

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** December 2, 2003
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF A TIERED APPROACH TO CORRECTIVE ACTION OBJECTIVE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND SALI SALIEVSKI", as presented.

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SUMMARY OF ITEM:

Adoption of the attached resolution will authorize the execution of a tiered approach to corrective action objective agreement between the Village of Downers Grove and Sali Salievski. in relation to the contamination of soil and groundwater at Hi-Tech Import Auto Service located at 356 Maple Avenue.

RECORD OF ACTION TAKEN:

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF A TIERED APPROACH TO
CORRECTIVE ACTION OBJECTIVE AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE AND SALI SALIEVSKI**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Sali Salievski. (the "Owner/Operator"), for certain corrective action and remediation objectives with regard to the contamination of soil and groundwater at Hi-Tech Import Auto Service located at 356 Maple Avenue, Downers Grove, IL, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

TIERED APPROACH TO CORRECTIVE ACTION RIGHT-OF-WAY AGREEMENT

This Agreement is entered into this ____ day of _____, 2003 pursuant to the Environmental Protection Act ("Act"), 35 IL Admin. Code Section 742.1020 by and between Sali Salievski ("Owner") and Sali Salievski ("Operator"), together referred to herein as "Owner/Operator," and the Village of Downers Grove ("Village"), as follows:

1. This Agreement is not binding on the Village until it is executed by a duly authorized representative of the Village, and prior to execution, this Agreement constitutes an offer by Owner/Operator. The duly authorized representatives of Owner and Operator have signed this Agreement, and this Agreement is binding upon them, their successors and assigns.
2. Owner/Operator stipulates:
 - a. Owner/Operator is pursuing corrective action at a Site and in the right-of-way adjacent to the Site located at 356 Maple Avenue, Downers Grove, Illinois 60515 ("Site"). Site is legally described in **Attachment A**.
 - b. The right-of-way adjacent to the Site, described and in **Attachment B**, is subject to this Agreement and is possibly impacted with contaminants from a release at the Site.
 - c. Attached as **Attachment C** is a site map showing the known and probable area(s) of contaminant impacted soil in the right-of-way where, at the time of this Agreement, contaminants exceed the Tier 1 residential soil remediation objectives under the Act and 35 Ill. Admin. Code Section 742. Attached as **Attachment D** is a table showing the concentration of contaminants in soil and groundwater within the area described in **Attachment B**, and showing the applicable Tier 1 soil remediation objectives for residential property that are exceeded. Based on analytical results from the environmental investigation performed at the Hi-Tech facility, there are no groundwater exceedences above 35 Ill. Admin. 742 Tier 1 groundwater remediation objectives.
 - d. The corrective action is for a confirmed release of petroleum from an underground storage tank at the Site.
 - e. The Illinois Emergency Management Agency has assigned incident number **20020345** to the Site.

- f. Owner/Operator has requested risk-based, site-specific soil remediation objectives from the Illinois Environmental Protection Agency ("Illinois EPA") under the Act and 35 Ill. Admin. Code Section 742.
 - g. Under 35 Ill. Admin. Code 742.1020, the use of risk-based, site-specific remediation objectives in the right-of-way require this Agreement, in lieu of active remediation of the contaminant-impacted soil.
3. The Village stipulates that it holds the right-of-way described in **Attachment B** in trust for the public and has jurisdiction over the right-of-way.
4. The parties stipulate that:
 - a. This Agreement is intended to meet the requirements of the Illinois Pollution Control Board ("Board") regulations for such Agreements and is intended, under 35 Ill. Admin. Code §742.1020, as an acceptable "Highway Authority Agreement."
 - b. This Agreement shall be recorded by the Owner/Operator at its expense along with the Illinois EPA's "No Further Remediation" determination with the DuPage County Recorder of Deeds. The Owner/Operator will similarly record any attachments, addendums, or alterations to this Agreement. Within thirty (30) days of such recording with the DuPage County Recorder of Deeds, the Owner/Operator shall provide the Village a copy of the Agreement that has been stamped by the DuPage County Recorder of Deeds to indicate that it has been recorded with that office.
 - c. This Agreement shall be null and void should the Illinois EPA not approve it, or should it not be recorded along with the Illinois EPA's "No Further Remediation" determination, or should the Village not review and approve the "No Further Remediation" determination for the Site as it applies to the right-of-way identified in **Attachment B**.
5. The Village agrees that it will prohibit by ordinance the use of groundwater that is contaminated at levels above Tier 1 residential remediation objectives beneath its right-of-way identified in **Attachment B** as a potable or other domestic supply of water. This prohibition is ensured in the Village of Downers Grove ordinance number 4423, dated June 18, 2003. The Village further agrees that it will limit access to soil as described herein under the right-of-way described in **Attachment B** that is contaminated from the release at levels above the Tier 1 residential remediation objectives, and by requiring applicants for a public way work permit in the right-of-way described in **Attachment B** to consult the Village before obtaining a permit.

- a. Where the pavement in the right-of-way is to be considered an engineered barrier, the Owner/Operator agrees to reimburse the Village for maintenance activities requested by Owner/Operator. Except for ordinary maintenance performed on Village roadways, the Village does not agree to maintain the right-of-way, nor does it guarantee that the right-of-way will continue as a roadway or that the right-of-way will always be maintained as an engineered barrier.
 - b. This agreement does not in any way limit the Village's authority to construct, reconstruct, repair or maintain and operate a right-of-way upon the property identified in **Attachment B** or to allow others to do the same. To that extent, the Village reserves the right to identify, investigate, and remove contaminated soil and/or groundwater above Tier 1 residential remediation objectives from the right-of-way identified in **Attachment B** and to dispose of them as it deems appropriate in accordance with applicable environmental regulations so as to avoid causing a further release of the contaminants and to protect human health and the environment. The Owner/Operator shall reimburse the actual costs incurred by the Village or others in so identifying, investigating, removing, storing, handling or disposing of contaminated soil and/or groundwater, and it shall not be a defense for Owner/Operator that those costs were not consistent with or required by Board or United States Environmental Protection Agency regulations, guidelines or policies. Prior to incurring any such costs, and unless there is an urgent reason otherwise, the Village shall first give Owner/Operator thirty days notice and an opportunity to remove or dispose of contaminated soil and/or groundwater, at Owner/Operator's cost, to the extent necessary for the Village's work. Such removal and disposal shall be in accordance with all applicable laws and regulations. Failure to give this opportunity to Owner/Operator shall not be a defense to a claim for reimbursement or that the work should not have been done. There is a rebuttable presumption that the contamination found in the right-of-way described in **Attachment B** arose from the release of contaminants at the Site. Should Owner/Operator not reimburse the costs identified here, this Agreement shall be null and void in addition to such other remedies as may be available to the Village by law.
6. The Owner/Operator agrees to indemnify and hold harmless the Village, its agents and employees, and other entities using the right-of-way by a permit issued by the Village, for all obligations asserted against or costs incurred by them associated with the release of contaminants of concern as described in **Attachments B, C and D**.
 7. Violation of the terms of this Agreement by Owner/Operator, or its successor(s) in interest, may be grounds for voidance of this Agreement as a Highway Authority Agreement.

8. No violation of a permit by a third party shall constitute a breach of this Agreement by the Village. Owner/Operator also agrees that its personnel, if any, at the Site will exercise due diligence in notifying those accessing contaminated soil in the right-of-way of their rights and responsibilities under this Agreement.
9. Should the Village breach this Agreement, Owner/Operator's sole remedy is for an action for damages in the Circuit Court of DuPage County. Any and all claims for damages against the Village, its agents, contractors, employees or its successors in interest or others under permit from the Village arising at any time are limited to an aggregate maximum of \$20,000.00. No other breach by the Village, its successors in interest or others under permit, of a provision of this Agreement is actionable in either law or equity by Owner/Operator against the Village or them and Owner/Operator hereby releases the Village, its agents, contractors, employees and its successors in interest, or others under permit from the Village for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or environmental laws, regulations or common law governing the contaminated soil or groundwater in the right-of-way. Should the Village convey, vacate or transfer jurisdiction of that right-of-way, Owner/Operator may pursue an action under this Agreement against the successors in interest, other than the Village, or any of its departments, or State agency, in a Court of Law.
10. This Agreement is entered into by the Village in recognition of laws passed by the General Assembly and regulations adopted by the Board which encourage a tiered-approach to remediating environmental contamination. This Agreement is entered into by the Village in the spirit of those laws. Should any provision of this Agreement be determined to exceed the authority of the Village, however, this Agreement shall be null and void.
11. This Agreement (including attachments, addendums, and amendments) shall run with the land and be binding upon all assigns and successors in interest to the Owner/Operator of the Site.
12. The Village will limit access to the Site and rights-of-way as follows:
 1. Normal Access: The Village will limit access to the Site and rights-of-way via the Village Transportation Department or its successor agency, by which persons seeking authorization to perform subsurface work in a Village right-of-way will be informed of the nature and extent of the contamination, and will be informed that they should take appropriate steps to ensure the health and safety of people working at the Site and rights-of-way.
 2. Emergency Access: The Public Works Department, the Village Building Department, and the Downers Grove Fire Department or their successor agencies

will be notified of the contamination at this Site and adjacent rights-of-way and will be provided with all available environmental data regarding the Site and adjacent rights-of-way. Such information will be provided to utilities in the area.

13. This Agreement shall continue in effect from the date of the Agreement until contaminant concentrations in the soil and groundwater are subsequently reduced through active remediation or through natural attenuation to Tier 1 residential levels as approved by the Illinois EPA and Board regulations, such that the right-of-way identified in **Attachment B** is demonstrated to be suitable for unrestricted use and there is no longer a need for this Agreement, and the Illinois EPA has, upon written request to the Illinois EPA and notice to the Village, amended the "No Further Remediation" determination for the Site to reflect unencumbered future use of that right-of-way.

14. Written notice and other communications relating to this agreement directed to the Village shall be sent to:

Riccardo Ginex, Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

15. Written notice and other communications relating to this agreement directed to Owner/Operator shall be sent to:

Sali Salievski, Owner
Hi-Tech Import Auto Service
356 Maple Avenue
Downers Grove, IL 60515

IN WITNESS WHEREOF, the Village of Downers Grove has caused this Agreement to be signed by its duly authorized representative:

BY: _____ Date: _____

IN WITNESS WHEREOF, Owner, Sali Salievski has caused this Agreement to be signed by its duly authorized representative:

BY: *Sali Salievski* Date: 11-06-03

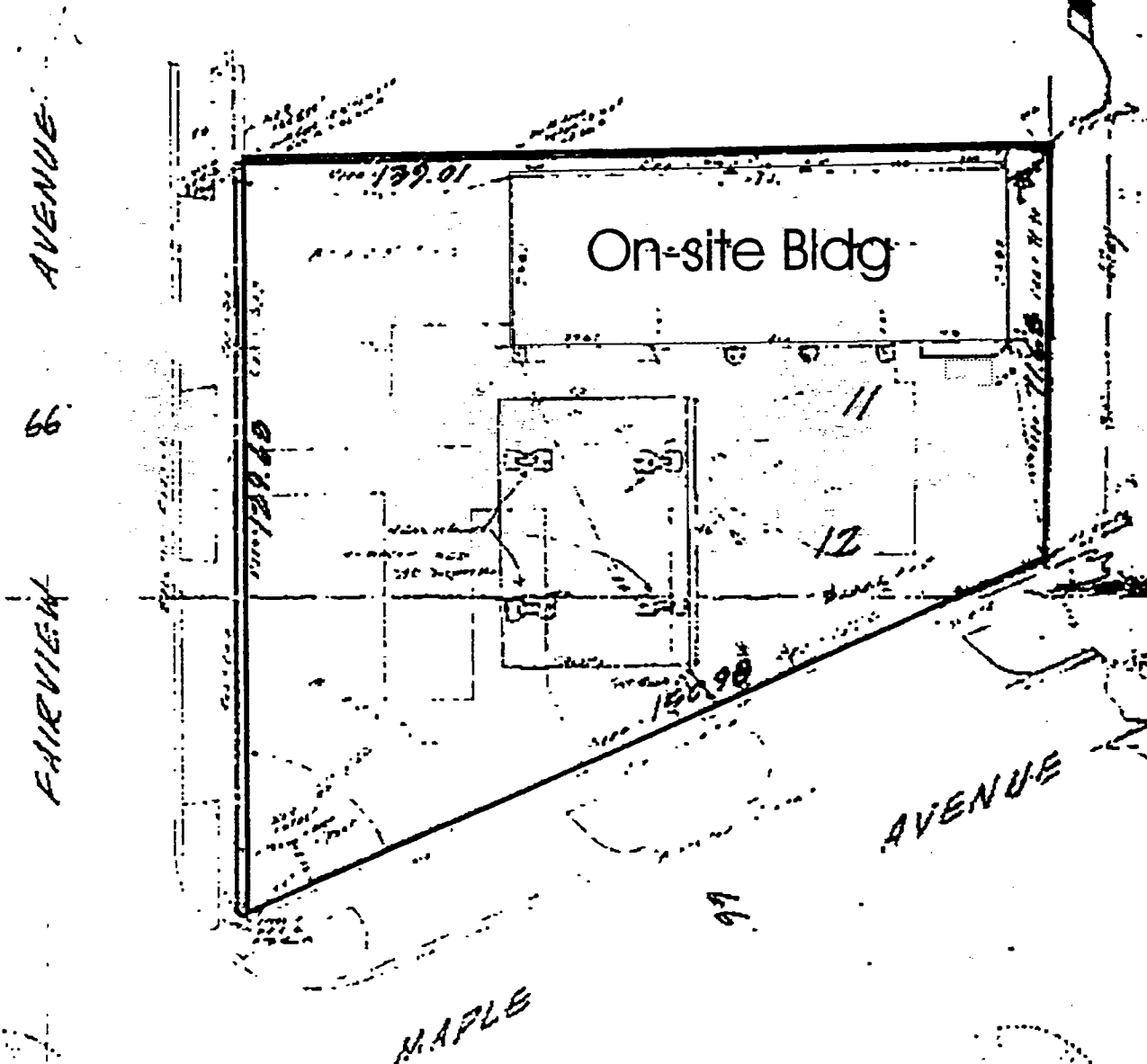
IN WITNESS WHEREOF, Operator, Sali Salievski has caused this Agreement to be signed by its duly authorized representative:

BY: *Sali Salievski* Date: 11-06-03

ATTACHMENT A

PLAT OF SURVEY

OF LOTS 11 AND 12 IN BLOCK 5 IN THE RESUBDIVISION OF BLOCKS 1, 2, AND 3 IN AUSTIN
 SUBDIVISION IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 12 NORTH, RANGE 11
 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION
 RECORDED ON JUNE 12, 1891 AS DOCUMENT 45755, IN DU PAGE COUNTY, ILLINOIS.



AEC, Inc.	Map Scale: As Indicated	Location: 356 Maple Avenue Downers Grove, IL 60515	
	Source: Plat Survey- Downers Grove F.R.D.	Title: Site Map With U.O. UST Location	
	Date: 02/00	Proj. # 000216.01	Figure 2

ATTACHMENT B

DESCRIPTION OF HIGHWAY AUTHORITY AGREEMENT AREA

The parcel of land to be entered in agreement with the Village of Downers Grove (Village) and Mr. Sali Salievski (Owner) is described herein:

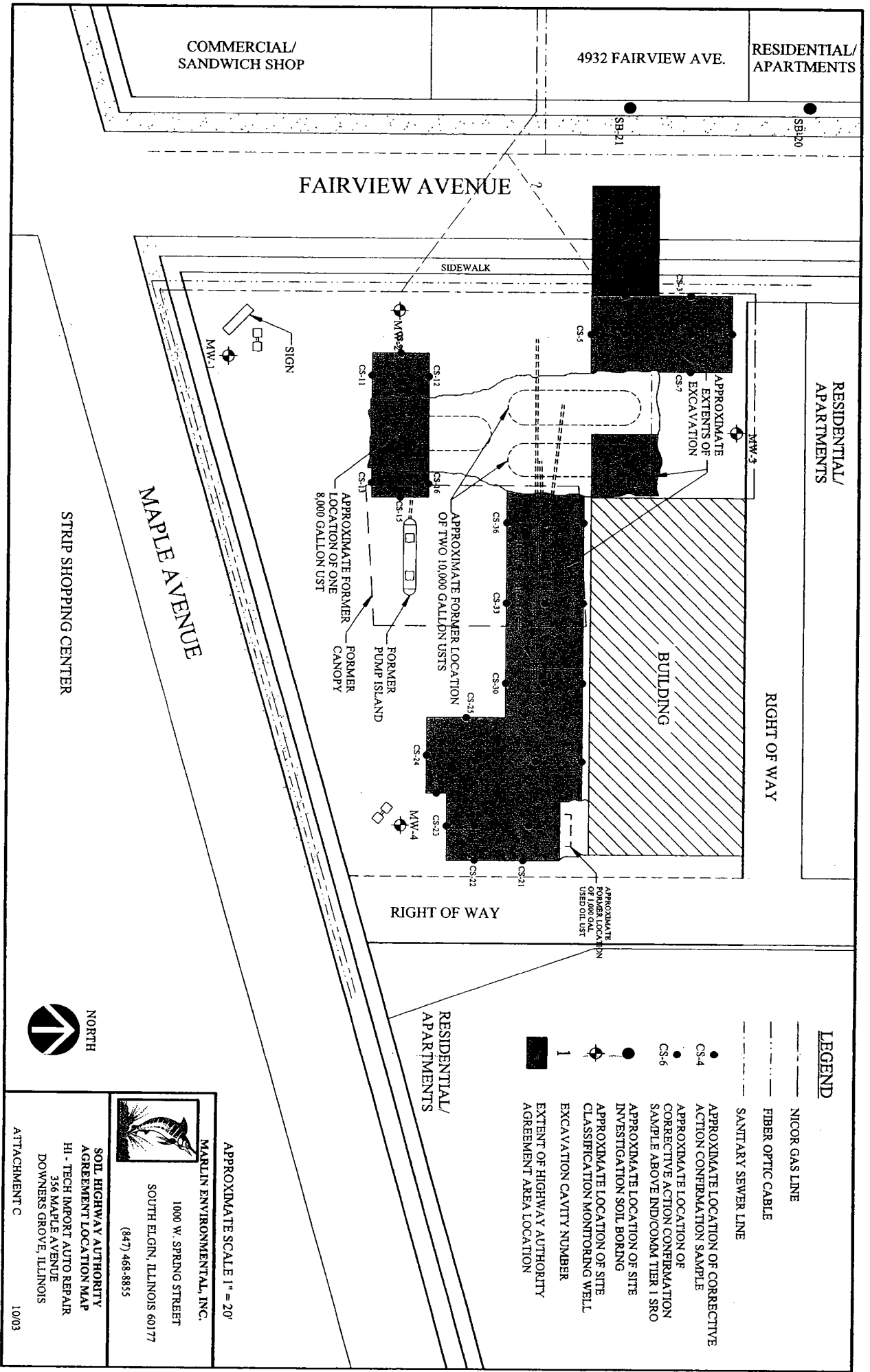
The section of land beginning 20 feet south from the northwest corner of Lot 11 and ending 35 feet south northwest corner of Lot 11. The agreement area is a total of 15 feet in length along the east right of way of Fairview Avenue extending out onto Fairview Avenue. The agreement area extends out onto the right-of-way of Fairview Ave at a distance not exceeding the middle section of the roadway. Soil borings SB-20 and SB-21 drilled on the west easement of Fairview Avenue display levels of BTEX that are below laboratory detection limits, therefore below IEPA soil remediation objectives. This defines the agreement area to an area entirely beneath Fairview Avenue.

The depth of the agreement area shall be no greater than 10 feet in depth. The confirmation soil sample taken just east of the subject area returned BTEX levels below IEPA soil remediation objectives. The depth of this sample is 10 feet below surface grade, therefore placing the maximum depth of possible impaction in the agreement area at 10 feet.

In total, the agreement area is defined as an approximate volume of **150 cubic yards** of soil above IPEA TACO Tier 1 soil remediation objectives.

The parcel of land under agreement is located adjacent to the west property line of 356 Maple Avenue, Downers Grove, IL 60515. A map depicting the area to be considered under this Highway Authority Agreement is shown in **Attachment C**.

ATTACHMENT C



RESIDENTIAL/
APARTMENTS

RESIDENTIAL/
APARTMENTS

4932 FAIRVIEW AVE.

COMMERCIAL/
SANDWICH SHOP

FAIRVIEW AVENUE

MAPLE AVENUE

STRIP SHOPPING CENTER

RIGHT OF WAY

BUILDING

RIGHT OF WAY

RESIDENTIAL/
APARTMENTS

LEGEND

- NICOR GAS LINE
- - - FIBER OPTIC CABLE
- - - - - SANITARY SEWER LINE
- CS-4 APPROXIMATE LOCATION OF CORRECTIVE ACTION CONFIRMATION SAMPLE
- CS-6 APPROXIMATE LOCATION OF CORRECTIVE ACTION CONFIRMATION SAMPLE ABOVE IND/COMMITTER 1 SRG
- APPROXIMATE LOCATION OF SITE INVESTIGATION SOIL BORING
- APPROXIMATE LOCATION OF SITE CLASSIFICATION MONITORING WELL
- 1 EXCAVATION CAVITY NUMBER
- EXTENT OF HIGHWAY AUTHORITY AGREEMENT AREA LOCATION



NORTH

APPROXIMATE SCALE 1" = 20'



MARLIN ENVIRONMENTAL, INC.

1000 W. SPRING STREET

SOUTH ELGIN, ILLINOIS 60177

(847) 468-8855

SOIL HIGHWAY AUTHORITY
AGREEMENT LOCATION MAP

HI - TECH IMPORT AUTO REPAIR

356 MAPLE AVENUE

DOWNS GROVE, ILLINOIS

ATTACHMENT C

10/03

ATTACHMENT D

Summary of Soil Analytical BTEX Results – Corrective Action Site Investigation

BORING NUMBER	SAMPLE DEPTH (IN FT)	BENZENE	TOLUENE	ETHYL BENZENE	XYLENES
3/20/03					
SB-20	8' – 10'	<2.0	<5.0	<5.0	<5.0
SB-21	10' – 12'	<2.0	<5.0	<5.0	<5.0
IEPA TACO Tier 1 SRO		30.0	12,000	13,000	150,000

Notes: Analytical testing results are expressed in parts-per billion (ppb) concentrations.
Shaded Areas = Concentrations exceed the Industrial/Commercial IEPA TACO Tier 1 SROs.

Summary of Soil Analytical BTEX Results - Corrective Action

PARAMETER	CS-1	CS-2	CS-3	CS-4	CS-5	CS-6	CS-7	IEPA TACO TIER 1 SOIL REMEDIATION OBJECTIVES
Benzene	<2.0	<2.0	<2.0	<2.0	<2.0	124	<2.0	30
Toluene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	12,000
Ethyl benzene	<5.0	<5.0	<5.0	9.6	<5.0	<5.0	<5.0	13,000
Xylenes	<5.0	<5.0	<5.0	17.5	<5.0	<5.0	<5.0	150,000

PARAMETER	CS-8	CS-9	CS-10	CS-11	CS-12	CS-13	CS-14	IEPA TACO TIER 1 SOIL REMEDIATION OBJECTIVES
Benzene	<2.0	<2.0	<2.0	<2.0	<2.0	<2.0	<2.0	30
Toluene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	12,000
Ethyl benzene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	13,000
Xylenes	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	150,000

PARAMETER	CS-15	CS-16	CS-28	CS-32	CS-33	CS-34	CS-35	CS-36	IEPA TACO TIER 1 SOIL REMEDIATION OBJECTIVES
Benzene	<2.0	<2.0	<2.0	<2.0	<2.0	<2.0	4.2	5.8	30
Toluene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	12,000
Ethyl benzene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	13,000
Xylenes	<5.0	<5.0	<5.0	5.7	<5.0	<5.0	<5.0	<5.0	150,000

Notes: Analytical testing results are expressed in parts-per billion (ppb) concentrations.
Shaded Areas = Concentrations exceed the Industrial/Commercial IEPA TACO Tier 1 SROs.

Summary of Soil Analytical BTEX/PNA Results - Corrective Action

PARAMETER	CS-17	CS-18	CS-19	CS-20	CS-21	CS-22	CS-23	IEPA TACO TIER 1 SOIL REMEDIATION OBJECTIVES
Benzene	12.3	16.7	<2.0	<2.0	<2.0	<2.0	<2.0	30
Toluene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	12,000
Ethyl benzene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	13,000
Xylenes	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	150,000
Naphthalene	29	29	<25	<25	<25	<25	5,260	1,800
Acenaphthylene	<50	<50	<50	<50	<50	<50	2,080	NA
Acenaphthene	<50	<50	<50	<50	<50	<50	273	570,000
Fluorene	<50	94	<50	<50	<50	<50	1,590	560,000
Phenanthrene	80	<50	92	<50	<50	<50	3,240	NA
Anthracene	<50	<50	<50	<50	<50	<50	865	12,000,000
Fluoranthene	<50	<50	<50	<50	<50	<50	1,020	4,300,000
Pyrene	<50	<50	<50	<50	<50	<50	1,400	4,200,000
Benzo [a] anthracene	<8.7	<8.7	<8.7	<8.7	<8.7	<8.7	647	2,000
Chrysene	<50	<50	<50	<50	<50	<50	556	160,000
Benzo [b] fluoranthene	<11	<11	<11	<11	<11	<11	256	5,000
Benzo [k] fluoranthene	<11	<11	<11	<11	<11	<11	368	49,000
Benzo [a] pyrene	<15	<15	<15	<15	<15	<15	631	800
Indeno [1,2,3-cd] pyrene	<29	<29	<29	<29	<29	<29	206	8,000
Dibenzo [a,h] anthracene	<20	<20	<20	<20	<20	<20	78	800
Benzo [g,h,i] perylene	<50	<50	<50	<50	<50	<50	170	NA
PARAMETER	CS-24	CS-25	CS-26	CS-27	CS-29	CS-30	CS-31	IEPA TACO TIER 1 SOIL REMEDIATION OBJECTIVES
Benzene	<2.0	<2.0	<2.0	15.2	<2.0	<2.0	<2.0	30
Toluene	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	12,000
Ethyl benzene	<5.0	<5.0	<5.0	17.7	<5.0	<5.0	12.4	13,000
Xylenes	<5.0	<5.0	<5.0	19.7	<5.0	<5.0	<5.0	150,000
Naphthalene	<25	<25	<25	616	<25	65	443	1,800
Acenaphthylene	<50	<50	<50	<50	<50	<50	<50	NA
Acenaphthene	<50	<50	<50	<50	<50	<50	124	570,000
Fluorene	<50	<50	<50	<50	<50	<50	143	560,000
Phenanthrene	68	110	54	<50	<50	<50	660	NA
Anthracene	<50	<50	<50	<50	<50	<50	631	12,000,000
Fluoranthene	<50	<50	<50	<50	<50	<50	437	4,300,000
Pyrene	<50	<50	<50	<50	<50	<50	324	4,200,000
Benzo [a] anthracene	<8.7	9.5	<8.7	<8.7	<8.7	<8.7	104	2,000
Chrysene	<50	<50	<50	<50	<50	<50	94	160,000
Benzo [b] fluoranthene	<11	12	<11	<11	<11	<11	59	5,000
Benzo [k] fluoranthene	<11	<11	<11	<11	<11	<11	83	49,000
Benzo [a] pyrene	<15	<15	<15	<15	<15	<15	79	800
Indeno [1,2,3-cd] pyrene	<29	<29	<29	<29	<29	<29	37	8,000
Dibenzo [a,h] anthracene	<20	<20	<20	<20	<20	<20	<20	800
Benzo [g,h,i] perylene	<50	<50	<50	<50	<50	<50	<50	NA

Notes: Analytical testing results are expressed in parts-per billion (ppb) concentrations.
Shaded Areas = Concentrations exceed the Industrial/Commercial IEPA TACO Tier 1 SROs.

Summary of Groundwater Analytical BTEX/PNA Results – Site Classification

PARAMETER	MW-1	MW-2	MW-3	MW-4	FIELD BLANK	TRIP BLANK	IEPA TACO TIER I GROUNDWATER OBJECTIVES
Benzene	-	< 5.0	< 5.0	< 5.0	< 5.0	< 5.0	5.0
Toluene	-	< 5.0	< 5.0	< 5.0	< 5.0	< 5.0	1,000
Ethyl benzene	-	< 5.0	< 5.0	< 5.0	< 5.0	< 5.0	700
Xylenes	-	< 5.0	< 5.0	< 5.0	< 5.0	< 5.0	10,000

Notes: Analytical testing results are expressed in parts-per billion (ppb) concentrations.

Shaded Areas = Concentrations exceed the Industrial/Commercial IEPA TACO Tier 1 GROs.

MW-1 was continuously monitored but failed to produce sufficient water for an analytical sample.