

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation
of a Remedial Response for

AGREEMENT

Parcel "B" of the

Hunts Point Food Distribution Center,
by
the City of New York,
Volunteer

INDEX NUMBER: D2-0004-01-03

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 recreation facilities, 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": 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, generated by MGP facilities that formerly operated on the Site. 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 which 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

11/3/01

Agreement as Exhibit "B", as may be modified under the terms of this Agreement and which 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 that, as a result, may appear in such other identified in this Agreement as this Agreement may provide, and is an enforceable part of this Agreement.

J. "Site": that property, approximately 30 acres in size, known as Parcel "B" of the Hunts Point Food Distribution Center located in the Borough of Bronx, Bronx County, New York. Exhibit "A" of this Agreement is a map of the Site showing its general location.

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 (such 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 pursuant to 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 Existing 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 ("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 cause a, or suffer 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 cause a, or suffer 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. 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) 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
625 Broadway
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 twenty-five thousand dollars (\$25,000), 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
625 Broadway
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.2 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 Agreement

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 City Register 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 City Register, 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 City Register to be a true and faithful copy of the instrument as recorded in the Office of the City Register .

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:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Deborah Christian, Esq.
Division of Environmental Enforcement
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-5500

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

- Four copies (one unbound) to Robert Cozzy, P.E.
- Two copies to Director, Bureau of Environmental Exposure Investigation

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 its 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 Deborah Christian, Esq.

written application shall be delivered or mailed to Robert Cozzy, P.E. and to Deborah Christian, 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 her designee.

DATED: **JUL 13 2001**

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
AND TRUSTEE OF NEW YORK
STATE'S NATURAL RESOURCES

A handwritten signature in dark ink, appearing to read 'Erin M. Crotty', is written over a horizontal line.

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
Commissioner, Department of Building
Services

Date: 4/28/01

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 28 day of April, in the year 2001, before me, the undersigned, personally appeared Deborah Weeks, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Andrew Schwartz
Notary Public

ANDREW SCHWARTZ
Notary Public, State of New York
No. 24-4943703
Qualified in Kings County
Commission Expires Oct. 2

EXHIBIT "A"

Map of Site

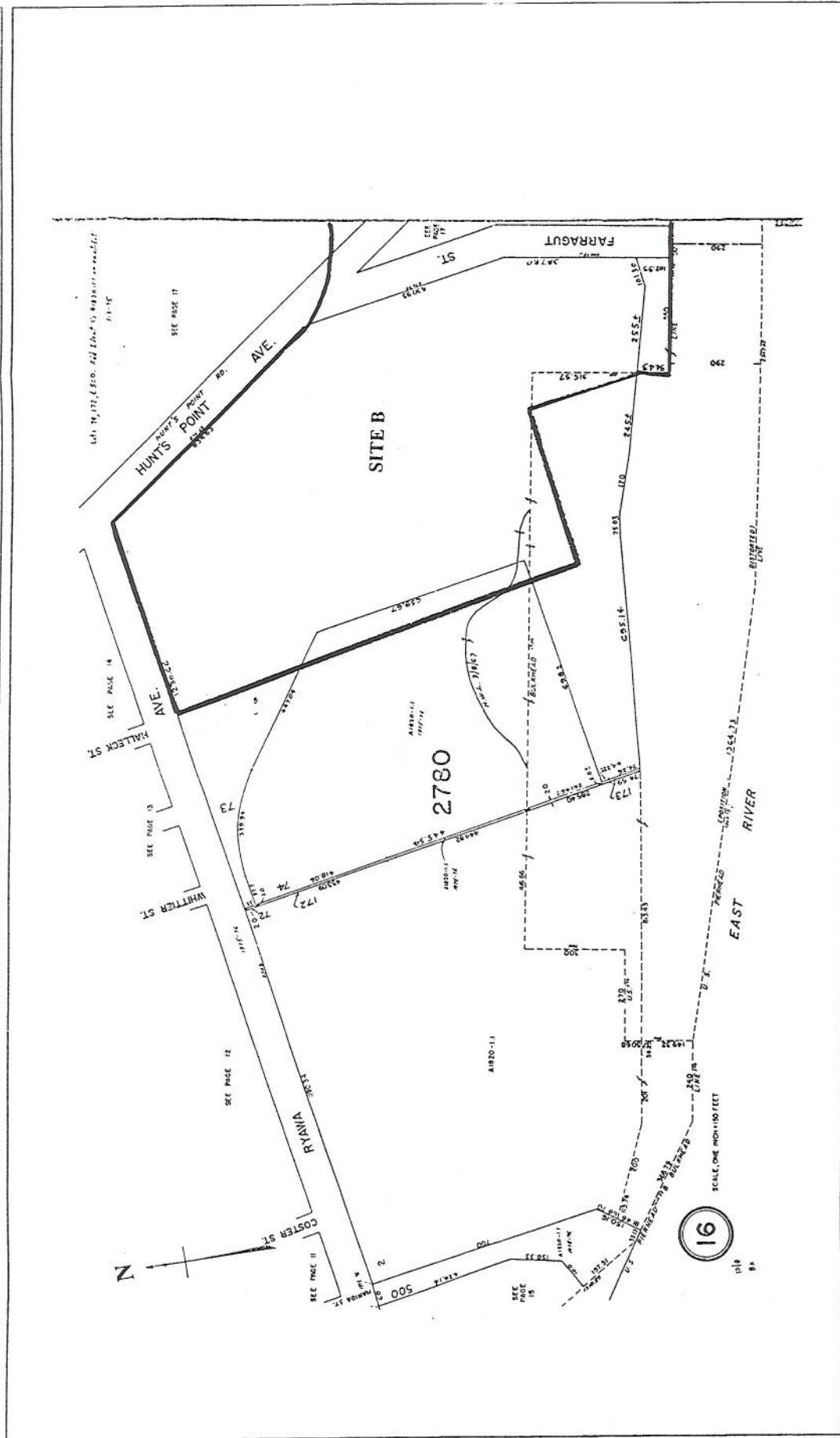


Figure 5A - Tax Lot Map, Block 2780

Fulton Fish Market at Hunts Point - Supplemental Environmental Studies

New York City Economic Development Corporation

Prepared by Urbitran Associates

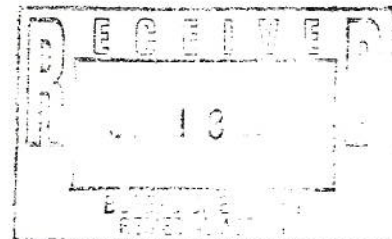
EXHIBIT "B"

Investigative Work Plan

Hunts Point Cooperative Market Redevelopment Plan

Investigative Scope of Work for Operating Unit Portion of Parcel B, Bronx, NY

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



INTRODUCTION:

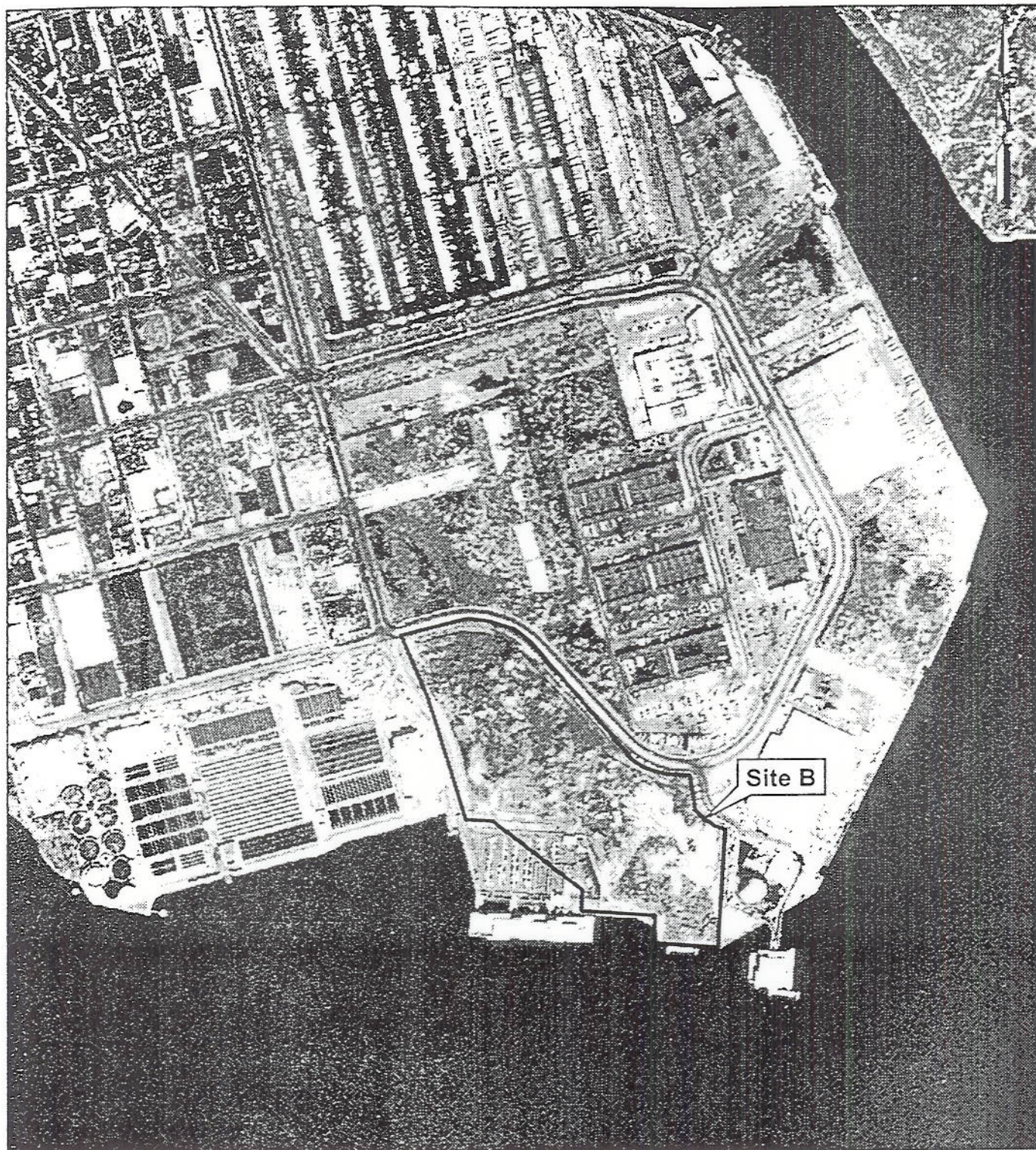
This Scope of Work (SOW) is a subsurface investigation of Parcel B (Site B) at the Hunts Point Cooperative Market Site (the Market). Site B is located in the southeast portion of the Market (Figure 1). The purpose of the investigation is to assess areas of the Site that are suitable for redevelopment 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 visually obvious contamination or areas where analytical results do not suggest significant contamination will be available for the proposed development. As part of the redevelopment, any "green areas" (that is, those areas not covered by buildings or pavement) must be covered by at least one (1) foot of clean soil. Recommendations for remedial actions of the remaining areas will also be provided. The site is best described as follows:

SITE B: Site B is irregular shaped and covers approximately 38.3 acres. The Site is bounded on the north by Food Center Drive and Site A, on the south by the East River and a parking lot for the Department of Corrections floating detention facility, on the west by NYCDEP Water Treatment Plant, and the east by the South Bronx Marine Transfer Station (Figure 2).

Historic Site and topographic maps have been reviewed and a composite showing conditions that were identified on those maps is included as Figure 3. Historic aerial photographs show that the area has been used for oil and tar storage in above ground and underground storage tanks. A channel of Causeway Creek bordered the western limit of Site B as shown on Sanborn maps but is not shown on USGS topographic maps. It is not known whether this creek has been filled or not. The portion of the site that is now occupied by the corrections facility parking lot was filled in between 1966 and 1975. During a previous investigation, various types of fill material related to the operations of the plant were encountered.

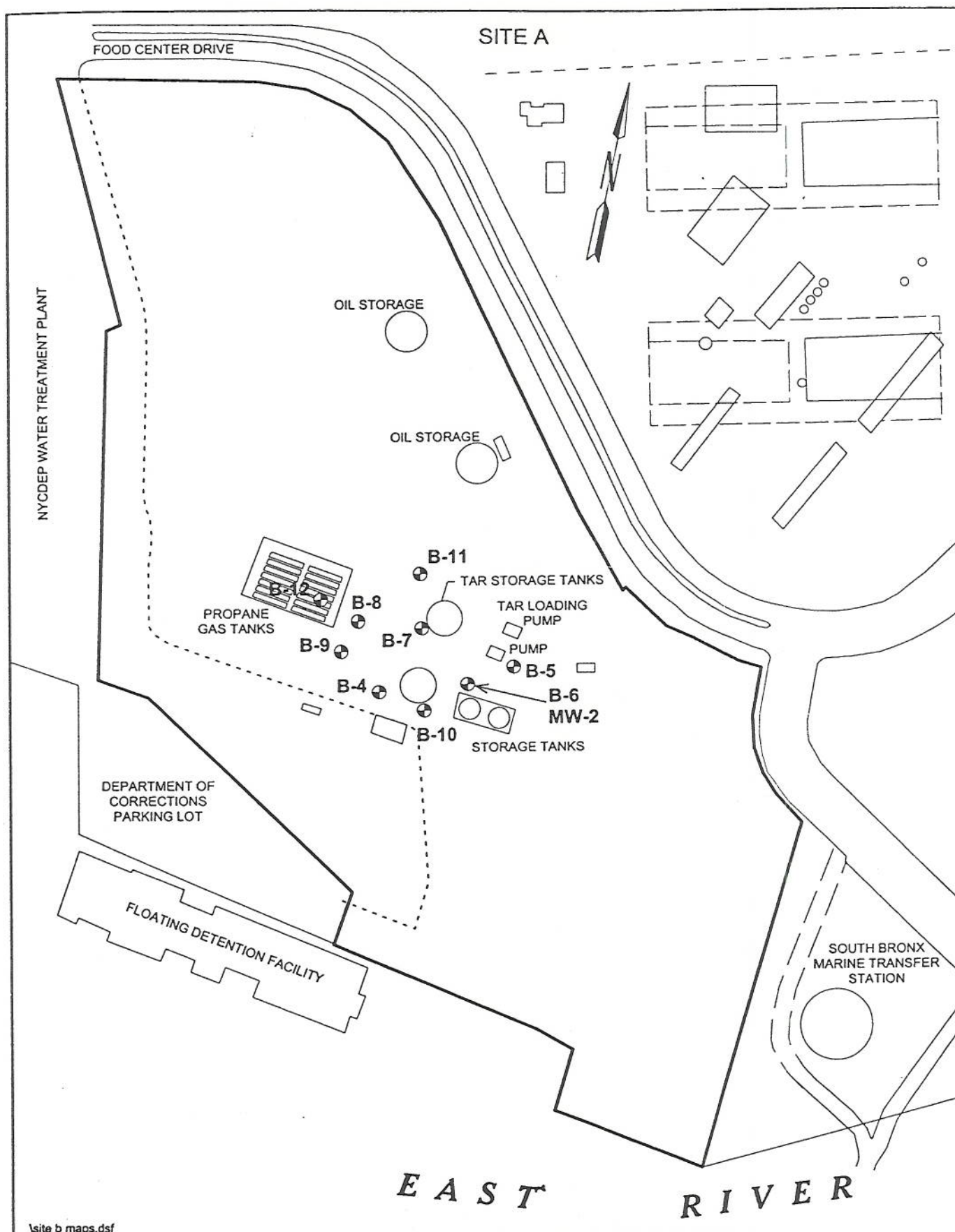
Several large above ground and underground storage tanks previously existed at the central and northern portions of Site B. The above ground storage tanks included two (2) 1,000,000 gallon tanks that stored oil, two (2) 500,000 gallon tanks that stored tar, and two (2) 150,000 gallon tanks that also stored oil. The underground storage tanks included one (1) 2,000,000 gallon tank and four (4) 7,500 gallon tanks. Each of these tanks reportedly stored oil. A former propane storage plant consisting of 14 tanks on concrete footings previously existed to the south and west of the storage tanks. Each of these tanks were 9 feet in diameter, 30 feet long, and had a capacity of 30,000 gallons.

Based on a historic site map, the area to the east of Site B contained rubble and remains of a former coke oven with associated equipment.

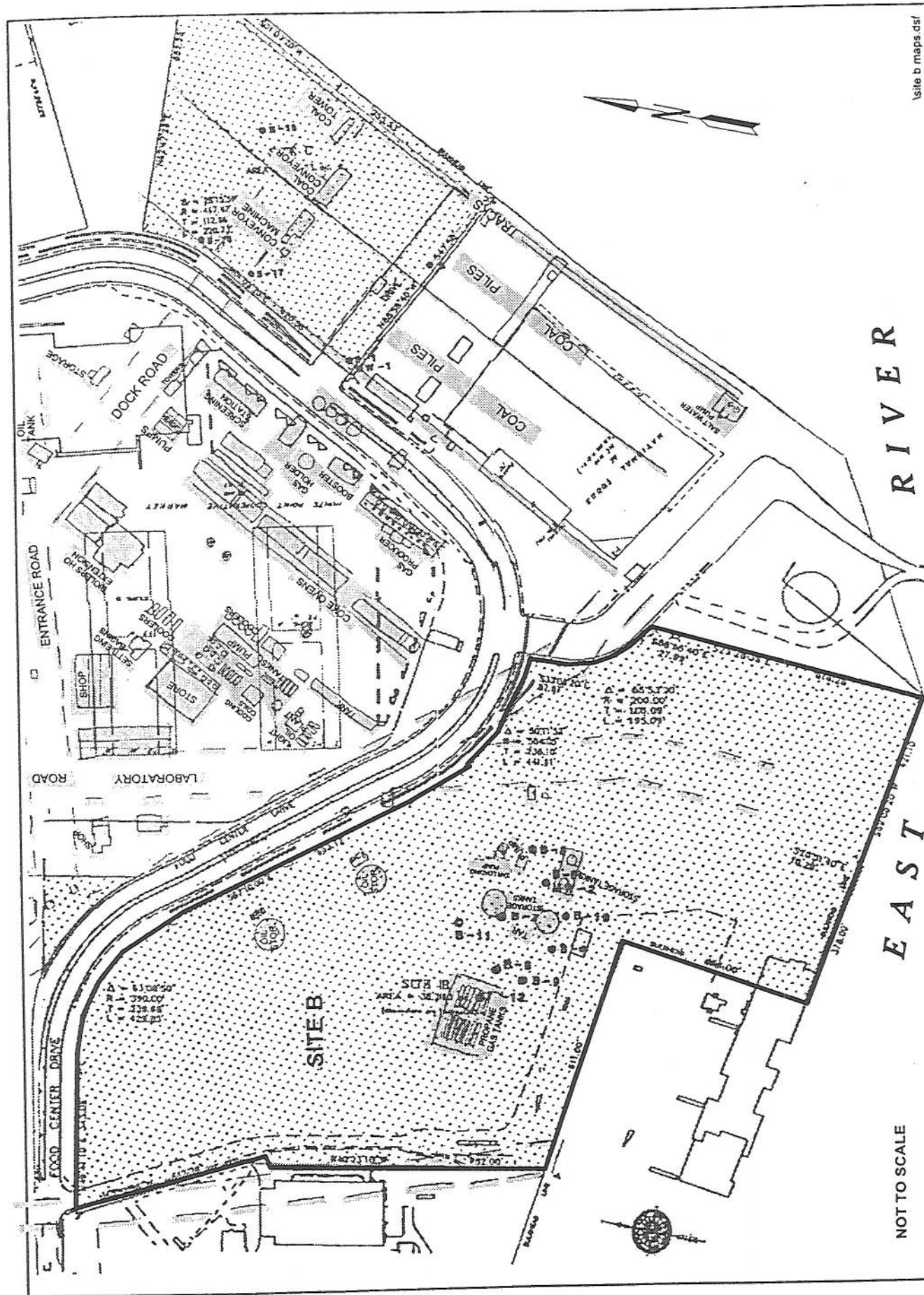


0 750 ft
SCALE IN FEET

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\\site b maps.dsf



Six-inch fire service mains run parallel to the bulkhead lines at the southern Site border and across the center of the Site. Laterals from the main are present perpendicular to the bulkhead at the southern Site limit and from the main that extends across the Site. A pipe tunnel is shown on a historic site map beneath the previously existing Hunts Point Avenue, near the current Food Center Drive, just north of the intersection with Farragut Street. Foam lines, ranging from 2 to 4 inches in diameter, existed in the vicinity of the above and underground storage tanks. A four-inch water line also extends onto the Site from Farragut Street. A twelve inch City water main exists beneath the former Hunts Point Drive and Farragut Street.

The intrusive work proposed in this scope takes into account the information shown on these maps and photos. Based on our experience at other areas of the market and the limited available information concerning underground utilities and structures, deviations from this scope may occur during the field activities. To the extent practical, these situations will be discussed with the regulatory agencies before the deviation occurs.

SCOPE OF WORK for Site B:

Approach to Sampling

- 1) LMS began this assignment by conducting a site inspection to identify the following: health and safety concerns, access limitations, and layout of control areas. The site inspection included a Certified Biologist traversing the site to assess the flora and fauna, look for the presence of threatened and endangered species, significant habitat, as well as the topography and surface conditions in anticipation of site clearing for the investigative activities.
- 2) A utility markout will be requested by contacting the utility clearance hotline. Historical site maps and aerials combined with the walkover were used to identify any additional locations that should be investigated. This specific site information was also used to determine the layouts of the sampling trenches by identifying obvious utilities, structures, and natural and man-made barriers. Although the markout clearance will identify existing utilities at a site, other relatively large utilities were observed on aerial photos and were then confirmed during the site visit. These utilities included a large double barrel Combined Sewer Overflow (CSO) and other storm drains. Several unidentified utilities were encountered during the subsurface investigation at other Hunts Point Sites. Care will be taken during the trenching so that disturbance to these utilities is minimized. However, LMS and its contractors will not accept responsibility for potential damage that may result when encountering these unidentified utilities.
- 3) The field activities will consist of excavation and visual inspection of material removed from the trenches at the Site. The orientation of the trenches is as shown on Figure

4. The excavations will allow for collection of samples over a greater area across the site in a manner not available with test boring installation. Excavations will allow a comprehensive Site Characterization to be completed.

Based on the review of boring logs from the previous Phase II work and a site walkover, it is proposed that a rubber tired backhoe will be used to excavate trenches and test pits across the site. Trenches will begin on one side of the site and extend across the site to a point reasonably close to the opposite edge of the area influenced by the previous site activities. Test pits are proposed to be advanced at areas that are known to contain significant underground utilities that would make a continuous trench impractical or infeasible. Specific site features viewed during the field activities (i.e. tar balls, extruded surface tar, or obvious signs of a subsurface condition) may prompt the adjustment of trench locations. Also, if significant underground utilities are encountered in the areas where trenching is proposed, the trenches may be scaled down to test pits. The field investigation will include the following activities:

- Ten (10) linear excavations (trenches)
- Maximum of Five (5) test pits
- Minimum of nine (9) shallow test borings
- Four (4) deep test borings
- Four (4) surface soil samples

Trenches

Linear excavations will be extended into the upper saturated zone across the entire site to provide a clear visual picture of the subsurface conditions, type and thickness of fill material, and condition of the shallow water table. These trenches are proposed for the open portion of Site B (Figure 4).

At the western portion of the Site, five (5) trenches will be oriented northwest-southeast, and these are identified on Figure 4 as numbers 1 through 5. These trenches will each be approximately 1100 ft long and will be spaced approximately 150 ft apart. Five (5) trenches planned on the eastern side of the Site (numbered 6 through 10) will be oriented east-west. All trenches will extend across the site to the existing combined sewer overflow. Other existing underground utilities at the Site will also be located (if possible). Any utilities or obstructions that are encountered will be noted and avoided.

The furthest upgradient western trench (#1) will be excavated as near Food Center Drive as possible. This proximity will provide observation of upgradient conditions for the entire Site so that the potential affects of adjacent areas can be assessed. Trench #2 will be advanced at or immediately downgradient of the two former

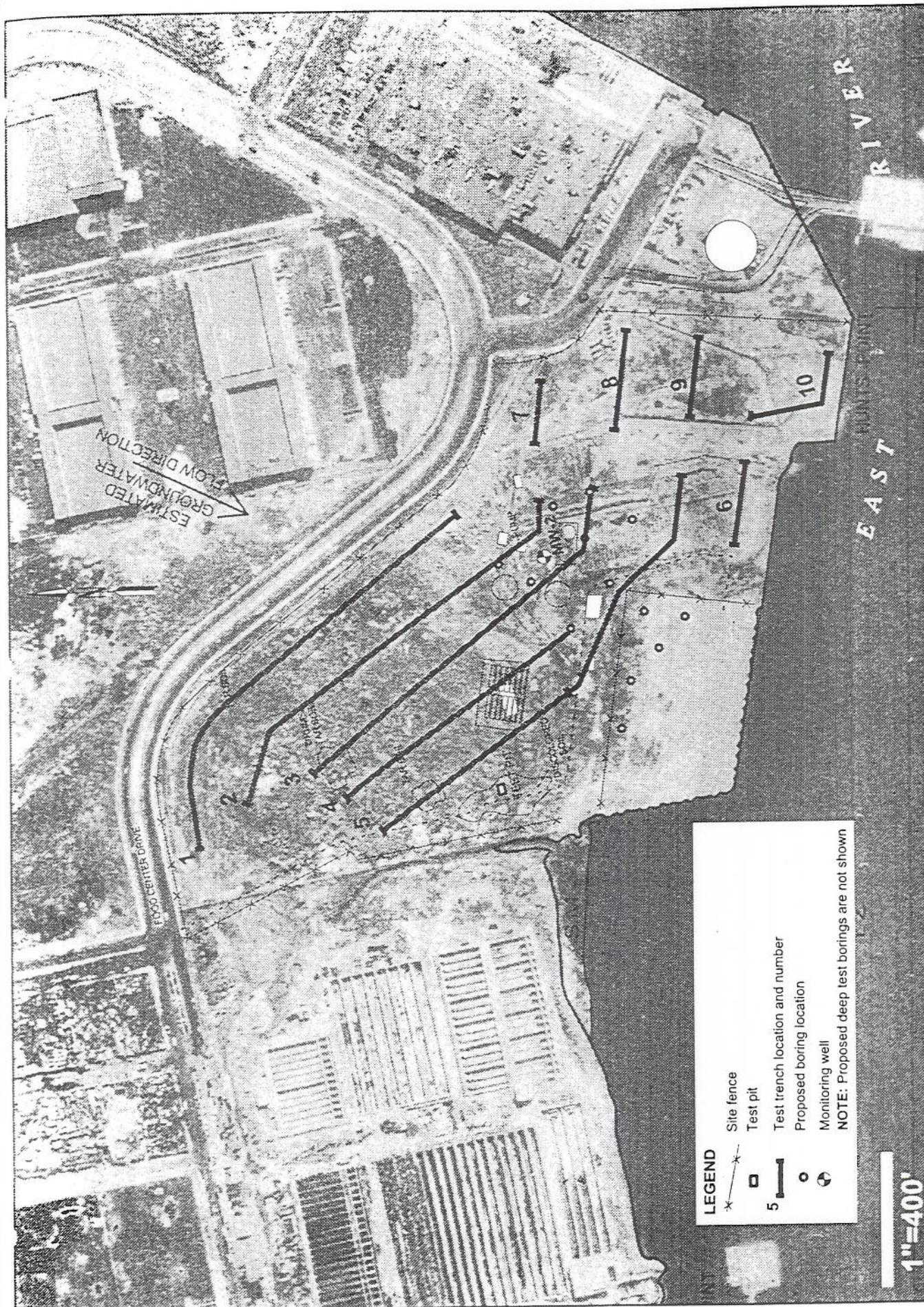


Figure
4

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Site B Sampling Locations

NOTE: Proposed deep test borings are not shown

LEGEND

Site fence

Test pit

Test trench location and number

Proposed boring location

Monitoring well

1"=400'

aboveground oil storage tanks (Figure 4). Trenches #3, #4, and #5 are located parallel to #2 and will extend through the areas where the greatest impacts were identified during the prior Phase II investigation. The downgradient northwest-southeast trench (#4) will be advanced through the area that contained the former propane storage tanks.

At the eastern side of the site, the three most upgradient trenches (#7, 8, & 9) will essentially be a continuation of trenches #2, 3, & 5, beginning on the other side of the underground CSO and drainage utilities. Two downgradient trenches (#6 & 10) will be excavated along the bulkhead (as close as reasonably possible).

Trench Excavation and Sampling Procedures

Each trench will extend until one of the following conditions are encountered: a depth at which the groundwater table is measurable and can be observed; refusal on bedrock or an obstruction; the top of the clay layer similar to Sites A and E; or 15 ft below grade, whichever is encountered first. Based on existing information and inspection of one existing well on-site, groundwater is expected to be encountered between 7 to 8 ft below ground surface. Understanding that Site B conditions and subsurface materials may vary, LMS may alter 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, remove material in 1-ft or 2-ft lifts, and log material as appropriate. During the excavation activity, specific attention to unearthed structures (piping, vaults, specialized fill material, etc.) will be noted.

Select samples will be collected from each trench to assess the potential impact of the previous site operations. LMS proposes to collect samples in the following manner and number:

Trenches 1 – 5 will each be divided into four relatively equal segments, with each segment identified by a letter (A – D). Three (3) grab samples will be collected from each segment at depths above the saturated zone. The general procedure will be to collect grab samples for Target Compound List (TCL) volatile organics (VOC) analysis from the three locations in each section that exhibit the greatest relative degree of petroleum and/or organic contamination. This will be based on observations and meter readings ("worst case" locations).

One (1) sample will also be composited from material across that corresponding trench segment. Four (4) composite samples will be collected from each trench (one from each segment). Each sample will be submitted for TCL semi-volatile organic compounds (SVOCs), pesticides/PCBs, Target Analyte List (TAL) metals, and cyanide. The metals analyses will include those that are typically present at other MGP sites and are reported in significant concentrations with respect to a human health concern. These metals include: arsenic, cadmium, chromium, lead, nickel, and vanadium. All samples collected will be delivered by an overnight courier, following chain-of-custody protocol, to a New York State Department of Health (NYSDOH) certified analytical laboratory. Samples will be analyzed for the

parameters described previously and listed on Table 1. NYSDEC ASP Category B deliverables will be the requested reporting level.

Trenches 6 – 10 are approximately one fourth of the length of Trenches 1 - 5. Samples will be collected from these excavations following the same rationale as Trenches 1 - 5. Similarly, the analyses of these samples will include three (3) grab samples for TCL VOCs and one (1) composite sample for TCL semi-volatile organic compounds (SVOCs), pesticide/PCBs, TAL metals, and cyanide. If specific source areas within the fill are identified, additional samples will be collected from these areas and submitted for chemical analysis. Up to nine (9) additional samples may be collected from this specific source material (approximately one sample per trench or from the additional test pits discussed later in this section). The determination for additional sample collection will be according to the conditions encountered during the field activities. The analysis of each sample will be based on the specific conditions encountered at that location, (for example, if an area of heavy coal tar substance is encountered below grade and this is chosen as a spot for analysis, that sample will be tested for SVOCs. If an area of purifier waste is encountered, it will be analyzed for metals and cyanide). These grab samples are intended to characterize some of the worst case material in order to help determine any approach to remediation.

As the excavations are advanced, the removed material will be placed as close as possible to the trench while still maintaining protection against trench wall collapse. All inspection of material will occur from outside the excavation. For this activity, delineation, removal of piping, and remediation of impacted material is not the intent of the excavations. Therefore, material will only be removed and stockpiled away from the backfill stockpile if gross contamination (soils containing free phase petroleum product or material of a similar nature) is encountered in a quantity and condition where it can be reasonably segregated. LMS will inspect and assess the excavated material and determine whether the impacted material can be returned to the trench as backfill. If any material requires segregation, it will be placed separate from the material to be backfilled on plastic sheeting.

If drums or containers are encountered during the trenching, they will be segregated from the other excavated materials. Any containers that are observed to have contents, either liquid or solid, will be inspected prior to handling to ensure the integrity of the container is not compromised. If the integrity of the drums with contents is suspect, the drums may be left in the excavation, the location will be marked for later removal so that potential discharges are prevented. If possible, samples will be collected to assess their contents and to characterize the material for disposal. All drums that are handled at the site will be placed in a bermed area and covered with plastic to limit exposure to the environment.

LMS will monitor and log each excavation as it is advanced 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

intrusive sampling, LMS will perform air monitoring at each Site as per the Community Air Monitoring Plan portion of this Scope.

When groundwater is encountered, it will be observed for obvious contamination. If free phase petroleum or other significant impacts are encountered, the bottom of the trench will be backfilled at that location so that lateral movement of petroleum in the excavation is limited. Upon completion of each trench and prior to complete backfilling, a temporary slotted PVC pipe (2-4 in. ID.) may be placed in locations where groundwater conditions suggest the greatest potential impact. The pipe will be kept upright as the trench is backfilled. A temporary cap will be placed on the top of the PVC piping to limit access and a numbering system will be devised to indicate the location of the casing. If no obvious impacted groundwater is encountered, PVC may be installed at the area with the most available water. Groundwater samples may also be collected directly from the trench if conditions do not allow PVC to be safely installed or if an isolated condition is observed. Backfilling will occur in 1-1.5 ft lifts or greater (if conditions allow) and compacted using the excavator bucket between each lift.

Upon completion of all of the trenches at the Site, the temporary PVC pipes or standing groundwater will be inspected. Groundwater samples will be collected from each temporary casing. LMS proposes to submit two (2) upgradient and approximately six (6) downgradient samples for analysis. Each sample will be collected using a dedicated, disposable polyethylene bailer and submitted for TCL VOCs, SVOCs, pesticides/PCBs, TAL metals, cyanide, total suspended solids (TSS), and TPH. The sample collected for metals analysis will be filtered using an inline filtration apparatus. Following filtration, the sample will then be preserved before shipment to the laboratory.

Free phase product exists at the site in one monitoring well. A sample of product from that well and up to three additional locations (if suspected to be from potentially different plumes) will be collected and analyzed for VOCs, SVOCs, pesticide/PCBs, metals, cyanide, ignitability, corrosivity, and reactivity.

A maximum of five (5) additional test pits are proposed for locations where additional information may be needed, either from a gap in the larger trenches or from surface conditions that are noted away from proposed trenches. Gaps in the trenches may be necessary to avoid existing or suspected underground utilities, structures or obstructions. These determinations may occur at any time up to and during the actual excavation. This proposes that if test pits are installed, up to three (3) samples will be collected and the TCLP extraction will be performed. The extraction will be held for future analysis.

Shallow Test Borings and Sampling Procedures

Shallow and deep test borings will be advanced at the site in areas not exposed by trenching and in the open parking lot. The primary purpose for the borings in the open area of the site will be to delineate petroleum contamination that may be

encountered. The borings advanced in the parking area will be in lieu of trenches in that area.

This scope includes approximately nine (9) shallow test borings that will be advanced in order to delineate shallow groundwater contamination and certain fill conditions. Each test boring will be advanced approximately 5 ft into the water table using hollow stem auger drilling methods and tools. Sampling will be performed continuously from grade to the bottom of the boring so that the fill material can be observed. Each soil or fill sample will be described on a boring log. The description will include the type of material, relative composition, obvious contamination, coloration, PID or FID readings from headspace above the sample, and any other distinctive observations relative to that interval. Slotted PVC casing (2 or 4 in I.D.) will be installed several feet into the water table, similar to the trench procedure. The annulus of the slotted portion of the casing will be backfilled with silica sand. The remainder of the annulus will be backfilled with cuttings from the boring so that surface collapse is prevented and the casing is stabilized. These temporary piezometers/groundwater monitoring points will be used to monitor potential free phase floating product, groundwater fluctuation, general tidal influence, and to provide other information for a remedial assessment.

Following completion of the boring and casing installation, an elevation survey will occur so that a generalized groundwater contour map can be prepared. Using an oil/water interface probe, product measurement thickness will be collected from these locations and plotted on a map to assist in the delineation of the impacted area. If product is observed at more than one location, a sample will be collected from a minimum of one casing for each individual source. Each sample will be observed with a description including color, odor, relative PID or FID, and column thickness. That sample will then be submitted to the analytical lab for VOCs, SVOCs, pesticides/PCBs, TAL metals, and cyanide analysis as well as ignitability, corrosivity and reactivity. If additional borings are necessary to complete delineation, that determination will be made in the field and locations will be cleared through NYSDEC and NYCEDC prior to their installation.

An additional five (5) shallow test borings will be advanced in the parking lot area as shown on Figure 4. Each will be advanced following the same procedures for logging and sampling as the delineation borings. If a distinctive fill interval is encountered that contains obvious discoloration or odor, a sample will then be collected for laboratory analysis. A maximum of three (3) soil samples will be collected and analyzed for TCL VOCs, SVOCs, pesticide/PCBs, TAL metals, and cyanide. If free phase product is encountered, a PVC casing similar to those described in the delineation borings will be installed. However, any casings installed in the parking lot will be completed as monitoring wells using standard NYSDEC construction methods. Each will be finished with a flush mount curb box and will have 10 ft of slotted screen, sand pack above the screen interval, bentonite seal and portland cement backfill. Product will be sampled following the procedures described for the delineation borings.

Deep Boring Installation and Sampling Procedures

A maximum of four (4) deep test borings will be advanced both up and downgradient of the larger area containing potential petroleum product. These borings will be advanced to a maximum depth of 50 ft or bedrock, whichever is encountered first. Each boring will be advanced using air rotary and a soil casing advancer similar to ODEX. Split spoons will be collected at five ft intervals to the water table and then continuously to the bottom of the boring. 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 impacted soils, 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. If no signs of dense non-aqueous phase liquid (DNAPL) are encountered upon reaching the bottom depth, the boring will be terminated and grouted. If DNAPL is suspected at the 40 ft depth, the boring may be continued so that the vertical limit is defined. 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.

Surface Soil Sampling

Four (4) surface soil samples will be collected from areas that contain discolored soil as was evidenced along the western site limit. The area where the discolored soils are observed will be traversed to identify the appropriate sampling locations. Factors to be considered for the sampling location include, but not be limited to, headspace monitoring results, the degree of discoloration, the apparent thickness of the discolored soils, and low-lying areas where runoff that contacted the discolored soil may collect. Sample locations will be identified on the site map. A general description of the area, its size, condition of vegetation, color, and distinctive characteristics will be provided for each sample. Each sample will be collected and analyzed for the following parameters; VOCs, SVOCs, pesticides/PCBs, TAL metals and cyanide, and will have the extraction for TCLP metals performed. This will offer up to six months holding time for the extract. The TCL VOC samples will be collected from 3 to 6 inches below grade using a decontaminated stainless steel spoon and transferred directly to laboratory provided sample containers. The material collected from 0 to 3 inches below grade will be placed in a decontaminated stainless steel bowl and homogenized with material from the other sampling locations. After the material is homogenized, it will be transferred to the appropriate containers for the remaining analyses.

Daily Inspection of the Bulkhead

On at least a daily basis, the length of the bulkhead adjacent to Site B will be traversed to document observations of this area.* Specific attention will be focused on whether any sheens, seeps or staining are observed at the water surface. The daily inspection will include observations within one hour of low tide, if possible, provided

the low tide occurs during other activities at the site. The timing of the low tide will be determined by the tidal data for Willets Point (south end of Throgs Neck Bridge) as provided by a local newspaper. Willets Point is approximately 5.5 miles east of Site B.

If sheens, seeps, or staining is observed emanating from the Site B bulkhead, surface water and/or sediment samples will be collected if it is determined the material originates from the Site. Observations of subsurface conditions in trenches and test pits advanced adjacent to the bulkhead and at other areas of the site will be used to assess whether the sheen/seeps originate from Site B. Surface water samples will be collected by lowering the sample container below the water surface and filling the bottle to the extent practical. Sediment samples will be collected from the upper 6 inches to 1 foot of sediment, using a hand auger, ponar dredge, or other equipment as appropriate to access the material in the vicinity of the sheen or seep. Depending on the location of the sheen or seep, the samples will be collected either by accessing the location from the land surface or by use of a boat. The surface water and sediment samples will be collected for TCL VOCs, SVOCs, pesticides/PCBs, TAL metals, and cyanide.

Investigation and Data Report

Following completion of the investigation for Site B 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 impacts of the MGP and an assessment of the impacted areas
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 impacted areas 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
9. Assessment of contaminant plume conditions, locations, size, type of contamination

10. Following completion of the Investigation Report LMS will prepare a recommendation for remedial work

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 5 ppm, work activities under the provisions of the Vapor Emissions Response Plan will be performed. Because of the concentrations of benzene, toluene, ethylbenzene and xylenes (BTEX) reported during the previous Phase II investigation, upgrading to Level C or Level B personal protective equipment may be warranted.

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/m^3 greater than the background level for a period of fifteen (15) minutes, then downwind perimeter measurements will be collected. If measurements remain 150 ug/m^3 above the background then dust suppression techniques will be employed.

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.

Emergency Response Plan

The Health and Safety Plan documents the actions to be performed in the event of a medical emergency or injury at the site. In the event that non-medical incident occurs at the site, the site safety officer will immediately notify the proper agency to respond to the incident. Possible emergency contacts include:

- | | |
|---------------------|------------------|
| • Fire Department | 911 |
| • Police Department | 911 |
| • Utility Hot Line | 1 (800) 272-4480 |
| • NYSDEC Hot Line | 1 (800) 457-7362 |
| • NYCDEP | |

The Scope of Work includes excavation of soil and fill material across the site in trenches. This method will allow the inspection of subsurface conditions and may encounter abandoned or existing underground piping. Contents and location of piping is unknown and all precautions will be taken to not breach conduits. Based on current site settings, all conduits

are below ground and therefore situations requiring action are expected to be able to be dealt with using the excavation equipment already on-site to temporarily slow or stop any discharge.

The site safety officer will evaluate the situation to ensure that there is no risk to personnel. If necessary, the impacted area will be barricaded to limit access. If it is determined that there is no risk to personnel, engineering controls may be established to control or reduce the impact of the situation. Such engineering controls include the placement of soil or other material to form a berm, backfilling a specific area of the trench to stop or slow flow of material, or the placement of sorbing material, in addition to other engineering controls.

Table 1
Analytical Parameter Summary*
AREA B
Hunts Point Cooperative Market

Area B	Method	Quantity	QA/QC	Type
Trench Soil				
TCL VOCs	8260	75	7 trip blanks, 3 S/SD	Grab
TCL SVOCs	8270	25	1 S/SD	Composite
pesticide	8081	25	1 S/SD	
PCBs	8082	25	1 S/SD	Composite
TAL metals	6000/7000	25	1 S/SD	Composite
cyanide	335.2	25	1 S/SD	Composite
Trench Groundwater	Method	Quantity		Type
TCL VOCs	8260	8	7 trip blanks, 1 MS/MSD/MSB, 1 blind Dupl.	Grab
TCL SVOCs	8270	8	1 MS/MSD/MSB, 1 blind dupl.	Grab
pesticides	8081	8	1 MS/MSD/MSB, 1 blind dupl.	Grab
PCBs	8082	8	1 MS/MSD/MSB, 1 blind dupl.	Grab
TAL metals	6000/7000	8	1 MS/MSD/MSB, 1 blind dupl.	Grab
cyanide	335.2	8	1 MS/MSD/MSB, 1 blind dupl.	Grab
TSS	160.2	8		
TPH	418.1	8		
Trench Product	Method	Quantity		Type
TCL VOCs	8260	4		Grab
TCL SVOCs	8270	4		Grab
pesticides	8081	4		Grab
PCBs	8082	4		Grab
TAL metals	6000/7000	4		Grab
cyanide	335.2	4		Grab
ignitability	1010	4		
corrosivity	9045C	4		
reactivity	Chap. 7.3.2	4		
Trench & Test Pit Source	Method	Quantity		Type
TCL VOCs	8260	9		Grab
TCL SVOCs	8270	9		Grab
pesticides	8081	9		Grab
PCBs	8082	9		Grab
TAL metals	6000/7000	9		Grab
cyanide	335.2	9		Grab
Trench & Test Pit Source	Method	Quantity		Type
TCLP extract	1311	3		Grab
Surface Soil Samples	Method	Quantity		Type
TCL VOCs	8260	4	1 trip blank, 1 S/SD	Grab
TCL SVOCs	8270	4	1 S/SD	Grab
pesticides	8081	4	1 S/SD	Grab
PCBs	8082	4	1 S/SD	Grab
TAL metals	6000/7000	4	1 S/SD	Grab
cyanide	335.2	4	1 S/SD	Grab
TCLP extract	1311	4		

Table 1
Analytical Parameter Summary*
AREA B
Hunts Point Cooperative Market

Shallow Boring Product	Method	Quantity		Type
TCL VOCs	8260	1		Grab
TCL SVOCs	8270	1		Grab
pesticides	8081	1		Grab
PCBs	8082	1		Grab
TAL metals	6000/7000	1		Grab
cyanide	335.2	1		Grab
ignitability	1010	1		
corrosivity	9045C	1		
reactivity	Chap. 7.3.2	1		
Shallow Test Boring Soil	Method	Quantity		Type
TCL VOCs	8260	3	1 trip blank, 1 S/SD	Grab
TCL SVOCs	8270	3	1 S/SD	Grab
pesticides	8081	3	1 S/SD	Grab
PCBs	8082	3	1 S/SD	Grab
TAL metals	6000/7000	3	1 S/SD	Grab
cyanide	335.2	3	1 S/SD	Grab
Deep Test Boring Soil	Method	Quantity		Type
TCL SVOCs	8270	**		Grab
Bulkhead Surface Water	Method	Quantity		Type
TCL VOCs	8260	**		Grab
TCL SVOCs	8270	**		Grab
pesticides	8081	**		Grab
PCBs	8082	**		Grab
TAL metals	6000/7000	**		Grab
cyanide	335.2	**		Grab
Bulkhead Sediment	Method	Quantity		Type
TCL VOCs	8260	**		Grab
TCL SVOCs	8270	**		Grab
pesticides	8081	**		Grab
PCBs	8082	**		Grab
TAL metals	6000/7000	**		Grab
cyanide	335.2	**		Grab

Notes:

* - Category B deliverables.

** - Contingency samples to be collected if field conditions warrant

EXHIBIT "C"

Response Plan

EXHIBIT "D"

Assignable Release and Covenant Not To Sue

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. D2-0004-01-03 (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 B located at Tax Block 2780, Lot 1; Tax Block 2781, part of Lot 160 and part of Lot 306; and Tax Block 2778, part of Lot 100 in the Borough and County of Bronx, City and State of New York (all of which is more fully set forth in a legal description of the Site at Appendix A attached hereto), has been successfully implemented. Parcel "B" is more fully set forth on a Map of the Site attached hereto as Appendix "B."

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 AND
TRUSTEE OF NEW YORK STATE'S NATURAL
RESOURCES

By: _____

Appendix "A"

Description of Parcel "B"

Appendix “B”

Map of the Site

EXHIBIT "E"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 2001 by the City of New York, the fee owner of a parcel of real property consisting of the operable unit Parcel "B" located at Tax Block 2780, Lot 1; Tax Block 2781, part of Lot 160 and part of Lot 306; and Tax Block 2778, part of Lot 100 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) (the "Property"); and

WHEREAS, the City of New York, by authorized signature, entered into an agreement with the Department, Index #D2-004-01-03 (the "Agreement"), concerning the remediation of contamination present on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____, 2001; 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: April 17, 2001

By: Deborah R. Wecker

Its: Commissioner

STATE OF NEW YORK)

) ss:

COUNTY OF)

On the 17 day of April, in the year 2001, before me, the undersigned, personally appeared Deborah Wecker, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Andrew Schwartz
Signature and Office of individual
taking acknowledgment

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

Appendix "A"

Description of Parcel "B"

All that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of the Bronx, City and State of New York, bounded and described as follows:

Commencing at the North Easterly corner of Halleck Street (100' wide) and Food Center Drive (100' wide); running thence Southerly along the prolongation of the Easterly line of Halleck Street, a distance of 100 feet to a point, on the Southerly line of Food Center Drive. Thence Easterly along the Southerly line of Food Center Drive, a distance of 13.05 feet to the point have a coordinate of (N-1827.165 E-20023.082) said point being the point and place of BEGINNING.

1. Along the south line of Food Center Drive, N 49° 41' 10" E 257.53' to a point; thence,
2. Along the same on a tangent concave curve to the right with a radius of 421.00' and a curve length 464.00' to a point; thence,
3. Along the same, S 67° 10' 00" E 665.12' to a point; thence,
4. Along the same on a tangent concave curve to the left with a radius of 473.05' and a curve length 411.36' to a point; thence,
5. S 33° 03' 20" E 119.03' to a point; thence,
6. Along a tangent concave curve to the left with a radius of 200.00' and a curve length 195.09' to a point; thence,
7. Leaving the above mentioned, S 88° 56' 40" E 27.99' to a point; thence,
8. S 25° 28' 35" E 616.27' to a point on the bulkhead line of East River; thence,
9. Along the above mentioned, S 69° 08' 20" W 421.10' to a point; thence,
10. Leaving the above mentioned, N 20° 51' 40" W 124.28' to a point; thence,
11. S 69° 47' 52" W 210.44' to a point; thence,
12. N 20° 46' 45" W 145.27' to a point; thence,

13. N $42^{\circ} 57' 53''$ W 280.86' to a point; thence,
 14. N $69^{\circ} 09' 03''$ W 542.25' to a point; thence,
 15. N $40^{\circ} 42' 35''$ W 93.26' to a point; thence,
 16. N $44^{\circ} 15' 36''$ E 12.27' to a point; thence,
 17. N $41^{\circ} 19' 13''$ W 98.70' to a point; thence,
 18. N $67^{\circ} 03' 57''$ W 70.30' to a point; thence,
 19. N $40^{\circ} 47' 05''$ W 254.89' to a point; thence,
 20. Along the same on a tangent concave curve to the left side with a radius 555.38' and a curve length 164.68' to a point; thence,
 21. N $57^{\circ} 46' 24''$ W 274.58' to a point; thence,
 22. N $40^{\circ} 23' 19''$ W 115.83 to the point and place of beginning.
- Containing 29.04 acres, subject to easement.