

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation
of a Remedial Response of
Parcels "A" and "E" of the
Hunts Point Food Distribution Center,

AGREEMENT

INDEX NUMBER: D3-0004-99-04

by

the City of New York,

DEFINITIONS

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

- A. "Contemplated Use": Commercial uses consistent with local zoning, except the development of residential housing, community facilities, public recreating, day care/child care facilities or medical facilities..
- B. The Site's "Covered Contamination": the concentrations of Existing Contamination that remain at the Site at the time the Department issues the "no further action" letter pursuant to Paragraph I.E of this Agreement.
- 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": means possible coal/coke/ash, coal tar, purifier waste, or petroleum-based residues and other substances associated with MGP operations, including hazardous wastes as ECL 27-1301 defines that term, that MGP facilities formerly operating on the Site generated. The term also includes contamination encountered during the course of the Agreement's implementation that relates to or is commingled with contamination related to the MGP facilities formerly operated at the Site and also hazardous substances from other operations conducted by Volunteer at the Site, the nature and extent of which were unknown or inadequately characterized as of the effective date of this Agreement but shall be fully characterized to the Department's satisfaction.

G. "Investigation Work Plan": the Department-approved Investigation 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 is an enforceable part of this Agreement.

H. "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.

I. "Response Plan": a Department-approved Response Plan pertaining to the Site that Volunteer shall implement and that is attached to this Agreement as Exhibit "C", 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.

J. "Site": that property which is consisting of those portions of Parcels "A" and "E" as set fourth in the attached site description. Exhibit "A" of this Agreement are maps showing its general location and a legal description of that portion of Parcel A and Parcel E comprising the Site.

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

L. "Volunteer": The New York City Department of Business Services ("DBS"), located at 110 William Street, 3rd Floor, New York, New York 10038. All of the Volunteer's responsibilities for investigation and remediation at the Site will be conducted by DBS's agent, the New York City Economic Development Corporation.

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) with respect to the Existing Contamination at the Site.
2. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: Volunteer acquired the Site in 1968 and has managed the Site, which has remained vacant and fenced, since that date. Volunteer has not conducted any operations on the Site since acquiring ownership.
3. The Department's authority to require abatement and remediation of releases of, inter alia, hazardous substances as that term is defined in 42 U.S.C. 9601(14), including MGP wastes, that are in violation of law or that exceed State environmental quality standards (as those set

forth in 6 NYCRR Part 703) (“hazardous substances”), is varied, including, but not limited to, ECL 1-0101, 3-0301, 71-1929, 71-2703, and 71-2705. In addition, the Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution caused, by inter alia, the release of hazardous substances into the environment. ECL 3-0301.1.i. Furthermore, the Department has authority to require abatement and remediation of significant threats to the public health or the environment caused by threatened releases of hazardous substances that are hazardous wastes as that term is defined in ECL 27-1301.

4. A. Volunteer wishes to enter into this Agreement in order to ensure and the Department hereby determines that this Agreement constitutes a demonstration that any remedial 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.

B. Volunteer also wishes to enter into this Agreement in order to resolve its potential liability as a party responsible for the investigation and remediation of the Existing Contamination at the Site under ECL Article 27, Title 13 based upon Volunteer's investigation and remediation of the Site. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

C. Volunteer, desirous of implementing a remedial program acceptable to the Department, consents to the terms and conditions of this Agreement.

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

A. for Volunteer to,

1. implement the Department-approved Response Plan for the Site relating to the Existing Contamination and

2. reimburse the State's administrative costs as provided in this Agreement, and,

B. in accordance with the terms of this Agreement, for the Department to release, covenant not to sue, and forbear from bringing any action, proceeding, or suit against Volunteer for the further investigation or remediation of the Covered Contamination at the Site.

6. 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 issue 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 AND THE TRUSTEE'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Investigation Work Plan and Development and Implementation of the Response Plan, if Necessary

A. Within 30 days after the effective date of this Agreement, Volunteer shall commence implementation of the Investigation Work Plan and implement it in accordance with its terms.

B. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Investigation Work Plan or any Department-approved modification to it and shall not modify any obligation unless first approved by the Department.

C. In accordance with the schedule contained in the Investigation Work Plan, Volunteer shall submit to the Department a final investigation report. The final investigation report shall:

1. include all data generated and all other information obtained during the investigation;
2. provide all of the assessments and evaluations identified in the Investigation Work Plan;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the Investigation Work Plan.

D. 1. After its acceptance of the final investigative report submitted under Subparagraph I.C of this Agreement, the Department shall determine whether it has sufficient information respecting the nature and extent of the contamination on the Site.

i. If the Department determines that it does not have sufficient information respecting the nature and extent of the Site's contamination, it will so notify Volunteer in writing. Volunteer shall collect such additional data under a Department-approved

revision to the Investigation Work Plan, which shall be attached to this Agreement as Exhibit "B-1" and made a part of this Agreement. However, if within 10 days after receipt of the Department's written notification, Volunteer elects in writing not to collect such additional data or if within that period the Department and Volunteer cannot agree upon revisions to the Investigation Work Plan, then, except with respect to

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

b. 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 investigative activities were commenced; and

c. the Department's right to enforce the obligations described in Subparagraphs I.D.1.i.a and I.D.1.i.b of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the tenth day after Volunteer's receipt of the Department's written notification; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

ii. If the Department determines that it has sufficient information respecting the nature and extent of the Site's contamination, it will so inform Volunteer in writing, and the Department will inform it in that communication whether the Department believes that remediation of contamination on the Site is needed to allow the Site to be used for the Contemplated Use.

2. If the Department determines that no remediation is needed to allow the Site to be used for the Contemplated Use, it shall so state in writing and shall provide Volunteer with the forbearance, release, and covenant not to sue described in Subparagraph I.G of this Agreement and with the notification letter described in Subparagraph I.H of this Agreement.

3. If the Department determines that remediation is needed to allow the Site to be used for the Contemplated Use, it shall so state in writing; and both parties shall develop a proposed Response Plan that shall be noticed for public comment in accordance with Subparagraph I.D.4 of this Agreement. If within 10 days after receipt of the Department's written determination, Volunteer elects not to develop a Response Plan; or, in the event that the Department concludes that a mutually acceptable Response Plan cannot be successfully negotiated, 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.D.3.i and I.D.3.ii of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

The proposed Response Plan shall provide, *inter alia*, that if during the Response Plan's implementation, contamination is discovered that was not discussed in the final investigative report, Volunteer shall investigate the nature and extent of such newly discovered contamination, and the Work Plan will be revised to have Volunteer remediate such newly discovered contamination in the event that this remediation is needed to allow the Contemplated Use to proceed.

4. Upon development of a proposed Response Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the public's opportunity to submit to the Department by no later than 30 days after the date of the issue of the Environmental Notice Bulletin in which the notice shall appear, comments on the proposed Response Plan and shall mail an equivalent notice to the County of Bronx and City of New York. If, as a result of its review of the comments received, the Department determines that the proposed Response Plan to implement the Department-approved remedial activities for the Site 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 proposed Response Plan; or

ii. due to information received, in whole or in part, after the Department's approval of the proposed Response Plan, which indicates that the activities carried out in accordance with it 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 proposed Response Plan accordingly. If the Department and Volunteer agree upon revisions to the proposed Response Plan, the revised proposed Response Plan shall become the final Response Plan and shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement. However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the proposed Response 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.D.4.iii and I.D.4.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 Response 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, following the 30 day comment period, the Department determines that the proposed Response Plan to implement the Department-approved remedial activities for the Site does not need to be revised then the proposed Response Plan shall become the final Response Plan and shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement.

5. Volunteer shall commence implementation of, and implement, the final Response Plan contained in Exhibit "C" in accordance with its terms. However, the parties agree that the final Response Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during implementation of the final Response Plan unless after good faith negotiations, Volunteer and the Department cannot agree upon modifications to the final Response Plan. In such event, 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.D.5.i and I.D.5.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 final Response Plan; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

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

2. Respondent shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("IRM 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.

F. 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.

G. 1. After receipt of the final engineering report, the Department shall notify Volunteer in writing whether the Department is satisfied that the Response Plan was satisfactorily implemented in compliance with Exhibit "C" (and, as appropriate "C-1") and the Department-approved design, which notification shall not be unreasonably withheld.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Response Plan have been reached, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department and the Trustee release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer for the further investigation and remediation of the Site, and for natural resources damages, 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 and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

i. due 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 Response 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 Response 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 Response 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 Response Plan were reached.

Additionally, the Department and the Trustee hereby reserve all of their respective 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 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.

H. If the Department is satisfied with the implementation of the Response 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 "D;"

I. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.G or in a "no further action" letter issued under Subparagraph I.H 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.G of this Agreement and in the "no further action" letter issued under Subparagraph I.H 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, the Trustee, 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.G and in the "no further action" letter issued under Subparagraph I.H 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.

J. During implementation of all activities conducted on the Site under either the Investigation Work Plan or the Response Plan, Volunteer shall

1. have on-site a full-time representative who is qualified to supervise the activities undertaken; and

2. notify the Department of any significant difficulties that may be encountered in implementing the Investigative Work Plan, the Response Plan, any Department-approved modification to either of them, or any Department-approved detailed document or specification prepared by or on behalf of Volunteer pursuant to either, and shall not modify any obligation unless first approved by the Department, which approval shall not be unreasonably withheld.

II. Progress Reports and Meetings

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

1. describe the actions which have been taken toward achieving compliance with this Agreement;

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 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 the Response 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 the Agreement, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to the Response 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.G.1 of this Agreement approving Volunteer's final engineering report concerning the Response 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; provided, however, that if circumstances are such as to prevent Volunteer from providing the Department with such advance notice, Volunteer will provide as much advance notice as possible under the circumstances.

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 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 use its best efforts to notify the Volunteer in writing within 30 days after its receipt of the submittal and shall specify the reasons for its disapproval 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 under which the work was performed. The Department agrees to promptly meet with Volunteer to explain and clarify its disapproval and attempt to resolve any areas of disagreement. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, or such additional time as the parties may agree, 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. The Department shall use its best efforts to notify the Volunteer in writing within 30 days after its receipt of the submittal whether it accepts or rejects the revised submittal. 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, however Volunteer shall not be required to submit a microfilm copy of any report which the Department agrees in writing does not need to be submitted in such form. 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, inability to obtain reasonable Site access to perform its obligations under this Agreement despite its good faith efforts, 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

Subject to conditions which may be prescribed in the Site's Health and Safety Plan, 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. Volunteer shall provide the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

A. Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money, which sum shall not exceed \$30,000.00, 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 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.G.1 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. Reservations of Rights

A. Except as provided in Subparagraph I.G.1 of this Agreement and in any “no further action” letter issued under Subparagraph I.H. 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, provided, however that Volunteer shall not indemnify the Department, the State of New York, and their representatives and employees in the event that such claim, suit, action, damages or costs relate to or arise from any unlawful, willful, grossly negligent or malicious acts or omissions on the part of the Department, the State of New York or their representatives or employees.

IX. Notice of Sale or Conveyance

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

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

B. provide the Department with evidence of such filing.

Volunteer may terminate the Notice upon the earlier of when the Department notifies Volunteer in writing pursuant to Subparagraph I.G.1 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan has been successfully implemented.

X. Deed Restriction

A. Volunteer shall, within 30 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.G.1 of this Agreement, record an instrument with the Bronx 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 and all institutional and engineering controls required by the Response Plan; 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.G.1 of this Agreement approving Volunteer's final engineering report concerning the Response Plan, Volunteer shall provide the Department with a copy of the instrument reflecting the deed restriction certified by the Bronx County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Bronx 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
50 Wolf Road
Albany, New York 12233-5550

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

Dale A. Desnoyers, Esq.
New York State Department of Environmental Conservation
Room 410A
50 Wolf Road
Albany, New York 12233-5550

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

- Four copies (one unbound) to Robert Cozzy, P.E.
- Two copies to Dr. Carlson

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

Mark McIntyre, Esq.
New York City Law Department
100 Church Street, Room 3-125
New York, New York 10007

with a copy to:

Kay Zias
New York City Economic Development Corp.
110 William Street, 6th Floor
New York, New York 10038

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 at the Site 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 VII 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 except where such advance notice is not possible in that case Volunteer will provide the Department with as much advance notice as is possible under the circumstances.

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 shall 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 and Volunteer's successors and assigns shall be bound by this Agreement. Volunteer and Volunteer's successors and assigns 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 Robert Cozzy, P.E. and to Dale A. Desnoyers, Esq.

J. This Agreement concerning the Site's remediation constitutes an exercise of the Department's prosecutorial discretion and accordingly, is not subject to review under the State Environmental Quality Review Act and its implementing regulations. ECL 8-0105.5(I), 6 NYCRR 617.5(c)(29).

K. 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, including present or past owners and/or operators of the Site, or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs.


L. Volunteer and Volunteer's officers, directors, employees, servants, agents, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim 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. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED:

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

Executive Deputy Commissioner

 *1/20/00*

for: Commissioner John Cahill

CONSENT BY Volunteer

Volunteer 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 New York City Department of Business Services

By: Deborah R. Weeks

Deborah R. Weeks

ACTING Commissioner, Department of Business Services

Date: 12-8-99

STATE OF NEW YORK)

) s.s.:

COUNTY OF NEW YORK)

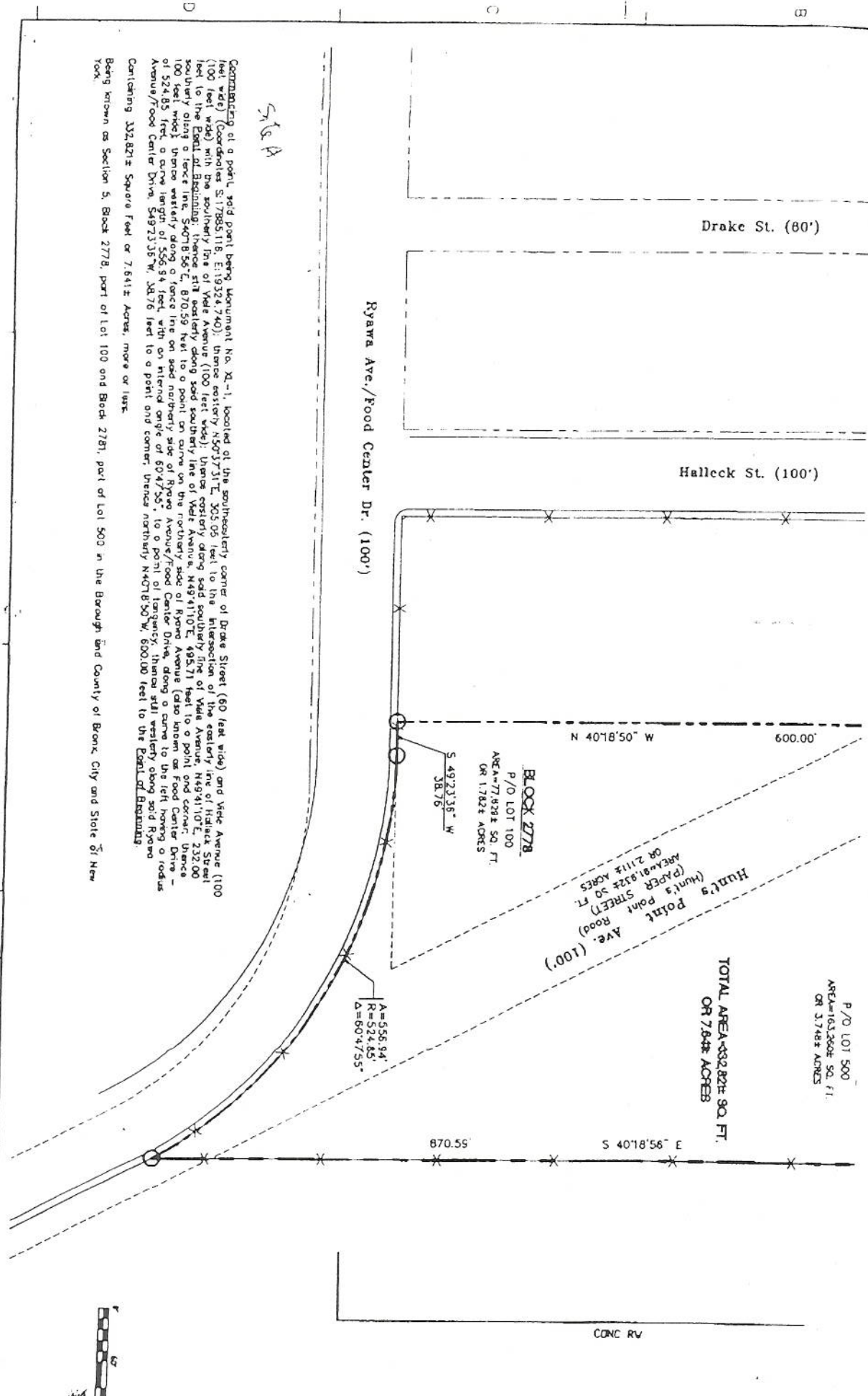
On this 8th day of December, 1999, before me personally came ---, to me known, who being duly sworn, did depose and say that --- resides in ---; that --- is ---, the described in and which executed the foregoing instrument; and that --- signed --- name on behalf of NYC Dept of Business Services and was authorized to do so,

Andrew Schwartz
Notary Public

ANDREW SCHWARTZ
Notary Public, State of New York
No. 24-4943703
Qualified in Kings County
Commission Expires Oct. 31, 2000

EXHIBIT "A"

Map of Site



Continuation of a point, said point being Monument No. X-1, located at the southeasterly corner of Drake Street (60 feet wide) and Yale Avenue (100 feet wide) (Coordinates S:17985.118, E:19338.740). Thence easterly N50°37'31"E, 505.05 feet to the intersection of the easterly line of Halleck Street (100 feet wide) with the southerly line of Yale Avenue (100 feet wide); thence easterly along said southerly line of Halleck Street, N49°41'10"E, 232.00 feet to the Point of Beginning; thence still easterly along said southerly line of Halleck Street, N49°41'10"E, 495.71 feet to a point and corner; thence southerly along a fence line, S49°18'56"E, 870.59 feet to a point and corner; thence southerly along a fence line, S49°18'56"E, 870.59 feet to a point and corner; thence southerly along a fence line on said block in a curve on the northerly side of Ryawa Avenue/Food Center Drive, doing a curve to the left having a radius of 524.85 feet, a curve length of 556.94 feet, with an internal angle of 60°47'55", to a point of tangency; thence still easterly along said Ryawa Avenue/Food Center Drive, S49°23'36"W, 38.76 feet to a point and corner; thence northerly N40°18'50"W, 600.00 feet to the Point of Beginning.

Containing 332,827 ± Square Feet or 7.641 ± Acres, more or less.

Being known as Section 5, Block 2778, part of Lot 100 and Block 2781, part of Lot 500 in the Borough and County of Bronx City and State of New York.



PARCEL "E"

Commencing at a point, said point being a monument located at the northeasterly corner of Drake Street (60' wide) and East Bay Avenue (100' wide); thence easterly N50°56'36"E, 305.93 feet to a point, said point being the intersection of the southerly line of Food Center Drive (formerly East Bay Avenue - 100' wide) with the easterly line of Halleck Street (100' wide); thence easterly along said southerly line of Food Center Drive (formerly East Bay Avenue - 100' wide), N49°41'10"E, 1,020.00 feet to the Point of Beginning, thence easterly along said southerly line of Food Center Drive, N49°41'10"E, 304.59 feet to a point on curve; thence still easterly along a curve bearing to the right having a radius of 188.00 feet, an arc length of 24.57 feet and an internal angle of 07°29'17" to a point of tangency, thence still easterly N57°10'29"E, 102.79 feet to a point and corner; thence southerly S40°18'50"E, 694.00 feet to a point and corner; thence westerly S49°41'10"W, 431.00 feet to a point and corner; thence northerly N40°18'50"W, 709.00 feet to the Point of Beginning.

Containing 304,631 ± Square feet or 6.99 ± Acres, more or less.

Being known as Tax Section 10, Block 2781, part of Lot 600 in the Borough of Bronx, County of Bronx, City and State of New York as indicated on a signed and sealed survey prepared by J. Nicoletti, L.S., dated 8/7/98.

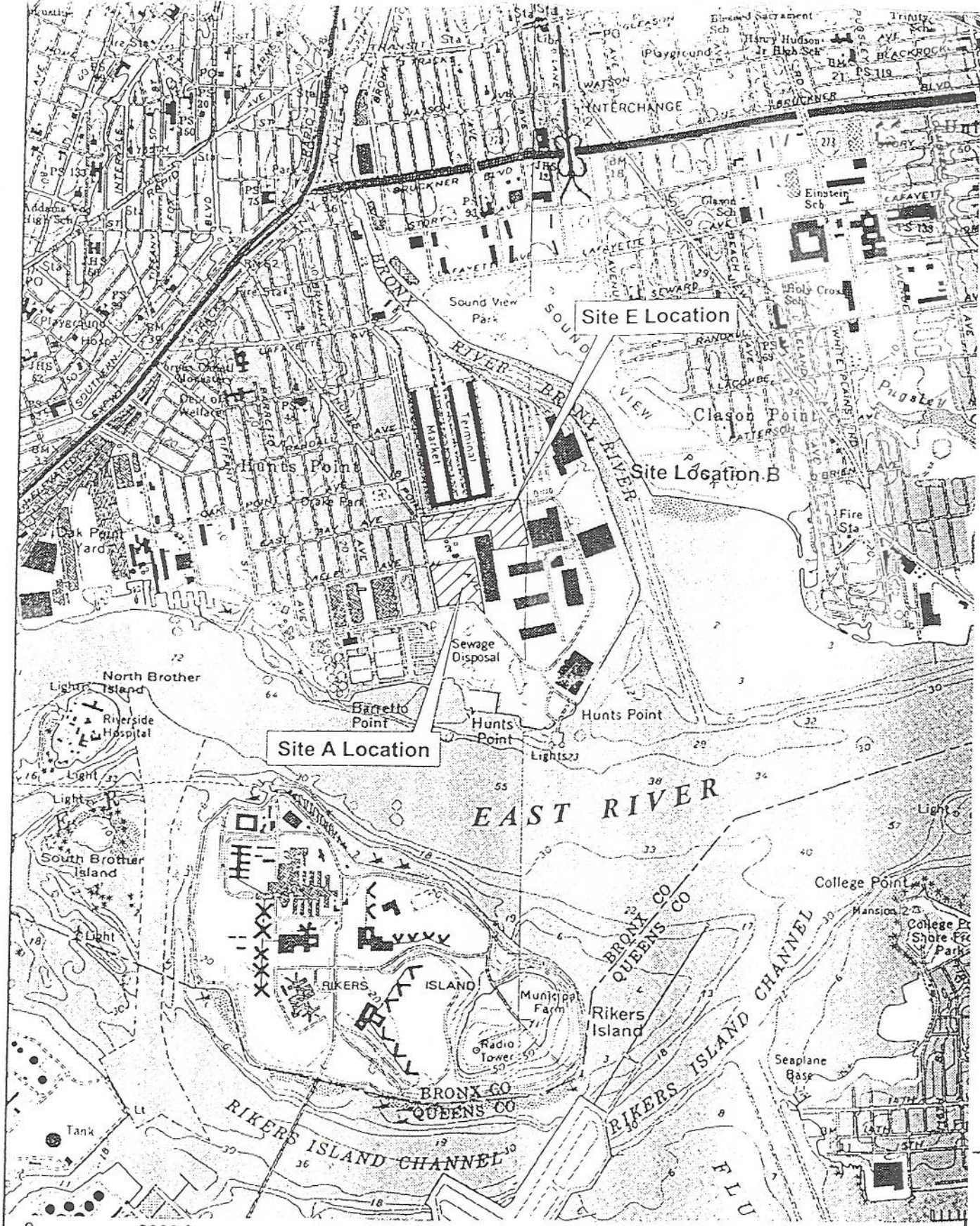


[Signature] 6/14/1999
Stavros Timotheou, L.S.
N.Y. LICENSE NO. 050216

Parcel "E"

Metes and Bounds Survey
Tax Section 10, Block 2781 P/O Lot 800 Borough & County of Bronx,
City & State of New York

Munoz Engineering, P.C.
505 Elghth Avenue
New York, NY 10018
(212) 867-8688 Fax (212) 268-8464
e-mail: munozeng.com



Map source: USGS 7.5 minute quadrangle series, Central Park, NY-NJ, 1966, photorevised 1988.

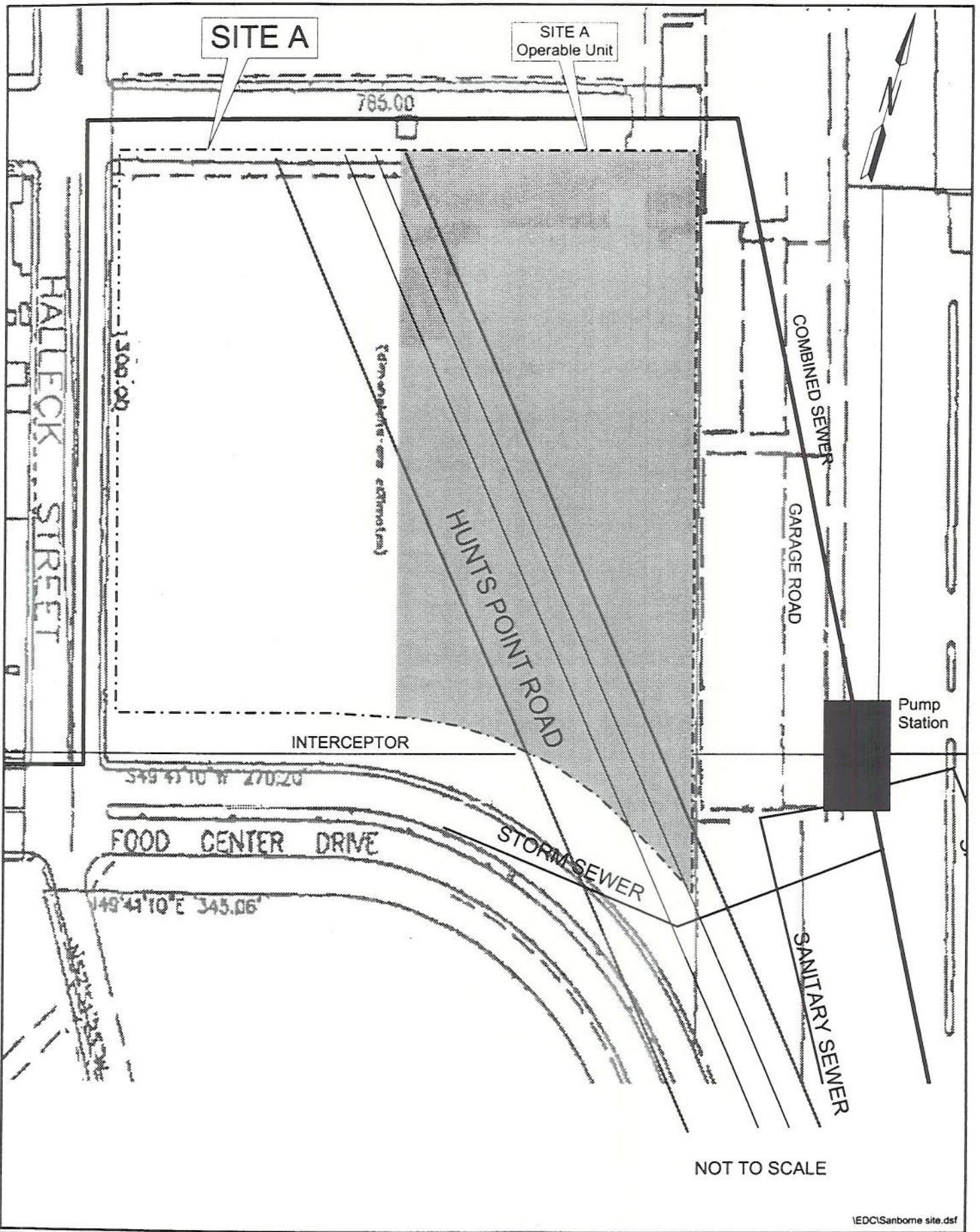
IEDC\Sanborne site.dsf

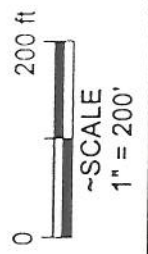
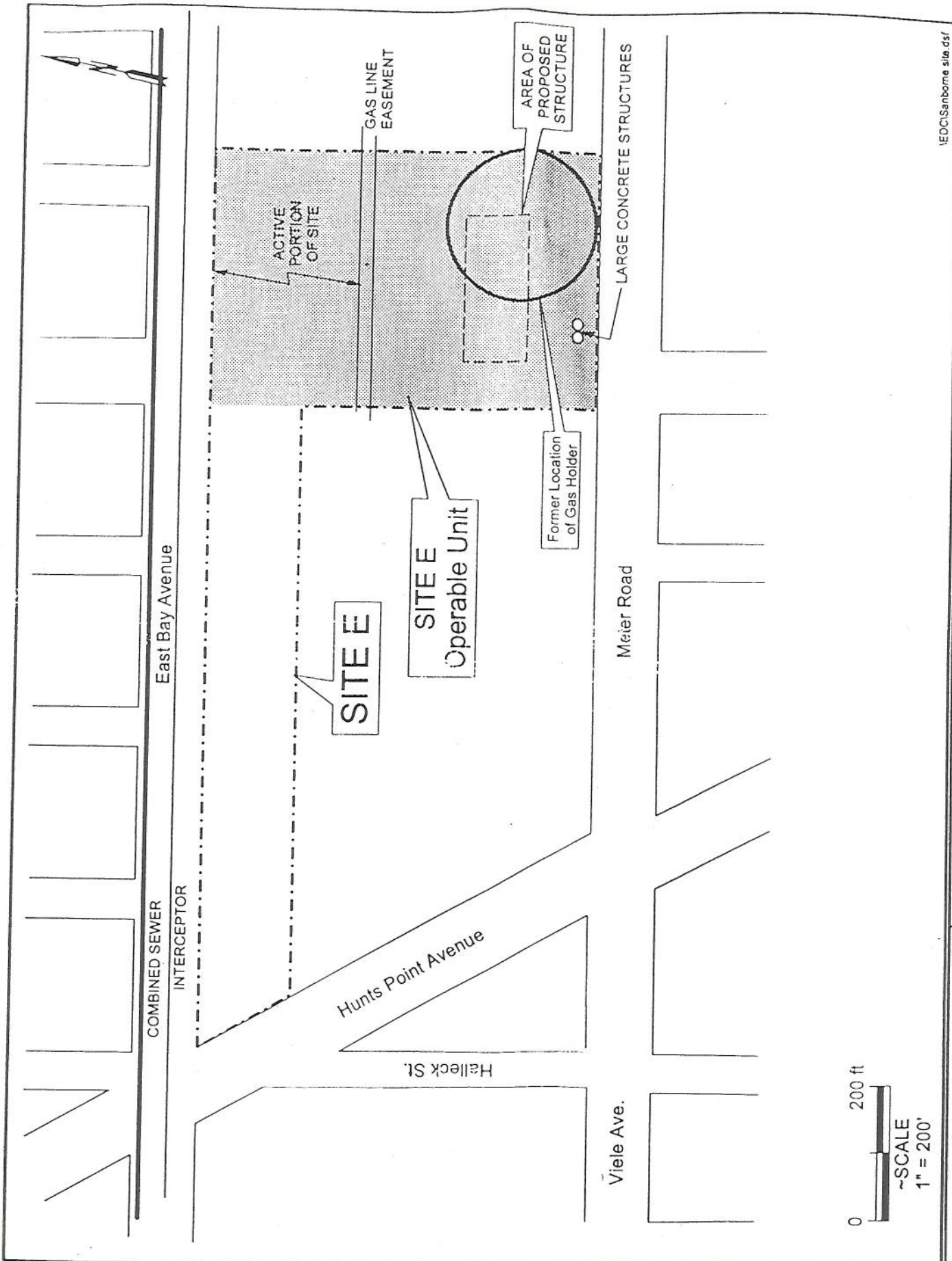
LMS Lawler, Matusky & Skelly Engineers LLP
 One Blue Hill Plaza • Pearl River, New York 10965
 ENVIRONMENTAL SCIENCE & ENGINEERING CONSULTANTS

Site Location

Hunts Point

Figure 1





IEDC:\Sanborne site.dsf

Operable Unit Site E (With Known Utilities)

Hunts Point

EXHIBIT "B"

Investigative Work Plan

Hunts Point Cooperative Market Redevelopment Plan

Investigative Scope of Work for Operating Unit Portion of Parcels A & E, Bronx, NY

**Prepared by: Lawler, Matusky &
Skelly Engineers LLP June 1999**
(Revised 17 June 1999)

INTRODUCTION:

The Scope of Work is for subsurface investigation for the initial Operable Units (OUs 1 and 2) of two Parcels (A & E) located in the northwestern portion of the Hunts Point Cooperative Market (Figure 1). The purpose for the investigation is to determine areas of the OUs that are suitable for redevelopment under the proposed redevelopment plan and identify specific areas that may require more specific attention. Following completion of the SOW, areas not showing free product or gross contamination will be immediately available for the proposed redevelopment. The sites are best described as follows:

SITE A: The total area of Site A is rectangular in shape and covers approximately 14.5 acres with the OU 1 area being approximately 7 acres in size. The Site is bounded on the north by the northern edge of Viele Avenue, on the south by Food Center Drive, on the west by Halleck Street, and the east by what was designated in the 1951 Sanborn as Laboratory Road (Figure 2).

SITE E: Site E is shaped as a north/south orientated rectangle with a long narrow rectangular piece attached to the northwestern edge and extending in a westerly direction. The total area of the Site is approximately 11.6 acres with the OU 2 area being approximately 7.3 acres in size. The entire Site E is bounded on the north by Bay Avenue (now part of Food Court), on the south by the approximate southern border of Viele Avenue, with the extension ending at Halleck Street, and the main site extending east to the approximate limit of Falconer Street (now bordered by the A & P food center (Figure 3).

Historic Sanborn and topographic maps have been reviewed and a composite showing conditions which were identified on those maps is included as Figure 4. Historic aerial photographs will also be reviewed prior to the start of field work and any conditions not shown on the Sanborns will be taken into consideration for the actual sampling. The intrusive work proposed in this scope takes into account the information shown on these maps and photos.

SCOPE OF WORK for Sites A & E:

Approach to Sampling

- 1) LMS will begin this assignment by conducting a site inspection to identify the health and safety concerns for the sites, access limitations, layout of control areas, preparation of a site specific health and safety plan, and confirmation of utilities on the sites with respect to the sampling locations.
- 2) Sampling will consist of excavation and visual inspection of a significant amount of material across each of the sites in the areas of the OUs shown on Figures 2 and 3. The inspection will also allow for collection of samples across each site in these areas in a manner not normally available during the installation of test borings and should allow for a fairly extensive site characterization to be performed.

Based on the review of boring logs from the previous Phase II work, and a walkover of the sites, it is proposed that a track mounted excavator be used to install trenches and test pits across both sites. Trenches will begin on one side of the site (east or west) and extend across the site to a point reasonably close to the opposite edge of the area influenced by the OU. Test pits are proposed to be installed in areas now known to contain significant underground utilities that would make a continuous trench impossible or infeasible. Figure 5 shows the specific location of both pits and trenches in the OU of Site A. The portion of the Site that is covered or broken up with utilities is proposed to have test pits installed. Approximate dimensions of the trenches and locations of the pits for each site are shown on Figure 5 (Site A) and Figure 6 (Site E). Specific site features viewed during the utility clearance (i.e. tar balls, extruded surface tar, or obvious signs of a subsurface condition) may prompt the adjustment of trench locations. As well as the determination of significant underground utilities during the markout that may prompt trenches to be scaled down to test pits.

A total of five (5) linear arrangements of excavations (trenches or pits) are proposed for Site A. Figure 5 shows the first three and the last lateral east – west sampling locations to be completed with trenches and the fourth row from the northern end to include four test pits along the lateral. Following completion of the excavation, a north – south trench approximately 30 ft long will be excavated across the area of the trench or test pit that shows the greatest level of visible contamination. If no visible contamination is encountered, then this will not be necessary. A total of four (4) lateral sampling locations are proposed in Site E (Figure 6); Three trenches approximately 200 ft long are located at the northern and southern end of the empty portion of the operable unit (south of the easement) . In the northern portion of the site above the utility easement, one lateral will be located in an area away from the high traffic zone. Following completion of the excavation, a north – south trench approximately 30 ft long will

be excavated across the area of the trench or test pit that shows the greatest level of visible contamination. If no visible contamination is encountered, then this will not be necessary. A gap is shown on the southernmost trench due to access problems between the existing concrete structures and fence. Additional gaps in the trenches may be necessary to avoid existing or suspected underground utilities, structures or obstructions. These determinations may be made at any time up to and during the actual excavation.

Trench Excavation and Sampling Procedures

Each trench or test pit will extend to a depth at which groundwater interferes with observations, refusal, or 15 ft below grade, whichever comes first. Based on existing information, groundwater is expected to be encountered between the depths of 8 – 12 ft below grade. Material removed from the excavation will be placed as close to the actual excavation as possible while still maintaining protection against collapse. All inspection of material will occur from outside the excavation. LMS will monitor and log each excavation as it is extended with a combustible gas indicator (CGI) and either a photoionization detector (PID), or flameionization detector (FID). Readings will be collected according to depth and location in the excavations and will be used to reconstruct a subsurface profile of the Site. During the excavations, specific attention will be paid in the examination of unearthed structures (piping, vaults, specialized fill material, etc.). It is not the intent of the excavations to delineate and remove piping and remediate contamination and therefore material will only be removed from the backfill stockpile if contamination (petroleum or other obvious contaminants) is encountered in a quantity and condition where it can be reasonably segregated. If any material requires segregation, it will be placed separate from the material to be backfilled on plastic sheeting. Understanding that conditions and material may vary, LMS will extend the trenches in length and depth according to conditions that are encountered. The general procedure would be to open an area equal to the reach of the excavator and remove material in 1ft or 2ft lifts.

During intrusive sampling, LMS will perform air monitoring at each Site as per the Community Air Monitoring Plan portion of this Scope. All samples collected will be delivered under chain-of-custody protocol via overnight courier to a New York State Department of Health (NYSDOH) certified analytical laboratory. Samples will be analyzed for the parameters described below and listed on Table 1, the level of reporting will be NYSDEC ASP Category B deliverables.

LMS proposes to collect three (3) material samples from each trench or horizontal group of test pits at depths above the saturated zone. The general procedure will be to collect grab samples for volatile organics (VOC) analysis from the three locations in each trench that exhibit the greatest degree of petroleum and/or organic contamination based on observations and meter readings ("worst case" locations). Three (3) worst case composite samples will also be collected and submitted for Target Compound List (TCL) semi-volatile organic compounds (SVOCs), pesticide/PCBs, metals and cyanide. Metals analyses will include

those reported at significant concentrations at other MGP sites that might pose some concern with respect to human health: arsenic, cadmium, chromium, lead, nickel, and vanadium

When groundwater is encountered it will be inspected for obvious contamination and if free phase petroleum or significant contamination is encountered, the bottom of the trench will be backfilled in that location in order to prevent rapid lateral movement of petroleum in the excavation. Upon completion of each trench excavation and prior to complete backfilling, a temporary slotted PVC pipe (2-4 in. ID.) will be placed in the location of greatest obvious groundwater contamination in that trench. The pipe will be kept upright as the trench is backfilled and a temporary cap placed on the top. If no obvious groundwater contamination is encountered then PVC will be installed in the area affording the most available water.

Backfilling will be performed in 1-1.5 ft lifts or greater if conditions allow and compacted by the excavator bucket between each lift. Figure 7 shows the relative layout of both OUs with respect to the sampling locations and the historic site setting.

Upon completion of all of the trenches for each Site, the temporary PVC pipes will be inspected and the locations exhibiting the worst case condition in addition to the expected downgradient (southernmost) locations, will have a groundwater sample taken in that location. If both are in the same trench then only one groundwater sample for that OU will be collected. Each sample will be collected and submitted for TCL VOC, SVOC, Pesticide/PCB, metals and cyanide. The samples will be filtered in the field for all parameters with the exception of VOCs using an inline filtration apparatus and then preserved prior to shipment to the laboratory.

Deep Boring Installation and Sampling Procedures

Three (3) deep borings are proposed to be installed at the Sites A and E (two (2) at OU1 and one (1) at OU2). The initially proposed locations are in the southern end of Site E in the former vicinity of the gas holder, and in the eastern portion of Site A, nearest the purifying boxes (as they appear on the 1951 Sanborn). The final locations will be modified based on the trenching inspection. LMS proposes to place the borings in their respective Sites in a location that exhibits the greatest potential for encountering dense non-aqueous phase liquid (DNAPL). Each boring will be advanced using air rotary with an outer casing advancer as the drilling method. This method is preferable to wet rotary in situations such as this since it will not require recirculation of drilling fluid that has contacted and potentially mobilized contamination. All cuttings exit at the top of the boring and stay at the surface. Continuous split spoon samples will be collected to the bottom depth of the boring which will be 50 ft or top of bedrock, whichever comes first. Upon removal of each split spoon, the sample will be closely inspected for physical characteristics including: color, material type and composition, relative grain size and distribution, presence of

free moisture, potential confining characteristics, evidence of contamination, and degree and orientation of contaminated bedding. If DNAPL is encountered, a sample will be collected and submitted to the contract analytical laboratory for analysis of SVOCs using EPA Method 8270. Following completion of each boring, a mixture of Type 1 Portland cement and bentonite will be pumped into the borehole as the casing is removed.

Investigation and Data Report

Following completion of the investigation for both Sites and receipt of the soil and groundwater analyses, LMS will prepare a Report that will include:

1. A description of the work that was performed
2. Any modification from this work scope and the reason for the modifications
3. Conditions that were encountered with respect to MGP contamination and an assessment of the contamination
4. Soil, fill, and groundwater conditions that were observed
5. Analytical data in tabular form comparing results to the most current applicable guidance (TAGM 4046) or standards (DWS)
6. An assessment of any areas of contamination with respect to the proposed development plan and land use
7. Cross sections and data figures which will provide a visual account of the physical and chemical conditions in the subsurface
8. Laboratory analytical data, trench and boring logs for all samples and areas covered by the investigation

Community Air Monitoring Plan

Air monitoring will be performed by LMS in the breathing zone adjacent to the excavation on a continuous basis. Measurements from the work area will be recorded manually as intrusive sampling is performed. If total organic vapors in the work area exceed 5 ppm above background then additional measurements will be collected at the perimeter. If perimeter measurements exceed 5ppm, work activities under the provisions of the Vapor Emissions Response Plan will be performed.

Particulates will be monitored within the work area during intrusive activities. Prior to beginning intrusive work, a background ambient measurement will be taken. If during the work, particulate levels in the work area are 150 ug/m³ greater than the background level for a period of fifteen (15) minutes, then downwind perimeter measurements will be collected. If measurements remain 150 ug/m³ above the

background then dust suppression techniques will be employed. All readings must be recorded and be available for State (DEC & DOH) personnel to review.

Vapor Emission Response Plan

If the ambient air concentration of organic vapors exceeds 5 ppm above background at the perimeter of the work area, activities will be halted and monitoring continued. If the organic vapor level decreases below 5 ppm above background, work activities can resume. If the organic vapor levels are greater than 5 ppm over background but less than 25 ppm over background at the perimeter of the work area, activities can resume provided:

- The organic vapor level 200 ft. downwind of the work area or half the distance to the nearest residential or commercial structure, whichever is less, is below 5 ppm over background.

If the organic vapor level is above 25 ppm at the perimeter of the work area, activities must be shutdown. When work shutdown occurs, downwind air monitoring as directed by the Safety Officer will be implemented to ensure that vapor emission does not impact the nearest residential or commercial structure at levels exceeding those specified in the Major Vapor Emission section.

Major Vapor Emission

If any organic levels greater than 5 ppm over background are identified 200 feet downwind from the work area or half the distance to the nearest residential or commercial property, whichever is less, all work activities must be halted.

If, following the cessation of the work activities, or as the result of an emergency, organic levels persist above 5 ppm above background 200 feet downwind or half the distance to the nearest residential or commercial property from the work area, then the air quality must be monitored within 20 feet of the perimeter of the nearest residential or commercial structure (20 Foot Zone).

If efforts to abate the emission source are unsuccessful and if the following levels persist for more than 30 minutes in the 20 Foot Zone, then the Major Vapor Emission Response Plan shall automatically be placed into effect;

However, the Major Vapor Emission Response Plan shall be immediately placed into effect if organic vapor levels are greater than 10 ppm above background.

Major Vapor Emission Response Plan

Upon activation, the following activities will be undertaken:

1. All Emergency Response Contacts as listed in the Health and Safety Plan of the Work Plan will go into effect.

2. The local police authorities will immediately be contacted by the Safety Officer and advised of the situation.
3. Frequent air monitoring will be conducted at 30-minute intervals within the 20 Foot Zone. If two successive readings below action levels are measured, air monitoring may be halted or modified by the Safety Officer.

Area A Soil	Method	Quantity	Type
Trenching			
TCL VOCs	8260	15	Grab
TCL SVOCs	8270	3-5	Composite
pesticide/PCBs	8081/8082	3-5	Composite
metals	6010	3-5	Composite
cyanide	6010	3-5	Composite
Borings			
TCL SVOCs	8270	2	Composite
Area A Groundwater	Method	Quantity	Type
TCL VOCs	8260	2	Grab
TCL SVOCs	8270	2	Grab
pesticide/PCBs	8081/8082	2	Grab
metals	6010	2	Grab
cyanide	6010	2	Grab
Area A QA/QC Samples	Method	Quantity	Type
TCL VOCs	8260	3	Trip Blank
TCL VOCs	8260	0	Field Blank
TCL SVOCs	8270	0	Field Blank
pesticide/PCBs	8081/8082	0	Field Blank
metals	6010	0	Field Blank
cyanide	6010	0	Field Blank
Area E Soil	Method	Quantity	Type
Trenching			
TCL VOCs	8260	12	Grab
TCL SVOCs	8270	3-4	Composite
pesticide/PCBs	8081/8082	3-4	Composite
metals	6010	3-4	Composite
cyanide	6010	3-4	Composite
Boring			
TCL SVOCs	8270	1	Composite
Area E Groundwater	Method	Quantity	Type
TCL VOCs	8260	2	Grab
TCL SVOCs	8270	2	Grab
pesticide/PCBs	8081/8082	2	Grab
metals	6010	2	Grab

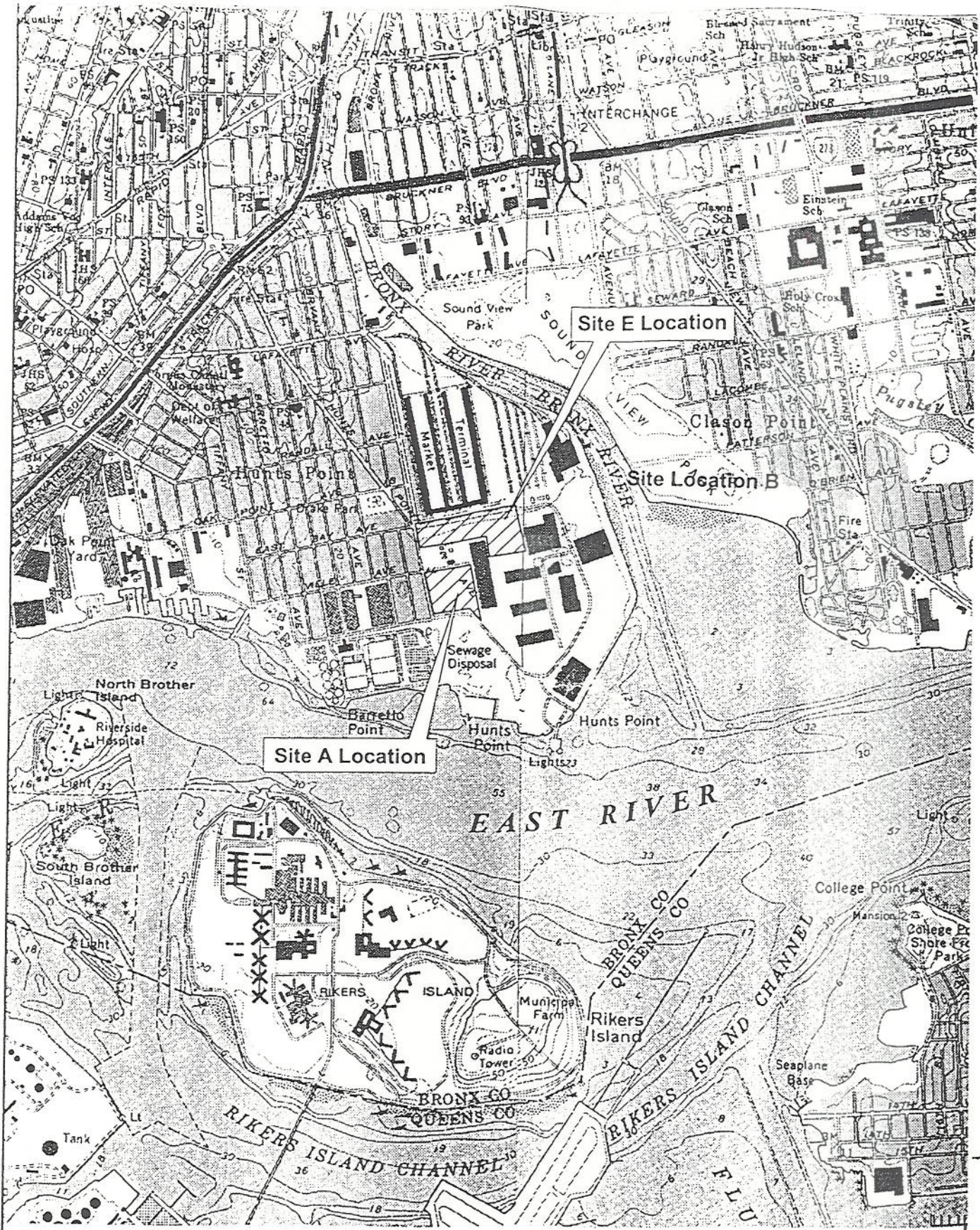
Area E QA\QC Samples	Method	Quantity	Type
cyanide	6010	2	Grab
TCL VOCs	8260	2	Trip Blank
TCL VOCs	8260	0	Field Blank
TCL SVOCs	8270	0	Field Blank
pesticide/PCBs	8081/8082	0	Field Blank
metals2	6010	0	Field Blank
cyanide	6010	0	Field Blank

Notes:

* - Category B deliverables.

1 - Contract analytical laboratory is Mitkem Corporation.

2 - Metals include arsenic, cadmium, chromium, lead, nickel, and vanadium.



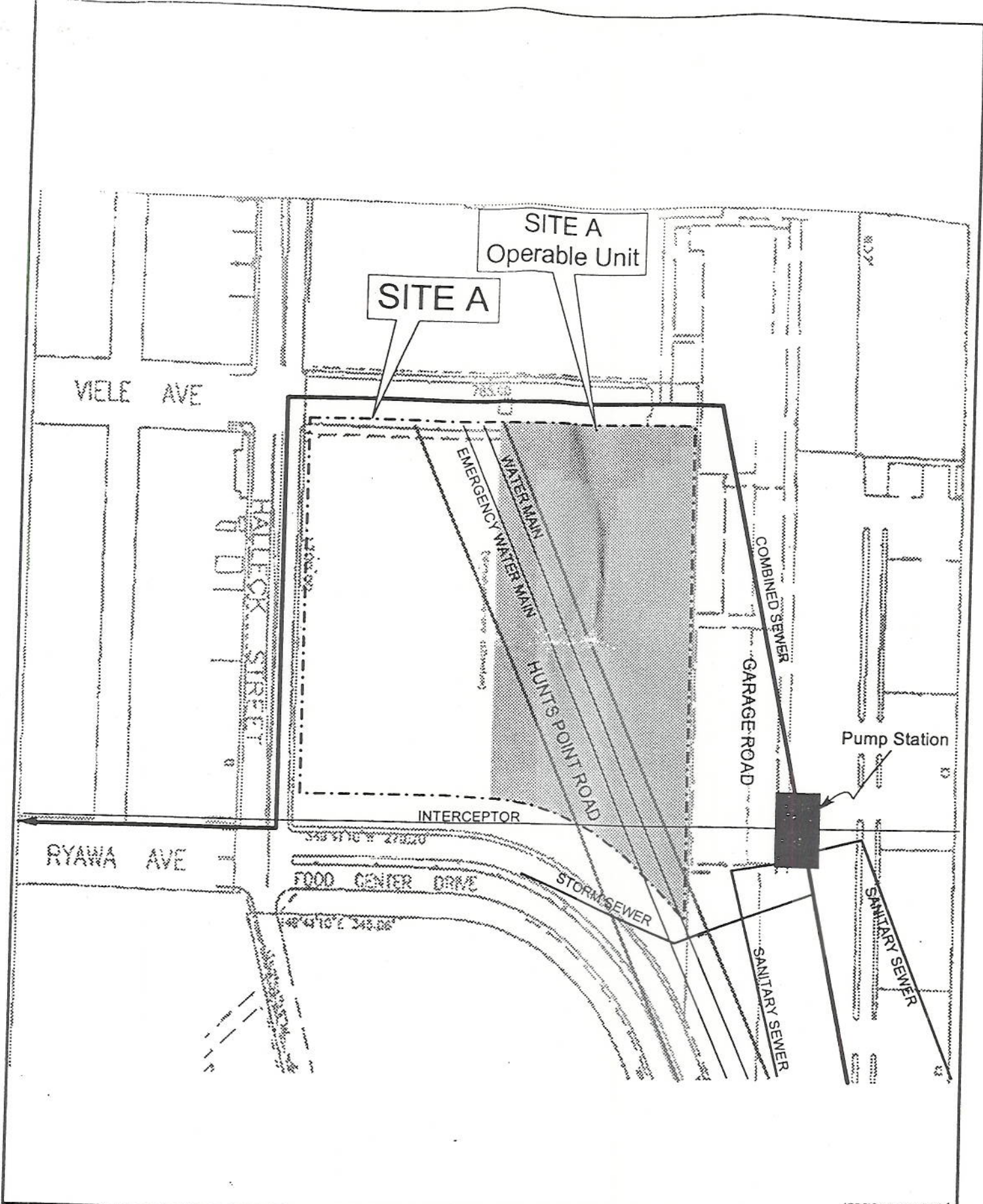
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 One Blue Hill Plaza • Pearl River, New York 10965
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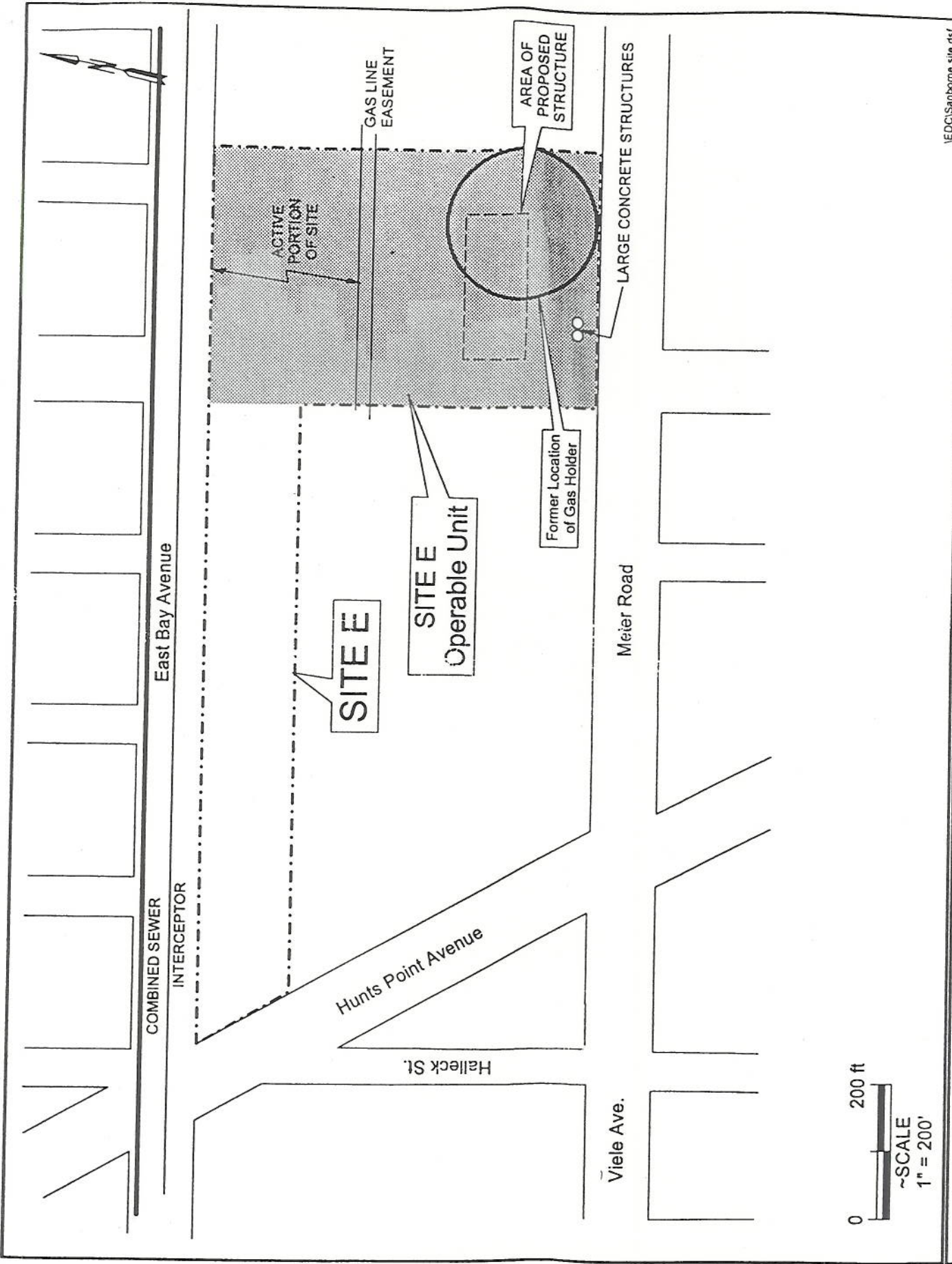
Site Location
 Hunts Point

Figure
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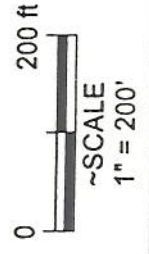
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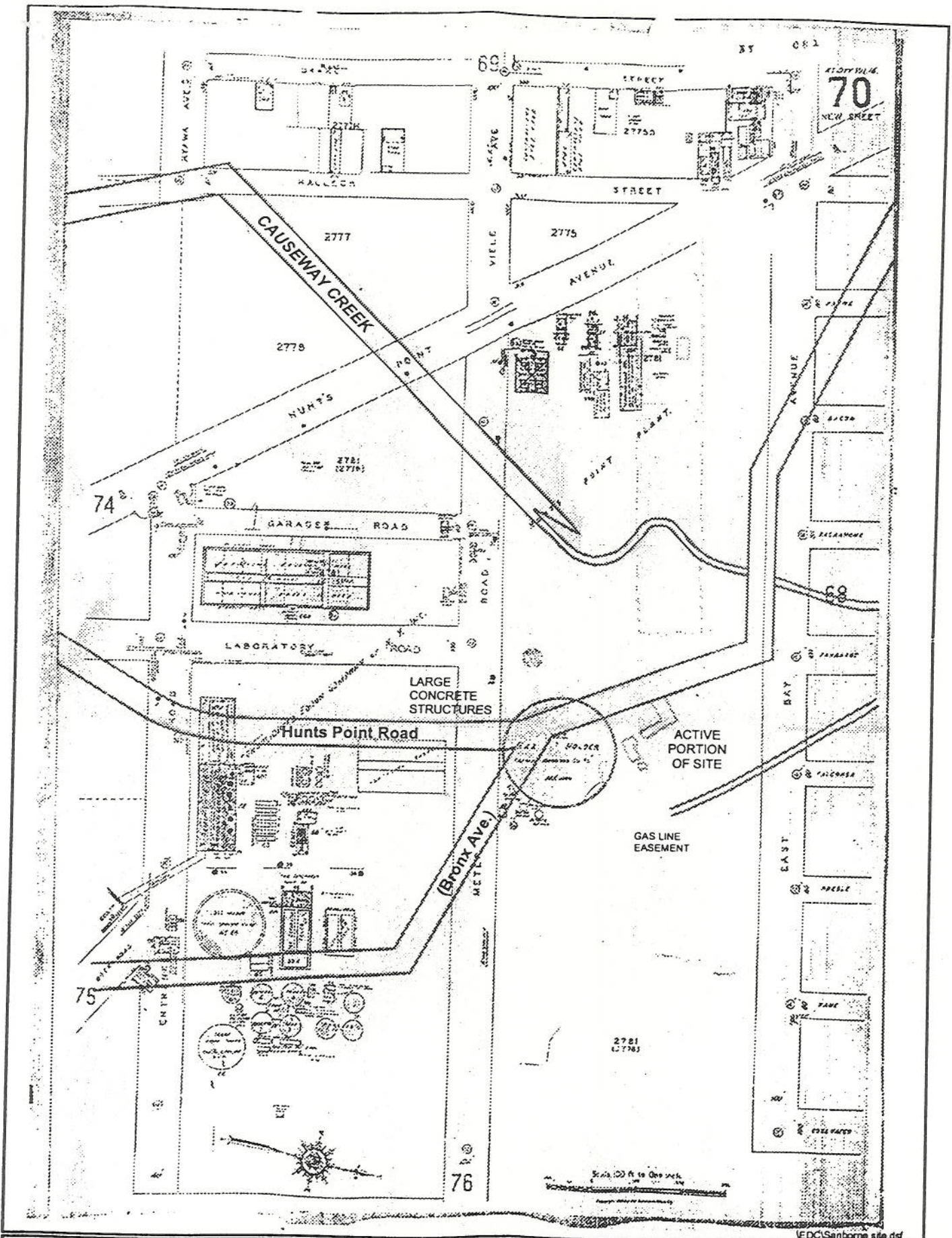


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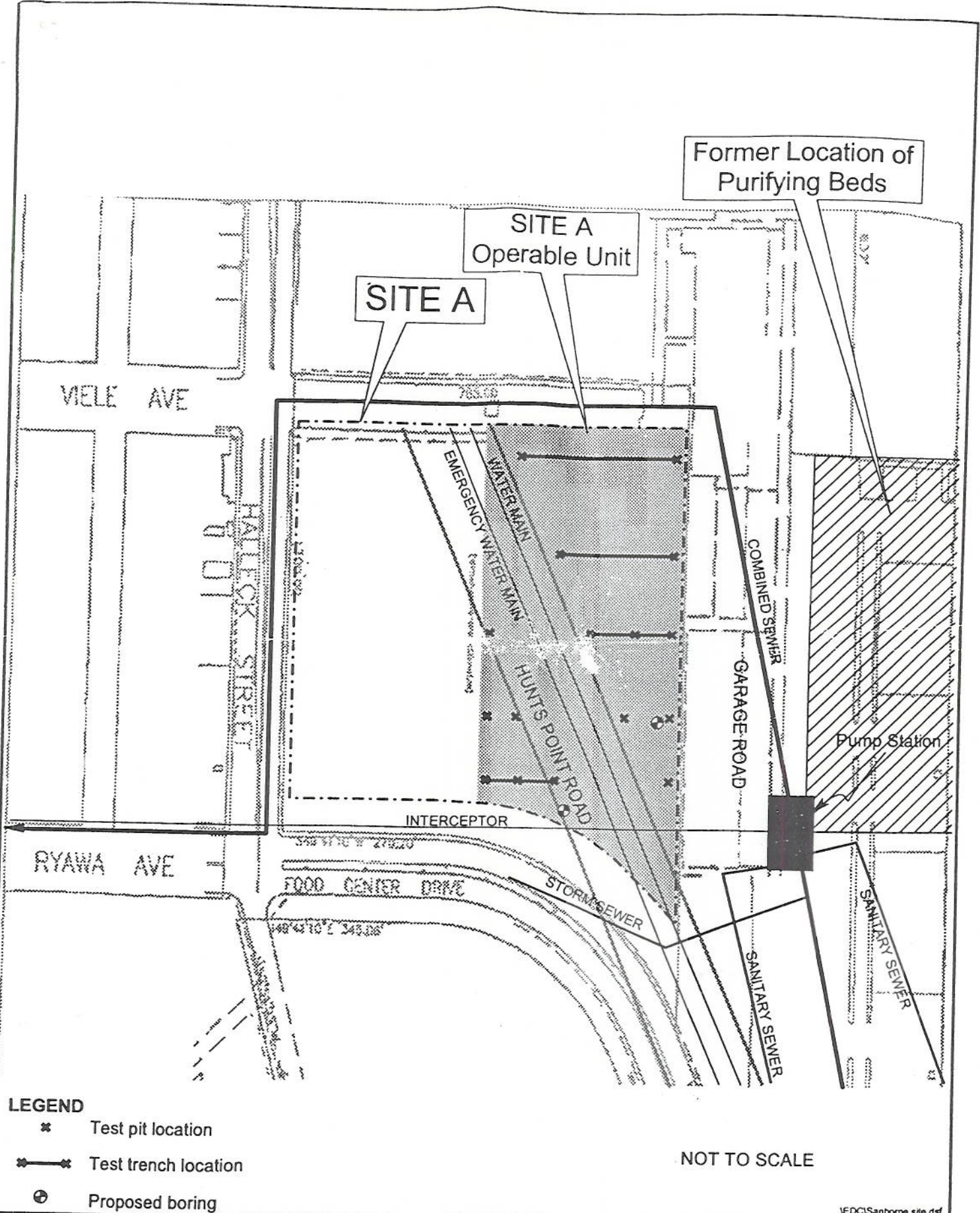
Operable Unit Site E (With Known Utilities)

Hunts Point

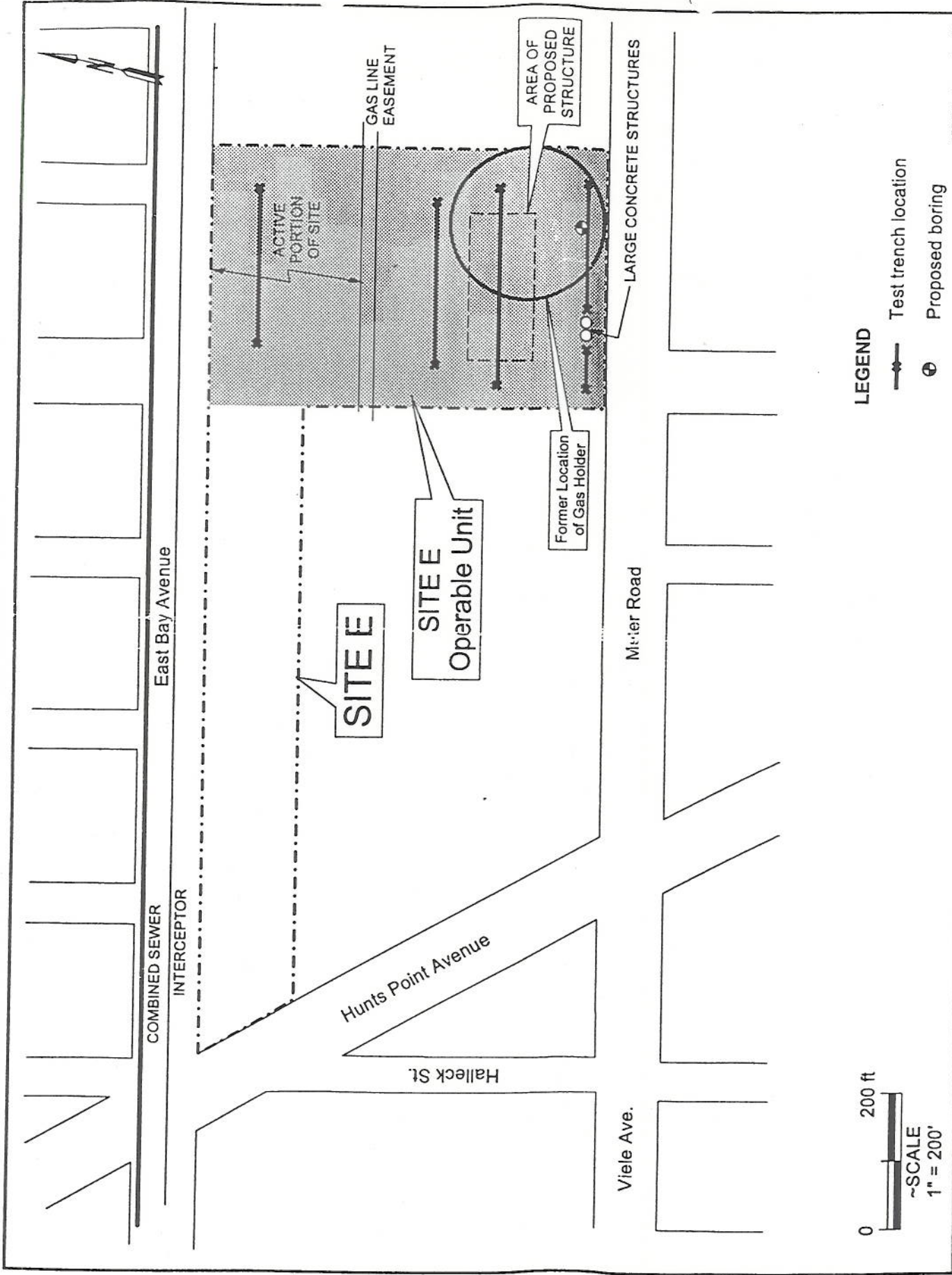
Figure 3



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IEDCLSanborne site.dwg



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- LEGEND**
- +— Test trench location
 - ⊕ Proposed boring

0 200 ft
 ~SCALE
 1" = 200'

Site E Sampling Laterals

Hunts Point

Hunts Point Food Distribution Center Redevelopment Plan

Additional Sampling and Removal Scope of Work for the Operating Unit Portion of Parcel E, Bronx, NY

**Prepared by: Lawler, Matusky &
Skelly Engineers LLP**
September 1999

INTRODUCTION:

This scope of work defines the site activities for the additional sampling and removal for the initial Operable Unit (OU 2) of Parcel E located in the northwestern portion of the Hunts Point Food Distribution Center (Figure 1). A subsurface investigation has already been performed on the site and identified several areas of concern at the OU. These included oil saturated soils in the immediate vicinity of several large underground pipe structures. The purpose of this additional work is to delineate and characterize the areas of concern and remove material which has been obviously impacted by these structures.

Site E is shaped as a north/south orientated rectangle with a long narrow westerly extending rectangular piece that is attached to the northwestern quadrant. The total area of the Site is approximately 11.6 acres with the OU 2 area being approximately 7.3 acres in size. The entire Site E is bounded on the north by Bay Avenue (now part of Food Center Drive), on the south by the approximate southern border of Viele Avenue (Meter Road), with the extension ending at Halleck Street, and the main site extending east to the approximate limit of Falconer Street (now bordered by the A & P food center (Figure 1)).

As part of the initial subsurface investigation, historic Sanborn and topographic maps were reviewed as well as historic aerial photographs and Consolidated Edison Company of New York (Con Ed) site maps. Overall, this parcel was part of a Con Ed coal gasification Plant that was constructed between 1924 and 1932 and operated until the early 1960s. The plant was constructed to manufacture both oven gas and carburetted water gas as major products and coke, ammonium sulphate, coal tar, water gas tar, and light oil as by products. A total of approximately 46 buildings or structures existed on the site that were actively involved in gas production.

Site E is located in the northern end of the former facility and several structures were located on that parcel including the main 15,000,000 cubic foot waterless gas holder, which was 254 ft in diameter and 365 ft high. Several additional structures associated with the gas holder were also located on the site including a number of pump tanks, coke filters, a waste oil tank, a centrifuge, a tar separator, and substation structures.

The foundation of the former gas holder and some associated tank like structures were discovered during the initial field investigation. These areas will be the focus of this remedial investigation.

COMBINED SEWER

East Bay Avenue

INTERCEPTOR

Halleck St.

Hunts Point Avenue

SITE E

LARGE CONCRETE STRUCTURES

Viele Ave.

Meter Road

GAS LINE EASEMENT

ACTIVE PORTION OF SITE

TANK STRUCTURE #1

TANK STRUCTURE #2

TANK STRUCTURE #1 (approx.)

4' dia. PIPING

OIL SATURATED SOIL



LMS Lawler, Matusky & Skelly Engineers LLP
 One Blue Hill Plaza • Pearl River, New York 10665
 ENVIRONMENTAL SCIENCE & ENGINEERING CONSULTANTS

1'E:\DCI\Sanborne.sta.dwg

Operable Unit Site E

Hunts Point

Figure 1

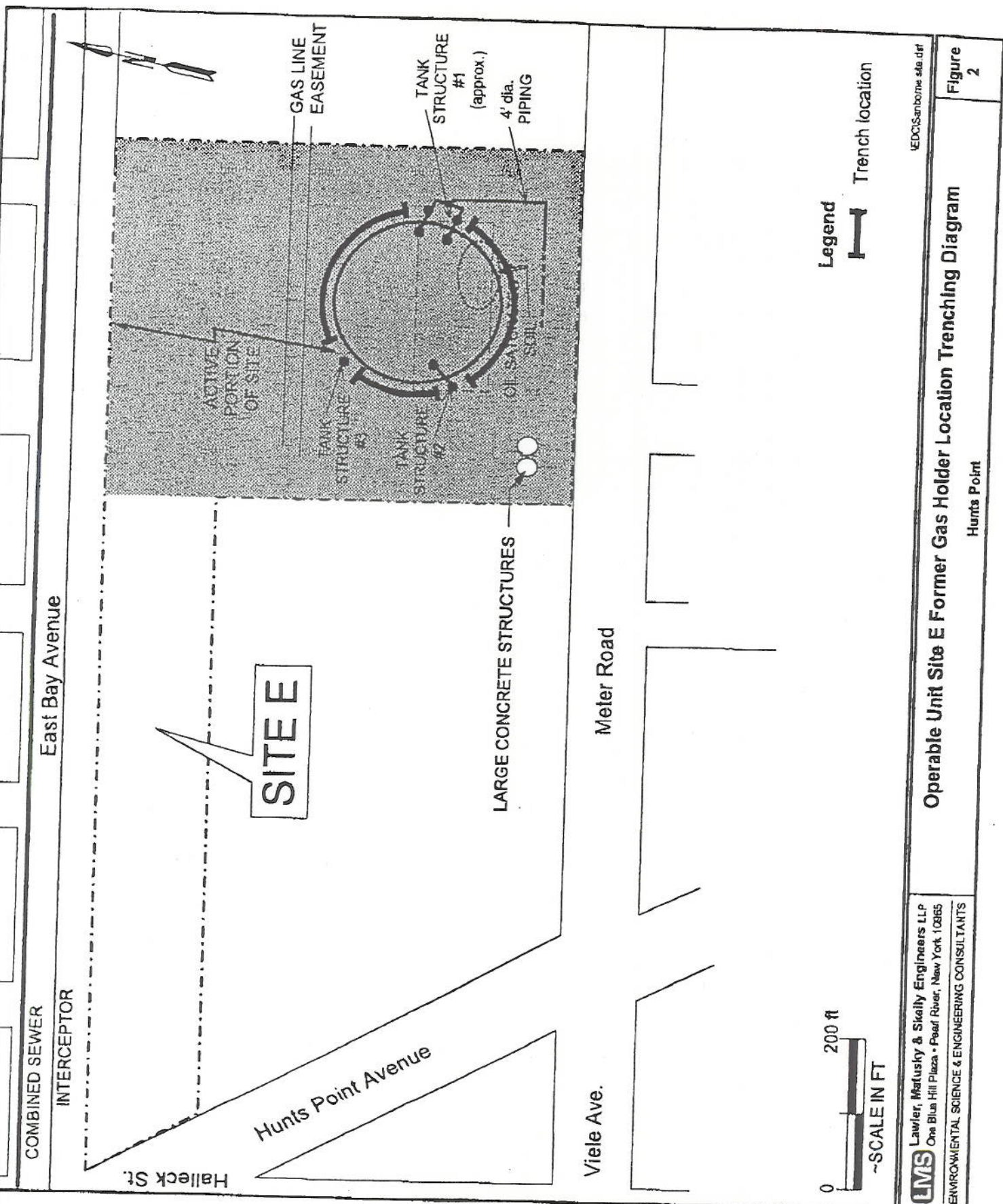
FIELD SAMPLING ACTIVITIES

LMS will utilize the site specific health and safety plan prepared as part of the initial site investigation and will re-confirm the presence of utilities on the site with respect to the sampling locations prior to the commencement of site activities.

According to a site map provided by Con Ed, the gas holder was surrounded by seven (7) "pump tanks". During the initial site investigation, three of the seven pump tanks and associated piping were discovered (Figure 1). A geophysical survey consisting of magnetometer and ground penetrating radar (GPR) techniques was conducted on 12 July 1999 in an attempt to locate the remaining four pump tanks. A grid was established over the area of the gas holder and the adjacent areas for the magnetometer survey. The GPR survey was used to confirm the magnetometer survey results. Both surveys identified the pilings used to support the gas holder, but the remaining four pump tanks could not be located using these techniques. It is believed that the fill material at the site was the main factor that made it very difficult to identify the structures. As part of this scope of work it is proposed to excavate trenches along the perimeter of the former gas holder in an effort to reveal the remaining four tanks. It is possible that some or all of the remaining four tanks do not exist or were removed at the same time as the gas holder, however every effort will be made to locate these structures.

Three trenches will be excavated along the perimeter of the former gas holder between those pump tanks already identified in the initial investigation in an effort to identify any remaining pump tanks (Figure 2). The trenches will be installed and/or oriented around the perimeter of the former gas holder, which was approximately 260 ft in diameter. The trenches will be installed by a 40-hour OSHA trained operator using a tire or track-mounted backhoe. The trenches will initially be excavated to the depth just below the depth of the structures found around the perimeter of the gas holder (estimated to be 8 ft) or the water table whichever is encountered first). If a structure is encountered, the fill material adjacent to it will be excavated, inspected and temporarily removed and placed on poly sheeting. If material around the structures (if any) are found to be the source of the petroleum contamination, it will be removed also and stockpiled (separately) on reinforced poly tarps. This source material for this specific scope will consist of soil or fill material that has come in contact with petroleum product and still contains petroleum in such amounts that would allow migration of contamination. This determination will be made in the field mutually by LMS and NYSDEC.

During excavation activities, all inspection of material will occur from outside the excavation. LMS will monitor and log each excavation as it is extended with a combustible gas indicator (CGI) and either a



EDC:\Sanborne site.dwg

Operable Unit Site E Former Gas Holder Location Trenching Diagram

Figure 2

Hunts Point

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 ENVIRONMENTAL SCIENCE & ENGINEERING CONSULTANTS

0 200 ft
 ~SCALE IN FT

Legend
 Trench location

photoionization detector (PID), or flameionization detector (FID). Readings will be collected according to depth and location in the excavations and will be used to reconstruct a subsurface profile of the Site. Source material will be stockpiled separately from the remaining excavated material. Whatever material requires segregation will be placed on either double layered or reinforced poly sheeting in order to allow for classification sampling to be performed.

During the initial investigation of Parcel E, it was noted that the soil in the area immediately surrounding Tank Structure #1 was impacted by oil (see Figure 2). There is some oil in a vessel attached to the tank structure. The large portion of 4 ft diameter piping connected to this was found to be filled with water. Samples collected from the tank and piping during the initial subsurface investigation showed that the petroleum compounds present in the tank were not present in the water from the piping in any degree that would cause an impact to the soil of if the water came in contact with it. LMS proposes to remove oily material and product from inside of the vessel attached to the tank structure but not the water as this has appears to have entered the piping from infiltration of precipitation.

At this time there is no definite volume of source material that will be excavated from around the various structures and require offsite disposal. What material that is removed for disposal will be stockpiled in individual piles and the size of those piles will be controlled and kept consistent where it is possible. If it is necessary, a pile will be made at each tank, but the need for this will be determined in the field. Following completion of the removal of the source material LMS will collect a composite sample at a rate of one per 500 cubic yards. The proposed disposal facility Middlesex County Utilities Authority requires one sample per 2000 cubic yards. The additional samples are being collected and analyzed in order to allow for disposal classification for material. The general procedure will be to collect grab samples for volatile organics (VOC) analysis from areas that exhibit the greatest degree of petroleum and/or organic contamination based on observations and meter readings ("worst case" locations). Composite samples will also be collected and submitted for Target Compound List (TCL) semi-volatile organic compounds (SVOCs), pesticide/PCBs, metals and cyanide. Total and TCLP metals analyses will also be performed.

Following removal and stockpiling of the source material from the excavations, the balance of the material will be placed back into the excavation. Understanding that additional material is necessary for the final development of the OU, LMS is not proposing to bring in fill to replace what is removed for disposal. The remaining backfill will be placed in the excavation as even as possible. The material to be disposed of will be covered with poly sheeting and the edges rolled or secured to prevent wind or water from eroding the pile(s). Upon receipt of the analytical

results the material will be loaded onto properly licensed and permitted vehicles and then transported to the final disposal facility. At that time, the product in the tank vessel(s) will also be removed.

When the material has been removed, LMS will prepare a removal document that outlines the following items:

- Figures showing excavations with dimensions, piles, structures, and conditions encountered
- Pile locations, dimensions, sample locations, designation, and results
- Copies of disposal documentation, manifests, weigh tickets (if applicable)
- Written description of the procedure, conditions, or changes

EXHIBIT "C"

Response Plan

EXHIBIT "C-1"

Response Plan Revision

EXHIBIT "D"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

City of New York

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and the City of New York ("Volunteer"), Index No. (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan, covering the remediation of the Site, consisting of Parcel A located at Section 5, Block 2778, part of Lot 100 and Block 2781, part of Lot 500 in the Borough and County of Bronx, City and State of New York (all of which is more fully set forth on Appendix A attached hereto and Parcel E located at Tax Section 10, Block 2781, part of Lot 600 in the Borough of Bronx, County of Bronx, City and State of New York (all of which is more fully set forth on Appendix B attached hereto), has been successfully implemented. The area of both parcels "A" and "E" is more fully set forth on a Map of the Site attached hereto as appendix "C"

The Department and the Trustee, therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of the Site based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph I of the 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 the 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 and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum, 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 migration;

- 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;
- 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;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- 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 and the Trustee hereby reserve all of their respective 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 the 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 the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- 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 release shall be construed, or deemed, to preclude the State of New York from recovering such claim.
- except as provided in Subparagraph I.E of the Agreement and in this letter, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination or Covered Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

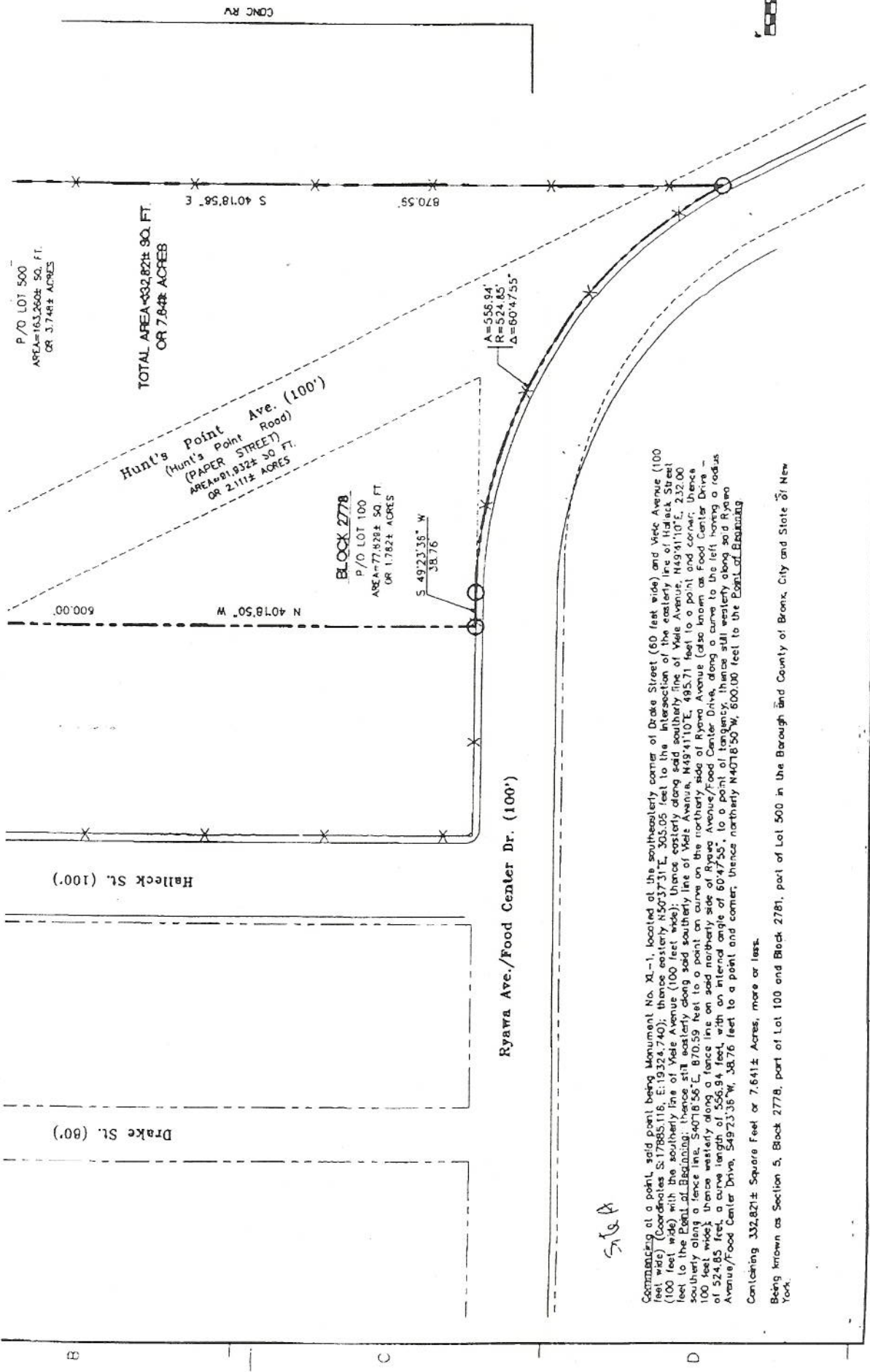
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____

Appendix "A"

(to Exhibit "D")

Description of Parcel "A"



P/O LOT 500
 AREA=163,260± SQ. FT.
 OR 3.74± ACRES

TOTAL AREA=332,821± SQ. FT.
 OR 7.64± ACRES

Hunt's Point Ave. (100')
 (Hunt's Point Road)
 (PAPER STREET)
 AREA=91,932± SQ. FT.
 OR 2.11± ACRES

BLOCK 2778
 P/O LOT 100
 AREA=77,828± SQ. FT.
 OR 1.78± ACRES

S 49°23'36" W
 38.76

A=556.94'
 R=524.65'
 Δ=60°47'55"

Drake St. (60')

Halleck St. (100')

Ryawa Ave./Food Center Dr. (100')

Site

Commencing at a point, said point being Monument No. XI-1, located at the southeasterly corner of Drake Street (60 feet wide) and Vele Avenue (100 feet wide) (Coordinates S:17885.118, E:19324.740); thence easterly N50°37'31" E, 305.05 feet to the intersection of the easterly line of Halleck Street (100 feet wide) with the southerly line of Vele Avenue (100 feet wide); thence easterly along said southerly line of Vele Avenue, N49°41'10" E, 232.00 feet to the Point of Beginning; thence still easterly along said southerly line of Vele Avenue, N49°41'10" E, 495.71 feet to a point and corner; thence southerly along a fence line, S40°18'56" E, 870.59 feet to a point on a curve on the northerly side of Ryawa Avenue (also known as Food Center Drive, 100 feet wide); thence westerly along a fence line on said northerly side of Ryawa Avenue/Food Center Drive, along a curve to the left having a radius of 524.65 feet, a curve length of 556.94 feet, with an internal angle of 60°47'55", to a point of tangency; thence still westerly along said Ryawa Avenue/Food Center Drive, S49°23'36" W, 38.76 feet to a point and corner; thence northerly N40°18'50" W, 600.00 feet to the Easly of Beginning

Containing 332,821± Square Feet or 7.641± Acres, more or less.
 Being known as Section 5, Block 2778, part of Lot 100 and Block 2781, part of Lot 500 in the Borough and County of Bronx, City and State of New York.



CONC. RW

B

C

D

Appendix "B"

(to Exhibit "D")

Description of Parcel "E"

PARCEL "E"

Commencing at a point, said point being a monument located at the northeasterly corner of Drake Street (60' wide) and East Bay Avenue (100' wide); thence easterly N50°56'36"E, 305.93 feet to a point, said point being the intersection of the southerly line of Food Center Drive (formerly East Bay Avenue - 100' wide) with the easterly line of Halleck Street (100' wide); thence easterly along said southerly line of Food Center Drive (formerly East Bay Avenue - 100' wide), N49°41'10"E, 1,020.00 feet to the Point of Beginning; thence easterly along said southerly line of Food Center Drive, N49°41'10"E, 304.59 feet to a point on curve; thence still easterly along a curve bearing to the right having a radius of 188.00 feet, an arc length of 24.57 feet and an internal angle of 07°29'17" to a point of tangency, thence still easterly N57°10'29"E, 102.79 feet to a point and corner; thence southerly S40°18'50"E, 694.00 feet to a point and corner; thence westerly S49°41'10"W, 431.00 feet to a point and corner; thence northerly N40°18'50"W, 709.00 feet to the Point of Beginning.

Containing 304,631 ± Square feet or 6.99 ± Acres, more or less.

Being known as Tax Section 10, Block 2781, part of Lot 600 in the Borough of Bronx, County of Bronx, City and State of New York as indicated on a signed and sealed survey prepared by J. Nicoletti, L.S., dated 8/7/98.



[Handwritten Signature] 6/14/1999
Stavros Timotheou, L.S.
N.Y. LICENSE NO. 050216

Parcel "E"

Metes and Bounds Survey
Tax Section 10, Block 2781 P/O Lot 600 Borough & County of Bronx,
City & State of New York

Munoz Engineering, P.C.
505 Eighth Avenue
New York, NY 10018
(212) 867-6688 Fax (212) 268-9464
e-mail: munozeng.com

Appendix "C"
(to Exhibit "D")
Map of the Site

Exhibit "E"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 1999 by the City of New York, the fee owner of a parcel of real property consisting of the operable unit of Parcel A located at Section 5, Block 2778, part of Lot 100 and Block 2781, part of Lot 500 in the Borough and County of Bronx, City and State of New York (all of which is more fully set forth on Appendix A attached hereto and the operable unit of Parcel E located at Tax Section 10, Block 2781, part of Lot 600 in the Borough of Bronx, County of Bronx, City and State of New York (all of which is more fully set forth on Appendix B attached hereto). The operable units of parcels "A" and "E" is more fully set forth on a Map of the Site attached hereto as appendix "C" (the "Property"); and

WHEREAS, the City of New York, by authorized signature, entered into an agreement with the Department, Index #D3-0004-99-04 (the "Agreement"), concerning the remediation of contamination present on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide the City of New York and the City of New York's successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, the City of New York agreed that it would give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Bronx County Clerk,

NOW, THEREFORE, the City of New York, on behalf of itself and its lessees, successors and assigns, declares that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property; and that
2. This Notice shall terminate upon the filing by the City of New York of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental Conservation.

IN WITNESS WHEREOF, the City of New York has executed this Notice of Agreement by its duly authorized representative.

City of New York

Dated:

By: _____

Its: _____

[acknowledgment]

Appendix “A”

(to Exhibit “E”)

Description of Parcel “A”

Appendix "B"

(to Exhibit "E")

Description of Parcel "E"

Appendix "C"

(to Exhibit "E")

Map of the Property