECL") and its accompanying regulations, and is subject to the terms and conditions set forth in such laws and regulations. This real property is further subject to the terms and conditions of the following contracts entered into by the _____ ("Municipality") and the New York State Department of Environmental Conservation ("NYSDEC"): an investigation contract, State Assistance Contract ("SAC") No. _____, filed in the _____ County Clerk's Office in Book of Deeds No. ____ at Page No. ____; and a remediation contract, SAC No. _____ filed in the _____ County Clerk's Office in Book of Deeds No. ____ at Page No. _____. Additionally, the real property is subject to the terms and conditions of the Record of Decision ("ROD") relating to the investigation and approved remediation of the real property, as prepared by NYSDEC and dated _____, and on file in the offices of NYSDEC.

The Grantor agrees to the following conditions with respect to the use of the real property described herein:

- a) the property shall not be used for any purpose other than the following: _____.
- b) the Municipality and successors in title shall implement and maintain the following engineering controls over the property:
 - (i) _____; and
 - (ii) _____; and
 - (iii) annual certification to the NYSDEC that the remedy and protective cover have been maintained and that the conditions of the property are fully protective of public health and the environment.

The Grantor hereby declares that the real property described herein and being conveyed by this instrument shall be held, sold and conveyed subject to each and every term, covenant, condition and restriction set forth in the afore-mentioned law, regulations, and contracts. All such terms, covenants, conditions, and restrictions shall constitute covenants that shall run with the land and shall be binding on all parties including heirs, successors, and assigns having any right, title or interest in this real property, or any part thereof. The Grantor further declares that any use or occupancy of the real property conveyed herein by this deed is limited to the uses identified above and that any "change in

use" which includes, but is not limited to, construction on the real property, is subject to the requirements set forth in section 56-0511 of the ECL, which requirements minimally include the prior notice and approval of NYSDEC, or its successor. The Grantor additionally declares that every deed, subsequent to this deed, shall contain this restrictive covenant and all subsequent owners shall be deemed to covenant by acceptance of a deed to be bound by this restrictive covenant. The Grantor also declares that the State of New York, NYSDEC, as well as its successors or assigns, shall be entitled to enforce the terms of this restrictive covenant.