

# UNOFFICIAL COPY

**PREPARED BY:**

Name: Shell Oil Products US

Address: 4346 N. Western Avenue  
Chicago, IL 60618



Eugene "Gene" Moore Fee: \$54.50  
Cook County Recorder of Deeds  
Date: 08/04/2003 11:52 AM Pg: 1 of 16

**RETURN TO:**

Name: Shell Oil Products US

Address: 603 Dickl Rd, Suite 103  
Naperville, IL 60563

**(THE ABOVE SPACE FOR RECORDER'S OFFICE)**

Legal Description or Reference to a Plat Showing the Boundaries: see Attachment A  
Common Address: 4346 N. Western Avenue, Chicago, Illinois  
Real Estate Tax Index/Parcel Index Number: 13-13-402-053  
Site Owner: Shell Oil Products US

Property of Cook County Clerk's Office

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Site PIN: 13-13-402-053

## TIERED APPROACH TO CORRECTIVE ACTION RIGHT-OF-WAY AGREEMENT

This Agreement is entered into this 3<sup>rd</sup> day of January, 2002, pursuant to the Environmental Protection Act ("Act"), 35 IL Admin. Code Section 742.1020 and the Municipal Code of the City of Chicago Section 2-30-030 ("Code") by and among Equilon Enterprises, LLC. ("Owner"), and the City of Chicago ("City"), as follows:

1. This Agreement is not binding on the City until it is executed by a duly authorized representative of the City, and prior to execution, this Agreement constitutes an offer by Owner. The duly authorized representative of Owner have signed this Agreement, and this Agreement is binding upon them, their successors and assigns.
2. Owner stipulates:
  - a. Owner is pursuing corrective action at a Site and in the right-of-way adjacent to the Site located at 4346 North Western Avenue, Chicago, Illinois ("Site"). Site is legally described in Attachment A.
  - b. The right-of-way adjacent to the Site, described 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 and groundwater in the right-of-way where, at the time of this Agreement, contaminants exceed the Tier 1 residential remediation objectives under the Act and 35 Ill. Admin. Code Section 742. Also attached as Attachment D is a table showing the concentration of contaminants in soil and/or groundwater within the area described in Attachment B and showing the applicable Tier 1 soil and groundwater remediation objectives for residential property that are exceeded.
  - 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 980363 to the Site.
  - f. Owner has requested risk-based, site-specific soil and/or groundwater 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 and groundwater.

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3. The City 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.
  - b. This Agreement shall be recorded by the Owner at its expense along with the Illinois EPA's "No Further Remediation" determination with the Cook County Recorder of Deeds. The Owner will similarly record any attachments, addendums, or alterations to this Agreement. Within thirty (30) days of such recording with the Cook County Recorder of Deeds, the Owner shall provide the City a copy of the Agreement that has been stamped by the Cook 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.
5. The City 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 Code Section 11-8-390. The City 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, as provided in Code Section 10-20-100 et seq., and by requiring applicants for a public way work permit in the right-of-way described in Attachment B to consult the City and complete Form No. DOE.ROW.01 (or successor document), Attachment E, before obtaining a permit.
  - a. Where the pavement in the right-of-way is to be considered an engineered barrier, the Owner agrees to reimburse the City for maintenance activities requested by Owner. Except for ordinary maintenance performed on City roadways, the City 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 City'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 City 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

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further release of the contaminants and to protect human health and the environment. The Owner shall reimburse the actual costs incurred by the City 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 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 City shall first give Owner thirty days notice and an opportunity to remove or dispose of contaminated soil and/or groundwater, at Owner's cost, to the extent necessary for the City's work. Such removal and disposal shall be in accordance with all applicable laws and regulations. Failure to give this opportunity to Owner 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 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 City by law.

6. The Owner agrees to indemnify and hold harmless the City, its agents and employees, and other entities using the right-of-way by a permit issued by the City, for all obligations asserted against or costs incurred by them associated with the release of contaminants of concern as described in Attachments C and D.
7. Violation of the terms of this Agreement by Owner, 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 City. Owner 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 City breach this Agreement, Owner's sole remedy is for an action for damages in the Circuit Court of Cook County. Any and all claims for damages against the City, its agents, contractors, employees or its successors in interest or others under permit from the City arising at any time are limited to an aggregate maximum of \$20,000.00. No other breach by the City, its successors in interest or others under permit, of a provision of this Agreement is actionable in either law or equity by Owner against the City or them and Owner hereby releases the City, its agents, contractors, employees and its successors in interest, or others under permit from the City 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 City convey, vacate or transfer jurisdiction of that right-of-way, Owner may pursue an action under this Agreement against the successors in interest, other than the City, or any of its departments, or State agency, in a Court of Law.

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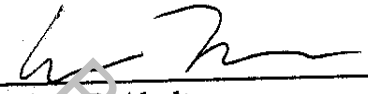
10. This Agreement is entered into by the City in recognition of laws passed by the General Assembly and regulations adopted by the Board which encourage a tiered-approach to remediating environmental contamination. This Agreement is entered into by the City in the spirit of those laws. Should any provision of this Agreement be determined to exceed the authority of the City, 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 of the Site.
12. The City will limit access to the Site and rights-of-way as follows:
  1. Normal Access: The City will limit access to the Site and rights-of-way via the City Department of Transportation or its successor agency, by which persons seeking authorization to perform subsurface work in a City 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 City Board of Underground, the City Department of Buildings, and the Chicago 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 City, 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 City shall be sent to:

Commissioner  
Department of Environment  
30 N. LaSalle Street  
25th Floor  
Chicago, IL 60602
15. Written notice and other communications relating to this agreement directed to Owner shall be sent to:

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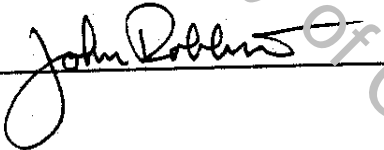
Equiva Services, LLC.  
Environmental Engineering  
603 Diehl Road, Suite 103  
Naperville, IL 60563

**IN WITNESS WHEREOF**, the City of Chicago has caused this Agreement to be signed by its duly authorized representative:

BY:   
William F. Abolt

Date: 1/3/02

**IN WITNESS WHEREOF**, Owner, Equilon Enterprises, LLC has caused this Agreement to be signed by its duly authorized representative:

BY: 

Date: 12/18/01

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**ATTACHMENT A**



0321627069 Page: 8 of 16 NO. 4990

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## EXHIBIT "A" COOK COUNTY, ILLINOIS

Tract 40. - 4346 N Western/ Montrose, Chicago, COOK, WIC 212-1544-1805  
Tax Parcel # 13-13-402-053

Lots 1, 2, 3, 4, and 5 in Block 1 in Lutz Park Addition to Ravenswood a subdivision of Lots 1, 2, and 3 in Superior Court Partition of the north 1/2 of the southeast 1/4 of Section 13, Township 40 North, Range 13 east of the Third Principal Meridian (except that part of said lots lying east of a line 50 feet west of and parallel with the east line of Section 13) in Cook County, Illinois;

together with all rights, privileges and appurtenances thereunto belonging, all buildings and improvements thereon, and all right, title and interest of Grantor (if any) in and to the alleys, streets and roads adjacent thereto;



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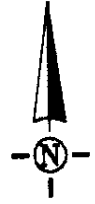
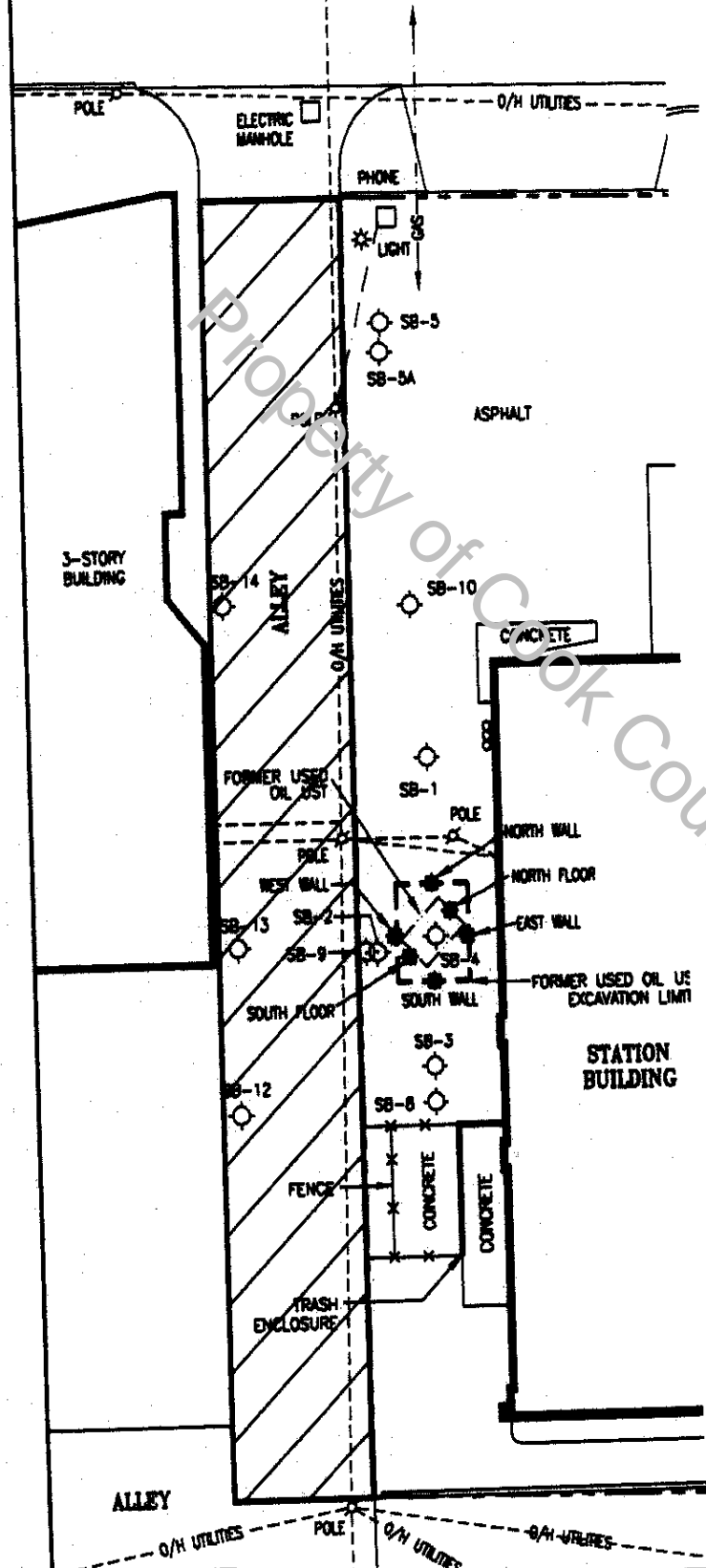
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**ATTACHMENT B**



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REVISIONS	DATE	BY	CHKD
48" SANIT.			
M O N T R			



LEGEND	
	PROPERTY BOUNDARY
	APPROXIMATE LIMITS OF EXCAVATION
	SOIL SAMPLE LOCATION
	OBSERVATION SUMP LOCATION
	SOIL BORING LOCATION

**Handa**  
OF IL  
1701 W. QUINCY, SUITE 1  
NAPERVILLE, ILLINOIS 6054  
(630) 527-1666

DRAWN BY:	R. WALSHVELO
CHECKED BY:	-
SCALE:	1" = 30'
DATE:	6/29/01
DRAWING FILE:	115953

EXHIBIT  
B

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**ATTACHMENT C**





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**ATTACHMENT D**





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**ATTACHMENT E**





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5-8-0 11:46AM DEPT OF ENVIRONMENT

630 527 8174:# 2/ 2

SENT BY:



City of Chicago  
Richard M. Daley, Mayor

Department of Environment

William F. Abelt  
Commissioner

Twenty-fifth Floor  
30 North LaSalle Street  
Chicago, Illinois 60602 2575  
(312) 744-7600 (Voice)  
(312) 744-6451 (FAX)  
(312) 744-3586 (TTY)

<http://www.ci.chi.il.us>

Permit No. \_\_\_\_\_ Date \_\_\_\_\_

Site Address \_\_\_\_\_

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT  
FORM NO. DOE.ROW.01

Notice is hereby given that the site you have requested information on is recorded with the City of Chicago Department of Environment as potentially having environmental contamination on the site and adjacent right-of-way. This environmental contamination could present a threat to human health and safety in connection with work performed at the site, or in the adjacent right-of-way, if proper safeguards are not employed.

A file containing detailed information regarding the aforementioned environmental contamination can be reviewed by contacting the City of Chicago Department of Environment at 30 N. LaSalle St., 25th Floor, Chicago, Illinois, 60602 during normal business hours (8:30 AM - 4:30 PM, Monday through Friday).

Please complete the following:

I have reviewed and understand the documents, maintained by the Department of Environment, regarding environmental contamination of the site and adjacent right-of-way. Further, I will assure that all work at the subject site and adjacent right-of-way will be performed in a manner that is protective of human health and the environment and in compliance with all applicable local, state, and federal laws, rules, and regulations, especially those pertaining to worker safety and waste management.

Signature \_\_\_\_\_  
Name (print) \_\_\_\_\_  
Company \_\_\_\_\_  
Phone No. \_\_\_\_\_

Signed by Department of Environment \_\_\_\_\_  
Date \_\_\_\_\_

Please return this completed form to the City of Chicago Department of Transportation at 30 N. LaSalle St., Room 1101, Chicago, Illinois, 60602 during normal business hours (8:30 AM - 4:30 PM, Monday through Friday).

