

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF NEW YORK AND CON EDISON
REGARDING HUNTS POINT SITE**

AGREEMENT made this 31st day of March, 2000, by and between the City of New York, a municipal corporation having its principal office at City Hall in the Borough of Manhattan, City and State of New York ("the City"), acting by and through the New York City Department of Business Services; and Consolidated Edison Company of New York, Inc. ("Con Edison"), a New York State-regulated public utility corporation serving the New York City metropolitan area.

WITNESSETH:

WHEREAS, Con Edison owned and operated a manufactured gas plant in the Hunts Point section of the Borough of the Bronx, City and State of New York, from the 1920s until the 1950s; and

WHEREAS, in 1968, after Con Edison demolished its manufactured gas plant, the City purchased from Con Edison the grounds of that former plant, consisting of approximately 203.5 acres of unimproved land (hereinafter the "Site"); and

WHEREAS, since 1972, the City has constructed various facilities and structures, including the Hunts Point Meat Market, on portions of the Site;

WHEREAS, the City's ability to develop additional portions of the Site has been adversely impacted by the presence of hazardous substances, petroleum, and other environmental contaminants ("contamination") from Con Edison's former manufactured gas plant operations at the Site; and

WHEREAS, the City has reported the contamination to the New York State Department of Environmental Conservation ("DEC") which has demanded that remedial response measures adequate to protect public health and the environment be undertaken and completed before additional portions of the Site are developed; and

WHEREAS, by reason of the foregoing, the City is entering into Voluntary Agreements with the DEC under which: (1) the City will investigate to the extent required by DEC the contamination on the portions of the Site, known as Parcels A, B, C, E, and the Perimeter, as depicted in Exhibit A to this Agreement, in accordance with DEC-approved work plans; (2) the City will remediate Parcels A, B, C, E, and the Perimeter to the extent required by DEC, that is, the City will undertake and complete in accordance with DEC-approved work plans the remedial response measures specified by DEC for the contamination on Parcels A, B, C, E, and the Perimeter; and (3) the DEC, in return for the City's completing all such actions to DEC's satisfaction, will issue to the City "No Further Action" Letters in which the DEC releases, covenants not to sue, and agrees not to commence any actions or proceedings against the City and its successors and assigns for further investigation activities and remedial response measures for the contamination on Parcels A, B, C, E, and the Perimeter that is covered in the Voluntary Agreements;

WHEREAS, the City has demanded that Con Edison pay all response costs that the City and its agencies and departments incur in connection with the contamination at Parcels A, B, C, E, and the Perimeter, including the costs and expenses of implementing and completing pursuant to the terms of the DEC Voluntary Agreements the investigation and remedial response measures required by the DEC for the contamination on Parcels A, B, C, E, and the Perimeter and has threatened to sue Con Edison under the Comprehensive

Environmental Response, Compensation and Liability Act, 42 USC §§ 9601, *et seq.*, Article 27 of the New York Environmental Conservation Law, and Article 12 of the New York Navigation Law to recover those costs and expenses; and

WHEREAS, without admitting any fact, fault, or liability in connection with the Site, the City and Con Edison wish to avoid litigation with respect to the City's claims and demands for the costs and expenses of investigating and remediating the contamination on Parcels A, B, C, E, and the Perimeter.

NOW THEREFORE, in consideration of the promises and the respective representations and agreements contained herein, the City and Con Edison agree as follows:

1. The City, acting by and through its agencies, departments and contractors, shall be responsible for implementing and completing in accordance with the terms and conditions of its Voluntary Agreements with the DEC for Parcels A, B, C, E, and the Perimeter: (1) all investigation activities that DEC requires under those Voluntary Agreements for the contamination on Parcels A, B, C, E, and the Perimeter; (2) all remediation activities that DEC requires under those Voluntary Agreements for the contamination on Parcels A, B, C, E, and the Perimeter, including without limitation, the construction and installation of all containment structures (such as paving and vertical flow barriers), coal tar and/or petroleum recovery systems, and groundwater monitoring and/or treatment systems required by DEC for those parcels; (3) the implementation and completion of all activities specified in the operations, maintenance and monitoring plans that DEC requires under those Voluntary Agreements for such containment structures and recovery, monitoring, and/or treatment systems; and (4) the payment of the DEC oversight

costs provided for under those Voluntary Agreements for all such investigation activities and remedial response measures for Parcels A, B, C, E, and the Perimeter. The City and its agencies, departments, and contractors shall maintain accurate and complete records for all costs and expenses incurred by them with respect to such investigation and remedial response measures and shall on reasonable advance notice by Con Edison to the City allow Con Edison and its authorized representatives to inspect and copy all such records. Except as otherwise provided below in Paragraph 3(B) of this Agreement, the City shall provide Con Edison with detailed invoices and complete accountings when demanding reimbursement of any such costs and expenses from Con Edison.

2. Con Edison shall be responsible for and shall reimburse the City at the times and in the manner specified below in Paragraph 3 of this Agreement for the following costs and expenses incurred by the City, and its agencies, departments, and contractors in connection with the contamination on Parcels A, B, C, E, and the Perimeter to the extent that such costs and expenses do not in the aggregate exceed \$ 14.247 million: (1) the costs and expenses of investigating the contamination on Parcels A, B, C, E, and the Perimeter to the extent required by the DEC pursuant to the terms and conditions of the Voluntary Agreements that the DEC and the City enter with respect to those portions of the Site; (2) the costs and expenses of implementing and completing the remedial response measures that the DEC requires for the contamination on Parcels A, B, C, E, and the Perimeter pursuant to the terms and conditions of those Voluntary Agreements, including the costs and expenses of constructing and installing the containment structures (such as paving and vertical flow barriers), coal tar and/or petroleum recovery systems, and groundwater monitoring systems required by DEC; and (3) the DEC oversight costs

imposed under those Voluntary Agreements for such specified investigation and remedial response measures. The estimated expenses are set forth in Exhibit B to this Agreement. Notwithstanding anything to the contrary in this paragraph, if at any time prior to the City's receipt of a "No Further Action" Letter from the DEC for Parcels A, B, C, E, or the Perimeter, Con Edison is required to incur costs and expenses for the investigation and/or remediation of any portion or portions of Parcels A, B, C, E, or the Perimeter, other than pursuant to the provisions of this Agreement, the costs and expenses so incurred by Con Edison shall reduce, dollar for dollar, the \$14.247 million limitation provided for above in this paragraph on Con Edison's obligation to reimburse the City. Further, notwithstanding anything to the contrary in this agreement, any costs or expenses incurred by Con Edison with respect to investigation and/or remediation of areas other than or outside Parcels A, B, C, E, or the Perimeter shall not reduce or otherwise affect the \$14.247 million limitation provided for herein. It is not the intention of the parties here to alter the respective obligations of each with respect to costs and expenses incurred in connection with investigation and/or remediation of any areas other than or outside Parcels A, B, C, E, or the Perimeter.

3. Subject to the \$14.247 million limit provided for above in Paragraph 2 of this Agreement, reimbursement of the costs and expenses specified in that paragraph shall be made by Con Edison as follows:

(A) Con Edison shall reimburse the City for the costs and expenses specified above in Paragraph 2, other than those relating to the containment structures (such as paving and vertical flow barriers) required by the DEC for Parcels A, B, C, and E, within 45 days after its receipt of the City's written demand for reimbursement of those costs and

expenses. Demands for reimbursement of any such costs and expenses shall be accompanied by: (1) detailed invoices and accountings for the costs and expenses for which reimbursement is demanded; and (2) vouchers or other documentation evidencing that the costs and expenses for which reimbursement is demanded have been paid by the City. In the event that Con Edison disputes that any such costs and expenses have been incurred and/or paid by the City, Con Edison shall: (1) pay the undisputed portion of such costs and expenses within 45 days of receiving the City's demand; (2) send written notice of the dispute to the President of the New York City Economic Development Corporation ("EDC"), with a copy to the General Counsel of the New York City Economic Development Corporation, within 15 days after receiving the City's demand and thereafter negotiate in good faith with the President of the New York City Economic Development Corporation, or his designee, for the purposes of resolving the dispute; and (3) pay the disputed portion of such costs and expenses in accordance with and to the extent required under the resolution reached with the President of the New York City Economic Development Corporation, or his designee.

(B) The City will demand payment from Con Edison for the fixed amount of the costs of the containment structures (such as paving and vertical flow barriers) required by the DEC for any of Parcels A, B, C, or E only after the DEC has issued a "No Further Action" Letter for such parcel. Demands for payment for any of Parcels A, B, C or E, shall be accompanied by a copy of DEC's "No Further Action" Letter for that parcel and shall specify the amount due. Con Edison shall pay such amount(s) within 45 days of receiving the City's demand. The fixed amount to be paid by Con Edison for containment for any of Parcels A, B, C, or E shall be the amount set forth in Exhibit B for each such parcel.

(C) Reimbursement payments by Con Edison shall be made by checks payable to the New York City Economic Development Corporation. All such checks shall be hand delivered to the office of the President of the New York City Economic Development Corporation at 110 William Street, New York, NY 10038 or sent by overnight mail to the attention of the President of the New York City Economic Development Corporation at that address.

4. Notwithstanding anything to the contrary in Paragraph 3 above or in this Agreement, Con Edison shall not be required to reimburse the City for more than \$5 million in containment costs and expenses for Parcels A, B, C or E within any calendar year. In the event that the City's demands pursuant to Paragraph 3 for reimbursement of such costs and expenses for one or more of Parcels A, B, C or E in the aggregate exceed \$5 million in any calendar year, Con Edison shall make payment to the City of the first \$5 million of such demanded costs and expenses as provided above in Paragraph 3, and shall pay the balance of such demanded costs and expenses during the succeeding calendar year or years until all such demanded costs and expenses are paid.

5. The City will provide Con Edison with copies of: (1) all Voluntary Agreements that the City enters into with the DEC with respect to Parcels A, B, C, E, and the Perimeter; (2) all correspondence that the City or its departments, agencies or contractors submit to DEC or receive from DEC pursuant to those Voluntary Agreements; and (3) all work plans, reports, and test results submitted to DEC under those Voluntary Agreements. Con Edison will be given, to the greatest extent practicable, an opportunity to comment on such work plans, reports, and test results through regularly scheduled meetings held at least quarterly, which meetings shall include representatives of the City's

contractors and consultants for the required investigation and remediation activities for the contamination at the Site.

6. Except as otherwise provided below in Paragraph 7 of this Agreement, upon the City's receipt of a "No Further Action" Letter from DEC for Parcel A, B, C, E, or the Perimeter, the City shall: (1) release, covenant not to sue, and agree to forbear from bringing any action, proceeding or suit against Con Edison for the contamination on that portion of the Site that is covered by DEC's "No Further Action" Letter to the City, provided that, Con Edison has made full payment to the City of the costs and expenses specified above in Paragraph 2 of this Agreement for that portion of the Site; and (2) indemnify and hold Con Edison harmless from any claims, demands, causes of action, or proceedings by any third party, including the DEC, for the costs and expenses specified above in Paragraph 1 of this Agreement for that portion of the Site.

*

7. Notwithstanding anything to the contrary in Paragraph 6 of this Agreement, the release, covenant not to sue, indemnification, and forbearance specified in Paragraph 6 shall not extend to, and the City expressly reserves all of its rights against Con Edison with respect to, any further investigation activities and remedial response measures that DEC requires the City or its successors to perform for Parcels A, B, C, E, or the Perimeter for any or all of the reasons specified below after DEC issues "No Further Action" Letters to the City for those portions of the Site under the Voluntary Agreements between the DEC and the City for such portions of the Site:

(a) due to the off-site presence of petroleum that may have migrated off-site from sources on Parcels A, B, C, E, or the Perimeter irrespective of whether the information available to the City and DEC at the time of the development of

the remediation work plans for those parcels pursuant to the Voluntary Agreements described above disclosed the existence or potential existence of such off-site migration of petroleum;

(b) due to environmental conditions related to Parcels A, B, C, E, or the Perimeter which were unknown to DEC at the time of its approval of the remediation work plans for those parcels pursuant to the Voluntary Agreements described above and which indicate that conditions at Parcels A, B, C, E, or the Perimeter are not sufficiently protective of human health and the environment for the contemplated use of Parcels A, B, C, E, or the Perimeter specified in those Voluntary Agreements;

(c) due to information received, in whole or in part, after DEC's approval of any final engineering report for Parcels A, B, C, E, or the Perimeter which indicates that the activities carried out in accordance with the DEC-approved remediation work plans for Parcels A, B, C, E, or the Perimeter are not sufficiently protective of human health and the environment for the contemplated use of Parcels A, B, C, E, or the Perimeter specified in the Voluntary Agreements described above.

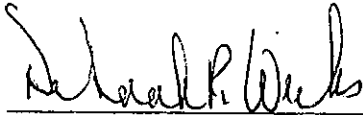
8. Except as otherwise provided above in Paragraph 3, whenever under the terms of this Agreement notice is required to be given, or a demand for reimbursement, invoice, report or other document is required to be submitted by one party to the other, such notice, demand, invoice, report or other document shall be sent by overnight mail or hand-delivered to the following individuals at the addresses specified below:

(A) For the City -- President, New York City Economic Development Corporation, 110 William Street, New York, NY 10038 with a copy to General Counsel, New York City Development Corporation at the same address; and

(B) For Con Edison – M. Peter Lanahan, Jr., Vice President, Con Edison, 4 Irving Place, New York, NY 10003 with a copy to Peter P. Garam, Associate General Counsel, at the same address.

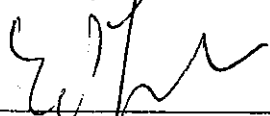
IN WITNESS WHEREOF, the City and Con Edison intending to be bound hereto, execute this Agreement by their duly authorized representatives.

**NEW YORK CITY DEPARTMENT OF
BUSINESS SERVICES**

By: 

Deborah R. Weeks
Commissioner


**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

By: 

M. Peter Lanahan, Jr.
Vice President

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this day of April 2001, before me personally came Deborah R. Weeks, who being by me sworn did depose and say that she is the Commissioner of the Department of Business Services of the City of New York and the person named in and who executed the foregoing Agreement and acknowledged to me that she signed her name to said Agreement as authorized by said municipal corporation.


Notary Public

ANDREW SCHWARTZ
Notary Public, State of New York
No. 24-4943703
Qualified in Kings County
Commission Expires Oct. 31, 2002

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

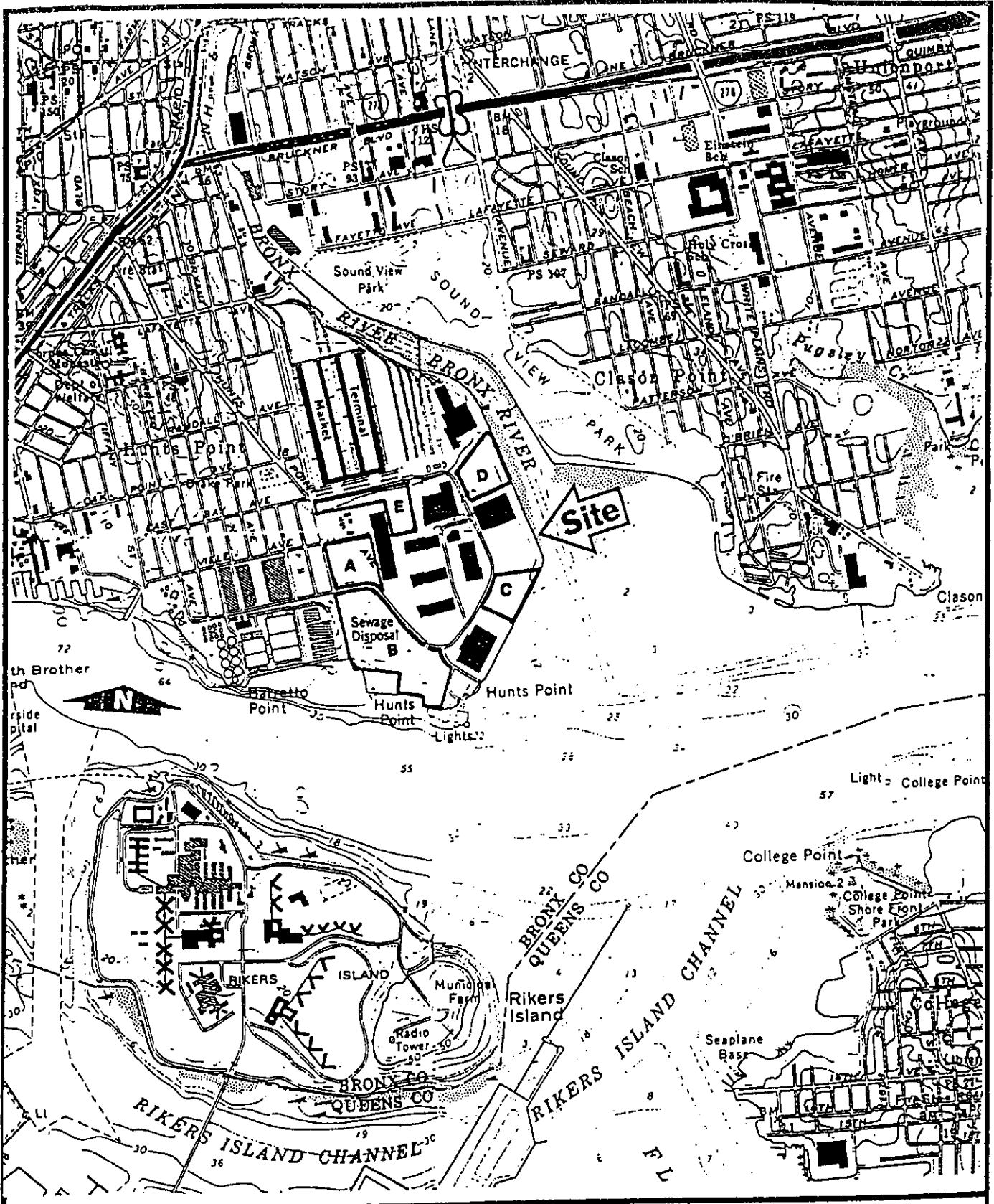
On this 12th day of April 2001, before me personally came M. Peter Lanahan, Jr., who being by me sworn did depose and say that he is a Vice President of the Consolidated Edison Company of New York, Inc., and the person named in and who executed the foregoing Agreement and acknowledged to me that he signed his name to said Agreement as authorized by said corporation.



Notary Public

CHANOCH LUBLING
NOTARY PUBLIC, State of New York
No. 24-4748879
Qualified in Kings County
Commission Expires October 31, 2001

Exhibit A



Hunts Point Cooperative Market Sites A, B, C, D and E Bronx, New York	Hygienics Environmental Services, Inc. One West 34 th Street, 7 th Floor New York, NY 10001		Figure 1 Topographic and Site Location Map
	Project No.: 2310.072	Checked By: G. Davis 10/21/97	

Exhibit B

HUNTS POINT ENVIRONMENTAL REMEDIATION COSTS

	SITE A	SITE B	SITE C	SITE D	SITE E	PERIMETER	TOTAL
Acreage	14.5	29	10.3	6.8	11.6	6.5	79
Testing	\$100,000	\$150,000	\$71,000	\$88,000	\$97,000	\$80,000	\$498,000
Excavation/Removal of Coat Tar/Purifier							
Waste/Contaminated Soil/Water	\$0	\$3,800,000	\$0	td	\$87,000	\$0	\$3,887,000
Containment Structures - Fixed Amount	\$1,579,050	\$3,158,100	\$1,121,670	td	\$1,263,240	\$0	\$7,122,060
Add'l Containment Systems	\$0	\$200,000	\$0	td	\$0	\$0	\$200,000
Clean Fill	\$0	\$0	\$0	td	\$0	\$104,762	\$104,762
Monitoring/Treatment Systems	\$0	\$400,000	\$10,000	td	\$0	\$250,000	\$660,000
Vapor Extracolon System	\$0	\$300,000	\$0	td	\$0	\$0	\$300,000
DEC Oversight	\$15,000	\$100,000	\$25,000	td	\$15,000	\$25,000	\$180,000
Total	\$1,694,050	\$8,108,100	\$1,227,670	td	\$1,462,240	\$459,762	\$12,951,822
Contingency							\$1,295,182
							Grand Total: \$14,247,004

