NYCEDC
New York City Economic Development Corporation

October 19, 2016

Jon Paul Lupo
Director
Mayor's Office of City Legislative Affairs
City Hall
New York, New York 10007

Re: City Council Approval Required for Maritime Lease for approximately 58,000 square feet on Brooklyn Block 644 Lot 50

Dear Mr. Lupo:

I am writing this letter to request that the Office of City Legislative Affairs submit to the City Council for approval a proposed maritime lease ("Lease") between the City of New York ("City"), acting by and through its Department of Small Business Services, as landlord ("Landlord"), and Ferrara Bros. LLC, as tenant ("Tenant"), initially for an approximately 58,000 square foot City-owned parcel located on the waterfront and along 3rd Avenue in Sunset Park, Brooklyn ("Moore McCormack Site"), pursuant to City Charter Section 1301(2)(f). As more fully described below, the Lease provides that upon termination of a certain City lease for property adjacent to the Moore McCormack Site, property being subleased by Tenant under that City lease will be incorporated automatically into the Lease and become a part of the Moore McCormack Site. The Lease will be administered by the New York City Economic Development Corporation ("NYCEDC").

The proposed Lease to be entered into between the City and the Tenant will be substantially in the form attached hereto as Exhibit A.

On October 7, 2016, the Department of Small Business Services issued a determination, a copy of which is attached as Exhibit B, that the proposed Lease would have no significant environmental impacts.

Background

In June 2012, NYCEDC, on behalf of the City, issued a Request for Proposals for the Moore McCormack Site ("RFP"), seeking proposals for a lease with the City that increased industrial maritime activity across the bulkhead or through the adjacent 25th Street Pier. The RFP sought uses that would create quality jobs for City residents and support and enhance the growth of the City's industrial base and other positive community impacts. The Moore McCormack site is presently vacant and has lacked job-intensive uses since 1986.

NYCEDC received three responses to the RFP, and the Tenant was selected to enter into the Lease. The Tenant's selection was based on the following: (i) over 45 years of experience as

a ready-mixed concrete company providing quality jobs to its unionized workforce; and (ii) a commitment to operate a compressed natural gas ("CNG") fueling station to power its fleet of trucks. Additionally, the Lease facilitates the Tenant's relocation from its current plant at 435 Hoyt Street, a City-owned site managed by the New York City Department of Housing Preservation and Development ("HPD Site"). The Tenant's departure from the HPD Site will enable remediation of the Gowanus Canal around the property and the construction of affordable housing on the HPD Site.

The Tenant will construct and operate a maritime dependent concrete manufacturing batch plant and a CNG fueling station (collectively, the "Project") on the Moore McCormack Site. The Lease will revive the Moore McCormack Site's use as an industrial property and restore the property to active maritime uses, helping to retain industrial jobs in Brooklyn. The Moore McCormack Site's proximity to the water and multiple thoroughfares will enable the efficient movement of raw materials into the plant and from the plant to construction sites throughout the City. Ferrara Bros. LLC has been a family-owned concrete company operating several plants in Brooklyn and Queens continuously since 1969. In April 2015, U.S. Concrete, Inc., a national ready-mixed concrete and aggregate company, purchased all of the outstanding stock in Ferrara Bros. Employees will be paid a living wage.

In connection with the Project, Tenant is subleasing approximately 45,000 square feet of property adjacent to the Moore McCormack Site ("Sublease Property") from Lafarge Building Materials, Inc. ("Lafarge"). Lafarge currently leases approximately 296,000 square feet of open area from the City adjacent to the Moore McCormack Site ("Lafarge Lease"). The Lafarge Lease provides for a lease term through December 31, 2035. The transaction to sublease the Sublease Property to Tenant is a closing condition for execution and delivery of the Lease. The Lease provides that, subject to certain conditions, upon the expiration or earlier termination of the Lafarge Lease, the Sublease Property will be automatically incorporated into the Lease and become a part of the Moore McCormack Site and will be leased to Tenant for the balance of the Lease term for the operation of the Project.

Material Lease Terms

The proposed material Lease terms are as follows:

Landlord:	The City of New York, acting by and through its Department of Small Business Services
Tenant:	Ferrara Bros. LLC
Premises:	Approximately 58,000 square feet of land in the Borough of Brooklyn, City and State of New York, Block 644, Lot 50 along the waterfront and 3rd Avenue at 24th Street, initially, and thereafter, upon satisfaction of certain conditions in the Lease for the incorporation of the Sublease

Property into the Lease, approximately 45,000 square feet of land will be added to the Premises.

Term: Initial term will be for 25 years, beginning immediately after receipt of all required approvals. Tenant has five consecutive 5 year renewal options to extend the term for a total of an additional 25 years.

Permitted Use: Tenant will cause the Premises to be maintained and used, pursuant to applicable zoning regulations, as a maritime-dependent concrete manufacturing plant and compressed natural gas fueling station. A minimum of fifty percent of the raw materials used by the concrete manufacturing plant must be delivered by waterborne craft.

Base Rent and Production Payment:

During the first lease year of the initial term annual Base Rent will equal $220,000, escalating by 3% annually throughout the initial term of the Lease. For the first year of each renewal option period Base Rent will reset to the higher of Fair Market Rent, as determined by an independent appraiser, or 103% of the Base Rent for the final lease year of the prior period and thereafter escalate by 3% annually for the balance of the renewal option period. After the Abatement Period (hereinafter defined) Tenant is also required to pay the higher of (i) an annual production payment of $2.50, escalating by 3% annually (including during the Abatement Period) for each cubic yard of concrete produced on the Moore McCormack Site and the Sublease Property, collectively ("Production Payment") or (ii) the total Dockage and Wharfage (described below) due on the Moore McCormack Site and the Sublease Property (provided that while the sublease for the Sublease Property is in effect Tenant shall receive a reduction in such payments for Dockage and Wharfage paid under the sublease). Provided that Tenant shall not be in default under the Lease, all payments of annual Base Rent, the production payment and Dockage and Wharfage shall be abated for the first seven years of the initial term of the Lease ("Abatement Period") and the 3% annual increase to Base Rent shall not apply during the Abatement Period.

Other Charges:

Dockage: Tenant will have a charge assessed for berthing at the Moore McCormack Site or for mooring to a vessel so berthed (except for vessel calls exclusively related to the initial construction at the Moore McCormack Site), calculated as if the Moore McCormack Site were a Port Authority

Marine Terminal (as defined in the Port Authority Tariff, as amended from time to time).

Wharfage: Tenant will have a charge assessed against all cargo (except materials used in connection with initial construction work at the Moore McCormack Site) passing or conveyed over, onto, or under the Moore McCormack Site or between vessels (to or from barge, lighter, or water), when berthed at the Moore McCormack Site or when moored in a slip adjacent to the Moore McCormack Site, calculated as if the Moore McCormack Site were a Port Authority Marine Terminal (as defined in the Port Authority Tariff, as amended from time to time).

Payment of Dockage and Wharfage:

After the Abatement Period, Dockage and Wharfage shall be payable as provided under the caption "Base Rent and Production Payment" above.

Sublease Property: In the event that the Sublease Property is incorporated into the Lease, then Tenant shall make the following additional payments:

Base Rent: If the Lafarge Lease terminates prior to December 31, 2035 and the Sublease Property comes into the Lease, Base Rent through December 31, 2035 will be the greater of (i) the Fair Market Rent, as determined by an independent appraiser, or (ii) rent calculated on the following per square foot basis, such calculation to be made when the Sublease Property first comes into the Lease and thereafter at the beginning of each of the following periods:

Period	**Rent**	**Per Square Foot**
1/1/2015-12/31/2019	$3.86	*times* 44,635
1/1/2020-12/31/2024	$4.05	*times* 44,635
1/1/2025-12/31/2029	$4.25	*times* 44,635
1/1/2030-12/31/2035	$4.46	*times* 44,635

Thereafter, for the balance of the initial term of the Lease Base Rent on the Sublease Property will for the first year equal the greater of (i) the Fair Market Rent, as determined by an independent appraiser, or (ii) 103% of the Base Rent payable in the prior 12-month period or if no Base Rent had been payable for such period then pursuant to the last entry in the above schedule. The Base Rent paid on the Sublease Property shall be escalated by 3% annually. For the first year of each renewal option period Base Rent on the Sublease Property will reset to the higher of Fair Market Rent, as determined by an independent appraiser, or 103% of the Base Rent for the

final lease year of the prior period and thereafter escalate by 3% annually for the balance of the renewal option period.

Approvals: The proposed lease is a maritime lease and therefore, pursuant to Section 1301(2)(f) of the City Charter, is subject to City Council approval for disposition. The Council has 45 days to approve the Lease from the time of receipt. If the Council fails to act on the Lease within the 45 days, the Lease will be automatically approved upon the expiration of the 45th day.

Please inform me of the date of submission of the Lease to the City Council. If you have any questions or concerns, please feel free to contact Lydia Downing at (212) 312-4281 or the undersigned at (212) 312-3778. Thank you.

Very Truly Yours,

James Katz
Executive Vice President and Chief of Staff
New York City Economic Development Corporation
jkatz@edc.nyc

Exhibit A: Proposed Lease

AGREEMENT OF LEASE

by and between

THE CITY OF NEW YORK,
as Landlord

and

FERRARA BROS. LLC
as Tenant

Premises:

Lot 50 at Block 644
in the Borough of Brooklyn, County of Kings,
City and State of New York

Dated as of [_____], 2016

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[1] Fix index for added sections.

EXHIBITS

THIS AGREEMENT OF LEASE (this "Lease"), is made as of the [___] day of [_____], 2016 (the "Effective Date"), between THE CITY OF NEW YORK, a municipal corporation of the State of New York (the "City"), acting by and through its Commissioner of Small Business Services of the City of New York Department of Small Business Services, having an address at 110 William Street, New York, New York 10038, as landlord, and FERRARA BROS. LLC, a Delaware limited liability company having an address at 120-05 31ST Avenue, Flushing, New York 11354, as tenant (the "Tenant").

RECITALS

WHEREAS, the City is the owner of certain land designated as Block 644, Lot 50 on the Tax Map for the Borough of Brooklyn (as more particularly described in Exhibit A attached hereto, the "Land"; provided that the term "Land" shall include the Expansion Space (hereinafter defined) only on and after the Expansion Space Commencement Date) and the buildings, structures, Bulkhead (as defined in Article 1 hereto), piers, and/or improvements now or hereafter located on the Land (collectively, the "Premises");

WHEREAS, the City desires to promote waterfront commerce and maximize opportunities for waterborne deliveries of raw materials on the Premises so as to produce new employment opportunities and generate new revenues for the City;

WHEREAS, Tenant desires to undertake commercial activities that further Landlord's purpose for the Premises;

WHEREAS, the City has retained New York City Economic Development Corporation, a not-for-profit corporation organized pursuant to the New York State Not-for-Profit Corporation Law ("NYCEDC"), pursuant to that certain Amended and Restated Maritime Contract dated as of June 30, 2015 (as amended from time to time, the "NYCEDC Contract") to perform certain economic development services described therein;

WHEREAS, to facilitate the development of the Premises, and consistent with the NYCEDC Contract, NYCEDC issued a Request for Proposals released on June 25, 2012 (the "RFP") with respect to the Premises and certain other property in the boroughs of Brooklyn, the Bronx and Queens;

WHEREAS, based on the responses to the RFP and certain supplementary information and materials submitted to NYCEDC in connection therewith, including the proposal and supplementary information and materials submitted by Tenant, Tenant has been selected to undertake the development of the Premises as a maritime dependent concrete manufacturing plant and a compressed natural gas fueling station, as set forth in this Lease (the "Project");

WHEREAS, in furtherance of the Project, contemporaneous with the execution and delivery of this Lease (i) Lafarge Building Materials, Inc. ("Lafarge Sublessor") and Tenant shall have executed and delivered a sublease, dated as of the Effective Date, a copy of which is attached as Exhibit R hereto (the "Expansion Space Sublease"), of the entire Expansion Space as described and defined in the Expansion Space Sublease, whereby Lafarge Sublessor has subleased to Tenant the Expansion Space for the balance of the term of the lease agreement (the "Lafarge Lease") in effect on the Effective Date between Lafarge Sublessor and the City for premises including the Expansion Space and (ii) the City shall have executed and delivered an

agreement, dated as of the Effective Date (the "Consent to Expansion Space Sublease"), consenting to the Sublease;

WHEREAS, in accordance with and subject to the terms of this Lease, on the Expansion Space Commencement Date (defined in Article 1 hereto) the Expansion Space, including without limitation any Pier, shall automatically be and become incorporated into the Premises in accordance with the terms of this Lease for the balance of the Term hereof;

WHEREAS, as of October 8, 2014, NYCEDC and Tenant entered into a pre-development agreement (as amended, the "Pre-Development Agreement"), pursuant to which NYCEDC and Tenant have undertaken various obligations including, subject to the satisfaction of certain conditions set forth in the Pre-Development Agreement, Tenant's obligation to enter into this Lease;

WHEREAS, the conditions precedent to the execution of this Lease as set forth in the Pre-Development Agreement have been satisfied or waived in accordance therewith;

WHEREAS, Landlord and Tenant desire to enter into this Lease pursuant to Section 1301(2)(f) of the Charter of the City of New York and cause the Premises to be used in accordance with the terms hereof; and

WHEREAS, the disposition of the leasehold interest in the Premises and related actions were approved pursuant to a resolution of the New York City Council dated [ ] (Cal. No. __) pursuant to Section 1301(2)(f) of the Charter of the City of New York;

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants, and conditions hereinafter set forth.

ARTICLE 1
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. For all purposes of this Lease and, unless otherwise indicated therein, all agreements supplemental hereto, the terms defined in this Article 1 shall have the following meanings:

"Abandoned Property" has the meaning provided in Section 30.3 hereof.

"Abatement Period" means a period that begins on the Effective Date and ends on the last day of the seventh (7^{th}) Lease Year; provided, however, that if Tenant is in Default under the terms of this Lease at any time during the Abatement Period, the Abatement Period shall terminate on and as of the first day of such Default.

"Accounting Principles" means the then current generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board (or their respective successor organizations) or through other appropriate boards or committees thereof, and that are consistently applied for all periods after the Effective Date.

"Additional Rent" means any and all sums and payments, other than Base Rent, that this Lease requires Tenant to pay to Landlord or any third party, whether or not expressly designated as Additional Rent.

"Adjacent Property Owners" means any Person who owns real estate which is located adjacent to the Premises, leases or licenses real estate from the City which is located adjacent to the Premises, or manages or operates property which is located adjacent to the Premises.

"Adjusted for Inflation" means, with respect to any sum, that there shall be added to such sum (as the same may have been previously adjusted), beginning on the Effective Date unless otherwise specified, on an annual or such other basis as may be specified in this Lease (such annual or other period, the "Specified Interval"), an amount equal to seventy- five (75%) percent of the product of (A) such sum (as the same may have been previously adjusted) and (B) a fraction (1) the numerator of which is the difference between (a) the Consumer Price Index for the calendar month that is three (3) months immediately preceding the calendar month in which the Specified Interval for which such calculation is being made ended and (b) the Consumer Price Index for the calendar month that is three (3) months immediately preceding the calendar month in which the immediately preceding Specified Interval ended (or, if such date would be prior to the Effective Date, the calendar month in which the Effective Date occurs) (the "Measuring Month"), and (2) the denominator of which is the Consumer Price Index for the Measuring Month; provided, however, (i) if for any Specified Interval the difference between the index numbers in clauses (a) and (b) above is less than zero (0), such numerator shall be deemed to be zero (0) for purposes of calculating the applicable adjustment, and (ii) the applicable adjustment for the Specified Interval immediately following a Specified Interval in which the preceding clause (i) shall have been applicable shall be determined by replacing clause (b) above in its entirety with the following: "(b) the Consumer Price Index for the calendar month that is three (3) months immediately preceding the calendar month in which the Last Positive Specified Interval (as hereinafter defined) ended". The "Last Positive Specified Interval" means the last Specified Interval prior to the date of the applicable determination hereunder for which the numerator was greater than zero (0).

"Affiliate" means, with respect to any Person, another Person (other than an individual) that Controls, is Controlled by, or is under common Control with, such Person.

"Annual Base Rent Increase Amount" has the meaning provided in Section 3.2(a) hereof.

"Annual 3% Production Base Increase" has the meaning provided in Section 3.2(c) hereof.

"Approved Plans and Specifications" has the meaning provided in Section 13.1(b)(i) hereof.

"Architect" means a registered architect or architectural firm selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

"Assignee" has the meaning provided in Section 10.1(d)(ii) hereof.

"Assignee Reasonably Satisfactory to Landlord" has the meaning provided in Section 41.17(c) hereof.

"Assignment" has the meaning provided in Section 10.1(d)(i) hereof.

"Assignment of Construction Agreement" has the meaning provided in Section 13.4(e) hereof.

"Base Rent" means the amounts specified for and applicable to each Lease Year as provided in Section 3.2 and Exhibit Q hereof, with respect to the Original Premises and the Expansion Space, respectively.

"Building" means, individually and collectively, any and all occupancy structures or other buildings now situated on, or in the future constructed on, the Land (including footings and foundations), together with the Equipment (including Plant Equipment), other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon or within such occupancy structures or buildings, including Capital Improvements (as hereinafter defined), and any and all alterations and replacements thereof, additions thereto and substitutions therefor, but excluding any personal property, trade fixtures or equipment owned by any Subtenant or contractor. For the avoidance of doubt, except where specifically provided otherwise in this Lease, he term "Building" shall mean and include all of the Plant Equipment for all purposes of this Lease whether or not erected, constructed, or placed upon or within occupancy structures or buildings.

"Buildings Department" means the New York City Department of Buildings.

"Bulkhead" means the retaining wall along the waterfront of the Premises (as shown on the As-Built drawings attached as Exhibit N hereto) as well as any retaining wall along the waterfront of the Expansion Space.

"Bulkhead/Pier Consultant" has the meaning provided in Section 14.1(b)(i) hereof.

"Bulkhead/Pier Reports" has the meaning provided in Section 14.1(b)(i) hereof.

"Business Day" means any day other than a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

"Capital Improvement" has the meaning provided in Section 15.1(c) hereof.

"Casualty Restoration" has the meaning provided in Section 8.2(a) hereof.

"Charter" means the New York City Charter.

"City" has the meaning provided in the caption of this Lease.

"Combined Dockage and Wharfage Payment Amount" has the meaning provided in Section 3.9(c) hereof.

"Commence the Initial Construction Work" or "Commencement of the Construction Renovation Work" means that (i) the Permits for the Initial Construction Work in question have been issued (for the avoidance of doubt Tenant shall only be required to have in hand those Permits that are required in order to commence the Initial Construction Work; provided that once the Initial Construction Work commences with Tenant having the required Permits in hand, Tenant shall not thereafter perform any Construction Work (including without limitation any part of the Initial Construction Work) until Tenant shall have the required Permits for such continuing Construction Work in compliance with Requirements such that at all times Tenant shall have in hand those Permits required for the Construction Work then being performed by Tenant), (ii) Tenant shall have commenced on-site work at the Premises on such Initial Construction Work, and (iii) a Completion Guaranty and the other items of security for such Initial Construction Work shall have been delivered in accordance with Section 13.4(g) hereof.

"Completion Guaranty" means a guaranty of lien-free completion of the Initial Construction Work (or other applicable Construction Work) from the Tenant or other credit worthy guarantor reasonably acceptable to Landlord and in a form reasonably acceptable to Landlord.

"Comptroller" means the Comptroller of the City.

"Condemnation Restoration" has the meaning provided in Section 9.2(b) hereof.

"Consent to Expansion Space Sublease" has the meaning provided in the Recitals to this Lease.

"Consumer Price Index" means the Consumer Price Index for All Urban Consumers ("CPI") published by the Bureau of Labor Statistics of the United State Department of Labor for the New York-Northeastern New Jersey Area, all items (1982-1984=100), or any successor index thereto. In the event the CPI is converted to a different standard reference base or otherwise revised, the determination of the Base Rent during the relevant Lease Years shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc. or any other nationally recognized publisher of similar statistical information. If the CPI ceases to be published on a monthly basis, then the shortest period for which the CPI is published which includes the relevant months hereinafter specified shall be used in lieu of such specified months. If the CPI ceases to be published, and there is no successor thereto, such other index as Landlord and Tenant shall agree upon in writing shall be substituted for the CPI.

"Construction Agreement" has the meaning provided in Section 13.4(d) hereof.

"Construction Work" means any construction or renovation work performed by or on behalf of Tenant under this Lease including the Initial Construction Work, a repair, a Restoration, a Capital Improvement or construction work performed in connection with the use, maintenance or operation of the Premises, including all connections to public or private utilities and any excavation or pile driving, but not including test borings, test-pilings, surveys and similar pre-construction activities.

"Contractor" has the meaning provided in Section 13.4(d) hereof.

"Control" means, with respect to any Person, either (a) the direct or indirect ownership of, or beneficial interest in, not less than fifty one percent (51%) of the ownership interests in such Person or (b) the power directly or indirectly to direct the management and affairs of such Person, whether through the ability to exercise voting power, by contract or otherwise, including the right to make (or consent to) all capital and other major decisions to be made by such Person.

"Conviction" has the meaning provided in Section 41.17(c)(ii) hereof.

"Cure Period" has the meaning provided in Section 24.3(b) hereof.

"Date of Taking" has the meaning provided in Section 9.1(c)(i) hereof.

"Default" means any specified condition or event, or failure of any specified condition or event to occur, which constitutes or would constitute, after notice and lapse of cure period (if any is required) an Event of Default.

"Default Notice" has the meaning provided in Section 24.3(a) hereof.

"Demolition License" means the Revocable License Agreement, dated as of January 29, 2016, as amended, from the City to Tenant.

"Demolition and Remediation Work" means the demolition of the Buildings (or any part thereof) on the Premises as of the Effective Date and performance of the remediation work described in Article 21 hereof.

"Depositary" means an Institutional Lender selected by Tenant and, to the extent required pursuant to the terms of the definition of Institutional Lender, approved by Landlord (which approval shall not be unreasonably withheld, delayed or conditioned), except that any Recognized Mortgagee which is an Institutional Lender shall be deemed approved by Landlord.

"DEP" means the New York City Department of Environmental Protection or successor agency thereto.

"Determination Date" shall mean the date as of which the value or Fair Market Rent, as applicable, of the Premises or the Expansion Space, as applicable, is determined by the Fair Market Value Appraisal.

"Dockage" means a charge assessed against a vessel for berthing at the Premises or for mooring to a vessel so berthed, calculated as if the Premises were a Port Authority Marine Terminal (as defined in the Port Authority Tariff, hereinafter defined) under Port Authority Subrule 34-305.

"Dockage and Wharfage Fee Notice" has the meaning provided in Section 3.9(c) hereof.

"Dockage and Wharfage Payment Amount" has the meaning provided in Section 3.9(c) hereof.

"DOF" means the City's Department of Finance.

"Effective Date" has the meaning provided in the caption of this Lease.

"DSBS" means the New York City Department of Small Business Services or successor agency thereto.

"Eligible Costs" has the meaning provided in Section 13.1(h)(i) hereof.

"Employment Report" has the meaning provided in Section 39.9(a) hereof.

"Environmental Laws" means any and all present and future federal, state or local environmental, health and/or safety-related laws, regulations, standards, environmental impact filings and disclosure requirements, decisions of the courts, permits or permit conditions, relating to the protection of the environment, including those regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances, currently existing or as amended or adapted in the future which are or become applicable to Tenant or the Premises.

"Equipment" means all fixtures and personal property incorporated in, or attached to, and used or usable in the operation of the Premises and shall include, but shall not be limited to, all Plant Equipment, machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; partitions, doors, cabinets, hardware; floor, wall and ceiling coverings; wash room, toilet and lavatory equipment; lobby decorations; windows, window washing hoists and equipment; communication equipment; and all additions or replacements thereof; excluding, however, Tenant's Equipment.

"Equity Interest" has the meaning provided in Section 10.1(d)(iv) hereof.

"Event of Default" has the meaning provided in Section 24.1 hereof.

"Expansion Space" has the meaning provided in the Recitals of this Lease.

"Expansion Space Commencement Date" has the meaning provided in Section 2.1(b) hereof.

"Expansion Space Dockage and Wharfage Fee Notice" has the meaning provided in Exhibit Q attached hereto.

"Expansion Space Dockage and Wharfage Payment Amount" has the meaning provided in Exhibit Q attached hereto.

"Expansion Space Floor Area" has the meaning provided in Exhibit Q attached hereto.

"Expansion Space Sublease" has the meaning provided in the Recitals of this Lease.

"Expansion Space Sublease Expiration Date" means December 31, 2035.

"Expansion Space Sublease Termination Date" means the date of the expiration or earlier termination of the Expansion Space Sublease.

"Expiration Date" means the Initial Expiration Date, as the same may be duly extended in accordance with Section 2.2(b) hereof, or such earlier date upon which this Lease shall be terminated in accordance with the terms herein.

"Expiration of the Term" means the expiration of the Term upon the Expiration Date.

"Extension Term(s)" has the meaning provided in Section 2.2(b) hereof.

"Fair Market Rent" means the fair market rent for the Premises or the Expansion Space, as applicable, determined in accordance with the Fair Market Value Appraisal of the Premises or the Expansion Space, as applicable.

"Fair Market Value Appraisal" shall have the meaning provided in Section 35.1(b) hereof.

"Federal Courts" has the meaning provided in Section 41.18 hereof.

"Final Completion" or "Finally Complete" has the meaning provided in Section 13.1(b)(ii) hereof.

"Final Completion Date" has the meaning provided in Section 13.1(b)(iii) hereof.

"First Extension Term" has the meaning provided in Section 2.2(b) hereof.

"Fiscal Year" has the meaning provided in Section 39.9(a) hereof.

"Fourth Extension Term" has the meaning provided in Section 2.2(b) hereof.

"Goals" has the meaning provided in Section 23.1(d) hereof.

"Good Faith Deposit" has the meaning provided in Section 33.5 hereof.

"Governmental Authority or Authorities" means the United States of America, the State of New York, the City, and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises, any Building, any portion thereof or any street, road, avenue or sidewalk constituting a part of, or in front of, the Premises, or any vault in or under the Premises; provided, that the term Governmental Authority shall not include NYCEDC or Landlord to the extent Landlord is acting solely in its proprietary capacity hereunder (and not in its official governmental capacity).

"Greater NYC Area" means New York City, and Nassau County, Suffolk County, and Westchester County in the State of New York, and Hudson County and Bergen County in the State of New Jersey.

"Hazardous Substances" means any (i) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (ii) "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (iii) "hazardous materials" as defined under the Hazardous Substances Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., or (iv) "hazardous waste" as defined under New York Environmental Conservation Law, Section 27-0901 et seq., or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq., and the regulations adopted and publications promulgated pursuant to the above, (vi) all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R., Section 300.5, and (vii) any other chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

"Hazardous Substance Condition" means the presence at, on, beneath, or within any portion of the Premises of any Hazardous Substance and/or any underground or subsurface storage tanks or other similar storage vessel, or any Hazardous Substance and/or underground or subsurface storage tanks or other similar storage vessel affecting any part of the Premises.

"Hearing" has the meaning provided in Section 41.17(a) hereof.

"Hearing Officers" has the meaning provided in Section 41.17(a) hereof.

"HireNYC: Permanent Program Term" has the meaning provided in Section 23.1(d) hereof.

"Imposition(s)" has the meaning provided in Section 4.1(b) hereof.

"Improvement Award" has the meaning provided in Section 9.1(b) hereof.

"Indemnitees" has the meaning provided in Section 20.1 hereof.

"Indicted Party" has the meaning provided in Section 41.17(a) hereof.

"Initial Construction Work" means the Construction Work undertaken in connection with the Buildings and other improvements to be made by Tenant in accordance with the Project Commitments.

"Initial Expiration Date" has the meaning provided in Section 2.2(a) hereof.

"Initial Term" has the meaning provided in Section 2.2(a) hereof.

"Institutional Lender" means (A) any savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity) or an Affiliate of any of the foregoing, (B) an insurance company organized and existing under the laws of the United States or any state thereof (C) a real estate investment trust, a trustee or issuer of collateralized mortgage obligations, a loan conduit or other similar investment entity which (i) is regularly engaged in the business of providing debt financing and (ii) acts through an

institutional trustee, (D) a religious, educational or eleemosynary institution, a federal, state, or municipal employee's welfare, benefit, pension or retirement fund, a union pension or other retirement or investment fund, any governmental agency or entity insured by a governmental agency, a credit union, trust or endowment fund, (E) any brokerage or investment banking organization regularly engaged in the business of providing debt financing, or (F) any combination of the foregoing entities and any other Person approved by Landlord, such approval not to be unreasonably withheld, delayed or conditioned; provided that, each of the above entities (other than a governmental agency, entity insured by a governmental agency, public benefit corporation or a pass-through conduit for securities issued by a governmental or quasi-governmental agency or public benefit corporation, or any subsidiary of the foregoing) shall qualify as an Institutional Lender only if it shall satisfy the Eligibility Requirements. For the purpose of this definition, the "Eligibility Requirements" means, with respect to any Person, that such Person (i) is subject to the jurisdiction of the courts of the State of New York and (ii) has assets of not less than the Required Threshold, as Adjusted for Inflation.

"ISO" has the meaning provided in Section 7.2(a) hereof.

"Lafarge Lease" has the meaning provided in the Recitals to this Lease.

"Lafarge Sublessor" has the meaning provided in the Recitals to this Lease.

"Land" means the land portions of the Premises, including the land portion of the Expansion Space on and after the Expansion Space Commencement Date.

"Landlord" means the City, provided, however, that if the City or any successor to the City's interest hereunder transfers or assigns its interest in the Premises or its interest under this Lease, then, from and after the date of such assignment or transfer, the term Landlord means the assignee or transferee and the assignor or transferor shall be, and hereby is, entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such transfer or assignment, provided that the transferee or assignee under such transfer or assignment has assumed, in a written instrument (a copy of which shall be provided to Tenant), and agreed to carry out, any and all agreements, covenants and obligations of Landlord hereunder occurring from and after the date of such assignment or transfer.

"Landlord's Appraisal" has the meaning provided in Section 35.1(a) hereof.

"Last Positive Specified Interval" has the meaning provided in the definition of "Adjusted for Inflation" of this Lease.

"Late Charge Rate" means the rate of interest charged from time to time by the City for delinquent Taxes, compounded daily.

"Lease" means this Agreement of Lease, all exhibits hereto and all amendments, modifications and supplements thereof.

"Lease Administrator" means NYCEDC or such other entity designated by Landlord pursuant to Section 41.21.

"Lease Year" means the twelve (12) month period beginning on the Effective Date and each succeeding twelve (12) month period during the Term, provided, however, that if the Effective Date occurs on a date which is other than the first day of a calendar month, the first Lease Year shall be the remainder of the first (partial) calendar month and the succeeding eleven (11) full calendar months, and thereafter each Lease Year shall be each succeeding twelve (12) full calendar months.

"License" has the meaning provided in Section 39.8(a) hereof.

"MBE" has the meaning provided in Section 13.1(h)(i) hereof.

"Measuring Month" has the meaning provided in the definition of "Adjusted for Inflation" of this Lease.

"Member" has the meaning provided in Section 39.8(c) hereof.

"Memorandum of Lease" means the memorandum of lease to be recorded by Tenant promptly after the Effective Date in accordance with Section 37.1 hereof and in the form attached hereto at Exhibit M (Form of Memorandum of Lease).

"Mortgage" has the meaning provided in Section 11.1(b) hereof.

"Mortgagee" means the holder of a Mortgage.

"M/WBE" has the meaning provided in Section 13.1(h)(i) hereof.

"Net Worth" means, with respect to any Person as of any date, (i) the aggregate amount of all assets of such Person which would be reflected on a balance sheet or personal financial statements (but excluding therefrom (A) capitalized interest, debt discount and expense, goodwill, patents, trademarks, service marks, tradenames, copyrights, franchises, licenses, amounts due from Affiliates and any other items which would be treated as intangibles under Accounting Principles, (B) assets owned jointly with another Person (including a spouse), (C) assets owned by a trust with respect to which such Person is not the sole, one hundred percent (100%) beneficiary, or with respect to which such Person is not the sole, one hundred percent (100%) controlling party and (D) residences owned by such Person), less (ii) the aggregate amount of all liabilities of such Person, including contingent liabilities, which would be reflected on a balance sheet, in each case prepared in accordance with Accounting Principles.

"New York State Courts" has the meaning provided in Section 41.18 hereof.

"Non-Prevailing Party" has the meaning provided in Section 42.1(a) hereof.

"NYCEDC" has the meaning provided in the Recitals of this Lease.

"NYCEDC Contract" has the meaning provided in the Recitals of this Lease.

"NYCIDA" means the New York City Industrial Development Agency.

"Operating Commitments" means Tenant's commitments timely to perform and maintain specified operating milestones and commitments as set forth in the Project Commitments and in Article 23 , which milestones and commitments are the obligation of Tenant under this Lease.

"Original Premises" means the Premises leased hereunder on the Effective Date and shall not include the Expansion Space.

"Permit" has the meaning provided in Section 39.8(a) hereof.

"Permitted Person" means any Person that (A) is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City or NYCEDC, unless such default or breach has been waived in writing by the City or NYCEDC, as the case may be; (B) has not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years; (C) has not been convicted of a felony in the preceding ten (10) years; (D) shall not have received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; and (E) has not received written notice of default in the payment to the City of any Taxes or Impositions, that have not been paid, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Pier" means that portion of the Premises that at any time constitutes all or any portion of a pier.

"PILOT" has the meaning provided in Section 3.5(a) hereof.

"Plans and Specifications" has the meaning provided in Section 13.1(b)(iv) hereof.

"Plant Equipment" means the items set forth on Exhibit O attached hereto.

"Port Authority" means the Port Authority of New York and New Jersey.

"Port Authority Tariff" means the tariff known as PAMT FMC No. PA-10 adopted by the Port Authority on February 3, 1966, and any amendments and supplements thereto.

"Pre-Development Agreement" has the meaning provided in the Recitals of this Lease.

"Pre-Development License" means the License from the City to Tenant executed by Tenant on October 8, 2014, as amended.

"Pre-Existing Environmental Condition" has the meaning provided in Section 21.3 hereof.

"Premises" has the meaning provided in the Recitals of this Lease.

"Prevailing Party" has the meaning provided in Section 42.1(a) hereof.

"Prime Rate" means the rate announced as such from time to time by JP Morgan Chase Bank, or its successors (or if JP Morgan Chase Bank or its successors shall cease to exist, another Institutional Lender selected by Landlord), at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 365-day year.

"Principal(s) of Tenant" shall mean, the Tenant Principals and with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such Person, any individual holding equivalent positions, shareholders, members or other equity owners, or any other Person possessing, directly or indirectly, the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, partnership interests, membership interests or by contract or otherwise.

"Production Amount" has the meaning provided in Section 3.2(c) hereof.

"Production Multiplier" has the meaning provided in Section 3.2(c) hereof.

"Production Payment" has the meaning provided in Section 3.2(c) hereof.

"Production Payment Notice" has the meaning provided in Section 3.2(c) hereof.

"Prohibited Distinctions" has the meaning provided in Section 39.10(a) hereof.

"Project" has the meaning provided in the Recitals of this Lease.

"Project Commitments" has the meaning provided in Section 23.1 hereof.

"Recognized Mortgage" has the meaning provided in Section 11.2(b) hereof.

"Recognized Mortgagee" means the holder of a Recognized Mortgage.

"Remedial Action Plan" has the meaning provided in Section 21.2 hereof.

"Remediation Plan" has the meaning provided in Section 21.2 hereof.

"Remediation Work" means the removal, and disposal of all Hazardous Substance Conditions at the Premises and any other actions necessary to otherwise remediate the Premises as required by all Requirements and Environmental Laws, including excavating, testing, onsite management, temporary storage, transportation, offsite disposal and any other related actions as may be required by Requirements and Environmental Laws.

"Rental" means all of the amounts payable by Tenant pursuant to this Lease, including Base Rent, Additional Rent, PILOT, Dockage, Wharfage, Impositions, the amounts payable

pursuant to Article 20 hereof and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease, to pay and/or deposit.

"Replacement Value" means the actual cost to repair, rebuild or replace an item or structure damaged or destroyed by casualty or condemnation with an item or structure of comparable size, material and quality and used for comparable purposes and in the same location as the item or structure being repaired, rebuilt or replaced.

"Reporting Period" has the meaning provided in Section 39.9(a) hereof.

"Required Disclosure Statement" has the meaning provided in Section 10.1(e) hereof.

"Required Threshold" means an Institutional Lender having net assets of no less than Five Hundred Million Dollars ($500,000,000.00) as of the Effective Date, provided that if an Institutional Lender comprises more than one Person (whether as Affiliated real estate investment trusts, Affiliated funds or otherwise), the Required Threshold shall be the combined assets of all such Affiliated Persons as of the Effective Date.

"Required Uses" has the meaning provided in Section 23.1(a) hereof.

"Requirements" has the meaning provided in Section 16.1(b) hereof.

"Restoration" means either a Casualty Restoration or a Condemnation Restoration, or both.

"Restoration Funds" means (a) any moneys that may be received by Depositary pursuant to the provisions of Section 8.3 or Section 9.2(c) hereof, together with the interest, if any, earned thereon, and (b) the proceeds of any security deposited with Depositary pursuant to Section 34.2(b) hereof, together with the interest, if any, earned thereon.

"RFP" has the meaning provided in the Recitals of this Lease.

"Sales Taxes" has the meaning provided in Section 4.6 hereof.

"Sampling Protocol" has the meaning provided in Section 21.2 hereof.

"Scheduled Construction Commencement Date" has the meaning provided in Section 13.1(b)(vi) hereof.

"Scheduled Construction Completion Date" has the meaning provided in Section 13.1(b)(vii) hereof.

"Scheduled Demolition and Remediation Commencement Date" has the meaning provided in Section 13.1(b)(viii) hereof.

"Scheduled Demolition and Remediation Completion Date" has the meaning provided in Section 13.1(b)(ix) hereof.

"Schematics" has the meaning provided in Section 13.1(b)(x) hereof.

"Second Extension Term" has the meaning provided in Section 2.2(b) hereof.

"Second Request" has the meaning provided in Section 13.1(i) hereof.

"Security Deposit" has the meaning provided in Section 33.1 hereof.

"Security Deposit Readjustment Date" has the meaning provided in Section 33.3 hereof.

"Soft Costs" has the meaning provided in Section 8.3(b)(ii) hereof.

"Sublease(s)" has the meaning provided in Section 10.1(d)(v) hereof.

"Sublease Dockage and Wharfage Payment Amount" has the meaning provided in Section 3.9(c) hereof.

"Substantial Completion" or "Substantially Complete(d)" has the meaning provided in Section 13.1(b)(xi) hereof.

"Substantial Completion Date" means the date on which the Project shall have been Substantially Completed.

"Substantial Demolition and Remediation Completion" has the meaning provided in Section 13.1(b)(xii) hereof.

"Substantially All of the Premises" has the meaning provided in Section 9.1(c)(ii) hereof.

"Subtenant(s)" has the meaning provided in Section 10.1(d)(vi) hereof.

"Tax Year" means each tax fiscal year of the City.

"Taxes" means the real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes which would be so assessed and levied if not for such exemption), pursuant to the provisions of Chapter 58 of the Charter and Title 11, Chapter 7 of the New York City Administrative Code and Chapter 50-a of the Consolidated Laws of the State of New York, each as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part or in addition thereto.

"Taxing Authorities" has the meaning provided in Section 4.6 hereof.

"Tenant" means the Tenant and its permitted successors and assigns.

"Tenant Principal(s)" means (i) U.S. Concrete, Inc., the sole member of Tenant, William Sandbrook, Joseph Tusa, Jr. and Ronnie Pruitt, (ii) USC Atlantic, Inc., the entity that owns all of the issued and outstanding stock of U.S. Concrete, Inc. and Kevin Kohutek, and (iii) Joseph Ferrara.

"Tenant Remedial Actions" has the meaning provided in Section 21.1 hereof.

"Tenant's Appraisal" has the meaning provided in Section 35.1(b) hereof.

"Tenant Liabilities" has the meaning provided in Section 20.1 hereof.

"Tenant's Equipment" means all of Tenant's (or a Subtenant's) personal property and trade fixtures removable without damage to the Premises, including all communications equipment (including all such equipment installed on the rooftop of any Building or elsewhere on the Premises), computer equipment, supplemental mechanical systems, lobby decorations, artwork, and movable furniture of Tenant (or a Subtenant) installed or placed by Tenant (or a Subtenant) on, in or around the Premises and removable without damage to the Premises (but in all cases excluding Plant Equipment).

"Tenant's Representatives" means its managers, members, officers, employees, agents, representatives, contractors, customers, guests, invitees, or other persons who are doing business with Tenant, are on the Premises with Tenant's consent or with Tenant's knowledge or are on the Premises without Tenant's consent due to Tenant's failure to undertake adequate security measures.

"Term" means the period commencing on the Effective Date and ending on the Expiration Date.

"Termination Notice" has the meaning provided in Section 24.3(c) hereof.

"Threshold Amount" means $500,000.00.

"Third Appraiser" has the meaning provided in Section 35.1(c) hereof.

"Third Extension Term" has the meaning provided in Section 2.2(b) hereof.

"Title Matters" has the meaning provided in Section 2.1 hereof.

"Transfer" has the meaning provided in Section 10.1(d)(vii) hereof.

"Transferee" has the meaning provided in Section 10.1(d)(viii) hereof.

"Unavoidable Delays" means the following delays provided that each results from causes beyond Tenant's reasonable control: (i) actions of or failures to act by Landlord (in its proprietary capacity under this Lease) or by Lease Administrator which are in violation of this Lease (provided that such actions by Landlord or Lease Administrator are not themselves the result of actions by Tenant), (ii) orders of any court of competent jurisdiction (including any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the Initial Construction Work or any other Construction Work, as the case may be), (iii) labor disputes (including strikes, lockouts not caused by Tenant, slowdowns and similar labor problems), and (iv) shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute is readily available) and shortages or inability to obtain waterborne craft; (v) acts of God (including earthquakes, floods and inordinately severe weather conditions), (vi) enemy action (including a terrorist act or acts), civil disturbance or commotion; but in all cases only (A) to the extent (if any) such delay cannot be

offset or eliminated by the exercise of reasonable, good-faith curative efforts on the part of Tenant, and without giving duplicative effect to concurrent delays and (B) provided that Tenant (x) notifies Lease Administrator in writing of the occurrence of any event constituting an Unavoidable Delay condition promptly after Tenant has actual knowledge thereof, and (y) throughout the pendency of such Unavoidable Delay condition, utilizes good-faith efforts to minimize the impact and delays caused by such Unavoidable Delay condition. The period of delay caused by any occurrence of an event of Unavoidable Delay shall not be deemed to commence any earlier than ten (10) Business Days before the date Tenant gives notification to Landlord of such occurrence. Upon cessation of the event of Unavoidable Delay causing such delay, Tenant shall recommence the performance of the obligation affected by such event of Unavoidable Delay. Under no circumstances shall the non-payment of money or a failure attributable to a lack of funds or a delay due to Tenant's financial condition or inability to obtain financing, be deemed to be (or to have caused) an event of Unavoidable Delay and the denial by a Governmental Authority to grant a Permit and approval required by the Project beyond any right of appeal shall terminate the Unavoidable Delay. Furthermore, with respect to clause (iv), under no circumstances shall difficulty, long lead times or increased cost in obtaining utilities for Tenant's business be deemed to be (or to have caused) an Unavoidable Delay since Tenant understands that utilities may be costly (including for connections and specialized equipment) and difficult to obtain for Tenant's business and Tenant is required to plan accordingly and pay such increased costs. If and to the extent that an Unavoidable Delay continues as a result of a delay within the reasonable control of Tenant, then such Unavoidable Delay shall not be deemed an Unavoidable Delay for the period of such Tenant delay.

"WBE" has the meaning provided in Section 13.1(h)(i) hereof.

"Wharfage" means a charge assessed against all cargo passing or conveyed over, onto, or under the Premises or between vessels (to or from barge, lighter or water) when berthed at the Premises or when moored in a slip adjacent to the Premises, calculated as if the Premises were a Port Authority Marine Terminal under Port Authority Tariff, Subrule 34-505 and Subrule 34-590.

Section 1.2 Interpretation; Exhibits. Except as otherwise expressly provided herein, the following rules of interpretation shall apply to this Lease:

(a) The singular includes the plural and the plural includes the singular.

(b) "or" is not exclusive.

(c) A reference to any law, ordinance, regulation, statute, order, or code includes any amendment or modification to such law, ordinance, regulation, statute, order or code.

(d) A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

(e) The words "include", "includes" and "including" are not limiting.

(f) In the event of any conflict between the provisions of this Lease (exclusive of the Exhibits thereto) and any Exhibit thereto, the provisions of this Lease shall control.

(g) Unless otherwise expressly provided, references to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

(h) The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

(i) References to "days" shall mean calendar days, unless the term "Business Day" shall be used.

(j) References to a time of day shall mean such time in New York, New York, unless otherwise specified.

(k) If, at any time after the Effective Date, A.M. Best Company, Inc. or Standard and Poor's Ratings Group, Inc. changes their respective system of classifications, then any such "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

(l) The Exhibits attached hereto form an integral part of this Agreement and are incorporated in this Agreement as though fully set forth herein.

ARTICLE 2
DEMISE OF PREMISES, TERM OF LEASE AND EASEMENTS

Section 2.1 Demise of Premises.

(a) Premises. Landlord does hereby demise and lease to Tenant, and Tenant, having conducted its own independent title search with respect to the Premises and not relying on any statements or representations of any kind of Landlord, does hereby hire and take from Landlord the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject only to those matters affecting title set forth in Exhibit D (Title Matters) hereto (the "Title Matters").

(b) Expansion Space. On the Expansion Space Sublease Termination Date, subject to Landlord having obtained all necessary governmental or other approvals and consents and given all necessary notices and provided further that: (i) the Lafarge Lease shall have terminated or shall terminate contemporaneously therewith; (ii) no Default or Event of Default then exists hereunder, (iii) Tenant is in possession of the Expansion Space on such date and no default or event of default shall then exist (or have existed immediately prior to the

Expansion Space Sublease Termination Date that has not been cured) under the Expansion Space Sublease and/or the Expansion Space Sublease shall not have been terminated by reason of a default by the subtenant thereunder, (iv) no default shall then exist under the Consent to Expansion Space Sublease, (v) the representations and warranties of Tenant set forth in this Lease (assuming the Expansion Space is a part of the Premises for all purposes of such representations and warranties) shall be true and correct in all material respects on such date as if made by Tenant on such date and Tenant shall be deemed to have made and confirmed such representations and warranties to Landlord on such date, (vi) the Expiration Date shall not have occurred and this Lease shall be in full force and effect; and (vii) no circumstance exists that would prevent the incorporation of the Expansion Space into the Premises for the balance of the Term, then (A) the Expansion Space shall automatically be and become a part of the Premises for all purposes of this Lease without the necessity for execution of an amendment to this Lease or any other document or instrument, and (B) from such date through the balance of the Term (y) all references to the Premises in this Lease shall include the Expansion Space (unless otherwise specifically provided) and (z) all of the terms, conditions and requirements of this Lease shall apply to the Expansion Space except to the extent otherwise specifically provided, including without limitation in Exhibit Q hereto.

In furtherance of the foregoing, the Parties hereto acknowledge and agree that the City has agreed to make the Expansion Space available to Tenant pursuant to the terms of this Lease on and after the Expansion Space Sublease Termination Date for the balance of the Term as an accommodation to Tenant provided that the Lafarge Lease shall have terminated, the conditions set forth in the preceding paragraph have occurred and/or been satisfied and Landlord is able to do so at no cost or expense to Landlord or Lease Administrator. Nothing contained in this Lease shall be deemed to require Landlord or Lease Administrator to bring any action or proceeding or take any other steps to remove any impediment to incorporating the Expansion Space into the Premises for Tenant's use for the balance of the Term on and after the Expansion Space Sublease Termination Date or at any other time, or to incur any costs therefor, nor shall Tenant have any right of action against Landlord or Lease Administrator, at law or in equity, for Landlord's inability to incorporate the Expansion Space into the Premises and/or to allow Tenant to use the Expansion Space pursuant to the terms of this Lease or otherwise for any reason. The date on which the Expansion Space first becomes a part of the Premises in accordance with the terms of this Lease is hereinafter referred to as, the "Expansion Space Commencement Date." Notwithstanding anything to the contrary, this Lease shall not apply to the Expansion Space, the Expansion Space shall have no application to any of the terms of this Lease unless otherwise specifically provided, the terms of this Lease with respect to the Expansion Space shall be of no force and effect unless otherwise specifically provided, and Landlord shall have no obligation to Tenant with respect to the Expansion Space, unless and until the Expansion Space Commencement Date shall have occurred in accordance with the terms of this Section 2.1(b). Further notwithstanding anything to the contrary, in the event that the Expansion Space Commencement Date shall not occur and the Expansion Space shall not become a part of the Premises for any reason, the terms of this Lease shall remain in full force and effect as to the Original Premises unaffected thereby for the entire Term. The foregoing provisions of this Section 2.1(b) shall be self-operative; provided however that Tenant upon demand of Landlord shall execute and deliver such instrument or instruments as Landlord may reasonably request to evidence and confirm the provisions of this Section 2.1 at its sole cost and expense. Tenant shall give Landlord notice of the Expansion Space Sublease Termination Date not less than 180 days

prior to the occurrence thereof (or as much notice as possible if Tenant shall not have at least 180 days prior notice of such date).

(c) Title Report and Survey. On the Expansion Space Commencement Date, Tenant shall deliver to Landlord a title report with respect to the Expansion Space issued by a title company acceptable to Landlord and a current survey of the Expansion Space (certified to the City and Lease Administrator) which shall indicate the tax block and lot of the Expansion Space.

(d) Expansion Space "AS IS". In the event that the Expansion Space becomes a part of the Premises in accordance with the terms of this Section 2.1, Tenant agrees to the following terms as of the Expansion Space Commencement Date, that Tenant (a) has examined the physical condition of the Expansion Space prior to the execution and delivery of this Lease and agrees to accept the Expansion Space on the Expansion Space Commencement Date in "AS IS, WHERE IS" condition (including without limitation as to the presence of any and all Hazardous Substances and as to the condition of the Pier), and without any representations or warranties of any kind or nature by Landlord and subject to all encumbrances existing on the Expansion Space, (b) will not make any claim that the Expansion Space is not suitable for the uses set forth in this Lease, and (c) except to the extent of any express obligations of Landlord under this Lease, will not at any time make any claim against Landlord or Lease Administrator regarding the condition of the Expansion Space, including the condition of title in and to the Expansion Space.

(e) No Effect on Expansion Space Sublease. For the avoidance of doubt, nothing in this Lease shall have any effect on the Expansion Space Sublease which shall govern the relationship of the parties thereto in accordance with its terms and nothing in the Expansion Space Sublease, including without limitation the payments required to be paid by the subtenant thereunder, shall have any affect on the Rental payable by Tenant hereunder.

Section 2.2 Term.

(a) Initial Term. The initial term of this Lease (the "Initial Term") shall commence on the Effective Date and shall expire at 11:59 p.m. of the last day of the twenty-fifth (25^{th}) Lease Year or such earlier date upon which this Lease shall be terminated in accordance with the terms herein (the "Initial Expiration Date").

(b) Extension Term Option.

(i) Grant of Option. Provided that this Lease shall then be in full force and effect in accordance with its terms and there shall not then exist any material uncured Default or any Event of Default hereunder, as of the commencement date of the applicable Extension Term, Tenant shall have five (5) consecutive options to extend the then Term for the following periods (each an "Extension Term" and collectively the "Extension Terms"), each of which options shall be exercised in the manner set forth in Section 2.2(b)(ii) below (all Lease Years stated below are inclusive):

"First Extension Term"	Lease Years 26 to 30
"Second Extension Term"	Lease Years 31 to 35
"Third Extension Term"	Lease Years 36 to 40
"Fourth Extension Term"	Lease Years 41 to 45
"Fifth Extension Term"	Lease Years 46 to 50

(ii) Exercise of Option. If Tenant shall exercise its option to extend the then Term for any Extension Term, Tenant shall do so by giving written notice to Lease Administrator of its election not later than eighteen (18) months prior to the last day of the then-Term, TIME BEING OF THE ESSENCE. For the avoidance of doubt, in the event that at the date for Tenant's giving of the foregoing notice, a material uncured Default of which notice has been given to Tenant shall exist, which Default is subsequently cured by Tenant prior to the commencement of the Extension Term in question, Tenant shall not lose the right for the Extension Term in question by reason of such Default.

(iii) Terms Governing Extension Term(s). If the Term has been extended for an Extension Term by Tenant providing the notice required by, in accordance with and subject to the terms of Section 2.2(b)(ii) hereof, the Term shall automatically be extended for the applicable Extension Term without the necessity for execution of an extension or renewal lease. The Term, as extended for such Extension Term, shall be upon all of the same terms, covenants and conditions as shall be in effect hereunder, except that (y) Base Rent shall be determined in accordance with the provisions of Section 3.2 hereof; and (z) Tenant shall have no further right to extend or renew the Term other than as provided herein.

Section 2.3 Premises "AS IS". Tenant (a) has examined the physical condition of the Premises prior to the execution and delivery of this Lease and agrees to accept the Premises in "AS IS, WHERE IS" condition (including without limitation as to the presence of any and all Hazardous Substances), and without any representations or warranties of any kind or nature by Landlord, except as otherwise expressly provided herein, (b) will not make any claim that the Premises is not suitable for the uses set forth in this Lease, and (c) except to the extent of any express obligations of Landlord under this Lease, will not at any time make any claim against Landlord or Lease Administrator regarding the condition of the Premises. In furtherance and not in limitation of the foregoing, Tenant will ensure that the structure of any Pier will support any use by Tenant thereof.

Section 2.4 Easements.

(a) Municipal Easement. Landlord hereby reserves for itself and Lease Administrator, and their respective officers, employees, agents, servants, representatives and invitees, an easement for ingress and egress to, from and over the Premises for the following purposes: (i) to maintain, replace and repair existing municipal facilities located within the Premises, if any; (ii) to maintain its fire communications facilities, sewers, water mains and street sub-surface below the Premises, if any; and (iii) to access for purposes of inspection the bulkhead area and the pier and other facilities adjacent to the Premises.

(b) Right to Enter. Landlord, Lease Administrator and their respective designees shall have the right at all times to enter upon the Premises with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect Landlord's and/or Lease Administrator's facilities in or adjacent to the Premises. The easement reserved hereby is in addition to any other easement, right-of-way or other right that constitutes a Title Matter as described in Exhibit D hereto.

(c) No Interference. Neither Landlord's nor Lease Administrator's entry onto or permitted use of the Premises shall materially interfere with Tenant's use of the Premises.

ARTICLE 3
RENT

Section 3.1 Time and Place of Payment. Beginning on the Effective Date, (i) annual Base Rent shall be payable in advance in equal monthly installments, on the first day of each month and (ii) the Production Payment, if any, and Dockage fees and Wharfage fees shall be payable as provided in Section 3.2(c) and Section 3.9, respectively, and in Exhibit Q hereto in the limited circumstances provided in such exhibit, and PILOT shall be payable as provided in Section 3.5. Any monthly installment of annual Base Rent and Dockage and Wharfage in the limited circumstances provided in Exhibit Q hereto that is due for any period of less than a full month shall be apportioned on the basis of the number of calendar days in such month. All Rental (other than annual Base Rent, the Production Payment, Dockage fees and Wharfage fees

and PILOT) payable under this Lease shall be paid in full by Tenant upon demand, but in any event not later than the first day of the month following the giving of any notice related thereto. Except as otherwise specifically provided herein, all Rental shall be paid to Landlord (except for such items included in Rental that are to be paid to third parties directly, as expressly set forth in this Lease (provided it is agreed that Tenant shall not be required to pay any Rental twice, i.e., to a third party and to Landlord)), without notice or demand, by, at the election of Tenant, (i) good checks drawn on an account at a bank that is a member of the New York Clearing House Association (or any successor body of similar function) or in currency that at the time of payment is legal tender for public and private debts in the United States of America, at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant (with a copy concurrently sent to any Recognized Mortgagee), or (ii) by wire transfer(s) of immediately available funds to account(s) at a bank(s) that is a member of the New York Clearing House Association (or any successor body of similar function) designated by Landlord in writing. The foregoing requirement to pay Rental without notice or demand shall not limit Tenant's rights to cure a failure to pay Rental as provided in Section 24.1(a) hereof.

Section 3.2 Base Rent.

(a) Initial Term Base Rent. For each Lease Year during the Initial Term, the Base Rent shall be equal to the following: (1) for Lease Year 1, annual Base Rent shall equal $220,000.00 and (2) for Lease Years 2 through 25 annual Base Rent shall equal (y) the product of annual Base Rent for the immediately prior Lease Year *multiplied by* (z) 103% (such 103% multiplier being hereinafter referred to as the "Annual Base Rent Increase Amount"). Notwithstanding anything to the contrary, Base Rent for the Expansion Space shall be as set forth in Exhibit Q hereto.

(b) Extension Term Base Rent. For each Lease Year during each Extension Term, the Base Rent shall be equal to the following: (1) for the first Lease Year of the applicable Extension Term, annual Base Rent shall equal the greater of (y) the annual Fair Market Rent as of a Determination Date not earlier than one hundred eighty (180) days prior to the last day of the Lease Year immediately preceding the first Lease Year of the applicable Extension Term and (z) the product of the annual Base Rent in effect for the Lease Year immediately preceding the first Lease Year of the applicable Extension Term *multiplied by* the Annual Base Rent Increase Amount and (2) for the second through fifth Lease Years of the applicable Extension Term, annual Base Rent shall equal (y) the product of the annual Base Rent for the immediately prior Lease Year *multiplied by* (z) the Annual Base Rent Increase Amount; provided that if the Fair Market Rent provided in clause (1)(y) has not yet been determined in accordance with Section 35.1 hereof as of the first day of the applicable Extension Term, then Tenant shall pay Base Rent in accordance with clause (1)(z) of this Section 3.2(b) until such determination has been made, and when such determination has been made, an appropriate retroactive adjustment shall be made for any underpayment. Notwithstanding anything to the contrary, Base Rent during each Extension Term for the Expansion Space shall be as set forth in Exhibit Q hereto.

(c) Annual Production Payment. At the end of every Lease Year during the Initial Term and all Extension Terms, commencing with the first (1st) Lease Year, Tenant shall provide Landlord with written notice ("Production Payment Notice"), certified by a

Principal of Tenant, not later than thirty (30) days following the end of each Lease Year, of the number of cubic yards of concrete produced at the Premises (together with any adjacent property used by Tenant in connection with the Project, including pursuant to the Expansion Space Sublease, but excluding any concrete produced at the Premises which is rejected by the customer and/or not sold or transferred to a third party for any type of consideration) in such Lease Year (such amount being, collectively, the "Production Amount"), which notice shall include evidence of such calculation to Landlord's reasonable satisfaction, and the product of the Production Amount for each such Lease Year *multiplied by* $2.50 (which $2.50 amount shall be subject to a 3% escalation each Lease Year, compounded annually (the "Annual 3% Production Base Increase" and the $2.50 initial amount as increased annually by the Annual 3% Production Base Increase, the "Production Multiplier"), during the Initial Term and all Extension Terms commencing with the second (2nd) Lease Year including during the Abatement Period) shall be the production payment (the "Production Payment") for each such Lease Year. During the Abatement Period Tenant shall not be required to pay any Production Payment to Landlord, but the Annual 3% Production Base Increase shall apply to increase the Production Multiplier each year during the Abatement Period (and all subsequent Lease Years) as provided above in this Section 3.2(c). Following the Abatement Period, for each Lease Year during the balance of the Initial Term and all Extension Terms in which the Production Payment exceeds the Dockage and Wharfage Payment Amount (or the Combined Dockage and Wharfage Payment Amount during the term of the Expansion Space Sublease) for such Lease Year, Tenant shall pay to Landlord on the date of delivery of the Production Payment Notice an amount equal to the Production Payment *minus* the Sublease Dockage and Wharfage Payment Amount for the same Lease Year, if any, paid pursuant to the Expansion Space Sublease. .

Section 3.3 Abatement Period. Notwithstanding anything to the contrary in this Lease, during the Abatement Period Tenant shall not be required to pay Base Rent (and the Annual Base Rent Increase Amount shall not apply to increase Base Rent) , any Production Payment pursuant to Section 3.2(c), or any Dockage or Wharfage pursuant to Section 3.9(c). However, Tenant shall pay any and all other Additional Rent (including without limitation PILOT and Dockage fees and Wharfage fees, if any, payable with respect to the Expansion Spacepursuant to Exhibit Q) as and when such Additional Rent is due and payable under this Lease. Notwithstanding that Tenant shall not be required to pay any Production Payment during the Abatement Period, the Annual 3% Production Base Increase shall apply to increase the Production Multiplier each year during the Abatement Period in accordance with Section 3.2(c). Payments provided under this Lease which are calculated for a period of time within and outside of the Abatement Period shall be calculated on a pro rata basis. In the event that the Expansion Space Commencement Date shall occur prior to the end of the Abatement Period, the first sentence of this Section 3.3 shall not apply and Tenant shall pay any and all Base Rent, Dockage, Wharfage, PILOT or other amounts, if any, payable with respect to the Expansion Space during the Abatement Period. .

Section 3.4 Additional Rent. In addition to the Base Rent payable hereunder, Tenant shall pay to Landlord (or the appropriate third party, as applicable) as additional rent under this Lease, all Additional Rent. Except where this Lease provides otherwise, Tenant shall pay all Additional Rent within thirty (30) days after receipt of an invoice and reasonable backup documentation.

Section 3.5 Payments in Lieu of Taxes.

(a) Tenant's Obligation to Pay PILOT; Expansion Space Tax Lot. For so long as Landlord shall be the City or another Governmental Authority that is exempt from the payment of Taxes, for each Tax Year or portion thereof within the Term, Tenant shall pay to DOF or its successor in function, upon notice to Tenant from DOF of the amount due, an annual sum (each such sum being hereinafter referred to as "PILOT") in the amounts provided in Section 3.5(b) hereof, payable in equal semiannual installments during such Tax Year in advance on the first day of each January and July, or in such other manner as the City then may generally require for the payment of Taxes without interest or penalty. PILOT due for any period of less than six months shall be appropriately apportioned. Furthermore, as soon as practicable following the Expansion Space Commencement Date, Tenant shall apply for and diligently seek to obtain either of the following as directed by DOF (i) a permanent tax lot number that encompasses the entire Expansion Space or (ii) a revision of the current tax lot for the Premises to include the Expansion Space.

(b) Amount of PILOT. During the Term, PILOT shall be in an amount equal to Taxes on the Premises (including the Expansion Space on and after the Expansion Space Commencement Date), prorated for any period in which the remaining Term includes only a partial Tax Year (such proration being on a per diem basis, using the actual number of days); provided, that if and to the extent that all or any portion of the Premises would have qualified for an as-of-right exemption, abatement, credit or other reduction from Taxes under then-applicable laws, regulations, policies and/or programs, if Tenant were the fee owner of the Premises based on Tenant's exempt status and exempt use of the Premises, if applicable, then the PILOT due hereunder shall be adjusted to reflect the amount of such as-of-right exemption, abatement, credit or other reduction for which the Tenant would have qualified. Landlord shall cooperate with Tenant (at no cost or expense to Landlord), as reasonably requested from time to time by Tenant, in connection with Tenant's applications to DOF for any as-of-right exemption, abatement, credit or other reduction for which the Premises would have qualified if Tenant were the fee owner of the Premises.

(c) Tax Contest. Tenant shall continue to pay the full amount of PILOT required under this Section 3.5, notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 34.1 hereof to reduce the assessed valuation of the Premises or any portion thereof. If any such tax reduction or other action or proceeding shall result in a final determination in Tenant's favor, (i) Tenant shall be entitled to a credit against future PILOT and/or any other Rental to the extent, if any, that the PILOT previously paid for any Tax Year for which such final determination was made exceeds the PILOT as so determined, and (ii) if such final determination is made for the then current Tax Year, future payments of PILOT for such Tax Year shall be based on the PILOT as so determined. If at the time Tenant is entitled to receive such a credit the City is paying interest on refunds of Taxes, Tenant's credit shall include interest at the rate then being paid by the City. In no event, however, shall Tenant be entitled to any cash refund of any such excess from Landlord.

(d) Privatization of Landlord's Interest in Premises. If the City shall cease to be Landlord, Tenant shall remit to Landlord the full amount of Taxes billed to the Landlord subject to Tenant's right to seek reductions in the assessed value of the Premises

pursuant to Section 34.1 and subject further to Tenant's rights pursuant to Section 3.5(c) except that, upon the City's ceasing to be the Landlord, PILOT shall mean Taxes. For the avoidance of doubt, Tenant shall not be subject to duplicative payments of both PILOT and Taxes for the same period.

Section 3.6 Abatement, Deduction, Counterclaim and Offsets. It is the intention of Landlord and Tenant that, except as otherwise specifically provided in this Lease, (a) Rental shall be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) Tenant shall pay all costs, expenses and charges of every kind relating to the Premises (except Taxes other than pursuant to Section 3.5(d) hereof) that may arise or become due or payable during or after (but attributable to a period falling within) the Term, except, however, that Tenant shall not be responsible pursuant to this Lease for payment of (x) Taxes, (y) any mortgages or other loans obtained by Landlord on the Premises, or (z) unless specifically provided in this Lease, any costs, expenses and charges of any kind relating to the Premises to the extent attributable to any period prior to the Effective Date.

Section 3.7 Acceptance of Partial Payments; No Waiver. The acceptance by Landlord or its agent or any other Person entitled thereto of any partial payment of Base Rent or Rental or any other amount payable by Tenant hereunder, or the failure by Landlord or its agent to enforce any provision of this Lease, shall not be considered a waiver of any of Landlord's rights either under this Lease, at law or in equity.

Section 3.8 Intentionally Deleted.

Section 3.9 Dockage and Wharfage.

(a) Beginning on the Effective Date, Tenant shall pay to Landlord, as Additional Rent, Dockage (except for vessel calls exclusively related to the Initial Construction Work) at the rates set forth in the Port Authority Tariff, Subrules 34-472, 34-482 and 34-483 as they may be amended or supplemented from time to time by the Port Authority or its successor in function. For the avoidance of doubt, except as specifically provided in Exhibit Q hereto on and after the Expansion Space Commencement Date the calculation of Dockage pursuant to this Section 3.9 shall be on the entire Premises, including the Expansion Space.

(b) Beginning on the Effective Date, Tenant shall pay to Landlord, as Additional Rent, Wharfage for cargo passing or conveyed over, onto or under the Premises or between vessels (except materials used in connection with the Initial Construction Work) at the rates set forth in the Port Authority Tariff, Subrule 34-590, as it may be amended or supplemented from time to time by the Port Authority or its successor in function. For the avoidance of doubt, except as specifically provided in Exhibit Q hereto on and after the Expansion Space Commencement Date the calculation of Wharfage pursuant to this Section 3.9 shall be on the entire Premises, including the Expansion Space.

(c) Dockage fees and Wharfage fees described in Section 3.9(a) and Section 3.9(b) hereof, respectively, shall be payable annually in arrears as follows. At the end of every Lease Year during the Initial Term and all Extension Terms commencing with the first

(1st) Lease Year, Tenant shall provide Landlord with written notice (the "Dockage and Wharfage Fee Notice"), certified by a Principal of Tenant, not later than thirty (30) days following the end of each Lease Year of the full amount of Dockage fees and Wharfage fees for such Lease Year calculated as provided in Section 3.9(a) and Section 3.9(b) hereof (the "Dockage and Wharfage Payment Amount"), accompanied by copies of the applicable Berthing Account annexed as Exhibit P hereto and any additional evidence of such calculation as Landlord may reasonably require; provided that prior to the Expansion Space Commencement Date Tenant shall also include on a separate line in the Dockage and Wharfage Fee Notice the amount actually paid by Tenant for Dockage and Wharfage fees for such Lease Year pursuant to the Expansion Space Sublease (the "Sublease Dockage and Wharfage Payment Amount") together with evidence of such payment as Landlord may reasonably require (the "Dockage and Wharfage Payment Amount together with the Sublease Dockage and Wharfage Payment Amount are sometimes referred to herein, collectively, as the "Combined Dockage and Wharfage Payment Amount").

(i) During the Abatement Period, Tenant shall not be required to pay any Dockage fees or Wharfage fees in connection with the Premises described in Section 3.9(a) and Section 3.9(b) hereof; provided however that notwithstanding the foregoing, in the event that the Expansion Space Commencement Date shall occur prior to the last day of the Abatement Period, Tenant shall be required to pay Dockage fees and Wharfage fees on the Expansion Space during the Abatement Period as provided in Exhibit Q hereto.

(ii) For each Lease Year during the balance of the Initial Term and all Extension Terms following the Abatement Period, Tenant shall pay to Landlord the *greater* of (i) the Dockage and Wharfage Payment Amount (or the Combined Dockage and Wharfage Payment Amount prior to the Expansion Space Commencement Date) or (ii) the full Production Payment calculated as provided in the first sentence of Section 3.2(c) (without any deduction) for such Lease Year, at the time of delivery of the Dockage and Wharfage Fee Notice or the Production Payment Notice, as applicable; provided however that for all Lease Years in which Tenant shall be required to pay the Sublease Dockage and Wharfage Payment Amount pursuant to the terms ofthe Expansion Space Sublease, Tenant shall receive a reduction of such amount for all amounts of Dockage fees and Wharfage fees for the same Lease Year paid pursuant to the Expansion Space Sublease, but in no case shall such reduction result in (i) any type of credit against any other amounts due hereunder at any time or (ii) any payment by Landlord to Tenant.

(d) Notwithstanding anything to the contrary in this Lease, including in Sections 3.9(a)-(c) above, it is the intent of Landlord and Tenant that during the Abatement Period Tenant shall be required to pay the full amount of Dockage and Wharfage on the Expansion Space without abatement, offset, deduction , or reduction of any kind whatsoever. Accordingly, in the event that the Expansion Space Commencement Date shall occur prior to the last day of the Abatement Period, notwithstanding anything to the contrary in this Lease, Tenant shall pay to Landlord the full amount of Dockage and Wharfage on the Expansion Space in accordance with the terms of Exhibit Q hereto.

ARTICLE 4
IMPOSITIONS

Section 4.1 Payment of Impositions.

(a) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 4.1(c) hereof, all Impositions that at any time during the Term are, or, if the Premises or any part thereof were not owned by the City, would be assessed, levied, confirmed, imposed upon, or would grow out of, become due and payable out of, or with respect to, or would be charged with respect to the ownership, leasing, operation, use, occupancy and possession of (i) the Premises or any part thereof, or (ii) the sidewalks or streets directly in front of or adjoining the Premises or any part thereof, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises or any part thereof, or (v) any personal property or other facility used in the operation of the Premises, or (vi) the Rental (or any portion thereof) or any other amount payable by Tenant hereunder, or (vii) any documents to which Tenant is a party creating or transferring an interest or estate in the Premises or any portion thereof or (viii) the Bulkhead and/or the Pier.

(b) "Imposition(s)" means:

(i) real property general and special assessments (including any special assessments for or imposed by any business improvement district or by any special assessment district) other than Taxes;

(ii) personal property taxes;

(iii) occupancy and rent taxes assessed against Tenant;

(iv) water, water meter and sewer rents, rates and charges;

(v) license and permit fees;

(vi) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply which affect the Premises;

(vii) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever;

(viii) any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Tenant, but only to the extent that such taxes become or would become, by reason of the nonpayment thereof, an encumbrance or lien upon the Premises or any portion thereof, the sidewalks or streets in front of or adjoining the Premises or any portion thereof, any vault,

passageway or space in, over or under such sidewalks or streets, or any other appurtenances of the Premises or any portion thereof, or any personal property, equipment or other facility used in the operation thereof, or the Rental (or any portion thereof) payable by Tenant hereunder; and

(ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, incurred by reason of Tenant's failure to make any payments as herein provided.

(c) Payments of Impositions. Subject to the provisions of Section 34.2 hereof, during the Term, Tenant shall pay, or cause to be paid, each Imposition or installment thereof not later than the due date thereof (taking into account any option to pay such Imposition in installments). However, if by law, at the payer's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any, imposed thereon. If Tenant fails twice in any rolling three (3) year period to make any payment of an Imposition (or installment thereof) on or before the due date thereof, Tenant shall, at Landlord's request, be required for a period of two (2) years following the second such failure to pay all Impositions or installments thereof thereafter payable by Tenant not later than ten (10) days before the due date thereof.

(d) Income or Franchise Tax of Landlord. Tenant shall not be required to pay any municipal, state or federal corporate income or franchise tax imposed upon Landlord, whether based upon the income or capital of Landlord; nor shall Tenant be required to pay any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Landlord.

Section 4.2 Evidence of Payment. Tenant shall furnish to Landlord, within thirty (30) days of the date such Imposition is first due and payable, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment of any Impositions.

Section 4.3 Evidence of Nonpayment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting nonpayment of such Imposition shall be prima facie evidence that such imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated herein. Notices given by Landlord under this Lease shall not be deemed to be such certificate, advice or bill.

Section 4.4 Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Effective Date or after the Expiration Date, shall be apportioned between Landlord and Tenant as of the Effective Date or the Expiration Date (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment) so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the Term bears to the fiscal period of the taxing authority.

Section 4.5 Taxes. Provided the City shall be Landlord, Landlord shall pay or, on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord), cancel or otherwise satisfy and discharge of record any and all Taxes. If the City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof. Landlord, from time to time, upon request of Tenant, shall furnish to Tenant and any Recognized Mortgagee designated in writing by Tenant, within forty-five (45) days of such request, official receipts of the appropriate taxing authority or other proof, reasonably satisfactory to Tenant, evidencing the cancellation, satisfaction or discharge of record of the Taxes in lieu of which the PILOT payments are being made.

Section 4.6 Sales Tax. Tenant acknowledges that Tenant may incur New York City and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections) (collectively, "Sales Taxes") on tangible personal property incorporated into or otherwise in connection with the Construction Work. Tenant shall pay all Sales Taxes as may be imposed by the New York State Department of Taxation and Finance or DOF (collectively, together with any successor(s) in function, the "Taxing Authorities"), as if Tenant were the fee owner of the Premises, and without regard to any exemption that may arise or be available solely on account of Landlord's ownership of the Premises. Tenant acknowledges that (i) Landlord shall have no liability to Tenant therefor, nor be required to provide any exemption (including the delivery of a sales tax exemption letter), and (ii) Tenant shall pay all such amounts as and when due together with any interest or penalty charges imposed thereon by the Taxing Authorities. This Section 4.6 shall not be construed to prevent Tenant from claiming any exemption from Sales Taxes to which Tenant may be entitled by law based on Tenant's exempt status (without regard to any exemption that may arise or be available solely on account of Landlord's ownership of the Premises); provided, however that Landlord makes no representation with respect to the ability of Tenant to acquire any exemption from Sales Taxes.

ARTICLE 5
DEPOSITS FOR IMPOSITIONS AND INSURANCE PREMIUMS

Section 5.1 Deposits.

(a) Tenant's Obligations to Make Deposits. Unless Tenant is already making such deposits with a Depositary in conformance with the requirements of a Recognized Mortgage upon Landlord's demand made at any time after the occurrence of two (2) separate Defaults by Tenant of which Landlord has given notice with respect to a monetary obligation under this Lease within a twelve (12) month period, Tenant shall deposit with Depositary on the first day of each month during the remainder of the Term (the "Monthly Deposit") an amount equal to (i) in the case of Impositions, one-twelfth (1/12) of the amount of the annual Impositions as reasonably estimated by Landlord and (ii) in the case of insurance premiums, one-twelfth (1/12) of the annual premiums for the insurance coverage required to be carried or caused to be carried by Tenant pursuant to the provisions of Article 7. If, at any time, the moneys so deposited by Tenant on the date of the Monthly Deposit immediately preceding the next

installment of Impositions shall be insufficient to pay in full the next installment of Impositions, Tenant shall, not later than the date which is ten (10) days prior to the due date of the Imposition deposit the amount of the insufficiency with Depositary.

(b) Depositary's Obligations. Depositary shall place all moneys deposited pursuant to the provisions of this Section 5.1 in a special interest-bearing account in the name of Landlord in a savings or commercial bank or in city, state or federal government obligations to be used by Depositary to pay the Impositions and insurance premiums for which such amounts were deposited. Depositary shall apply the amounts deposited and the interest earned thereon to any (i) such Impositions not later than the last day on which any such Imposition may be paid without penalty or interest and (ii) such premiums not later than the last day on which such premiums may be paid without penalty, interest or cancellation of the subject policies. Upon the occurrence of an Event of Default, Depositary shall apply such deposits to the payment of the premiums or Impositions next due, unless this Lease has been terminated and a new lease has not been entered into, or this Lease has not been continued, with a Recognized Mortgagee, in which event Depositary shall apply such deposits at the direction of Landlord to any of Tenant's obligations under this Lease. Interest earned on such deposits shall be applied to the next required deposit.

(c) Increase of Deposits. If the amount of any Imposition or insurance premium is increased, Tenant shall, within thirty (30) days of receipt of notice of such increase (or such lesser amount of time as required in order to comply with the terms of the following clause of this Section 5.1(c)), increase the amount of such monthly deposits so that sufficient moneys for the payment of such Imposition or insurance premium shall always be available to pay such Imposition or insurance premium at least ten (10) days before the Imposition becomes due and payable and at least thirty (30) days before the insurance premium becomes due and payable, as the case may be.

(d) Determination of Sufficiency of Deposits. For the purpose of determining whether Depositary has on hand sufficient moneys to pay an Imposition or insurance premium, deposits for each category of Imposition or insurance premium shall be treated separately. Depositary shall not be obligated to use moneys deposited for the payment of an Imposition or an insurance premium not yet due and payable for the payment of an Imposition or insurance premium that is due and payable.

(e) Return of Deposits. If the Default that gave rise to Landlord's demand for Tenant to make deposits for Impositions or insurance premiums under the provisions of Section 5.1(a) hereof has been cured by Tenant and, for a period of twelve (12) consecutive months following such cure, no Default with respect to any monetary obligation of Tenant under this Lease has occurred that has not been cured within the applicable grace period, then, at any time after the expiration of such twelve (12) month period, upon demand by Tenant and provided no Default with respect to any monetary obligation of Tenant under this Lease then exists, Landlord shall reasonably cooperate with Tenant in Tenant's efforts to cause Depositary to return to Tenant all unexpended moneys then held by Depositary pursuant to the provisions of Sections 5.1(a) and (c) hereof, with accrued interest, if any, thereon which shall not have been applied by Depositary pursuant to the provisions of this Article 5. Thereafter, Tenant shall not be required to make any deposits required by this Article 5 unless and until there shall occur

within a twelve (12) month period two (2) subsequent Defaults with respect to any monetary obligation of Tenant under this Lease and Landlord has demanded of Tenant to make such deposits.

(f) Deposits with Recognized Mortgagee. In the event that a Recognized Mortgagee shall require Tenant to deposit funds to insure payment of Impositions or insurance premiums, the same shall be credited against any amounts required to be deposited under this Article 5 for so long as such funds are used solely to pay Impositions or insurance premiums. The disposition of such amounts shall be governed by the Recognized Mortgage pursuant to which the same are deposited with such Recognized Mortgagee, provided that Tenant shall notify Landlord, or cause the Recognized Mortgagee to immediately notify Landlord, of any disbursement of deposited funds, and, to the extent such funds are applied by the Recognized Mortgagee to payments other than Impositions or insurance premiums, within five (5) Business Days after demand by Landlord, Tenant shall restore sufficient funds to the account to satisfy the requirements of Sections 5.1(a) and (c) hereof.

Section 5.2 Effect of Sale or Transfer of Premises By Landlord. In the event of Landlord's sale or transfer of the Premises, Depositary shall continue to hold any moneys deposited with it pursuant to the provisions of Sections 5.1(a) and (c) hereof and shall transfer such deposits to a special account with such Depositary established in the name of the Person who acquires the Premises and becomes Landlord for the purposes provided in the applicable provisions of this Lease. Upon such sale or transfer, the transfer of such deposits and notice thereof to Tenant, Landlord shall be deemed to be released to the extent of the deposits so transferred from all liability with respect thereto and Tenant shall look solely to the Depositary and the new Landlord with respect thereto. Landlord shall promptly deliver to Tenant a copy of the instrument of transfer to the new Landlord. The provisions of this Section 5.2 shall apply to each successive transfer of such deposits.

Section 5.3 Effect of Termination. Upon the Expiration of the Term, if this Lease shall terminate and a new lease shall not be entered into, or this Lease shall not be continued with a Recognized Mortgagee, all deposits then held by Depositary, together with the interest, if any, earned thereon shall be applied by Landlord on account of any and all sums due under this Lease and the balance, if any, remaining thereafter with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or, if there shall be a deficiency, Tenant shall pay such deficiency to Landlord on demand.

ARTICLE 6
LATE CHARGES

Section 6.1 Late Charges.

(a) Base Rent. If any installment of Base Rent shall become overdue for ten (10) days beyond the date on which it is due and payable as provided in this Lease, a late charge of one percent (1%) per month (computed on a 30-day month) on the sum so overdue shall become immediately due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment and said late charges shall be payable by Tenant without notice or demand.

(b) Other Payments. If (a) any other Rental payment due hereunder is not paid within ten (10) Business Days after the due date therefor, or (b) Landlord makes a payment required to be made by Tenant under this Lease, then Tenant shall pay Landlord, in addition to such overdue other payment or payment made by Landlord, immediately, upon demand, a late charge on the amount of such overdue other payment, or payment made by Landlord, calculated on the basis of the Late Charge Rate from the due date of such payment, or the date Landlord made payment on behalf of Tenant, as the case may be, to the date on which actual payment of any such amount by Tenant is received by Landlord. Tenant understands and agrees that any late charge imposed on Tenant pursuant to Section 6.1(a) or (b) shall constitute liquidated damages payable to Landlord for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make payment as required hereby on or before such payments are due.

ARTICLE 7
INSURANCE

Section 7.1 Tenant's Obligation to Insure.

(a) From the Effective Date through the Expiration Date, Tenant shall obtain and keep in full force and effect insurance of the types, and in at least the coverage amounts, required by this Article 7, and ensure that such insurance adheres to all requirements herein.

(b) Tenant is authorized to undertake or maintain operations under this Lease only during the effective period of all required coverages.

Section 7.2 Liability Insurance.

(a) Tenant shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars ($2,000,000.00) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least Four Million Dollars ($4,000,000.00). Tenant shall maintain excess liability coverage of at least (i) Five Million Dollars ($5,000,000.00) so long as the Premises is used solely for a concrete manufacturing plant and (ii) Ten Million Dollars ($10,000,000.00) for so long as the Premises is used as a concrete manufacturing plant and compressed natural gas fueling station, in each case such excess liability coverage to be in excess of the primary Commercial General Liability insurance. All such insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Lease. Coverage shall be at least as broad as that provided by the edition of Insurance Services Office ("ISO") Form CG 0001 in effect as of the date hereof, shall contain no exclusions other than as required by law or as approved by Landlord (no exclusion for waterfront activities), and shall be "occurrence" based rather than "claims-made." Policies providing such insurance may not include any endorsements excluding coverage relating to the emission of asbestos, lead, mold, or pollutants.

(b) Such Commercial General Liability insurance shall name each of Landlord and Lease Administrator together with their respective officials, representatives, officers and employees, as additional insureds (collectively, "Additional Insureds") with coverage at least as broad as the most recent edition of ISO Form CG 20 26 in effect as of the date hereof.

(c) Tenant shall maintain Marine Protection and Indemnity Insurance with regard to all marine vessels involved in the operations of the Project with coverage at least as broad as policy form SP-23. Coverage shall include bodily injury and property damage arising from marine operations under this Lease, including injury or death of crew members (if not fully provided through other insurance), damage to piers, wharves and other fixed or movable structures and loss of or damage to any other vessel or craft, or to property on such other vessel or craft, whether or not caused by collision. Such insurance shall name each of Landlord and Lease Administrator, together with their respective officials, representatives, officers and employees, as Additional Insureds and have a combined single limit of Five Million Dollars ($5,000,000.00) per occurrence.

(d) With regard to all tug boats involved in operation in connection with the Project, Tenant shall maintain or cause to be maintained Collision Liability/Towers Liability insurance with coverage at least as broad as the American Institute Tug Form (8/01/76) and Collision Liability per American Institute Hull Clauses (6/2/77). Such insurance shall name Landlord and Lease Administrator, and their respective officials, representatives, officers and employees as Additional Insureds and have a limit of at least Five Million Dollars ($5,000,000.00) per occurrence and Five Million Dollars ($5,000,000.00) aggregate.

Section 7.3 Statutory Workers' Compensation, Employers Liability, and Disability Benefits Insurance. Tenant shall maintain Statutory Workers' Compensation insurance, Jones Act insurance, U.S. Harbor Worker's Insurance and Long Shoremen's Compensation Insurance as well as Employer's Liability insurance, and Disability Benefits insurance, in statutory amounts, and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Premises, including Employer's Liability coverage in an amount not less than One Million Dollars ($1,000,000.00), and such insurance shall comply with the laws of the State of New York.

Section 7.4 Business Automobile Liability Insurance.

(a) With regard to all operations under this Lease, Tenant shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least Five Million Dollars ($5,000,000.00) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the most recent edition of ISO Form CA 00 01 in effect as of the date hereof. Such insurance shall name each of Landlord and Lease Administrator, together with their respective officials, representatives, officers and employees, as Additional Insureds.

(b) If vehicles are used for transporting any Hazardous Substances, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (ISO Form endorsement CA 99 48 or its reasonable equivalent) as well as proof of an MCS-90 endorsement.

Section 7.5 Property Insurance.

(a) Tenant shall maintain comprehensive "All Risk" or "Special Perils" form property insurance covering all buildings, structures, equipment (including all Plant Equipment) and fixtures that are located on the Premises or used in connection with operations under this Lease, including without limitation coverage for bulkheads, pilings, piers, wharves and docks (collectively, the "Insured Improvements"). Such insurance shall provide full Replacement Value coverage for the Insured Improvements (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water, flood, subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate Tenant as Named Insured and Landlord and Lease Administrator as Loss Payee as their interests may appear. In furtherance of the foregoing, if the Premises are located in an area designated as "flood zone" or a "special flood hazard area" under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster protection Act of 1973, at all times during the Term, Tenant shall carry and maintain flood coverage to the maximum extent available under the Federal flood insurance plan.

(b) The limit of such property insurance shall be no less than the full costs of replacing the Insured Improvements including the costs of post-casualty debris removal and Soft Costs, to the extent that such costs can be covered by an "All risk" or "Special Perils" form insurance policy.

(c) Either as part of the above referenced property insurance or as a separate property insurance policy, Tenant shall include and maintain or procure and maintain business interruption insurance coverage on an "All Risk" basis in an amount, and with limits, reasonably determined by Tenant and its property insurance carrier, but in no event less than the greater of (i) an amount correlated to the "restoration period" as that term is understood and used in the insurance industry and (ii) Base Rent for the following two (2) Lease Years. The insurance required in this subsection shall designate Tenant as loss payee and shall be in the broadest form available covering loss of income. Tenant acknowledges that, subject to the provisions of Section 8.6 of this Lease, Tenant shall remain responsible for the payment of Rental during the period of any Casualty Restoration required of Tenant under this Lease notwithstanding that the limits of Tenant's business interruption insurance may be exhausted prior to the completion of such Casualty Restoration.

(d) All such policies of insurance shall name Landlord and Lease Administrator as Loss Payees as their interests may appear, and specify that in the event a loss occurs at an occupied facility, occupancy shall be permitted without the consent of the insurance company.

(e) In the event of any loss to the Insured Improvements, Tenant shall provide the insurance company that issued such property insurance with prompt, complete and

timely notice, and simultaneously provide Landlord and Lease Administrator with a copy of such notice. Tenant shall thereafter take all appropriate actions in a timely manner to adjust such claim on terms that provide Landlord with the maximum possible payment for the loss. Tenant shall provide Landlord and Lease Administrator with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims.

Section 7.6 Construction Insurance. From the commencement of any Construction Work, Tenant shall carry or cause to be carried and maintain in full force and effect until Final Completion of such Construction Work:

(a) Construction Insurance in the broadest form reasonably available in an amount not less than Two Million Dollars ($2,000,000.00) combined single limit/Five Million Dollars ($5,000,000.00) annual aggregate and together with excess liability coverage of at least Twenty Million Dollars ($20,000,000.00) for bodily injury and property damage protecting Tenant, Landlord and Lease Administrator, and the general contractor against all insurable legal liability claims resulting from Construction Work being performed by or for general contractors and subcontractors engaged to work on the Premises and naming Landlord and Lease Administrator, together with their respective officials, representatives, officers and employees, as Additional Insureds. Without limiting the generality of the foregoing, the following coverages shall be provided: (i) automobile liability insurance in an amount not less than Five Million Dollars ($5,000,000.00) covering any automobile or other motor vehicle used in connection with Construction Work being performed on or for the Premises; (ii) products liability/completed operations coverage; (iii) a broad form property damage endorsement; (iv) explosion, collapse and underground property damage coverage; (v) independent contractors coverage; (vi) blanket contractual liability covering written and oral contractual liability and specifically covering Tenant's indemnification obligations under Article 20 of this Lease; (vii) specific contractual liability specifically covering any indemnification agreement protecting Tenant, Landlord, and Lease Administrator; (viii) an endorsement providing that excavation and foundation work are covered and that the "XCU exclusions" have been deleted; and (ix) no exclusions other than those included in the basic forms described unless approved by Lease Administrator.

(b) Builder's Risk insurance covering any Building while in the course of such Construction Work and including property of every kind and description intended to become a permanent part of the Building or structure, including temporary structures built or assembled on the Premises.

(c) Builder's Risk insurance shall be written on an "All Risk" form and provide coverage for direct physical loss and damage, including flood and earthquake, off-site storage, transit, Soft Costs, delay in completion (including delayed start-up and extra expense), testing, machinery breakdown, equipment and indoor/outdoor installed fixtures and structures, materials and supplies. Such insurance shall cover the total value of such renovation or construction, as well as the value of any equipment, supplies and/or material for such operations that may be in storage (on or off site) or in transit. Such insurance shall also cover the cost of removing debris, including demolition as may be legally necessary by operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented

equipment, tools, including tools of Tenant's agents and employees, staging towers and forms, and property of Landlord held in their care, custody and/or control.

(d) All such policies of Builder's Risk insurance shall name Landlord and Lease Administrator as Loss Payees as their interests may appear, and specify that in the event a loss occurs at an occupied facility, occupancy shall be permitted without the consent of the insurance company.

(e) In the event of any loss to any Construction Work, Tenant shall provide the applicable insurance company with prompt, complete and timely notice, and simultaneously provide Landlord with a copy of such notice. Tenant shall provide Landlord and Lease Administrator with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims.

(f) Statutory Worker's Compensation, Employer's Liability, New York State Disability Benefits and other statutory forms of insurance in form and limits as required by law covering all persons employed by Tenant. Tenant shall also require any and all of its contractors and subcontractors to maintain such Worker's Compensation, Employer's Liability, New York State Disability Benefits and other statutory forms of insurance in form and limits as required by law covering all persons employed by them, as the case may be.

Section 7.7 Pollution/Environmental Liability Insurance; Marine Pollution Liability Insurance.

(a) Tenant shall maintain Pollution Environmental Liability Insurance covering the following two distinct and separate risks and coverages:

(i) The risk associated with any loss, cost, claims, causes of action, damages and remediation obligations imposed by any Governmental Authority which may arise as a result of the environmental condition of the property on the Effective Date (and in the case of the Expansion Space on the Expansion Space Commencement Date should that occur). Coverage shall be procured by Tenant effective as of the Effective Date, with a policy limit of Five Million ($5,000,000.00) Dollars, which policy shall provide coverage to the maximum extent readily available for a continuous coverage period of ten (10) years or such lesser period; provided that the policy has an extended coverage period so that the total coverage period aggregates ten (10) years. The Landlord and Lease Administrator and their respective officials, representatives, officers and employees shall be Additional Insureds. The coverage shall include coverage for any environmental remediation program required by a Governmental Authority as well as any third-party claims for bodily or personal injury or death and property damage.

(ii) The risk associated with any actual, alleged, or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including any Hazardous Substances in violation of applicable Environmental Laws) or in the investigation, settlement or defense of any claim, suit or proceeding against any of the Additional Insureds, arising out of or in connection with Tenant's use or occupancy of the Premises and transport to and from the Premises. Such coverage shall be procured by Tenant with a policy limit of Five Million ($5,000,000.00) Dollars.

The policy for the two coverages prescribed above shall name the Lease Administrator and Landlord as Additional Insureds, and both of said coverages shall be on a primary and non-contributory basis. The insurance coverage required in this Section 7.7 is not intended to be duplicative of that required of consultants, contractors and subcontractors in Section 7.8 below. Both coverages (i) and (ii) above of this Section 7.7, in so far as they relate to bodily injury and property damage and clean up shall apply to both on and off the Premises and shall include, without limitation, coverage for improper or inadequate: (i) environmental management practices by or on behalf of Tenant, its representatives or Subtenants in violation of applicable law; (ii) storage of chemicals and Hazardous Substances; and (iii) loading, unloading, transportation, and/or off-site disposal of Hazardous Substances. Coverage must not exclude transportation (owned and non-owned vehicles) of the Hazardous Substances to and from the Premises and all related events which may occur in the Premises.

(b) With regard to all marine vessels involved in operations in connection with the Project, Tenant shall maintain or cause to be maintained Marine Pollution Liability insurance for liability arising from the discharge or substantial threat of a discharge of oil, or from the release or threatened release of a Hazardous Substance, including injury to, or economic losses resulting from, the destruction of or damage to real property, personal property or natural resources. Coverage shall be at least as broad as that provided by the most recent Water Quality Insurance Syndicate Form. Such insurance shall name Landlord and Lease Administrator, including their officials, employees and representatives, as Additional Insureds, and have a limit of at least Five Million Dollars ($5,000,000.00).

Section 7.8 Contractors Pollution Liability Insurance.

(a) In the event Tenant enters into a contract with another party that involves any Remediation Work or any other abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other Hazardous Substances, Tenant shall maintain, or cause the contractor to maintain, Contractors Pollution Liability Insurance covering bodily injury, property damage, clean-up costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor's operations at the Premises.

(b) If required, the Contractors Pollution Liability Insurance shall have a limit of at least Five Million Dollars ($5,000,000.00) and provide coverage for Tenant as named insured, or additional insured, as applicable, and each of Lease Administrator and Landlord, and their respective officials, representatives, officers and employees, as Additional Insured. Coverage for Landlord and Lease Administrator shall be at least as broad as Tenant's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination or completion of such work.

Section 7.9 Additional Coverages. Lease Administrator shall have the right, at any time and from time to time to modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required by this Article 7 to conform such

requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises comparable to the Premises, or are commonly carried by businesses of the size and nature of the business conducted at the Premises, subject to Section 7.12(e).

Section 7.10 General Requirements for Insurance Coverage and Policies.

(a) Policies of insurance required under this Article 7 shall be provided by companies that may lawfully issue such policy and have an A.M. Best Company, Inc. rating of at least A- / "VII" or a Standard and Poor's Ratings Group, Inc. rating of at least A, unless prior written approval is obtained from Lease Administrator.

(b) Policies of insurance required under this Article 7 shall be primary and non-contributing to any insurance or self-insurance maintained by Landlord and Lease Administrator. Neither Landlord nor Lease Administrator shall be called upon to contribute to any loss.

(c) The limits of coverage for all types of insurance required under this Article 7 shall be the greater of (i) the minimum limits set forth in this Article 7 or (ii) the limits provided to Tenant under all primary, excess/umbrella, and blanket policies covering operations under this Lease.

(d) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company provide Landlord with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both Landlord, at the address for notices to Landlord herein, and the Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least ten (10) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(e) All required policies shall include a waiver of the right of subrogation with respect to all additional insureds and loss payees named therein.

Section 7.11 Proof of Insurance.

(a) Certificates of insurance, acceptable to Landlord demonstrating unequivocally that the coverage required under this Article 7 is in full force and effect or certified copies of policies for all insurance required in this Article 7 must be submitted to and accepted by Lease Administrator prior to or upon execution of this Lease and upon the occurrence of the Expansion Space Commencement Date evidencing inclusion of coverage for the Expansion Space (together with the balance of the Premises) in the insurance required hereunder.

(b) For Workers' Compensation, Jones Act, U.S. Harbor Workers's Insurance and Longshoremen's Compensation Insurance and Employers Liability Insurance, and Disability Benefits insurance policies, Tenant shall submit one of the following:

(i) C-105.2 Certificate of Worker's Compensation Insurance;

(ii) U-26.3 State Insurance Fund Certificate of Workers' Compensation Insurance;

(iii) Request for WC/DB Exemption (Form CE-200);

(iv) Equivalent or successor forms used by the New York State Workers' Compensation Board; or

(v) Other proof of insurance in a form reasonably acceptable to Landlord. ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article 7 other than for Workers Compensation, Employers Liability, and Disability Benefits, Tenant shall submit one or more Certificates of Insurance in a form acceptable to Lease Administrator. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of all such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in Tenant's policy/ies (including its general liability policy) by which each of Lease Administrator and Landlord has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by Lease Administrator or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to Lease Administrator prior to the expiration date of coverage of all policies required under this Lease. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

(e) Acceptance or approval by Lease Administrator of a Certificate of Insurance, policy, or any other matter does not waive Tenant's obligation to ensure that insurance fully consistent with the requirements of this Article 7 is secured and maintained, nor does it waive Tenant's liability for its failure to do so.

(f) Tenant shall be obligated to provide Landlord with a copy of any policy of insurance required under this Article 7 upon request by Lease Administrator or the New York City Law Department.

Section 7.12 Miscellaneous.

(a) Tenant shall require any subtenant or other entity occupying any part of the Premises, by contract or otherwise, to procure insurance with regard to any operations under this Lease to the same extent as Tenant is required to obtain insurance hereunder and Tenant shall ensure that such entity also names Landlord and Lease Administrator, including their officials, representatives, officers and employees, as Additional Insureds under such policies with coverage at least as broad as the most recent edition of ISO form CG 20 26. Tenant

shall provide evidence of compliance with this Section 7.12(a) to Landlord anytime upon request. The fact that any other party shall obtain insurance as referenced in this clause (a) shall not relieve Tenant from its obligations to obtain all insurances required by this Article 7. Notwithstanding the foregoing, Landlord may, in its sole discretion (but is not obligated to) upon receipt of written request from Tenant, consent to reduce the amount of insurance required of any subtenant hereunder, but any such consent must be given in writing and in determining whether to grant its consent Landlord may consider factors which in its sole discretion it determines to be relevant, including without limitation if the subtenant is occupying a de minimus amount of space in the Premises.

(b) Tenant and each Subtenant (if any) may satisfy their respective insurance obligations under this Article 7 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(c) Tenant shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not Landlord is an insured under the policy; provided however that notwithstanding the foregoing, no policy shall have applicable to it a deductible in excess of $10,000.00 and no policy shall be subject to a self-insured retention.

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article 7, Tenant shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Lease (including notice to Commercial General Liability insurance carriers for events relating to Tenant's own employees) no later than 20 days after such event. For any policy where Lease Administrator and/or Landlord is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of New York City Economic Development Corporation and the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Tenant shall simultaneously send a copy of such notice to Landlord at the notice address provided herein and to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(e) Tenant's failure to secure and maintain insurance in complete conformity with this Article 7, or to give the insurance carrier timely notice on behalf of Landlord, or to do anything else required by this Article 7 shall constitute a material breach of this Lease. Such breach shall not be waived or otherwise excused by any action or inaction by Lease Administrator or by Landlord at any time. Notwithstanding the foregoing, if any of the insurance required to be carried under Sections 7.7, 7.8 or 7.9 of this Lease shall not, after diligent and commercially reasonable efforts by Tenant, and through no act or omission on the part of Tenant, be obtainable at a commercially reasonable cost from domestic carriers licensed to do business in New York and customarily insuring large-scale urban developments and business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted by Tenant at the Premises, then Tenant shall promptly

notify Landlord of Tenant's inability to obtain such insurance at a commercially reasonable cost and Tenant shall promptly obtain the maximum insurance obtainable at a commercially reasonable cost, and in such case, the failure of Tenant to carry the insurance which is unobtainable at a commercially reasonable cost shall not be a Default for as long as such insurance shall remain unobtainable at a commercially reasonable cost. For purposes of this Section 7.12(e), types and amounts of insurance shall be deemed unobtainable at a commercially reasonable cost only if such types or amounts of insurance are (i) (A) actually unobtainable, (B) practically unobtainable as a result of commercially unreasonable premiums, or (C) not generally made available to owners or operators of facilities such as are being conducted by Tenant on the Premises, and (ii) not required by statute or other applicable Requirements.

(f) Insurance coverage in the minimum amounts provided for in this Article 7 shall not relieve Tenant or any Subtenant of any liability under this Lease, nor shall it preclude Landlord from exercising any rights or taking such other actions as are available to it under any other provisions of this Lease or the law.

(g) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 7, Tenant shall at all times fully cooperate with Landlord with regard to such potential or actual claim.

(h) Tenant waives all rights against Lease Administrator and Landlord, and their respective officials, representatives, officers and employees, for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Tenant and/or its employees, agents, or servants of its contractors or subcontractors.

(i) In the event Tenant receives notice, from an insurance company or other Person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Tenant shall immediately forward a copy of such notice to both Landlord, at the address for notices to Landlord herein, and the Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, Tenant shall ensure that there is no interruption in any of the insurance coverage required under this Article 7.

(j) There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Lease Administrator. Tenant shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including, but not limited to, the defense and indemnification obligations that insurers are required to undertake in liability policies.

Section 7.13 Responsibility for Safety, Injuries or Damage; Indemnification.

(a) Without limiting in any way any other provisions of this Lease, including Article 20 (but also without imposing any obligation on Tenant to the extent resulting

from the gross negligence or willful misconduct of Landlord or Lease Administrator, or any of its employees, agents, contractors and subcontractors), as and between Landlord and Tenant only (and without limiting in any way any claim that Tenant may have against any Person other than Landlord, Lease Administrator, or any of their respective employees or agents):

(i) Tenant shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, subcontractors, and Subtenants; provided that nothing in this Section 7.13(a)(i) shall limit the responsibility of Landlord in its official governmental capacity to provide all applicable safety, fire and other services (if any) available to property owners;

(ii) Tenant shall be solely responsible for taking all reasonable precautions to protect the persons and property of Landlord or others from damage, loss or injury resulting from any and all operations under this Lease.

(iii) Tenant shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this Lease, whether or not due to the negligence of Tenant, including injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, Subtenants or any other person; and

(iv) Tenant shall use the Premises in compliance with, and shall not cause or permit the Premises to be used in violation of any Environmental Laws. Except as may be agreed by Landlord as part of this Lease, Tenant shall not cause or permit, or allow any of Tenant's personnel to cause or permit any Hazardous Substances to be brought upon, stored, used generated, treated or disposed of on the Premises (other than Hazardous Substances typically used in the operation of facilities similar to the Premises in New York City and/or in such reasonable quantities as the Requirements allow).

ARTICLE 8
DAMAGE, DESTRUCTION AND RESTORATION

Section 8.1 Notice to Landlord. Tenant shall notify Landlord immediately if any Building is damaged or destroyed in whole or in part by fire or other casualty.

Section 8.2 Casualty Restoration.

(a) Obligation to Restore. If all or any portion of any Building (which term includes the Plant Equipment for all purposes of this Lease including without limitation for purposes of the Casualty and Condemnation provisions set forth in Articles 8 and 9, respectively) is damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, in accordance with the provisions of this Article 8 and Article 13 hereof (as if such restoration were the Initial Construction Work), restore such Building to the extent of the value and as nearly as possible to the character of such Building as it existed immediately before such casualty and otherwise in substantial conformity with the Plans and

Specifications. Tenant shall so restore the Premises whether or not (i) such damage or destruction was insured or was insurable, (ii) Tenant is entitled to receive any insurance proceeds, or (iii) the insurance proceeds are sufficient to pay in full any cost of the Construction Work required in connection with the Casualty Restoration; provided, however, that notwithstanding the foregoing if insurance proceeds are not sufficient to restore any Building as it existed immediately before such casualty and otherwise in substantial conformity with the Plans and Specifications, then Tenant shall restore such Building to a condition as close to such condition as possible and in all cases to a condition that will permit the operation of a concrete manufacturing plant and natural gas fueling station on the Premises in accordance with the terms of this Lease. The condition to which the Premises is required to be restored in accordance with this paragraph being, a "Casualty Restoration."

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration, and as soon as reasonably practicable (and in any event, within ninety (90) days after the damage or destruction) Tenant shall furnish Landlord with an estimate, prepared by the Architect (after consultation by the Architect with Landlord, to the extent practicable), of the cost of such Construction Work. Such estimate shall include, without limitation, Architect's and engineer's fees (and other construction-related Soft Costs), construction labor costs and the cost of materials, fixtures and equipment, and the schedule for incurring these costs. Landlord, at its election and at Landlord's sole cost, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Construction Work. If Landlord shall fail to disapprove Tenant's estimate of such cost within thirty (30) days of receipt of such estimate, Tenant's estimate shall be deemed approved. If Landlord shall dispute the estimated cost of such Construction Work, the dispute shall be resolved by a licensed professional structural engineer or licensed professional contractor, chosen by agreement of Landlord and Tenant, which structural engineer or contractor shall resolve the dispute by choosing either Landlord's or Tenant's estimate, which choice shall be binding on the parties. During the course of any Casualty Restoration, Tenant shall provide monthly summaries to Landlord of the progress of the Construction Work. Such summary shall include a breakdown of the applicable costs spent for the Construction Work for such month. Tenant further agrees that Landlord shall have the right, at all reasonable times, to inspect the Premises and the progress of the Construction Work. Tenant agrees that if it fails to properly and fully complete such Construction Work, then, after notice and an opportunity to cure as set forth herein, Landlord shall have the right to complete such Construction Work at the cost and expense of Tenant, to terminate this Lease or to avail itself of any other remedy available under law.

(c) Commencement of Construction Work. Subject to Unavoidable Delays relating to the Construction Work in connection with a Casualty Restoration, Tenant shall commence the Construction Work in connection with a Casualty Restoration promptly after settlement of the insurance claim, if any, relating to the damages or destruction (which settlement will be diligently prosecuted), but in any event within twelve (12) months after the damage or destruction (notwithstanding Unavoidable Delays unless the Unavoidable Delay is the failure of a Governmental Authority to grant a permit required for the commencement of Construction Work, but only until the time has expired for any right of appeal). Prior to commencing the Construction Work in connection with a Casualty Restoration, Tenant will proceed diligently and in good faith to take all actions required to be taken prior to the commencement of the

Construction Work, including the preparation of any necessary plans and specifications and the obtaining of any necessary permits and approvals.

Section 8.3 Restoration Funds. All insurance proceeds received by or payable to Tenant with respect to any casualty or otherwise (including insurance proceeds with regard to the Plant Equipment in all cases, but excluding insurance proceeds from "contents" insurance policies carried by Tenant for personal property separate and apart from the policies required under this Lease), together with any interest earned on such insurance proceeds from time to time, shall be applied toward the cost of the Casualty Restoration, and any such funds remaining after the completion of a Casualty Restoration in accordance with the terms of this Lease shall be distributed as provided in Section 8.3(c) below. If the cost of the Casualty Restoration is (A) in excess of the Threshold Amount, then such funds shall be deposited with Depositary for disbursement as provided in this Article 8 and shall be deemed "Restoration Funds"; and (B) less than or equal to Threshold Amount, then such funds shall be paid to Tenant in trust for application as provided in this Article 8.

(a) Reimbursement of Depositary's and Landlord's Expenses. Before paying the Restoration Funds to Tenant, Depositary shall reimburse itself, Landlord and Tenant therefrom to the extent of the necessary and proper expenses (including reasonable attorneys' fees and disbursements) paid or incurred by Depositary, Landlord or Tenant in the collection of such Restoration Funds.

(b) Disbursement of Restoration Funds.

(i) Application for Disbursement. In connection with any Construction Work in connection with a Casualty Restoration costing in excess of the Threshold Amount, the Depositary shall pay to Tenant the Restoration Funds from time to time in installments as the Casualty Restoration progresses, in the manner and at the times as required by the Recognized Mortgagee most senior in lien. If there is no Recognized Mortgagee or the Recognized Mortgage has no provision relating to the disbursement of the Restoration Funds, then, subject to the provisions of Sections 8.2(a), 8.3(a), 8.3(b)(ii), 8.4 and 8.5 hereof, the Restoration Funds shall be paid to Tenant in installments as the Casualty Restoration progresses, upon application to be submitted by Tenant to Depositary and Landlord showing the cost of labor and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Buildings since the last previous application and either have been paid for by Tenant or are then due and owing by Tenant, or (B) not been incorporated in the Buildings but have been purchased since the last previous application and either have been paid for by Tenant, or payment for same is then due and owing by Tenant and such material, fixtures and equipment are insured by Tenant for one hundred percent (100%) of the cost thereof and stored at a secure and safe location either on, or outside of, the Premises. Depositary shall not make any installment payment to Tenant for materials, fixtures and equipment, purchased but not yet incorporated in the Buildings, until Tenant shall have delivered to Landlord certificates of insurance evidencing that such materials, fixtures and equipment are insured for one hundred percent (100%) of the cost thereof.

(ii) Holdback of Restoration Funds. The amount of any installment of the Restoration Funds to be paid to Tenant for labor, the cost of materials, fixtures and equipment (but exclusive of architects' fees, insurance and other professional fees and "soft" construction

costs, called herein "Soft Costs") shall be equal to ninety-five percent (95%) of the amount by which (A) the product derived by multiplying the Restoration Funds by a fraction, the numerator of which shall be the total cost (including any amounts that may have been retained by Tenant from any contractors) of all labor, and the cost of materials, fixtures and equipment incorporated in the Buildings or purchased, insured and stored as provided in Section 8.3(b)(i) hereof, excluding Soft Costs, and the denominator of which shall be the total estimated cost of the Construction Work in connection with such Casualty Restoration, exceeds (B) all prior installments of Restoration Funds paid to Tenant excluding Soft Costs. Upon Substantial Completion of the Casualty Restoration, and upon application for final payment submitted by Tenant to Depositary and Landlord and compliance with the conditions set forth in Section 8.4 hereof, the remaining portions of the Restoration Funds shall be first paid to each of Tenant's contractors in payment of the amounts due and remaining unpaid on account of work performed in connection with the Restoration and not disputed by Tenant, and any amounts retained under such contracts, and the balance of the Restoration Funds shall be paid in accordance with Section 8.3(c).

(c) Disbursement of Remaining Restoration Funds. Any Restoration Funds remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 13.2 and 13.5 hereof shall be paid to Tenant (or first to the Recognized Mortgage in the amount required by the Recognized Mortgagee (if any)).

Section 8.4 Conditions Precedent to Disbursement of Restoration Funds. The following are conditions precedent to each payment of Restoration Funds to be made to Tenant pursuant to Section 8.3(b) hereof:

(a) Certificate of Architect. A certificate of the Architect or the inspecting licensed, professional engineer selected by Tenant and approved by Landlord, such approval not to be unreasonably withheld, delayed or conditioned, for such Construction Work shall be submitted to Depositary and Landlord stating that:

(i) The sum then requested to be withdrawn either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and, giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons with respect thereto, and stating, in reasonable detail, the progress of the Construction Work in connection with the Restoration up to the date of the certificate;

(ii) No part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of Restoration Funds or has been paid out of any of the Restoration Funds received by Tenant;

(iii) The sum then requested does not exceed the cost of the services and materials described in the certificate;

(iv) The materials, fixtures and equipment, for which payment is being requested pursuant to clause (B) of Section 8.3(b)(i) hereof, to the extent applicable, are in

substantial accordance with the Plans and Specifications (or such other plans and specifications approved by Landlord for purposes of the Casualty Restoration);

(v) Except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depositary (including any bond, cash or other security provided by Tenant in accordance with Section 8.5 hereof) shall be sufficient, upon Substantial Completion of the Construction Work in connection with the Restoration, to pay for the Construction Work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Construction Work, and

(vi) In the case of the final request for payment by Tenant, the Construction Work in connection with a Restoration shall have been completed, except for punch list items, in accordance with the provisions of Sections 13.2 and 13.5 hereof.

(b) Certificate of Title Insurance. There shall be furnished to Landlord a report or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there are no (i) vendor's, mechanic's, laborer's or materialman's statutory or other similar liens filed against the Premises or any part thereof (except liens as to which Tenant shall have complied with the applicable provisions of this Lease, including Section 17.2), or (ii) public improvement liens created or caused to be created by Tenant affecting Landlord or the assets of, or any funds appropriated to Landlord, except in the case of either clause (i) or (ii), for (A) liens which will be discharged upon payment of the amount then requested to be withdrawn, (B) liens or encumbrances which the Restoration is intended to remove or (C) other liens expressly permitted pursuant to the terms of this Lease.

(c) Defaults. No Event of Default shall exist.

Section 8.5 Restoration Fund Deficiency. If the estimated cost (determined as provided in Section 8.2(b) hereof) of any Construction Work in connection with any Restoration (a) exceeds the Threshold Amount, and (b) exceeds the net Restoration Funds received by Depositary pursuant to Section 8.3 hereof, then, before the commencement of such Construction Work, or, at any time after commencement of such Construction Work if it is reasonably determined by Landlord that the cost to complete such Construction Work exceeds the unapplied portion of the Restoration Funds and as a condition to the disbursement of further Restoration Funds, Tenant shall, within ten (10) days of Landlord's request, furnish to Landlord evidence reasonably satisfactory to Landlord of the financial ability of Tenant to pay the amount of such excess, which evidence may, at Tenant's election, consist of a letter of credit, loan commitment, surety bond, completion guaranty (from a credit-worthy entity acceptable to Landlord) or any combination of the foregoing or such other security as may be reasonably satisfactory to Landlord, in the amount of such excess.

Section 8.6 Effect of Casualty on This Lease. Except as provided herein, this Lease shall neither terminate, be forfeited, nor be affected in any manner, nor shall there be a reduction or abatement of Rental by reason of damage to, or total, substantial or partial destruction of, the Buildings, or by reason of the untenantability of any part thereof, nor for any reason or cause whatsoever. Tenant's obligations hereunder, including the payment of Rental,

shall continue as though the Buildings had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.7 Waiver of Rights under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any casualty to the Buildings or the Premises. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

ARTICLE 9
CONDEMNATION

Section 9.1 Substantial Taking.

(a) Termination of Lease for Substantial Taking. If during the Term of this Lease, all or Substantially All of the Premises is taken (excluding a taking of the fee interest in the Land if, after such taking, Tenant's rights under this Lease and the leasehold interest created thereby are not materially affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease shall terminate on the day immediately prior to the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned and paid to that termination date.

(b) Disbursement of Award. If all or Substantially All of the Premises is taken or condemned as provided in Section 9.1(a) hereof, the entire award paid in connection with such taking or condemnation (net of reimbursement to Depositary, Landlord and Tenant of any reasonable costs of collection) shall be apportioned as follows: (i) there shall first be paid to Landlord so much of the award which is for or attributable to the value of the Land so taken, considered as encumbered by this Lease, and (ii) there shall next be paid (A) to Tenant (or, as directed by Tenant, to any Recognized Mortgagees in the order of the priority of their liens) so much of the award as is attributable to the value of the Building (the "Improvement Award"), subject to the reversionary interest of Landlord, pari passu with the payment and (B) to Landlord of so much of the Improvement Award as is for, or attributable to, the value of Landlord's reversionary interest, if any, in the Building. Tenant shall have the right to claim separately its personal property, trade fixtures, and moving and relocation costs.

(c) Definitions.

(i) "Date of Taking" means the earlier of (A) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable federal or New York State law or (B) the date on which title to all or Substantially All of the Premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable federal or New York State law.

(ii) "Substantially All of the Premises" means such portion of the Premises as, when so taken, would leave a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic

conditions, applicable zoning laws and building regulations then existing, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by Requirements required to be observed by Tenant, readily accommodate new or reconstructed buildings of the type and size generally similar to the Buildings as existing at the Date of Taking and capable of supporting substantially similar activities at the Premises in the condition thereof immediately prior to the Date of Taking.

Section 9.2 Less Than A Substantial Taking.

(a) Taking of Less Than Substantially All of the Premises. If less than Substantially All of the Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease shall continue for the remainder of the Term without diminution of any of Tenant's obligations hereunder, except that Base Rent shall be reduced in proportion to the percentage of the Premises which is so taken and PILOT shall be reduced in proportion to the extent that Taxes would otherwise be reduced by reason of such taking as determined by DOF.

(b) Obligation to Restore the Premises. If less than Substantially All of the Premises is taken as provided in Section 9.2(a) hereof, Tenant shall, as required by Section 9.2(d) hereof, after settlement of the award, restore the remaining portion of the Building not so taken so that the Building (including without limitation the Plant Equipment) shall be a complete structure, in good condition and repair and (to the extent applicable) consisting of self-contained architectural units, and to the extent practicable, of a size and condition substantially similar to the size and condition of, and of character similar to the character of, the Building (including without limitation the Plant Equipment) as it existed immediately before such taking (a "Condemnation Restoration") whether or not the award or awards received by Tenant for such taking are sufficient to pay in full the Construction Work in connection with such Condemnation Restoration, and Landlord, in no event, shall be obligated to restore any remaining portion of the Premises not so taken or to pay any costs or expenses thereof. No holder of any Mortgage shall have the right to apply the proceeds of any award paid in connection with any taking toward payment of the sum secured by its Mortgage if and to the extent that this Lease requires that Tenant restore the portion of the Premises remaining after such taking.

(c) Payment of Award. In the event of any taking described in Section 9.2(a), the entire award, excluding any separate award for or attributable to the Land, shall be paid to the Depositary and applied first to Condemnation Restoration and thereafter as provided in Section 9.2(d).

(d) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, Tenant's obligation to provide additional security, and disbursement of the condemnation award by Depositary shall be done, determined, made and governed in accordance with the provisions of Article 13 (as if such Construction Work were Initial Construction Work) and Sections 8.2(b), 8.3 (except Section 8.3(c) hereof), 8.4 and 8.5 hereof, as if such Condemnation Restoration were a Casualty Restoration. If the portion of the award made available by Depositary is insufficient for the purpose of paying for the cost of the

Construction Work in connection with the Condemnation Restoration, Tenant shall nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work. Any balance of the award held by Depositary and any cash and the proceeds of any security deposited with Depositary pursuant to Section 8.5 remaining after completion of such Construction Work shall be paid to Tenant, subject to the rights of Recognized Mortgagees, if any.

Section 9.3 Temporary Taking.

(a) Notice of Temporary Taking. If the temporary use of the whole or any portion of the Premises is taken for a public or quasi-public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give Landlord prompt notice thereof. The Term shall not be reduced or affected in any way by reason of such temporary taking and Tenant shall continue to pay Rental to Landlord without reduction or abatement; provided, however, that PILOT may be reduced on a proportionate basis on account of such temporary taking as determined by DOF.

(b) Obligation to Restore for Temporary Taking Not Extending Beyond the Term. If the temporary taking is for a period not extending beyond the Term, and (i) if the award by reason of the temporary taking is paid less frequently than in monthly installments, such award shall be paid to, and held by, Depositary as a fund that Depositary shall apply from time to time, first to the payment of the Rental payable by Tenant hereunder for the period in question and any remaining balance to be paid to Tenant, or (ii) if such award is paid in monthly installments, such award shall be paid to Tenant. Notwithstanding the foregoing, if the taking results in changes or alterations in any Building that would necessitate an expenditure to restore such Building to its former condition then Tenant shall restore such Building in the same manner, and subject to the same terms and conditions, as if such restoration were a Condemnation Restoration. If the cost of such restoration is in excess of the Threshold Amount, a portion of such award equal to the estimated cost of Restoration shall be paid to and held by Depositary and applied to the Restoration of the Building as provided in Section 9.2 hereof.

(c) Temporary Taking Extended Beyond the Expiration of the Term. If the temporary taking is for a period extending beyond the Expiration of the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration of the Term, and the portion allocable to the period during the Term shall be paid and applied in accordance with the provisions of Section 9.3(b) hereof. If this Lease shall terminate for any reason before Substantial Completion of the Construction Work related to such taking, Depositary shall pay Landlord the remaining Restoration Funds retained by Depositary for that purpose.

Section 9.4 Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental. Any award payable in connection with such governmental action, shall be applied first to reimburse Tenant for any Construction Work performed by Tenant resulting from such governmental action and any balance shall be paid to Landlord. Landlord (in its capacity as landlord under this Lease and

not as a "taker") shall have no obligation to perform or bear any cost incurred for Construction Work required as a result of any such Governmental Action.

Section 9.5 Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article 9.

Section 9.6 Intentionally Omitted .

Section 9.7 Negotiated Sale. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.8 Intention of Parties. It is the intention of Landlord and Tenant that the provisions of this Article 9 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

ARTICLE 10
ASSIGNMENT, TRANSFER AND SUBLETTING

Section 10.1 Tenant's Right to Assign, Transfer or Enter into a Sublease.

(a) Tenant shall not, without the prior consent of Landlord, which consent may be withheld in Landlord's sole discretion, enter into (i) an Assignment, (ii) a Transfer, (iii) a Sublease, or (iv) license or permit the use of the Premises, or any part thereof, nor allow the Premises or any portion thereof to be occupied, by any Person other than Tenant.

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) Definitions.

(i) "Assignment" means the sale, exchange, assignment or other disposition of all or any portion of Tenant's interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise (but not including a Sublease), including a foreclosure sale or an assignment in lieu of foreclosure; provided, that a Sublease for all or substantially all of the Premises for all or substantially all of the remainder of the then-Term shall be considered an Assignment.

(ii) "Assignee" means an assignee under an Assignment.

(iii) Intentionally Omitted.

(iv) "Equity Interest" means, with respect to any entity, (A) the ownership of (i) outstanding stock of such entity if such entity is a corporation, a real estate investment trust or a similar entity, (ii) a capital, profits, membership, or partnership interest in such entity if such

entity is a limited liability company, partnership or joint venture, (iii) interest in a trust if such entity is a trust, (B) any right of a lender in connection with the Project to participate in cash flow, gross or net profits, gain or appreciation, or (C) any other interest that is the functional equivalent of any of the foregoing.

(v) "Sublease" means a sublease (including a sub-sublease and any further level of subletting), occupancy, license or concession agreement.

(vi) "Subtenant" means a tenant, operator, licensee, franchisee or concessionaire pursuant to a Sublease.

(vii) "Transfer" means (A) the sale, assignment or transfer of the Equity Interests of any entity that is Tenant or that is a general partner or managing member of any entity that is Tenant; or (B) the issuance of additional stock or Equity Interests in any entity that is Tenant or that is a general partner or managing member of any entity that is Tenant; or (C) the sale, assignment, redemption or transfer of any general partner's or managing member's Equity Interests in a partnership or limited liability company that is Tenant or in a partnership or limited liability company that is a general partner or managing member in Tenant; or (D) a change in the capacity to direct the business policies or day-to-day management of Tenant or of the entity that is the general partner or managing member of Tenant. However, the term "Transfer" shall not include the sale or exchange of shares in a company whose shares are publicly traded on a national or regional stock exchange.

(viii) "Transferee" means a Person to which a Transfer is made.

(e) Required Disclosure Statements. Any proposed Assignee, Subtenant or Transferee shall deliver to Lease Administrator the Required Disclosure Statement, in the form attached as Exhibit E (Required Disclosure Statement) hereto (as such form may be updated from time to time, the "Required Disclosure Statement"), and otherwise in a form reasonably satisfactory to Lease Administrator; provided, that if the information set forth in the Required Disclosure Statement reveals that a proposed Assignee, Subtenant or Transferee is a Person with whom the City and/or NYCEDC will generally not do business or if such information is otherwise not acceptable to the Lease Administrator, acting in its sole but reasonable discretion, then the Assignment, Sublease or Transfer shall not be permitted.

(f) Limitations on Right to Assign, Transfer or Enter into a Sublease. Notwithstanding anything set forth in this Article 10 to the contrary, Tenant shall have no right to enter into an Assignment, Transfer or a Sublease:

(i) If on the effective date of such Assignment, Transfer or Sublease there is an Event of Default that has occurred and is continuing.

(ii) If the proposed Assignee, Transferee or Subtenant fails to deliver a satisfactory Required Disclosure Statement as provided in Section 10.1(e) hereof.

(iii) If the proposed Assignment, Transfer or Sublease would be reasonably likely to cause the Project Commitments or the Operating Commitments to be breached in any material respect.

(iv) If the proposed Assignment or Transfer is with respect to less than all of the Premises.

(v) Unless, in the case of a proposed Assignment or Transfer, both before and after the proposed Assignment or Transfer, the proposed Assignee or Transferee shall have a Net Worth at least equal to the Net Worth of Tenant immediately prior thereto, the financial capability reasonably required to meet its obligations under this Lease and shall have a proven successful history of operating for the Required Uses, all as determined by Landlord in its sole discretion.

(g) Assignment, Transfer or Sublease Instruments. Tenant (or Subtenant, as applicable) shall deliver to Landlord, or shall cause to be delivered to Landlord, within thirty (30) days after the execution thereof (i) in the case of an Assignment, an executed counterpart of the instrument of assignment and an executed counterpart of the instrument of assumption by the Assignee of Tenant's obligations under this Lease (or of Subtenant's under a Sublease), to be in form and substance reasonably satisfactory to Landlord; provided that in the case of an Assignment pursuant to a bona fide foreclosure proceeding, or a bona fide assignment in lieu of foreclosure, the Assignee's obligations shall be limited to payment of Rental and the satisfaction of the other obligations of Tenant, whether accruing prior to, on, or after the effective date of such Assignment, (ii) in the case of a Transfer, an executed counterpart of the instrument of Transfer, and if the Transfer is effected through admission of a new or substitute partner of Tenant all relevant amendments to the partnership or related agreement and, if applicable, the certificate of limited partnership or other related certificate, and (iii) in the case of a Sublease, an executed counterpart of the Sublease.

(h) Condominium Conversion. Tenant shall not, without the prior consent of Landlord (and in Landlord's sole and absolute discretion), submit Tenant's leasehold estate in the Premises, or any part thereof, to the provisions of Article 9-B of the Real Property Law of the State of New York, as it may be amended.

(i) Release of Assignor. If, as and when Tenant consummates an Assignment permitted in accordance with this Article 10 and the Assignee assumes Tenant's obligations under this Lease, then from and after the date of such Assignment, the Tenant which so Assigned this Lease shall have no further obligations or liability hereunder, other than any obligations that arose before the effective date of such Assignment (unless such obligations are expressly assumed by the Assignee); provided, that (1) Tenant shall remain liable for the performance of all of the Project Commitments and (2) if such Assignment is prior to Substantial Completion of the Initial Construction Work, then a credit worthy entity reasonably acceptable to Landlord shall deliver to Landlord a Completion Guaranty, in a form reasonably acceptable to Landlord and such other documents as Landlord shall reasonably require to guaranty the Substantial Completion of the Initial Construction Work.

(j) Intentionally Omitted.

Section 10.2 Subtenant Violation. A violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a Subtenant shall not relieve Tenant of Tenant's obligation to cure such violation or breach,

subject to any notice and cure period to which Tenant is entitled in accordance with the express terms of this Lease.

Section 10.3 Collection of Subrent by Landlord. After an Event of Default, Landlord may, subject to the rights of any Recognized Mortgagee, collect rent and all other sums due under any Subleases and apply the net amount collected to the Rental payable by Tenant hereunder. No such collection shall be, or shall be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease nor the recognition by Landlord of any Subtenant as a direct tenant of Landlord nor a release of Tenant from performance by Tenant of its obligations under this Lease. Following the cure of any such Event of Default, such right of collection shall terminate and Landlord shall not again exercise such right unless and until the occurrence of a subsequent Event of Default.

Section 10.4 Sublease Assignment.

(a) Assignment of Subleases to Landlord. As security for Tenant's obligations hereunder, Tenant hereby assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents made in connection with any Recognized Mortgage, all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and ensure the collection by Landlord of all sums payable under the Subleases. The exercise of such right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof. If such right of entry and possession is denied to Landlord, its agents or representatives, Landlord, in the exercise of this right, may use all legal means to recover possession of the Premises. This assignment, although presently effective, shall be operative only upon the occurrence and during the continuance of an Event of Default and not before.

(b) Schedule of Subleases. At any time upon Landlord's demand, Tenant shall deliver to Landlord, within fifteen (15) days of such demand, (i) a schedule of all Subleases, giving the names of all Subtenants, a description of the space that has been sublet, expiration dates, rentals and such other information as Landlord reasonably may request, and (ii) an electronic (in ".PDF" format) or photostatic copy of each of the Subleases to the extent not previously delivered. Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Subleases.

Section 10.5 Required Sublease Clauses. Each Sublease shall:

(a) Provide that it is subordinate and subject to this Lease.

(b) Provide that, except for security deposits and any other amounts deposited with Tenant or with any Recognized Mortgagee in connection with the payment of insurance premiums, real property taxes and assessments and other similar charges or expenses, no Subtenant shall pay rent or other sums payable under any Sublease to Tenant for more than one (1) month in advance without, in each case, the prior written consent of Landlord or Lease Administrator, which consent shall not be unreasonably conditioned, withheld or delayed.

(c) Provide that, at Landlord's option, on the termination of this Lease pursuant to Article 24 hereof, the Subtenant shall attorn to, or shall enter into a direct lease on terms identical to its Sublease with, Landlord for the balance of the unexpired term of the Sublease.

(d) Include provisions in accordance with Section 39.9(c), (d) and (e) hereof.

Section 10.6 Excess Payments. If this Lease or any interest herein be subject to an Assignment, Transfer, or Sublease, or used or occupied by anyone other than Tenant, whether Landlord's consent is required hereby or has been given for such Assignment, Transfer, Sublease, use or occupancy by others, in any such event Tenant shall pay to Landlord monthly, as Additional Rent, one hundred percent (100%) of the excess of the consideration received or to be received during such month for such Assignment, Transfer, Sublease or occupancy (whether or not denoted as rent) over the Rent reserved for such month in this Lease applicable to such portion of the Premises so Assigned, Transferred, Subleased or occupied (excluding amounts paid to Tenant in respect of reasonable expenses incurred by Tenant in connection with such transaction (as substantiated by invoices) or the reasonable market value of Tenant's Equipment purchased in connection therewith). No such Assignment, Transfer, Sublease, use, occupancy or collection shall be deemed a waiver of the requirements set forth in this Article 10 for the consent of Landlord to any such transaction or constitute a release of Tenant from the further performance by Tenant of the terms and provisions of this Lease.

ARTICLE 11
MORTGAGES

Section 11.1 Effect of Mortgages.

(a) No Effect on Landlord's Interest in Premises. No Mortgage shall extend to, affect or be a lien or encumbrance upon, the estate and interest of Landlord in the Premises or any part thereof.

(b) "Mortgage" means any mortgage or deed of trust that constitutes a lien on all or any portion of Tenant's interest in the Lease and the leasehold estate created hereby. Notwithstanding anything in this Lease to the contrary, a Mortgage shall only be permitted to the extent of Tenant's rights and interests in the Premises as demised under this Lease.

Section 11.2 Mortgagee's Rights.

(a) Mortgagee's Rights Not Greater than Tenant's. With the exception of the rights granted to Recognized Mortgagees pursuant to the provisions of Sections 11.3, 11.4, 11.6 and 11.8 hereof, the execution and delivery of a Mortgage or a Recognized Mortgage shall

not give nor shall be deemed to give a Mortgagee or a Recognized Mortgagee any greater rights against Landlord than those granted to Tenant hereunder.

(b) "Recognized Mortgage" means a Mortgage (i) that is held by an Institutional Lender (or a corporation or other entity wholly owned by an Institutional Lender) that is a Permitted Person; (ii) which shall comply with the provisions of this Article 11; (iii) an electronic (in ".PDF" format) or photostatic copy of which has been delivered to Landlord, together with a certification by Tenant and the Mortgagee confirming that such electronic or photostatic copy is a true and accurate copy of the Mortgage and giving the name and post office address of the holder thereof; and (iv) which is recorded in the Office of the City Register, Kings County, City of New York. A prospective Recognized Mortgagee shall be permitted to submit documentation and request a determination by Lease Administrator of its status as a Permitted Person prior to its making the loan to be secured by a Recognized Mortgage, which determination shall be valid so long as such Recognized Mortgage is executed within sixty (60) days following such determination; provided, that no material adverse change to such prospective Recognized Mortgagee has occurred prior to the expiration of such 60 day period. A Recognized Mortgagee shall not cease to be a Recognized Mortgagee because the Recognized Mortgagee ceases to meet the Required Thresholds of an Institutional Lender or ceases to be a Permitted Person following the date of the making of the Recognized Mortgage, subject to the further provisions of this Article 11.

Section 11.3 Notice and Right to Cure Tenant's Defaults.

(a) Notice to Recognized Mortgagee. Landlord shall give to Recognized Mortgagee, at the address of the Recognized Mortgagee stated in a notice given by the Recognized Mortgagee to Landlord, and otherwise in the manner pursuant to the provisions of Article 25 hereof, a copy of each notice of Default at the same time as it gives notice of Default to Tenant.

(b) Right and Time to Cure. Subject to the provisions of Section 11.5 hereof, Recognized Mortgagee shall, in the case of any default hereunder, have a period of thirty (30) days more than is given Tenant, under the provisions of this Lease, to remedy such default or cause it to be remedied or to proceed under Section 11.3(d)(ii). At any time after commencing to proceed in the manner described in Section 11.3(d)(ii), the holder of such Recognized Mortgage may notify Landlord, in writing, that it has relinquished possession of the Premises demised hereunder or that it will not institute foreclosure proceedings or, if such proceedings shall have been commenced, that it has discontinued such proceedings, and, in either event the Recognized Mortgagee shall have no further liability in connection therewith from and after the date on which it delivers notice to Landlord. Thereupon, Landlord shall have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any default or "event of default" hereunder which occurred prior to Landlord's delivery of notice of the termination of this Lease, and, upon any such termination, the provisions of Section 11.4 hereof shall apply.

(c) Acceptance of Recognized Mortgagee's Performance. Subject to the provisions of Section 11.5 hereof, Landlord shall accept performance by the Recognized Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder,

except for the obligations of Tenant which are not susceptible of being performed by a Recognized Mortgagee, with the same force and effect as though performed by Tenant. In the event of a Default under Article 23, a Recognized Mortgagee may exercise its rights under Section 11.4 hereof.

(d) Commencement of Performance by Recognized Mortgagee for Non-Rental Defaults. No Event of Default (other than an Event of Default arising from the nonpayment of Rental) shall be deemed to have occurred if, within the period set forth in Section 11.3(b) hereof, a Recognized Mortgagee shall have:

(i) In the case of a default that is curable without possession of the Premises, Recognized Mortgagee cured such default within the periods provided in Section 11.3(b); or

(ii) In the case of a default where possession of the Premises is required in order to cure such default, or is a default that is otherwise not susceptible of being cured by a Recognized Mortgagee (including a default occurring on any portion of the Premises), if a Recognized Mortgagee shall proceed promptly to institute foreclosure proceedings, and shall prosecute the foreclosure proceedings in good faith and with reasonable diligence to obtain possession of the Premises and, upon obtaining possession of the Premises, shall promptly commence to cure the default (other than a default which is not susceptible of being cured by a Recognized Mortgagee) and prosecute such cure to completion with reasonable diligence.

(e) No Merger. So long as any Recognized Mortgage is in existence, unless all holders of such Recognized Mortgages shall otherwise express their consent in writing, the fee title to the Premises and the leasehold estate of Tenant created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of both fee title to the Premises and any portion of the leasehold estate by Landlord, or by Tenant, or by any Recognized Mortgagee or by any other party.

Section 11.4 Execution of New Lease.

(a) Notice of Termination. If this Lease is terminated by reason of an Event of Default or otherwise, Landlord shall give prompt notice thereof to each applicable Recognized Mortgagee. Such notice shall set forth in reasonable detail a description of all defaults, to the actual knowledge of Landlord, in existence at the time the Lease was terminated by Landlord.

(b) Request for and Execution of New Lease. If, within thirty (30) days of the receipt (as shown on proof of service or return receipt) of the notice referred to in Section 11.4(a) hereof, a Recognized Mortgagee shall request a new Lease (which shall take the form of a direct lease between Landlord and a Recognized Mortgagee's designee as set forth herein), then subject to the provisions of Sections 11.4(c) and 11.5 hereof, within thirty (30) days after Landlord shall have received such request, Landlord shall execute and deliver a new Lease for the Premises for the remainder of the term to such Recognized Mortgagee's designee if and only if (i) such Recognized Mortgagee delivers to Lease Administrator a Required Disclosure Statement for itself and such nominee, and such Required Disclosure Statements shall contain no information that is unacceptable to Lease Administrator acting in its sole discretion, and (ii) the

proposed designee is otherwise acceptable to Lease Administrator in Lease Administrator's reasonable discretion. If Landlord is not then allowed to enter into such new Lease by order of a court of competent jurisdiction, the Recognized Mortgagee shall be deemed to have properly requested a new Lease pursuant to this Section 11.4(b) and Landlord, subject to the provisions of Section 11.4(c), shall deliver such new Lease promptly after the restriction on such new Lease by order of a court of competent jurisdiction is lifted. The new Lease shall contain all of the covenants, conditions, limitations and agreements contained in the Lease; provided, however, that Landlord shall not be deemed to have represented or covenanted that such new Lease shall be superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant. Notwithstanding the foregoing, if the Recognized Mortgagee shall request a new Lease pursuant to this Section 11.4(b), Landlord shall not voluntarily encumber, or consent to the encumbrance of the Premises demised by the Lease during the period following termination of the Lease and delivery of a new Lease pursuant to this Section 11.4(b).

(c) Conditions Precedent to Landlord's Execution of New Lease. The provisions of Section 11.4(b) hereof notwithstanding, Landlord shall not be obligated to enter into a new Lease with a Recognized Mortgagee unless the Recognized Mortgagee (i) shall pay to Landlord, concurrently with the execution and delivery of the new Lease, all Rental due under the Lease up to and including the date of the commencement of the term of the new Lease (excluding penalties and interest thereon) and all expenses, including reasonable attorneys' fees and disbursements and court costs, incurred in connection with the default or event of default, the termination of the Lease and the preparation of such new Lease, if and to the extent such expenses would be collectible under the Lease from Tenant, (ii) except in the case of an event of default or defaults not susceptible to cure by the Recognized Mortgagee, shall promptly after receipt from Landlord of a statement of the default required to be cured, cure all defaults then existing under the Lease (as though the term had not been terminated), and (iii) shall deliver to Landlord a statement, in writing, acknowledging that Landlord, by entering into such new Lease with such designee of such Recognized Mortgagee, shall not have or be deemed to have waived any defaults or events of default then existing under the Lease notwithstanding that any such defaults or event of default existed prior to the execution of such new Lease and that the breached obligations which gave rise to the defaults or event of default are also obligations under such new Lease.

(d) No Waiver of Default. The execution of a new Lease shall not constitute a waiver of any default existing immediately before termination of the Lease and, except for a default which is not susceptible of being cured by the Recognized Mortgagee, the Tenant under the new Lease shall cure, within the applicable periods set forth in the Lease as extended by Section 11.3(b) hereof, all defaults specified in Landlord's statement of defaults referred to in Section 11.4(c) hereof existing under the Lease immediately before its termination.

(e) Assignment of Depositary Proceeds. Concurrently with the execution and delivery of a new Lease pursuant to the provisions of Section 11.4(b) hereof, Landlord shall assign to the new Tenant named therein all of its right, title in and interest to moneys (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Landlord or a depositary that Tenant would have been entitled to receive but for the termination of the Lease. Any sums then held by, or payable to, a depositary, shall be deemed to be held by, or payable to, a depositary under the new Lease.

(f) Assignment of Subleases. Upon the execution and delivery of a new Lease pursuant to the provisions of Section 11.4(b) hereof, all Subleases that have been assigned to Landlord shall be assigned and transferred, together with any security or other deposits received by Landlord and not applied under such Subleases (if any), without recourse, by Landlord to the Tenant named in the new Lease. Between the date of termination of the Lease and the date of the execution and delivery of the new Lease, if a Recognized Mortgagee has requested a new Lease as provided in Section 11.4(b) hereof, Landlord shall not, except as may be commercially reasonable in the ordinary course of business, materially modify or amend, or cancel any Sublease or accept any cancellation, termination or surrender thereof (unless such termination is effected as a matter of law upon the termination of the Lease or terminated by the terms of the Sublease) or enter into any new Sublease without the consent of the Recognized Mortgagee's designee.

Section 11.5 Recognition by Landlord of Recognized Mortgagee Most Senior in Lien. If more than one Recognized Mortgagee has exercised any of the rights afforded by Sections 11.3 or 11.4 hereof, only that Recognized Mortgagee to the exclusion of all other Recognized Mortgagees whose Recognized Mortgage is most senior in lien shall be recognized by Landlord as having exercised such right, for so long as such Recognized Mortgagee shall be diligently exercising its rights hereunder with respect thereto, and thereafter only the Recognized Mortgagee whose Recognized Mortgage is next most senior in lien shall be recognized by Landlord, unless such Recognized Mortgagee has designated a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right. If the parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined by a title insurance company chosen by Landlord, and such determination shall bind the parties.

Section 11.6 Application of Proceeds from Insurance or Condemnation Awards. No Mortgage shall contain any provisions with respect to the application of (a) insurance proceeds payable in connection with any damage or destruction to the Buildings or (b) the proceeds of any award payable in connection with a taking referred to in Article 9 hereof which are inconsistent with the requirements of this Lease.

Section 11.7 Appearance at Condemnation Proceedings. A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 11.8 Rights of Recognized Mortgagees. The rights granted to a Recognized Mortgagee under the provisions of Sections 11.3, 11.4 and 11.7 hereof shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

Section 11.9 Landlord's Right to Mortgage its Interest. Landlord shall have the right to mortgage its interest in the Premises, as long as such mortgage is subject to this Lease, and any new Lease executed pursuant to the provisions of Section 11.4 hereof. Anything in this Lease to the contrary notwithstanding, Landlord covenants and agrees that neither Tenant's interest in this Lease, nor any Mortgagee's interest in a Recognized Sublease or a new Sublease obtained pursuant to Section 11.4 hereof, shall be subordinate to any mortgage on Landlord's interest in the Premises. Landlord agrees to include in such mortgage a subordination clause reasonably satisfactory to Tenant and to the Recognized Mortgagee most senior in lien in

order to accomplish such subordination. Such mortgage shall also include a waiver and release by the mortgagee of any claims to any insurance proceeds or condemnation awards properly applicable to a Condemnation Restoration or a Casualty Restoration. If the mortgagee refuses to include such provisions, Landlord shall not enter into the mortgage, and to do so shall constitute a material default by Landlord under the terms of this Lease. For the purposes of this provision, it is understood and agreed that the lien of any such mortgage shall be subordinate to this Lease, and to Tenant's interest in this Lease and Tenant's leasehold estate or any new lease granted pursuant to Section 11.4, notwithstanding that as a technical legal matter the leasehold estate created pursuant to this Lease may have terminated prior to the execution, delivery and recordation of a memorandum of such new Lease. Any such mortgagee shall, upon foreclosure under such mortgage, be entitled to succeed only to the interest of Landlord.

Section 11.10 Confirmation. The provisions of this Article 11 are deemed self-executing, but either Landlord, Tenant and/or a Recognized Mortgagee shall execute an instrument confirming the same in recordable form upon request therefor. Such instrument may also contain such substitutions for and modifications of the foregoing and such additional provisions as Landlord, Tenant and/or a Recognized Mortgagee may request of the other and as the other may agree to, each acting in their reasonable discretion.

ARTICLE 12
DREDGING; SUNKEN CRAFT

Section 12.1 No Dredging. Tenant shall not dredge in the slips, or water adjacent to, or included in, the Premises without Landlord's prior written approval which shall not be unreasonably withheld or delayed.

Section 12.2 Sunken Craft. If during the Term, the slips or water adjacent to the Premises shall become obstructed in whole or in part by the sinking of any waterborne craft, other than a waterborne craft owned or operated by the City or Lease Administrator, Tenant, at its sole cost and expense, after receiving notice, shall promptly eliminate such obstruction, or cause the same to be eliminated if, pursuant to applicable Requirements, it is the obligation of the owner of the Premises to eliminate such obstruction. If, after said notice, Tenant fails to eliminate such obstruction, Landlord may, in its discretion, undertake same, and Landlord is hereby granted the right to enter upon the Premises for such purpose, and in such event, Tenant shall reimburse Landlord for the reasonable expenses so incurred. If during the Term, said waters adjacent to the Premises shall become obstructed in whole or in part by the sinking of any waterborne craft owned or operated by the City or Lease Administrator through no fault or negligence of Tenant, then Landlord shall promptly remove such obstruction, or cause the same to be removed, and Landlord may enter the Premises for the purpose of doing so, without cost or expense to Tenant. If, after notice from Tenant, Landlord fails to remove such obstructions, Tenant may, in its discretion, undertake the removal thereof, and, in such event, Landlord shall reimburse Tenant for the reasonable expense so incurred. Except in those cases where it is Landlord's obligation to remove an obstruction in accordance with and as specifically provided

in this Section 12.2, Landlord shall have no obligation to remove any such obstruction and Landlord shall have no liability to Tenant in connection therewith.

ARTICLE 13
INITIAL CONSTRUCTION WORK

Section 13.1 Initial Construction Work.

(a) Commencement and Completion. Tenant shall perform (or cause to be performed) the Initial Construction Work in compliance with the Project Commitments, as more particularly set forth in Exhibit B (Project Commitments) and the Approved Plans and Specifications. Tenant acknowledges that in entering into this Lease Landlord is relying upon Tenant's commitment to perform the Initial Construction Work in accordance with the Project Commitments, including making the minimum investments in the Project specified in the Project Commitments, and Tenant covenants and agrees to perform the Initial Construction Work in accordance with the Project Commitments, including such minimum investments. In furtherance thereof, Tenant shall (i) commence the Demolition and Remediation Work included in the Initial Construction Work not later than the Scheduled Demolition and Remediation Commencement Date, (ii) thereafter continue to prosecute the Initial Construction Work with diligence and continuity in accordance with the development and construction schedule included in the Project Commitments, (iii) achieve Substantial Demolition and Remediation Completion on or before the Scheduled Demolition and Remediation Completion Date , (iv) commence the Initial Construction Work (other than Demolition and Remediation Work) not later than the Scheduled Construction Commencement Date, (v) Substantially Complete the Initial Construction Work on or before the Scheduled Construction Completion Date, (vi) diligently pursue a permanent certificate of occupancy or certificate of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, for all Buildings and shall promptly furnish Landlord with such permanent certificate of occupancy or certificate of completion or licenses or permits after the same shall have been duly issued by DSBS, the Buildings Department or other applicable Governmental Authority; and (vii) Finally Complete the Initial Construction Work on or before the Final Completion Date. Certain key dates with respect to the development and construction schedule approved by Landlord and Tenant for the Initial Construction Work are set forth in the Project Commitments.

(b) Definitions.

(i) "Approved Plans and Specifications" means the Plans and Specifications for the Initial Construction Work, in each case as approved by Landlord pursuant to Section 13.1(d) or (e) hereof.

(ii) "Final Completion" or "Finally Complete" means the Architect has determined that the following conditions have been satisfied: (A) all work, including all punch list items, remaining after Substantial Completion have been completed substantially in accordance with the Approved Plans and Specifications and Lease Administrator has confirmed

the same acting reasonably; and (B) if applicable, all Governmental Authorities having jurisdiction have authorized occupancy and use of the Initial Construction Work (as evidenced by issuance of a permanent certificate of occupancy or certificate of completion and any other permits or licenses required for occupancy for the intended use and purpose). Tenant shall provide written notice to Lease Administrator that, in its opinion, the above-listed conditions have been satisfied together with supporting documentation therefor.

(iii) "Final Completion Date" means the date that is no later than six (6) months following the Scheduled Construction Completion Date, subject to Unavoidable Delay not to exceed 30 days, as more particularly set forth in the Project Commitments.

(iv) "Plans and Specifications" means the completed final drawings, plans and specifications for the Initial Construction Work prepared by the Architect for submission to DSBS or other applicable Governmental Authority and for advertisements for bid to contractors or construction managers that shall, subject to the provisions of subparagraph (d) below, conform to the Schematics, as the same may be modified from time to time, in accordance with the provisions of this Article 13.

(v) Intentionally Omitted.

(vi) "Scheduled Construction Commencement Date" means the date specified in a notice given by Tenant to Landlord and Lease Administrator in which Tenant advises Landlord and Lease Administrator that the Initial Construction Work (other than the Demolition and Remediation Work) has commenced; provided, that in any case, (i) such notice shall have been delivered no later than the date when any Construction Work (other than the Demolition and Remediation Work) occurs, (ii) Landlord shall have confirmed such date in writing, except that in the event Landlord does not confirm such date, "Scheduled Construction Commencement Date" shall mean the date upon which contractors necessary for construction of the Project Commitments are mobilized and substantial excavation for foundations and/or footings for the installation of the concrete plant and/or natural gas fueling station have begun and (iii) in all cases such date shall be no later than ninety (90) days following the Effective Date, subject to Unavoidable Delay not to exceed 30 days, as more particularly set forth in the Project Commitments.

(vii) "Scheduled Construction Completion Date" means the date that is no later than eighteen (18) months following the Scheduled Construction Commencement Date, subject to Unavoidable Delay not to exceed 30 days, as more particularly set forth in the Project Commitments.

(viii) "Scheduled Demolition and Remediation Commencement Date" means the date prior to the Effective Date on which Tenant commenced the Demolition and Remediation Work ,

(ix) "Scheduled Demolition and Remediation Completion Date" means the date that is no later than sixty (60) days following the Scheduled Demolition and Remediation Commencement Date, subject to Unavoidable Delay not to exceed 30 days, as more particularly set forth in the Project Commitments

(x) "Schematics" means schematic drawings for the Buildings and the Premises approved by Landlord.

(xi) "Substantial Completion" or "Substantially Complete(d)" means that (A) the Initial Construction Work, other than a punch list of non-material construction items (such list to be submitted to Lease Administrator in writing), shall have been substantially completed in accordance with the Approved Plans and Specifications (excluding work for Subtenants), (B) the Buildings Department, or other appropriate Governmental Authority, shall have issued, pursuant to Section 645 of the Charter or another applicable Requirement, or any successor statute of similar import, either temporary or permanent certificates of occupancy or certificates of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, for all Buildings, and (C) Landlord shall have received written notice from Tenant certifying that the Initial Construction Work has been substantially completed, together with the certificates, as-built plans, survey and other documents required to be delivered pursuant to Section 13.5 hereof.

(xii) "Substantial Demolition and Remediation Completion" means the Demolition and Remediation Work has been substantially completed in accordance with the Approved Plans and Specifications and Section 21.1 hereof (including any applicable remediation plan), no further removal of Hazardous Substances from the Premises is required by Requirements, Section 21.1 hereof and any applicable remediation plan, and the entirety of the Buildings existing on the Premises as of the Effective Date have been removed.

(c) Submission and Review of Schematics. By the Effective Date, Tenant shall submit proposed Schematics for the Initial Construction Work to Lease Administrator for Lease Administrator's review and approval prior to its submission of such Schematics to any other Governmental Authority. Submission of such Schematics shall be made in such format, including electronic format, as shall be reasonably approved by Lease Administrator. Lease Administrator shall review such Schematics solely for the purpose of determining whether the same comply with the Project Commitments, and shall not unreasonably withhold, condition or delay its approval thereof. Each review by Lease Administrator of such Schematics shall be carried out within twenty (20) Business Days after the date of Tenant's delivery to Lease Administrator of such Schematics or revisions thereof (as contemplated below), whichever is applicable. If Lease Administrator reasonably determines that such Schematics comply in all material respects with the Project Commitments, Lease Administrator shall so notify Tenant in writing. If Lease Administrator reasonably determines that such Schematics do not conform in any material respect with the Project Commitments, Lease Administrator shall so notify Tenant, specifying in reasonable detail in what respects the Schematics do not so conform, and Tenant shall revise them to so conform and shall resubmit the Schematics to Landlord for review. Each resubmission by Tenant shall be made within twenty (20) days of the date of Landlord's notice to Tenant disapproving any portion of the submission. Notwithstanding anything to the contrary in this Article 13, including in this Section 13.1(c), Landlord and Tenant acknowledge and agree that Tenant has delivered the Schematics and Landlord has approved such Schematics for the Initial Construction Work under the Pre-Development Agreement and the Schematics are attached as Exhibit F (Schematics) to this Lease.

(d) Submission and Review of Plans and Specifications. By the date which is thirty (30) days after the Effective Date, Tenant shall submit final Plans and Specifications for the Initial Construction Work to Lease Administrator for its review and approval prior to its submission of such final Plans and Specifications to any other Governmental Authority. Submission shall be made in such format, including electronic format, as shall be reasonably approved by Lease Administrator. If Lease Administrator reasonably determines that the applicable Plans and Specifications comply in all material respect with the Project Commitments, Lease Administrator shall so notify Tenant in writing. If Lease Administrator reasonably determines that such Plans and Specifications do not comply in all material respects with the Project Commitments, Lease Administrator shall so notify Tenant, specifying in reasonable detail in what respect the Plans and Specifications do not so conform, and Tenant shall revise them to so conform and shall resubmit the Plans and Specifications to Lease Administrator for review. Tenant shall submit to Lease Administrator, together with the applicable Plans and Specifications, a construction schedule prepared in accordance with Exhibit B hereto for Lease Administrator's review based on and in compliance with the Project Commitments; provided, however, that Tenant shall deliver the construction schedule not less than thirty (30) days prior to the date Tenant plans to commence construction. Each review of Plans and Specifications by Lease Administrator shall be carried out within twenty (20) days of the date of submission to Lease Administrator by Tenant of the Plans and Specifications (and construction schedule) or any revisions thereof. Each resubmission by Tenant shall be made within twenty (20) days of the date of Landlord's notice to Tenant disapproving any portion of the submission.

(e) Modification of Approved Plans and Specifications. If Tenant desires to modify the Plans and Specifications in any material respect after they have been approved by Lease Administrator, Tenant shall submit the proposed modifications to Lease Administrator. Lease Administrator shall review the proposed changes to determine whether they comply in all material respects with the Project Commitments. The review process, and the timetables therefor, shall be the same as the review process for the Plans and Specifications set forth in Section 13.1(d); provided that Lease Administrator shall review any revisions within ten (10) Business Days of its receipt thereof.

(f) Compliance with Requirements, Etc. The Plans and Specifications shall comply with all Requirements. It is Tenant's responsibility to assure such compliance. Landlord's approval of the Plans and Specifications shall not be, nor shall be construed as being, or relied upon as, a determination that the Plans and Specifications comply with the Requirements.

(g) Landlord's Right to Use Field Personnel. Landlord reserves the right to maintain its field personnel at the Premises to observe Tenant's construction methods and techniques for compliance with the Requirements and safety practices, and Landlord shall be entitled to have its field personnel or other designees attend Tenant's job and/or safety meetings. Tenant shall notify Landlord of each job meeting in connection with the Initial Construction Work (such notification may be by telephone call to a person designated for such purpose by Landlord). No such observation or attendance by Landlord's personnel or designees shall impose upon Landlord responsibility for any failure by Tenant to observe any Requirements or

safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the provisions of this Lease.

(h) M/WBE Program.

i. Tenant has submitted to Lease Administrator an M/WBE Participation Proposal which states the Tenant's proposed plans for participation by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs", together with "MBEs" collectively referred to as "M/WBEs") in the Initial Construction Work performed in accordance with this Lease until a permanent certificate of occupancy is issued for the entire Project and includes the MWBE Participation Goal, defined as the target percentage of the hard costs and soft costs associated with the Initial Construction Work (the "Eligible Costs") that will be paid to M/WBEs. The M/WBE Participation Proposal is attached hereto as Exhibit H-1.

ii. Tenant agrees that not later than one-hundred and twenty (120) days prior to the commencement of the Initial Construction Work, Tenant shall submit to Lease Administrator, for Lease Administrator's reasonable approval, an M/WBE Participation Plan that reflects the M/WBE Participation Proposal and is in the form included in Exhibit H-2. If the submitted M/WBE Participation Plan does not meet with Lease Administrator's reasonable approval, Tenant shall amend and resubmit to Lease Administrator such M/WBE Participation Plan until Lease Administrator's final approval is obtained. The M/WBE Participation Plan may be amended from time to time in accordance with the M/WBE Program Requirements set forth in Exhibit H-3.

iii. Tenant agrees that from the Effective Date until receipt by Tenant of a permanent certificate of occupancy in connection with the Initial Construction Work, Tenant and its successors and assigns shall use good faith efforts to comply with the terms and conditions and reach the goals outlined in the Tenant's M/WBE Participation Proposal set forth in Exhibit H-1, the M/WBE Participation Plan submitted in accordance with Section 13.1(h)(ii) above, and the M/WBE Program Requirements set forth in Exhibit H-3. Tenant agrees to be bound by all the covenants in Tenant's M/WBE Participation Plan and the M/WBE Program Requirements, including the provision of all Compliance Reports, as shown in Exhibit H-4 and set forth in Section 4 of Exhibit H-3 hereto, and payment of any liquidated damages as set forth in Section 8 of Exhibit H-3 hereto.

(i) Landlord Review; Second Requests. Except as otherwise set forth herein, Landlord agrees to respond to any written request for approval under this Section 13.1 within twenty (20) days after Tenant's request, provided Tenant's submissions comply in all material respects with the requirements above. In addition, following any disapproval by Landlord of any Schematics or Plans and Specifications, Landlord agrees to respond to any revised submission of such plans and specifications within ten (10) Business Days after such submission. Any dates or timeframes for Landlord's approvals set forth in this Section 13.1(i) are not intended to, and shall not, increase Landlord's obligations or modify any timeframes set forth in this Section 13.1 or elsewhere in this Lease.

(j) No Representations or Warranties. Tenant understands and agrees that neither Landlord nor Lease Administrator shall incur any liability to any Person for any act or omission in connection with their respective reviews and approvals of the Approved Plans and Specifications or any other document, or failure to review or approve the foregoing in accordance with the provisions of this Lease, and neither Landlord's nor Lease Administrator's approval of the Approved Plans and Specifications or any other document shall be, or shall be construed or interpreted, or otherwise relied upon, by any Person as: (1) a representation, warranty or determination by either Landlord or Lease Administrator that the Approved Plans and Specifications comply with applicable Requirements, or are structurally or architecturally sound or safe, or technically correct, (2) an opinion by either Landlord or Lease Administrator that the improvements constructed pursuant to the Approved Plans and Specifications are adequate or sufficient for any purpose or use, (3) a waiver of any of Landlord's or Lease Administrator's rights or (4) a release of Tenant from any of its obligations under this Lease.

(k) LEED. If required by any Requirements, Tenant shall apply for and make good faith efforts to achieve a LEED (Leadership in Energy and Environmental Design) Certified rating of at least Silver under version 2.2 for the core and shell of all Buildings at the Premises from the United States Green Building Council.

(l) HireNYC Construction Program. Tenant shall comply with the terms of Tenant's HireNYC: Construction Program set forth in Exhibit J-1.

Section 13.2 Commencement and Completion of All Initial Construction Work. All Initial Construction Work, once commenced, shall be prosecuted diligently and continuously, in a good and workmanlike manner and, if applicable, in accordance with the approved Plans and Specifications therefor, the terms and provisions of this Lease and all applicable Requirements.

Section 13.3 Supervision of Architect and General Contractor. All Initial Construction Work shall be carried out under the supervision of the Architect.

Section 13.4 Conditions Precedent to Tenant's Commencement of Initial Construction Work.

(a) Permits, Insurance and Necessary Site Easements. Tenant shall not commence the Initial Construction Work unless and until (i) Tenant shall have obtained and delivered to Landlord copies of all necessary permits, consents, certificates and approvals of all Governmental Authorities with regard to the commencement of the particular work to be performed certified by Tenant or Tenant's Architect (provided that it is understood that Tenant shall not perform any Construction Work hereunder unless Tenant shall have first obtained all necessary permits, consents, certificates and approvals of all Governmental Authorities), and (ii) Tenant shall have delivered to Landlord certified copies, certificates or memoranda of the policies of insurance required to be carried pursuant to the provisions of Article 7 hereof.

(b) Cooperation of Landlord in Obtaining Permits. Landlord, in its proprietary capacity and not in its governmental capacity, shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by Section 13.4(a) hereof, and Landlord shall sign any reasonable application made by Tenant required to obtain such

permits, consents, certificates and approvals. Tenant shall reimburse Landlord within twenty (20) days after Landlord's demand for any reasonable cost or expense incurred by Landlord in obtaining the permits, consents, certificates and approvals required by Section 13.4(a) hereof.

(c) Approval of Plans and Specifications. Tenant shall not (i) commence the Initial Construction Work unless and until Landlord shall have approved the Plans and Specifications (including with regard to all Plant Equipment), or (ii) if applicable to such Initial Construction Work being performed, commence any other Initial Construction Work unless and until Landlord shall, if required hereunder, have approved the proposed plans and specifications in the manner provided herein.

(d) Construction Agreement. Tenant shall deliver to Landlord a true, correct and complete copy of a stipulated sum or cost-plus contract, a guaranteed maximum price contract, or construction management contract for the Initial Construction Work, or other form of contract that satisfies the requirements of Section 13.10 hereof (each a "Construction Agreement"), in form assignable to Landlord, made with a reputable and responsible contractor or construction manager who is a Permitted Person (such Person, a "Contractor"), which contract shall provide for the completion of the Initial Construction Work in accordance with the Approved Plans and Specifications therefor, applicable Requirements and this Lease.

(e) Assignment of Construction Agreement. Tenant shall deliver to Landlord a collateral assignment of the Construction Agreement ("Assignment of Construction Agreement") duly executed and acknowledged by Tenant (and consented to by the Contractor) effective by its terms upon any termination of this Lease, or upon Landlord's re-entry upon the Premises following an Event of Default before the complete performance of the Construction Agreement. Any such assignment shall be subject to the rights of any Recognized Mortgagee therein. The Assignment of Construction Agreement shall also include, subject to the rights of any Recognized Mortgagee, the benefit of all payments made on account of the Construction Agreement, including payments made before the effective date of any assignment of such Construction Agreement. The Assignment of Construction Agreement may include a provision that in order for it to become effective the assignee must assume Tenant's remaining obligations under the assigned Construction Agreement.

(f) Sufficient Funds. Prior to commencement of the Initial Construction Work, Tenant shall deliver to Landlord evidence that Tenant has sufficient funds (or binding commitments therefor) available to it to complete the Initial Construction Work so commenced in accordance with the Approved Plans and Specifications, applicable Requirements and this Lease. Within ten (10) Business Days of their execution, Tenant shall deliver to Landlord and the Lease Administrator true and complete copies of (i) all Mortgages and all loan or credit agreements as executed and delivered between Recognized Mortgagees and Tenant pursuant to which the Recognized Mortgagees will provide such funds, or (ii) where such Initial Construction Work will not be financed with Mortgages, loan or credit agreements or any other form of debt financing, all equity contribution, funding or other agreements between Tenant and the Person or Persons providing equity or other non-debt financing for the Initial Construction Work, as such equity contribution, funding or other agreements are executed and delivered between Tenant and such Person or Persons.

(g) Bonds; Completion Guaranty. Prior to commencement of the Initial Construction Work, Tenant shall deliver, or cause to be delivered, to Landlord (i) a Completion Guaranty guaranteeing Substantial Completion of such Initial Construction Work from a creditworthy party acceptable to Landlord and (ii) either (v) a performance or completion bond naming Landlord as obligee, in an amount equal to one hundred percent (100%) of the aggregate costs and expenses of such Initial Construction Work in question, to secure the faithful performance and completion of such Initial Construction Work, and a payment bond in an amount equal to one hundred percent (100%) of the aggregate costs and expenses of such Initial Construction Work, guaranteeing prompt payment of monies due to all Persons furnishing labor or materials for such Initial Construction Work (which bonds shall be reasonably satisfactory to Landlord in form and substance and shall be issued by a surety company licensed or authorized to do business in New York State), (w) a clean, unconditional and irrevocable letter of credit issued by a commercial bank or banks with its letter of credit office in New York City, (x) Intentionally Omitted, (y) any other alternative form of security, or (z) any combination of the foregoing, in each case subject to Landlord's determination that such security provides Landlord with sufficient protection and guarantees the Substantial Completion of the Initial Construction Work.

Section 13.5 Completion of Initial Construction Work; Certificates. Upon Substantial Completion of the Initial Construction Work, Tenant shall furnish Landlord with (a) a certification of the Architect or, if in connection with a Casualty Restoration, such inspecting engineer (certified to Landlord) that, in its professional judgment and in accordance with the applicable standard of care, after diligent inquiry, to the best of its knowledge, on the basis of its observations, the Initial Construction Work has been Substantially Completed in accordance with the Approved Plans and Specifications therefor and, as constructed, such Initial Construction Work complies with the New York City Building Code and all other applicable Requirements as well as the National Fire Protection Association Codes and Standards, (b) a copy or copies of the temporary or permanent certificate(s) of occupancy or certificate(s) of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, for all Buildings issued by the Buildings Department or other appropriate Governmental Authority, and (c) a complete set of "as built" plans and a survey showing the Buildings. Landlord shall have an unrestricted non-exclusive license to use such "as built" plans and survey in conjunction with the development of the Premises or otherwise without paying any additional cost or compensation therefor; provided that such license shall be subject to the rights of the parties preparing such plans and survey under copyright and other applicable laws.

Section 13.6 Title to the Buildings and Materials. Materials to be incorporated in the Buildings (excluding the Plant Equipment other than the CNG (Compressed Natural Gas) Station which shall constitute the property of Landlord in accordance with this Section 13.6) shall, effective upon their purchase and all times thereafter but, in all events, subject to this Lease, constitute the property of Landlord, and upon the incorporation of such materials therein, title thereto shall vest in Landlord. However, (a) Landlord shall not be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such materials and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to the materials. Title to the Buildings shall at all times remain vested in Landlord.

Section 13.7 Risks of Loss. Tenant hereby assumes all risks of demolition, removal, renovation and restoration of the Buildings (including without limitation the Plant Equipment).

Section 13.8 Costs and Expenses.

(a) Tenant understands and agrees that the Buildings will be constructed, maintained, restored, secured and insured entirely at Tenant's sole cost and expense without reimbursement or contribution by Landlord, or any credit or offset of any kind for any costs or expenses incurred by Tenant (except as otherwise expressly provided in this Lease).

(b) Tenant shall reimburse Lease Administrator and Landlord for any reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lease Administrator and Landlord in connection with Lease Administrator's review and/or approval of Tenant's Plans and Specifications, Schematics, Completion Guaranty, and Construction Agreement security and any other documents requiring Landlord's or Lease Administrator's review and/or approval in connection with the Initial Construction Work.

Section 13.9 Names of Contractors, Materialmen, Etc. Tenant shall furnish Landlord, within thirty (30) days of Landlord's demand, with a list of all Persons performing any labor, or supplying any materials, in connection with the Initial Construction Work costing in excess of ten percent (10%) of the Replacement Value. The list shall state the name and address of each Person and in what capacity each Person is performing work at the Premises. All persons employed by Tenant with respect to the Initial Construction Work shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 13.10 Construction Agreement.

(a) Required Clauses. All Construction Agreements shall include the following provisions:

(i) "[Contractor]/[Subcontractor]/[Materialman] hereby agrees that immediately upon the purchase by [contractor]/[subcontractor]/[materialman] of any building materials to be incorporated in the Building (as defined in the lease pursuant to which the owner acquired a leasehold interest in the property, but excluding the Plant Equipment (except for the CNG (Compressed Natural Gas) Station which shall become the property of Landlord) (the 'Lease')), such materials shall become the sole property of Landlord (as defined in the Lease), notwithstanding that such materials have not been incorporated in, or made a part of, the Building at the time of such purchase; provided, however, that Landlord shall not be liable in any manner for payment or otherwise to [contractor]/[subcontractor]/[materialman] in connection with the purchase of any such materials and Landlord shall have no obligation to pay any compensation to [contractor]/[subcontractor]/[materialman] [by reason of such materials becoming the sole property of Landlord]."

(ii) "[Contractor]/[Subcontractor]/[Materialman] hereby agrees that notwithstanding that [contractor]/[subcontractor]/[materialman] performed work at the Premises

(as such term is defined in the Lease) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to [contractor]/[subcontractor]/[materialman] in connection with the work performed at the Premises."

(iii) "[Contractor]/[Subcontractor]/[Materialman] hereby agrees to make available for inspection by Landlord, during reasonable business hours, [contractor's]/[subcontractor's]/[materialman's] books and records relating to the Initial Construction Work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as such term is defined in the Lease) to be incorporated into the Building."

(iv) "All covenants, representations, guarantees and warranties of [contractor]/[subcontractor]/[materialman] hereunder shall be deemed to be made for the benefit of Landlord under the Lease and Recognized Mortgagee and shall be enforceable against [contractor]/[subcontractor]/[materialman] by said Landlord.

(v) "Landlord is not a party to this [agreement]/[contract] nor will Landlord in any way be responsible to any party for any and or all claims of any nature whatsoever arising or which may arise from such [agreement]/[contract]."

Section 13.11 Demolition of the Buildings. Except to the extent permitted by the immediately following sentence and except for the Buildings on the Premises on the Effective Date which will be demolished as part of the Initial Construction Work, Tenant shall not demolish the Buildings during the Term, without in each case the advance written consent of Landlord, which consent shall be at Landlord's sole discretion. If the Buildings are substantially destroyed as a result of a fire or other casualty and it is necessary in connection with a Casualty Restoration to demolish the remainder of the Buildings, Tenant shall have the right, subject to compliance with the terms of Articles 8 and 13, to demolish the remainder of the Buildings. Nothing herein shall restrict the right of Tenant to perform any Capital Improvements that have been approved by Landlord in accordance with Article 15 hereof.

Section 13.12 Development Sign. Within thirty (30) days after request of Landlord, Tenant shall furnish and install a project sign during the Initial Construction Work, the design and location of which shall be reasonably satisfactory to each of Landlord and Tenant. Tenant shall extend to Landlord, and any of its designee(s), the privilege of being featured participants in any opening ceremonies to be held at such time and in such manner as Tenant, in its reasonable discretion, shall determine. Tenant shall provide to Landlord reasonable prior notice of any such ceremonies.

Section 13.13 Compliance with Requirements. Tenant assumes sole responsibility for compliance with all applicable Requirements in the performance of the Initial Construction Work. Accordingly, Tenant shall ensure that the Plans and Specifications and any Initial Construction Work undertaken at the Premises during the Term complies with all applicable Requirements.

ARTICLE 14
REPAIRS, SIDEWALKS, UTILITIES AND WINDOW CLEANING; SECURITY

Section 14.1 Maintenance of the Premises, Bulkhead/Pier Consultant, Cooperation, Etc.

(a) Tenant shall take good care of the Premises, the alleys, curbs, sidewalks, and gutters (if any) in front of or adjacent to the Premises (including the Bulkhead, the Pier and related waterfront infrastructure on the Premises), vaults, water, sewer and gas connections, pipes and mains adjacent to and servicing the Premises, and shall keep and maintain the Premises (including the foregoing) in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe order and condition, however the necessity or desirability therefor may occur. Tenant shall neither commit nor suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with the Requirements. As used in this Section 14.1, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions.

(b) In addition to the maintenance obligations set forth in paragraph (a) above, Tenant shall, throughout the Term, be obligated to maintain the Bulkhead and the Pier in first class, safe, sound and lawful order and condition and make all repairs thereto as shall be necessary to keep and maintain the same in good order and condition and in compliance with all Requirements, and howsoever the necessity or desirability therefor may have occurred, and whether or not necessitated by normal wear, tear, obsolescence or defects, latent or otherwise. Without limiting the generality of the foregoing, Tenant agrees to the following:

(i) Tenant shall retain the services of a Bulkhead and Pier consultant approved by Landlord, such approval not to be unreasonably withheld ("Bulkhead/Pier Consultant"). On or before the date which is thirty (30) days following the Effective Date, on the fifth (5^{th}) anniversary of the Effective Date and continuing throughout the Term no less frequently than every five (5) years (or more frequently at the recommendation of the Bulkhead/Pier Consultant), Tenant shall require the Bulkhead/Pier Consultant to (1) perform inspections of the Bulkhead and Pier in accordance with the Lease Administrator's 1999 Inspection Guideline Manual, as it may be amended, (2) prepare inspection reports and certify to Landlord and Tenant the current condition of the Bulkhead and Pier, including whether the Bulkhead and Pier are structurally sound (and, if not, to specify all respects in which the same is not structurally sound), which inspection reports shall be submitted by Tenant to Lease Administrator for review and reasonable approval before they are finalized (as finalized, the "Bulkhead/Pier Reports") and (3) recommend, in the Bulkhead/Pier Reports, a maintenance program as well as specific repair and maintenance work in furtherance of maintaining the structural integrity of the Bulkhead and the Pier and to bring the Bulkhead and the Pier up to and maintain the Bulkhead and Pier in accordance with the standards set forth in the first paragraph of this Section 14.1(b).

(ii) Throughout the Term, Tenant shall carry out the recommendations set forth in the Bulkhead/Pier Reports. . Tenant shall also perform such additional work as may be required during the Term to maintain the structural integrity of the Bulkhead and the Pier and to cause the structure of the Bulkhead and the Pier to comply with Requirements. Prior to performing any such additional work Tenant shall notify Landlord, and shall furnish Landlord with such information and materials as Landlord may reasonably request concerning such additional work.

(iii) If the Bulkhead/Pier Consultant shall be terminated, withdraw or otherwise cease to function as such, a new engineering consultant shall be selected in the same manner as set forth in paragraph (i) above to become the Bulkhead/Pier Consultant.

(c) Tenant will, at Tenant's sole cost and expense, cooperate with the City and the operator or other user of any part of the Pier with regard to the repair and maintenance of the Pier.

Section 14.2 Removal of Equipment.

(a) Tenant shall not, without the prior consent of Landlord (except where Landlord has already consented to the same in connection with a Casualty Restoration, Condemnation Restoration or approved demolition and except that Landlord's consent shall not be required (but the remainder of the requirements of this Section 14.2(a) shall apply) where the fair market value of the Equipment at issue does not exceed Twenty-Five Thousand Dollars ($25,000.00)), which consent shall not be unreasonably withheld, remove or dispose of any Equipment unless such equipment (a) is promptly replaced by Equipment of at least equal utility and quality, or (b) is removed for repairs, cleaning or other servicing; provided, that Tenant reinstalls such Equipment on the Premises with reasonable diligence; provided further, that Tenant shall not be required to replace any Equipment, other than Plant Equipment, that has become obsolete or that performed a function that has become obsolete, unnecessary (including by reason of the changed requirements of Subtenants) or undesirable in connection with the operation of the Premises. However, Tenant shall obtain the consent of Landlord prior to removal of any obsolete Equipment from the Premises, which consent shall not be unreasonably delayed or withheld. Notwithstanding anything to the contrary in this Lease, Tenant shall be required to replace all Plant Equipment in all circumstances. To the extent the removal of any trade fixtures and/or Equipment causes damage to any Building, Tenant shall promptly repair such damage. It is the intention of the parties that notwithstanding anything to the contrary in this Lease, the Plant Equipment will remain a part of the Premises throughout the Term and if removed or disposed of in accordance with the terms of this Lease, or damaged or destroyed, will be immediately replaced in accordance with this Section 14.2(a) (by Plant Equipment of at least equal value, utility and quality) or as part of a casualty or condemnation restoration.

(b) Notwithstanding anything to the contrary in Section 14.2(a), all of Tenant's Equipment (including Plant Equipment, but excluding the CNG (Compressed Natural Gas) Station which shall be and remain Landlord's property) shall, at all times, remain Tenant's property; Tenant may remove and replace any of Tenant's Equipment or Plant Equipment at any time during the Term in accordance with the terms of this Lease (including the terms of Section

14.2(a) requiring replacement of all Plant Equipment); provided, however, that with respect to trade fixtures and Plant Equipment, the removal thereof will not cause structural damage to the Buildings unless promptly repaired by Tenant.

Section 14.3 Free of Dirt, Snow, Etc. Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the sidewalks, grounds, parking facilities, plazas, common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs or any other space within the Premises. Nothing herein shall limit the responsibility of Landlord (if any) acting in its official governmental capacity.

Section 14.4 No Obligation to Supply Utilities. Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to any Building, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises, including but not limited to the rerouting of utility lines. For the avoidance of doubt, in the event that construction of any on-site and/or off-site infrastructure improvements are necessary for utility service for the Premises or Tenant's business, such improvements shall be Tenant's responsibility. Nothing herein shall limit the responsibility of Landlord (if any) acting in its official governmental capacity.

Section 14.5 Window Cleaning. Tenant shall not clean nor require, permit, suffer nor allow any window in the Buildings to be cleaned from the outside in violation of Section 202 of the Labor Law or of the rules of any Governmental Authority.

Section 14.6 Premises Security. Tenant shall provide security for the Premises, including for all Buildings, at Tenant's sole cost and expense and neither Landlord nor Lease Administrator shall have any responsibility for providing security or protection of Persons or property on and at the Premises.

Section 14.7 Outgoing Condition Survey.

(a) Within three (3) months after the expiration or earlier termination of this Lease, Tenant shall cause to be presented to Landlord an outgoing condition survey and inspection report based on a survey made within one week after the Expiration Date. The engineer selected by Tenant to prepare such report shall be acceptable to Lease Administrator in its reasonable discretion and shall be accompanied on the inspection by an engineer or engineers selected and paid for by Landlord. Tenant shall bear the full cost and expense of preparation of the outgoing condition survey and inspection report.

(b) Based upon the outgoing condition survey and inspection report, Landlord shall notify Tenant of any repair work reasonably necessary to be performed by Tenant so that the Premises are in the condition they are required to be maintained by this Lease and in the condition they are required to be surrendered pursuant to Article 30 hereof. Upon receipt thereof, Tenant shall perform or cause to be performed all work at its sole cost and expense. Landlord shall reasonably determine the necessity for and the adequacy of any necessary repairs.

The provisions of this Section 14.7 shall survive the expiration or earlier termination of this Lease.

Section 14.8 Landlord's Right to Inspect and Determine Necessity of Repairs.

(a) Landlord may, in its reasonable discretion, determine the necessity or the adequacy of repairs and maintenance at, to, or of the Premises.

(b) Every four (4) years during the Term of this Lease, or at such other time as Landlord shall determine, in its sole reasonable discretion (but not more often than every four (4) years except in cases of emergency), upon notice to Tenant, Landlord, Lease Administrator or their representatives or designees may, but shall have no obligation to, make an inspection of the condition of the Premises and make a report thereon.

(c) The inspection report shall specify the maintenance required to keep and maintain the Premises and every part thereof in good working order and condition under this Article 14. A copy of said inspection report shall be delivered to Tenant.

(d) Tenant, promptly and with diligence, shall commence and continuously and diligently perform the maintenance specified in the inspection report. The commencement of the maintenance specified in the report shall be deemed to have occurred upon the engagement of an architect, engineer or other design professional, as appropriate, to perform necessary design work in connection with any repairs and maintenance. Upon the timely completion of the design professional's design work, Tenant shall continuously and diligently prosecute the identified repairs and maintenance to completion. The failure of Landlord or its designees to make the reports shall not limit, or be deemed a waiver of, Tenant's obligation to perform or observe, or to relieve Tenant of liability for failure to comply with any of the terms, conditions and covenants of this Article 14.

(e) Landlord, upon notice to Tenant and provided Landlord shall not unreasonably interfere with Tenant's use of or access to the Premises, shall have access to, over and through the Premises for the purposes provided in this Article 14 and otherwise to determine compliance with the terms of this Lease and Tenant shall cooperate therewith.

ARTICLE 15
CAPITAL IMPROVEMENTS

Section 15.1 Capital Improvements; Tenant's Right to Make Capital Improvements.

(a) Tenant shall have the right to make Capital Improvements after Substantial Completion of the Initial Construction Work as long as Tenant shall comply with all provisions of Article 13 hereof (as if such Capital Improvement were the Initial Construction Work), but excluding clauses (i), (iii) (iv), (v) and (vii) of Section 13.1(a), and as long as Tenant shall comply with the requirements of this Article 15. Tenant shall obtain the consent of Landlord for any Capital Improvement, which consent shall not be unreasonably withheld,

delayed or conditioned. At least thirty (30) days before Tenant's commencement of any such Capital Improvement, Tenant shall provide Landlord with:

(i) complete plans and specifications for the proposed Capital Improvement prepared by the Architect. All plans and specifications submitted pursuant to this Section 15.1(a)(i) shall be reviewed by Landlord in accordance with the provisions of Section 13.1(e) hereof as if such plans and specifications were a modification of the Approved Plans and Specifications (and, for purposes of Article 13, any such plans and specifications shall constitute "Plans and Specifications");

(ii) a copy of a contract made with a reputable and responsible contractor, providing for the completion of the Capital Improvement in accordance with the Approved Plans and Specifications therefor;

(iii) evidence of Tenant's ability to pay for such Capital Improvement, and, at Landlord's request, a completion guaranty from a creditworthy guarantor satisfactory to Landlord guaranteeing the lien-free completion of the Capital Improvement; and

(iv) funds sufficient to reimburse Landlord for the reasonable fees and expenses of any registered architect or licensed professional engineer selected by Landlord to review the plans and specifications therefor and to inspect the Capital Improvement on behalf of Landlord; provided, that if such review is also required by a Recognized Mortgagee, Landlord shall rely on the architect or engineer selected by the Recognized Mortgagee.

(b) Completed Capital Improvements Shall Not Reduce Value of Premises. All Capital Improvements, when completed, shall be of a character that will not (i) materially reduce the value of the Premises below its value immediately before commencement of such Capital Improvement, (ii) diminish the Required Uses of the Project , or (iii) cause any deviation from the Project Commitments.

(c) "Capital Improvement" means (i) a material change, alteration, demolition, construction, reconstruction or addition to the Premises having a cost in excess of Two Hundred and Fifty Thousand Dollars ($250,000.00) or a useful life equal to or in excess of five (5) years, or (ii) work that would change, in any material respect, any plazas, open space or the exterior of any Building, or would change, in any material respect, the height, bulk or setback of any Building from the height, bulk or setback of such Building existing immediately before the commencement of the Capital Improvement or (iii) any change, alteration or work with respect to the Bulkhead or Pier. Capital Improvements shall not include the Initial Construction Work, any Casualty Restoration or Condemnation Restoration, any interior alteration made in connection with the initial occupancy under a Sublease, or any Tenant or Subtenant fit-out work.

ARTICLE 16
REQUIREMENTS OF GOVERNMENTAL AUTHORITIES AND LIVING WAGE

Section 16.1 Requirements.

(a) Obligation to Comply. Subject to the provisions of Article 34 hereof, in connection with any Construction Work, maintenance, management, use and operation

of the Premises and Tenant's performance of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises, and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put.

(b) "Requirements" means:

(i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Authorities applicable to the Premises or any street, road, avenue, sidewalk, pier, or bulkhead comprising a part of, or immediately adjacent to, the Premises or any vault in, or under the Premises (including the Building Code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions);

(ii) the certificate(s) of occupancy or certificate(s) of completion or other licenses or permits required for lawful occupancy and use and operation, as applicable, issued for any Building and the Project, as then in force;

(iii) the provisions of applicable resolutions and/or special permits of the City Planning Commission; and

(iv) all Environmental Laws.

Section 16.2 Living Wage.

(a) Tenant agrees, on behalf of itself and each of its Site Affiliates, to comply with the terms of this Section 16.2. Tenant acknowledges that the terms and conditions set forth in this Section 16.2 are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.

(b) The following capitalized terms shall have the respective meanings specified below for purposes of this Section 16.2 and Exhibit C hereto.

"Affiliate" means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

"Asserted Cure" has the meaning specified in Section 16.2(k)(i).

"Asserted LW Violation" has the meaning specified in Section 16.2(k)(i).

"Comptroller" means the Comptroller of The City of New York or his or her designee.

"Concessionaire" means a Person that has been granted the right by Tenant, an Affiliate of Tenant or any tenant, subtenant, leaseholder or subleaseholder of Tenant or of an Affiliate of Tenant to operate at the Premises for the primary purpose of selling goods or services to natural persons at the Premises.

"Control" or "Controls", including the related terms "Controlled by" and "under common Control with", means the power to direct the management and policies of a Person (a) through the ownership, directly or indirectly, of not less than a majority of its voting equity, (b) through the right to designate or elect not less than a majority of the members of its board of directors, board of managers, board of trustees or other governing body, or (c) by contract or otherwise.

"Covered Counterparty" means a Covered Employer whose Specified Contract is directly with Tenant or one of its Site Affiliates to lease, occupy, operate or perform work at the Premises.

"Covered Employer" means any of the following Persons: (a) Tenant, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of Tenant or of an Affiliate of Tenant that leases any portion of the Premises (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (d) a Concessionaire that operates on any portion of the Premises, and (e) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b), (c) or (d) above to perform work for a period of more than ninety days on any portion of the Premises, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term "Covered Employer" shall not include (i) a Person of the type described in Section 6-134(d)(2), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Premises if residential units comprise more than 75% of the total Premises area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Landlord has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) a person that is a "building services contractor" (as defined in the LW Law) so long as such Person is paying its "building service employees" (as defined in the Prevailing Wage Law) no less than the applicable "prevailing wage (as defined in the Prevailing Wage Law), or (vii) a Intentionally Omitted.

"DCA" means the Department of Consumer Affairs of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

"LW" has the same meaning as the term "living wage" as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the "living wage rate" component

of the LW shall be eleven dollars and sixty-five cents per hour ($11.65/hour) and the "health benefits supplement rate" component of the LW shall be one dollar and sixty-five cents per hour ($1.65/hour). The annual adjustments to the "living wage rate" and "health benefits supplement rate" will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

"LW Agreement" means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Exhibit C (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

"LW Agreement Delivery Date" means, with respect to any Covered Counterparty, the latest of (a) the effective date of such Covered Counterparty's Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the Premises and (c) the date of this Lease.

"LW Law" means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"LW Term" means the period commencing on the Effective Date and ending on the date that is ten years after the Effective Date.

"LW Violation Final Determination" has the meaning specified in Section 16.2(k)(i)(1), Section 16.2(k)(i)(2)(A) or Section 16.2(k)(i)(2)(B), as applicable.

"LW Violation Initial Determination" has the meaning specified in Section 16.2(k)(i)(2).

"LW Violation Notice" has the meaning specified in Section 16.2(k)(i).

"LW Violation Threshold" means $100,000 multiplied by 1.03^n, where "n" is the number of full years that have elapsed since January 1, 2015.

"Owed Interest" means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

"Owed Monies" means, as the context shall require, either (a) the total deficiency of LW required to be paid by Tenant or a Site Affiliate in accordance with this Section 16.2 to Tenant's or its Site Affiliate's (as applicable) direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Tenant or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 16.2(f) below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty's LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary

value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

"Prevailing Wage Law" means Section 6-130 of the new York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"Qualified Workforce Program" means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

"Site Affiliates" means, collectively, all Affiliates of Tenant that lease, occupy, operate or perform work at the Premises and that have one or more direct Site Employees.

"Site Employee" means, with respect to any Covered Employer, any natural person who works at the Premises and who is employed by, or contracted or subcontracted to work for, such Covered Employer, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term "Site Employee" shall not include (i) any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Premises unless the primary work location or home base of such person is at the Premises (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Premises shall thereafter constitute a Site Employee) and (ii) any natural person whose work solely consists of making deliveries of stone, sand and/or chemicals to the Project and who does not perform any work at the Project other than to unload such deliveries and pick up waste concrete for transport out of the Premises.

"Small Business Cap" means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the "living wage rate" component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

"Specified Contract" means, with respect to any Person, the principal written contract that makes such Person a Covered Employer hereunder.

(c) During the LW Term, Tenant shall pay each of its direct Site Employees no less than an LW. During the LW Term, Tenant shall cause each of its Site Affiliates to pay their respective Site Employees no less than an LW.

(d) During the LW Term, Tenant shall (or shall cause the applicable Site Affiliate to, as applicable), on or prior to the day on which each direct Site Employee of Tenant or of a Site Affiliate begins work at the Premises, (i) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 16.2 in a conspicuous place at the Premises that is readily observable by such direct Site Employee and (ii) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 16.2. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

(e) During the LW Term, Tenant shall not (or the applicable Site Affiliate shall not, as applicable) take any adverse employment action against any Site Employee for reporting or asserting a violation of this Section 16.2.

(f) During the LW Term, regardless of whether Tenant is a Covered Employer, Tenant shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty. Tenant shall deliver a copy of each Covered Counterparty's LW Agreement to the Lease Administrator, the DCA and the Comptroller at the notice address specified herein and promptly upon written request. Tenant shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

(g) During the LW Term, in the event that an individual with managerial authority at Tenant or at a Site Affiliate receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Tenant shall deliver written notice to the Lease Administrator, the DCA and the Comptroller within 30 days thereof.

(h) Tenant hereby acknowledges and agrees that the Lesase Administrator, the DCA and the Comptroller are each intended to be third party beneficiaries of the terms and provisions of this Section 16.2. Tenant hereby acknowledges and agrees that the DCA, the Comptroller, and the Lease Administrator shall each have the authority and power to enforce any and all provisions and remedies under this Section 16.2 in accordance with paragraph (k) below. Tenant hereby agrees that the DCA, the Comptroller, and the Lease Administrator may, as their sole and exclusive remedy for any violation of Tenant's obligations under this Lease, bring an action for damages (but not in excess of the amounts set forth in paragraph (k) below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph (k) below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Tenant (or of any Site Affiliate) under this Section 16.2. The agreements and acknowledgements of Tenant set forth in this Section 16.2 may not be amended, modified or rescinded by Tenant without the prior written consent of the Lease Administrator or the DCA.

(i) No later than 30 days after Tenant's receipt of a written request from the Lease Administrator, the DCA and/or the Comptroller, Tenant shall provide to the Lease Administrator, the DCA and the Comptroller (i) a certification stating that all of the direct Site

Employees of Tenant and its Site Affiliates are paid no less than an LW (if such obligation is applicable hereunder) and stating that Tenant and its Site Affiliates are in compliance with this Section 16.2 in all material respects, (ii) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties, (iii) certified payroll records in respect of the direct Site Employees of Tenant or of any Site Affiliate (if applicable), and/or (iv) any other documents or information reasonably related to the determination of whether Tenant or any Site Affiliate is in compliance with their obligations under this Section 16.2.

(j) Annually, by August 1 of each year during the LW Term, Tenant shall (i) submit to Lease Administrator a written report in respect of employment, jobs and wages at the Premises as of June 30 of such year, in a form provided by Lease Administrator to all projects generally, and (ii) submit to the Lease Administrator and the Comptroller the annual certification required under Section 6-134(f) of the LW Law (if applicable).

(k) Violations and Remedies.

(i) If a violation of this Section 16.2 shall have been alleged by the Lease Administrator, the DCA and/or the Comptroller, then written notice will be provided to Tenant for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Lease Administrator, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under Section 16.2(k)(ii), (iii), (iv), (v) and/or (vi) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Tenant's receipt of the LW Violation Notice, Tenant may either:

(1) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or

(2) Provide written notice to the Lease Administrator, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Tenant shall bear the burden of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Lease Administrator and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Tenant and deliver to Tenant a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Tenant's receipt of the LW Violation Initial Determination, Tenant may either:

(A) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (B) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or

(B) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Tenant's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Tenant's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Tenant shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

(ii) For the first LW Violation Final Determination imposed on Tenant or any Site Affiliate in respect of any direct Site Employees of Tenant or of a Site Affiiliate, at the direction of the Lease Administrator or the DCA (but not both), (A) Tenant shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Tenant or of a Site Affiliate to such direct Site Employees; and/or (B) in the case of a violation that does not result in monetary damages owed by Tenant, Tenant shall cure, or cause the cure of, such non-monetary violation.

(iii) For the second and any subsequent LW Violation Final Determinations imposed on Tenant or any Site Affiliate in respect of any direct Site Employees of Tenant or of a Site Affiliate, at the direction of the Lease Administrator or the DCA (but not both), (A) Tenant shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Tenant or of a Site Affiliate to such direct Site Employees, and Tenant shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (B) in the case of a violation that does not result in monetary damages owed by Tenant, Tenant shall cure, or cause the cure of, such non-monetary violation.

(iv) For the second and any subsequent LW Violation Final Determinations imposed on Tenant or any Site Affiliate in respect of any direct Site Employees of Tenant or of a Site Affiliate, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Tenant in respect of the direct Site Employees of Tenant or of a Site Affiliate is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Tenant or any Site Affiliate, then in lieu of the remedies specified in subparagraph (iii) above and at the direction of the Lease Administrator or the DCA (but not both), Tenant shall pay (A) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Tenant or of a Site Affiliate, and (B) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.

(v) If Tenant fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph (f) above, then at the discretion of the Lease Administrator or the DCA (but not both), Tenant shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (ii), (iii) and (iv) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Tenant.

(vi) Tenant shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (A) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site Employees for all past and present LW Violation Final Determinations (or that would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (B) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude Tenant from extending or renewing a Specified Contract pursuant to any renewal or extension options granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

(vii) It is acknowledged and agreed that (A) other than as set forth in Article 20, the sole monetary damages that Tenant may be subject to for a violation of this Section 16.2 are as set forth in this paragraph (k), and (B) in no event will the Specified Contract between Tenant and a given Covered Counterparty be permitted to be terminated or rescinded by the Lease Administrator, the DCA or the Comptroller by virtue of violations by Tenant or another Covered Counterparty.

(l) The terms and conditions set forth in this Section 16.2 shall survive the expiration or earlier termination of this Lease.

(m) In addition to the parties specified in Article 25 of this Lease, any notice sent concerning this Section 16.2 shall also be sent to:

(i) If to the DCA, to Department of Consumer Affairs of the City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.

(ii) If to the Comptroller, to Office of the Comptroller of the City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.

ARTICLE 17
DISCHARGE OF LIENS; BONDS

Section 17.1 Creation of Liens. Tenant shall neither create nor cause to be created (a) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, or (c) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises or any part thereof might be impaired. Notwithstanding the above, Tenant shall have the right to execute Recognized Mortgages and related security documents and Subleases as provided by, and in accordance with, the provisions of this Lease.

Section 17.2 Discharge of Liens. If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant shall, within thirty (30) days after Tenant receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause such lien to be discharged of record, by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such lien if Tenant shall have (a) furnished Landlord or the applicable court with a letter of credit, cash deposit, bond or other security reasonably satisfactory to Landlord, in an amount sufficient to pay the lien with interest and penalties, if any, and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding.

Section 17.3 No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Premises or any part thereof or against any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all agreements entered into by Tenant to provide, that to the extent enforceable under New York law, Landlord shall not be liable for any such work performed or to be performed at the Premises or any part thereof for Tenant or any Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, Landlord.

ARTICLE 18
REPRESENTATIONS; POSSESSION

Section 18.1 Representations of Landlord. Landlord represents, warrants and covenants that (a) it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby; (b) Landlord has all requisite power and authority to execute, deliver and perform this Lease; and (c) the terms, provisions, covenants and obligations of Landlord as set forth in this Lease are legally binding on and enforceable against Landlord, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Requirements affecting creditors' rights generally and to general principles of equity.

Section 18.2 Tenant's Acknowledgment of No Other Representations. Tenant confirms that, except for the representations contained in Section 18.1 hereof, (a) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord or NYCEDC with respect to the Premises or the transaction contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto of the use that may be made of the Premises, (b)

Tenant has relied on no such representations, statements or warranties, and (c) Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

Section 18.3 Tenant's Representations, Warranties and Covenants. Tenant represents, warrants and covenants that:

(a) Prior Conduct. None of Tenant, the Tenant Principals, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with Tenant:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with NYCEDC, NYCIDA or the City, unless such default or breach has been waived in writing by NYCEDC, NYCIDA or the City, as the case may be;

(ii) has been convicted of a felony and/or any crime involving moral turpitude in the ten (10) preceding years;

(iii) has received written notice of default in the payment to the City of any Taxes or Impositions, individually or collectively in excess of Five Thousand Dollars ($5,000.00) that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(iv) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

(b) Disclosure. As of the Effective Date, (i) the Tenant Principals own one hundred percent (100%) of the Equity Interests of Tenant and (ii) no other Person directly or indirectly Controls the Tenant. All Persons, in respect of Tenant, for which disclosure has been required are listed on Exhibit E (Required Disclosure Statement), and all information provided in the Required Disclosure Statement submitted prior to execution of this Lease is true and correct.

(c) No Broker. It has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby.

(d) No City Interest. No officer, agent, employee or representative of the City or NYCEDC has received or will receive any payment or other consideration for the making of this Lease and no officer, agent, employee or representative of the City or NYCEDC has any interest or will have any direct interest in this Lease or any proceeds thereof.

(e) Good Standing. Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, having the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified and in good standing under the laws of the State of New York and of each other jurisdiction in which such qualification is required.

(f) Due Execution and Delivery. The execution and delivery of this Lease by Tenant has been duly authorized by all required company action and creates legally binding and enforceable obligations on Tenant's part to be performed, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Requirements affecting creditors' rights generally and to general principles of equity.

(g) Other Agreements and Restrictions. The execution and delivery of this Lease by Tenant will not (i) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Tenant, (ii) result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Tenant is a party or by which it or its properties may be bound or affected; (iii) result in, or require, the creation or imposition of any lien, upon or with respect to any of the properties now owned or hereafter acquired by Tenant; or (iv) cause Tenant to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument to which Tenant is a party or by which it or its properties may be bound or affected.

(h) Legal Actions. There are no actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against, or affecting Tenant, any Affiliate of Tenant or any Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of Tenant before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of Tenant, or the ability of Tenant to perform its obligations under this Lease.

(i) Tax Returns. Tenant has filed all tax (federal, state and local) returns, if any, required to be filed and has paid all taxes, assessments and governmental charges and levies due thereon, including interest and penalties. Tenant has no knowledge of any claims for taxes due and unpaid which might become a lien upon any of its assets.

Section 18.4 Possession. Landlord shall deliver possession of the Premises to Tenant in accordance with the provisions of the Lease, subject to Title Matters, and Tenant shall accept possession of the Premises "as-is."

ARTICLE 19
LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 19.1 Landlord Not Liable. Landlord shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises, including the Bulkhead or any Pier, or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises (including any hatches, openings, installations, stairways or hallways or other facilities on the Premises, and the streets or sidewalk areas within the Premises) or that may arise from any other cause whatsoever, unless caused by the gross negligence, willful misconduct or intentionally tortious acts of Landlord, Lease Administrator, or any of their respective agents, contractors or employees. In addition, Landlord

shall not be liable to Tenant or to any Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless caused by Landlord's or Lease Administrator's or any of their respective agents', contractors' or employees', respective negligence or intentionally tortious acts. Nothing herein shall limit the rights, obligations or authority of Landlord acting in its governmental capacity.

ARTICLE 20
INDEMNIFICATION OF LANDLORD AND OTHERS

Section 20.1 Obligation to Indemnify. Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof, which subjects Landlord to any liability or responsibility for injury, damage to Persons or property or to any liability by reason of any violation of law or of any Requirement, but shall exercise such control over the Premises so as to fully protect Landlord against any such liability. The foregoing provisions of this Section 20.1 shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of Section 34.3 hereof. To the fullest extent permitted by law, Tenant shall indemnify and save Landlord and Lease Administrator and their respective officials, officers, directors, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (collectively, the "Tenant Liabilities"), including architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term, unless caused by the gross negligence, willful misconduct or intentionally tortious acts of any of the Indemnitees:

(a) Construction Work. Construction Work and/or any other work or act done in, on or about the Premises or any part thereof;

(b) Use and Possession. The use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises or any part thereof or of any street, sidewalk, curb, vault, bulkhead, pier, passageway or space comprising a part thereof or adjacent thereto (with respect to such adjacent areas for which Tenant is responsible for the maintenance and/or operations);

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant or any Subtenant or any of its or their respective officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees when such action is otherwise required;

(d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring

in, on, or about the Premises or any part thereof, or in, on or about any street, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto (with respect to such adjacent areas for which Tenant is responsible for the maintenance and/or operations);

(e) Lease Obligations. Tenant's failure to pay Rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and the proper exercise by Landlord of any remedy provided in this Lease with respect thereto;

(f) Liens, Encumbrance or Claim Against Premises. Any lien or claim that is alleged to have arisen against or on the Premises, or any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their officers, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, Landlord or any liability asserted against Landlord with respect thereto;

(g) Default of Tenant. Any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) Recording Fees. Any recording or transfer tax attributable to and required to be paid by Landlord with respect to the execution, delivery or recording of this Lease and a memorandum thereof;

(i) Contest and Proceedings. Any contest or proceeding brought or permitted to be brought pursuant to the provisions of Article 34 hereof; or

(j) Brokerage. Any claim for brokerage commissions, fees or other compensation by any Person who alleges to have acted or dealt with Tenant in connection with this Lease or the transactions contemplated by this Lease unless such person was a broker, finder or the like who alleges to have been retained by or to have acted for Landlord.

Section 20.2 Contractual Liability. The obligations of Tenant under this Article 20 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

Section 20.3 Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 20.1 hereof, then upon demand by Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Landlord shall approve, such approval not to be unreasonably withheld. The foregoing notwithstanding, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, the costs and expenses of which shall be paid by such Indemnitee except that Tenant shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee if either (i) the claim, action or proceeding is based solely on the negligence

or intentionally tortious acts of Tenant, (ii) the Indemnitee reasonably determines that Tenant is not diligently and competently resisting or defending the claim, action or proceeding, or (iii) there exists a conflict of interest that could impair the defense afforded to Indemnitee hereunder.

Section 20.4 Survival Clause. The provisions of this Article 20 shall survive the Expiration of the Term.

ARTICLE 21
HAZARDOUS MATERIALS

Section 21.1 Covenant.

(a) Tenant, prior to the Effective Date, has conducted environmental testing of the Premises the results of which show the environmental condition of the Premises as reflected in the documents described on Exhibit I. On the basis of such environmental report, Tenant shall have purchased the Pollution Liability coverage required by Section 7.7. Furthermore, throughout the Term of this Lease Tenant shall conduct and complete, at its sole cost and expense, any further investigations, studies, sampling and testing that Tenant deems necessary or as required by Environmental Laws or Governmental Authorities, and take any remedial actions required by applicable Environmental Laws and Governmental Authorities, necessary to commence construction of the Initial Construction Work (including the Demolition and Remediation Work), to achieve Final Completion of the Initial Construction Work and to operate its business at the Premises in accordance with the Required Uses ("Tenant Remedial Actions"). Landlord shall have no liability or obligation under this Lease with respect to Hazardous Substances.

(b) All actions required to be taken by Tenant under this Article 21 shall be performed by Tenant in a good, safe and workmanlike manner at Tenant's sole cost and expense in accordance with all Requirements of all applicable Governmental Authorities. Lease Administrator may retain, at Lease Administrator's option and at Tenant's expense, a consultant to monitor any required Tenant Remedial Actions and any other remedial actions Tenant is required to perform pursuant to the terms of this Article 21; provided, however, that the scope of work for any consultant retained by Lease Administrator in connection with Tenant Remedial Actions shall be as set forth in Exhibit T hereto.

Section 21.2 Tenant Remedial Actions.

(a) In the event that Tenant is required to perform testing or other investigation or provide for the remediation of Hazardous Substances as provided in Section 21.1(a), Tenant shall do so in accordance with the directions, rules and regulations of and/or a remedial action plan approved by DEP and any other Governmental Authority involved in the environmental review process for the Premises ("Remedial Action Plan"), which shall include without limitation the submission of a Hazardous Substances sampling protocol prepared by a qualified consultant approved by Lease Administrator and including a health and safety plan (the "Sampling Protocol"), testing and identification of any potential Hazardous Substances pursuant to the approved Sampling Protocol and, if remediation is required, submission to DEP (and any

other involved Governmental Authority) for approval of a Hazardous Substances remediation plan, including a health and safety plan (the "Remediation Plan"). Upon the approval of the Remediation Plan by DEP and any other involved Governmental Authority, Tenant shall provide for the remediation of such Hazardous Substances.

Section 21.3 Tenant's Further Obligations.

(a) Except in connection with Tenant Remedial Action(s), Tenant covenants that neither Tenant nor any of Tenant's Representatives shall use, transport, store, dispose of, or in any manner deal with Hazardous Substances at the Premises. In performing the Tenant Remedial Actions, Tenant shall not bring any new Hazardous Substances on the Premises nor exacerbate any Hazardous Substances pre-existing on the Premises as of the commencement date of such Remedial Action(s). Upon completion of the Tenant Remedial Actions, Tenant covenants that the Premises shall be kept free of Hazardous Substances, and neither Tenant nor any Tenant Representatives shall use, transport, store, dispose of or in any manner deal with Hazardous Substances at the Premises; provided that Tenant may utilize Hazardous Substances on the Premises in the amounts and in a manner that is commercially reasonable and customary for the uses to be conducted on the Premises (and that is in accordance with all Requirements). Tenant shall comply with, and ensure compliance by all Tenant Representatives, at all times during the Term, with all applicable Environmental Laws and any Site Management Plan (including required certifications) or other requirement of a Governmental Authority applicable to the Premises relating to Hazardous Substances and in the event that Tenant is required by any Site Management Plan or other requirement of a Governmental Authority to undertake ongoing environmental obligations with respect to the Premises, then Tenant shall retain a consultant, acceptable to Lease Administrator, at Tenant's sole cost and expense, to certify compliance with such continuing obligations. Tenant shall keep the Premises free and clear of any liens imposed pursuant to such Environmental Laws. In the event that Tenant receives any notice or advice from any Governmental Authority or any source whatsoever with respect to Hazardous Substances, at, under, on, from, adjacent to or affecting the Premises, Tenant shall immediately notify Landlord (with a copy to Lease Administrator). Tenant shall conduct and complete, at its sole cost and expense, all investigations, studies, sampling and testing, and take all remedial actions required by applicable Environmental Laws necessary to clean up and remove all Hazardous Substances from the Premises.

(b) Notwithstanding any provision of this Article 21 to the contrary, except in connection with (i) Tenant's Remedial Actions which Tenant shall be required to perform at its sole cost and expense with respect to all Hazardous Substances, including without limitation with respect to Pre-Existing Environmental Conditions (as hereinafter defined) and (ii) the portion of the Premises constituting the Expansion Space as to which the terms of this Article 21 shall apply with respect to all Hazardous Substances, including without limitation with respect to Pre-Existing Environmental Conditions, Tenant shall not be responsible for the remediation of any Pre-Existing Environmental Condition except as provided in the following clauses (1) and (2) or as otherwise specifically provided in this Lease:

(1) Tenant shall be responsible for a Pre-Existing Environmental Condition to the extent of (i) any violation by Tenant or Tenant's Representatives of any Environmental Laws pertaining to any Hazardous Substance; (ii) any failure by Tenant or

Tenant's Representatives to observe and comply with any written requirements, directives and procedures regarding any Hazardous Substance on, about or under the Premises set forth in any design guidelines, best management practices, agreements with Governmental Authorities (which agreements have been provided by Lease Administrator to Tenant or are subsequently provided to Tenant in the future), and (iii) any act or omission by Tenant or Tenant's Representatives in the operation of their business at the Premises, to the extent that the circumstances described in clauses (i), (ii), and (iii) exacerbate, disturb or increase any such Hazardous Substances that are a Pre-Existing Environmental Condition and thereby trigger a requirement under any Environmental Laws to remediate such Hazardous Substances; and

(2) Tenant shall be responsible for a Pre-Existing Environmental Condition to the extent that any excavation, demolition or Construction Work by or on behalf of Tenant or Tenant's Representatives on the Premises impacts or disturbs such Pre-Existing Environmental Condition.

Any remediation or other costs related to the foregoing in items (1) and (2) with respect to a Pre-Existing Environmental Condition shall be Tenant's sole responsibility, at its sole cost and expense.

A "Pre-Existing Environmental Condition" shall mean (x) any Hazardous Substances that were present on, about, under or migrating from the Premises prior to the commencement of the term of the Pre-Development License as set forth in the environmental reports referenced on Exhibit I attached hereto and made a part hereof; or (y) any Hazardous Substances present on, about, or migrating from the Premises which are discovered subsequent to the commencement of the term of the Pre-Development License and are not listed in the environmental report referenced on Exhibit I, but only provided that either (a) Tenant and Landlord mutually agree that such Hazardous substances existed prior to the commencement of the term of the Pre-Development License or (b) Tenant proves pursuant to and in accordance with the procedures set forth in the following paragraph that such Hazardous Substances in fact existed on, about, under or migrated onto the Premises prior to the commencement of the term of the Pre-Development License.

In any legal action or proceeding in which Landlord and/or Lease Administrator and Tenant are opposing parties Tenant shall have the burden of proof, as hereinafter defined, as to any and all issues of fact with respect to: (1) whether the presence of any Hazardous Substance on, about or under or migrating from the Premises occurred prior to or subsequent to the commencement of the term of the Pre-Development License; (2) whether any Hazardous substance disposed of or released from the Premises or which migrated from the Premises came to be present on, about or under the Premises prior or subsequent to the commencement of the term of the Pre-Development License; and (3) whether Tenant exacerbated any pre-existing environmental condition so as to cause a Hazardous Substance to first become regulated on and after the commencement of the term of the Pre-Development License and /or during the Term of this Lease. For purposes of this Section 21.3, "burden of proof" shall mean both the legal burden of going forward with the evidence and the legal burden of establishing the truth of any fact by a preponderance of the evidence.

(c) Without limiting any other of Tenant's obligations under this Article 21, Tenant shall provide Landlord and Lease Administrator, at the sole cost and expense of Tenant,

with such information, documentation, records, correspondence, notices, reports, test results and certifications and any other information as Landlord shall reasonably request in connection with any of Tenant's obligations pursuant to this Article 21, and as may be necessary for the preparation of any application, registration, statement, certification, notice, communication, negative declaration, clean-up plan or other information, documentation or communication required by Environmental Laws or this Article 21. Further, Tenant agrees, at its sole cost and expense, to provide Landlord and Lease Administrator with copies of all the aforementioned items as well as all other submissions provided by Tenant to a Governmental Authority prior to making such submission and by a Governmental Authority to Tenant at the time the same are provided to Tenant with respect to any matter involving Hazardous Substances and Tenant's obligations under this Article 21.

Section 21.4 Indemnification.

(a) Tenant shall defend, indemnify and save the Indemnitees harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees (i) arising out of, or in any way related to the presence, storage, transportation, disposal, release or threatened release of any Hazardous Substances over, under, in, on, from or affecting the Premises, and any persons, real property, personal property, or natural substances thereon or affected thereby from the date of the commencement of the term of the Pre-Development License and continuing through the later of the Expiration of the Term of this Lease and return of the Premises in accordance with the terms of this Lease, including any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against Landlord or Lease Administrator under the Comprehensive Environmental Response, Compensation, and Liability Act (subject to Section 21.4(b) hereof), (ii) arising out of any action taken by Tenant or any of Tenant's Representatives relating to Hazardous Substances, and (iii) any violations of any Environmental Laws by Tenant or any of Tenant's Representatives. The foregoing notwithstanding, Tenant shall not be obligated to indemnify Indemnitees for any liabilities in connection with a Pre-Existing Environmental Condition except for Pre-Existing Environmental Conditions for which Tenant is responsible as specifically provided in this Article 21 (including without limitation in Section 21.3(b)) (in which case Tenant shall indemnify the Indemnitees in accordance with the terms of this Section 21.4). The foregoing is not intended and shall not create any obligation on the part of Landlord or Lease Administrator to relieve Tenant of its obligations under Article 19 hereof or liability of Tenant to any third party, nor be deemed to constitute an indemnification by Landlord of Tenant with respect to the presence, release or discharge of any Hazardous Substances. The indemnity provisions set forth in Article 20 shall also apply to the indemnity obligations of Tenant set forth in this Section 21.4(a). The indemnity set forth in this Section 21.4 shall survive the expiration or earlier termination of this Lease.

(b) Notwithstanding the foregoing, Tenant shall not be required to indemnify, defend or save harmless the Indemnitees from any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against any of the Indemnitees arising out of any claim by any Person alleging bodily injury as a result

of exposure to any Hazardous Substances which exposure occurs on the Premises prior to the commencement of the term of the Pre-Development License.

ARTICLE 22
LANDLORD'S RIGHT TO DISCHARGE LIENS

Section 22.1 Discharge of Liens. If Tenant shall fail to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien or any public improvement lien to be discharged in accordance with the provisions of Article 17 hereof, and if such lien shall continue for an additional thirty (30) days after the applicable cure period provided for in Article 17, then, subject to any rights granted to a Recognized Mortgagee under this Lease, Landlord may, but shall not be obligated to, discharge such lien of record by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 22.2 Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be reimbursed by Tenant within thirty (30) days of Landlord's demand therefor, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3 Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article 22 shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to take such action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.4 Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including reasonable attorneys' fees and disbursements.

ARTICLE 23
USE AND OPERATING COMMITMENTS

Section 23.1 Use and Operating Requirements. The Landlord in authorizing this Lease, has materially relied upon Tenant's commitment to develop the Project as described in the Project Commitments set forth Exhibit B annexed hereto, which sets forth, among other things, (i) specific equipment and other elements to be included in the Project; (ii) minimum investments to be made in the Project by Tenant and (iii) specific construction milestones for the Project, all of which Tenant has committed to perform (collectively, the Project Commitments). Tenant

acknowledges and agrees that its ongoing commitment to use and operate the Project in accordance with the Project Commitments, and otherwise in accordance with this Article 23, and for no other use or purpose, is of paramount importance to Landlord, and a material inducement to Landlord in agreeing to enter into this Lease, and that Tenant's failure to do so in accordance with the provisions set forth in this Article 23 shall constitute a material breach under the terms of this Lease. Accordingly, at all times during the Term, Tenant shall comply with the use and operating requirements for the Project set forth in this Article 23, including as follows:

(a) Tenant shall continuously, on a daily basis throughout the Term, use the Premises (and cause the Premises to be used) (i) for the development and operation of a maritime dependent concrete manufacturing plant and (ii) to a di minimus extent (utilizing not more than ten percent (10%) of the Premises), for a compressed natural gas fueling station (the uses under this clause (a), collectively, the "Required Uses"). Without limiting Landlord's right to determine whether a Default or Event of Default has occurred with respect to Tenant's obligations pursuant to this Section 23.1(a) for any reason not described in the following provisions of this clause (a), in the event that Landlord determines that less than fifty percent (50%) of the raw materials used in Tenant's concrete manufacturing plant in any period of twelve (12) months determined on a rolling basis (with a new 12-month period beginning on the first day of each new month) was delivered to the Premises (or to the pier immediately adjacent to the Premises) by waterborne craft, commencing with Final Completion of the Initial Construction Work, subject to Unavoidable Delays not to exceed 30 calendar days, the Premises shall be deemed no longer used as a maritime dependent concrete manufacturing plant and no longer used for the "Required Uses" as required by this Section 23.1(a) and by Section 23.2(a) and Landlord shall have the remedies provided in Article 24.

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) HireNYC: Permanent.

(1) Tenant has submitted to Lease Administrator a HireNYC: Permanent Program ("Tenant's HireNYC: Permanent Program") which states Tenant's proposed plans for participation in NYCEDC's hiring and workforce development program which aims to create employment opportunities for low-income persons and includes certain hiring, retention, advancement and training goals ("Goals") as well as other requirements, as more particularly described in Tenant's HireNYC: Permanent Program. Tenant's 's HireNYC: Permanent Program is attached hereto as Exhibit J-2.

(2) Tenant agrees that from the date on which Tenant commences business operations at the Premises through the date that is eight (8) years from the date on which Tenant commenced business operations at the Premises ("HireNYC: Permanent Program Term"), Tenant and its successors and assigns and all Subtenants at the Premises shall use good faith efforts to reach the Goals set forth in the Tenant's HireNYC: Permanent Program. Tenant further agrees to be bound by all the

covenants and requirements in Tenant's HireNYC: Permanent Program, including the provision of all notices, documents and compliance reports as set forth in Exhibit J-2 hereto.

(3) During the HireNYC: Permanent Program Term, Tenant agrees to incorporate the terms of Tenant's HireNYC: Permanent Program into any and all Subleases at the Premises requiring tenants and subtenants to use good faith efforts to reach the Goals and to be bound by all of the covenants and requirements in Tenant's HireNYC: Permanent Program to the same extent as Tenant is required to use good faith efforts to reach the Goals and to be bound by all of the covenants and requirements in Tenant's HireNYC: Permanent Program for the balance of the HireNYC: Permanent Program Term.

(e) Tenant shall not use or occupy the Premises, and shall not permit the Premises or any part thereof to be used or occupied, for any purpose other than the Required Uses without (in any such instance) the prior written consent of Landlord in its sole discretion. Without limiting the generality of the preceding sentence, Tenant shall not use or permit any portion of the Premises to be used (i) for any unlawful or illegal business, use or purpose, (ii) for any purpose, or in any way in violation of the provisions of this Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, (iii) in such manner as may make void or voidable any insurance then in force with respect to the Premises, or (iv) for any residential use, and Tenant shall make good faith efforts to refrain from engaging in any unethical or disreputable method of business operation and shall make good faith efforts to cause other Persons on the Premises (including Subtenants) to refrain from using such methods of business operation. Tenant shall, promptly upon Tenant's knowledge of any business, use, purpose, or occupation of the Premises in violation of this Section 23.1, take all necessary steps, legal and equitable, to compel the discontinuance of such business, use or purpose, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of this Section 23.1 or Article 16 hereof. The provisions of this Section 23.1 shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

Section 23.2 Operation. The operation of the Premises shall be under the exclusive supervision and control of Tenant, provided that Tenant shall in all events operate the Premises on a daily basis consistent with the Premises being operated as a maritime dependent concrete manufacturing plant and natural gas fueling station in accordance with Section 23.1. The requirements for the operation of the Premises set forth in this Article 23are hereinafter referred to as the "Operating Commitments."

(a) Promptly, but in no event later than sixty (60) days following Final Completion of the Initial Construction Work, Tenant shall commence operation of the Premises for the Required Uses and thereafter continuously throughout the Term operate the Premises on a daily basis for the Required Uses.

(b) In furtherance of the requirement set forth in Section 23.2(a), Tenant shall produce not less than 25,000 cubic yards of concrete annually from the operation of the Premises for the Required Uses.

ARTICLE 24
EVENTS OF DEFAULT, REMEDIES, ETC.

Section 24.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant;

(b) if Tenant shall have failed to commence the Demolition and Remediation Work included in the Initial Construction Work on or before the Scheduled Demolition and Remediation Commencement Date (subject to Unavoidable Delays not to exceed thirty (30) calendar days);

(c) if Tenant shall have failed to achieve Substantial Demolition and Remediation Completion on or before the Scheduled Demolition and Remediation Completion Date (subject to Unavoidable Delays not to exceed thirty (30) calendar days);

(d) if Tenant shall fail to commence the Initial Construction Work (other than Demolition and Remediation Work) not later than the Scheduled Construction Commencement Date (subject to Unavoidable Delays not to exceed thirty (30) calendar days);

(e) if Tenant shall have failed to Substantially Complete the Initial Construction Work on or before the Scheduled Construction Completion Date (subject to Unavoidable Delays not to exceed thirty (30) calendar days);

(f) if Tenant shall have failed to Finally Complete the Initial Construction Work on or before the Final Completion Date (subject to Unavoidable Delays not to exceed thirty (30) calendar days);

(g) if Tenant shall enter into an Assignment, Transfer or Sublease in violation of the provisions of this Lease, and such Assignment, Transfer or Sublease shall not be made to comply with the provisions of this Lease or canceled within twenty (20) days after Landlord's notice thereof to Tenant;

(h) if Tenant shall fail to maintain the insurance required to be maintained by Tenant pursuant to Article 7;

(i) if Tenant shall fail to comply in any material respect with the Project Commitments (excluding those covered by Section 24.1(b), (c), (d), (e) and (f) hereof), and such failure shall continue for a period of thirty (30) days after notice thereof from Landlord or the Lease Administrator to Tenant;

(j) if Tenant shall fail to use the Premises as "a maritime dependent concrete manufacturing plant" as described in Section 23.1 hereof and such non-compliance shall continue for a period of six (6) months after notice thereof from Landlord to Tenant, except that such 6-month cure period shall not apply after Tenant shall have received two such notices from Landlord in any ten (10) year period;

(k) if Tenant shall have failed to comply with any of the Required Uses and the Operating Commitments set forth in Article 23 hereof that are not covered by Section 24.1(j) above and such failure shall continue for a period of thirty (30) days after notice thereof from Landlord or Lease Administrator to Tenant;

(l) if Tenant shall fail to observe or perform (subject to Unavoidable Delays not to exceed 30 days) one or more of the terms, conditions, covenants or agreements of this Lease not otherwise expressly provided for in this Section 24.1, and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(m) to the extent permitted by law, if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(n) to the extent permitted by law, if Tenant shall make a general assignment for the benefit of creditors;

(o) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to, or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant shall take any partnership or corporate action in furtherance of any action described in Sections 24.1(m), 24.1(n) or 24.1(o) hereof;

(p) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein,

such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated;

(q) if any of the representations made by Tenant in Article 18 hereof shall be proved to be or shall have been false or misleading in any material respect as of the date made and are not cured within thirty (30) days after delivery of notice thereof from Landlord; or

(r) (i) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall cause this Lease or the leasehold estate to be in imminent danger of being forfeited or sold in discharge of such levy, or (ii) if a levy under execution or attachment in an amount equal to or greater than Two Hundred Fifty Thousand Dollars ($250,000.00) shall be made against Tenant or any of its properties other than the Premises or any part thereof, the income therefrom or the leasehold estate created thereby and such execution or attachment shall not have been vacated or removed by court order, bonding or otherwise within a period of one hundred twenty (120) days.

(s) Subject to Tenant's rights of contest pursuant to Section 34.3 hereof and the terms of Section 24.1(t) which shall control with regard to a failure to comply with Article 21, if Tenant shall violate any of the Requirements as required under Section 16.1 hereof, and such violation shall continue for thirty (30) days following notice thereof from Landlord specifying such violation. Notwithstanding the foregoing, if compliance with the Requirements requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done, or removed within such thirty (30) day period, no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion; provided however in no event shall the period of any such extension exceed one hundred (180) days. Notwithstanding the foregoing terms of this Section 24.1(s), in no case shall (i) notice be required and any cure period be permitted to Tenant where a violation threatens imminent harm to persons or property or (ii) any cure period be permitted to Tenant with regard to the violation of any Requirement once Tenant shall have violated the same Requirement three (3) times.

(t) If Tenant shall fail to comply with Article 21 hereof and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done, or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have (i) commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion and (ii) remedied any condition which would pose an imminent and material risk or hazard to persons or property. In no event shall the period of any such extension exceed one hundred (180) days.

Section 24.2 Enforcement of Performance.

(a) Judicial Proceedings. If an Event of Default occurs, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce

performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

(b) Contest by Tenant. If Landlord shall claim that a Default has occurred but such claim shall be contested by Tenant by legal proceedings, the time in which Tenant must cure such Default shall not commence until a final determination has been made with respect to such contested claim. However, if the Default claimed by Landlord creates, in Landlord's reasonable opinion, a condition dangerous to public health or safety, then notwithstanding the fact that Tenant may contest the Default claim, then either (x) Tenant shall cause the dangerous condition to be remedied or (y) Landlord shall have the right to enter the Premises and cure the dangerous condition. Such cure shall be at Landlord's expense if it is ultimately resolved that no Default hereunder existed, or at Tenant's expense if it is ultimately resolved that a Default hereunder existed. Upon such ultimate resolution, if such is that a Default existed, Tenant shall within ten (10) days of demand reimburse Landlord for Landlord's cost of curing the dangerous condition, with interest thereon at the Late Charge Rate accruing from Landlord's incurring of such costs.

Section 24.3 Expiration and Termination of Lease.

(a) Default Notice. If an Event of Default occurs, Landlord shall have the right (but not the obligation), at any time thereafter, to deliver a written notice (a "Default Notice") to Tenant specifying the Event of Default in reasonable detail.

(b) Cure Period. Upon receipt of a Default Notice, Tenant shall immediately, diligently and continuously pursue remediation of the Default which is the basis of the Event of Default, and shall otherwise cause such Default to be remediated or cured within ten (10) days of the date of the Default Notice (the "Cure Period").

(c) Termination Notice. If an Event of Default is not remediated or cured within the applicable Cure Period, then Landlord shall have the right (but not the obligation) to terminate this Lease by delivery of a written notice (a "Termination Notice") to Tenant. If delivered, such Termination Notice shall state that this Lease and the Term shall expire and terminate on a date specified therein, which date shall not be less than ten (10) days after the giving of such Termination Notice, and in such event this Lease and the Term shall terminate on the date specified in such Termination Notice in accordance with Section 24.3(e). If such termination is stayed by order of any court having jurisdiction over any case described in Section 24.1 (o) or (p) hereof or by federal or state statute then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.10 hereof, Landlord, to the extent permitted by law, or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate

this Lease on five (5) days' notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of any five (5) day period described in this Section 24.3(c), this Lease shall cease and terminate (subject to the applicable provisions of Section 24.3(e)) and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(d) Re-Entry. If this Lease is terminated as provided in Section 24.3(c) hereof, Landlord may, without notice, re-enter and repossess the Premises and may dispossess Tenant by summary proceedings or otherwise.

(e) Termination. Notwithstanding any other provisions of this Lease, if Landlord shall terminate this Lease pursuant to Section 24.3(c), then (x) this Lease shall be terminated as to the entire Premises and this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Expiration Date, and Tenant shall immediately quit and surrender the Premises, (y) Landlord shall retain the remaining portion of the Security Deposit (including the Good Faith Deposit if then a part of the Security Deposit, except that in the limited circumstance where Landlord terminates this Lease in connection with an Event of Default described in any of Sections 24.1(b), (c), (d), (e) or (f) that arises solely due to an Unavoidable Delay exceeding thirty (30) calendar days and provided that no other Default or Event of Default is then outstanding, Landlord shall return the Good Faith Deposit to Tenant) and (z) thereafter neither party shall have any rights against or liabilities to the other by reason of this Lease, except under those provisions that expressly survive the termination of this Lease; provided, however, Tenant shall pay to Landlord all Rental payable under this Lease to the date on which the Lease was terminated and shall remain liable for and shall pay to Landlord all Rental falling due thereafter on the respective dates when such Rental would have been payable but for the termination of this Lease (which such obligations of Tenant shall survive the termination of this Lease) except that in connection with a termination of the Lease due solely to an Event of Default described in any of Sections 24.1(b), (c), (d), (e) or (f) that arises solely due to an Unavoidable Delay exceeding thirty (30) calendar days and no other Default or Event of Default is then outstanding and where Landlord returns the Good Faith Deposit to Tenant as provided in this Section 24.3(e), Tenant shall not be required to pay to Landlord such Rent falling due after termination of this Lease or any other amounts payable pursuant to this Article 24 (unless such amount is also payable pursuant to another Article of this Lease in which case Tenant's liability pursuant to such other Article shall continue) other than Rental payable through the date on which this Lease was terminated. Notwithstanding the foregoing or anything to the contrary in this Lease, including in this Section 24.3(e), upon termination of this Lease for any reason in all cases Tenant shall remain liable under those provisions that expressly survive the termination of this Lease (including without limitation for any liability with regard to Hazardous Substances arising from and/or during Tenant's use and occupancy of the Premises).

(f) Completion of Construction Work. In the event of any termination pursuant to Section 24.3(c), with respect to any portions of the Premises on which Construction Work has commenced, Landlord may (i) complete or demolish all such uncompleted Construction Work (and in the event of demolition, restore the Premises to the condition in which Tenant is required to surrender the Premises upon expiration or earlier termination of the Term of this Lease in accordance with Article 30 hereof (the "Surrender Condition"), (ii) repair and alter any such portion(s) of the Premises in such manner as Landlord may deem necessary

or advisable without affecting any liability of Tenant (provided that Tenant shall not be responsible for the increase in cost, if any, directly related to any alteration that deviates materially from the Plans and Specifications for the Construction Work , but such limitation on liability (1) shall only extend to so much of the alternation as so materially deviates and (2) for the avoidance of doubt shall not in any case apply to any demolition and the restoration of the Premises to the Surrender Condition), and (iii) draw on the Security Deposit and the Completion Guaranty and any other security (as the case may be) therefor for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant. Notwithstanding the foregoing, Tenant shall remain liable to pay for the cost and expense of completing and/or demolishing (and in the event of demolition, restoring the Premises to the Surrender Condition) any Construction Work underway at the time of such termination related to general site improvements and shall be responsible for site cleanup and backfilling as necessary for any other Construction Work underway at the time of such termination.

(g) Reletting. Landlord in no way shall be responsible or liable for any reletting or failure to relet any portion(s) of the Premises or for any failure to collect any rent due on any reletting, and no such reletting and collection of rent or failure to relet or to collect rent shall operate to give Tenant any rights with respect to the Premises or the rentals from reletting or relieve Tenant of any liability under this Lease or to otherwise affect any such liability. Landlord shall pay and dispose of any rent and other sums collected or received as a result of such reletting as follows:

(i) First, Landlord shall pay to itself the cost and expense of terminating what would otherwise have constituted the unexpired portion of the Term, re-entering, retaking, repossessing, repairing, altering, demolishing and/or completing construction of any portion(s) of the Premises and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and court costs and reasonable attorneys' fees and disbursements;

(ii) Second, Landlord shall pay to itself the cost and expense sustained in securing any new tenants and other occupants, including in such costs, brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises, and to the extent that Landlord shall maintain and operate any portion(s) of the Premises, the cost and expense of operating and maintaining same; and

(iii) Third, Landlord shall pay to itself any balance remaining on account of the liability of Tenant to Landlord under this Lease.

Section 24.4 Waiver of Rights of Tenant. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute to redemption, re-entry, repossession or restoration if Tenant is dispossessed by a judgment or order of any court or judge. Tenant shall execute, acknowledge and deliver within ten (10) days after request by Landlord any instrument that Landlord may request, evidencing such waiver or release.

Section 24.5 Receipt of Moneys After Notice or Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any

notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After delivery of the Termination Notice, and the consequent termination of this Lease pursuant to Section 24.3(e), or after the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due under this Lease, notwithstanding the termination thereof, without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.6 Waiver of Service. Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Tenant, for and on behalf of itself and all Persons claiming through or under Tenant, also waives any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession or (d) to restore the operation of this Lease, if Tenant is dispossessed by a final, non-appealable judgment or by warrant of a court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings.

Section 24.7 Strict Performance. No failure by Landlord to insist upon Tenant's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord by reason of a Default or Event of Default, and no payment or acceptance of full or partial Rental during the continuance of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default by Tenant, shall be waived, altered or modified except, in either case, by a written instrument executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default.

Section 24.8 Landlord's Right to Enjoin Defaults or Threatened Defaults and Compel Specific Performances. In the event of Tenant's Default or threatened Default, Landlord shall be entitled to enjoin the Default or threatened Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, and Landlord shall have the right to compel specific performance as may be available in a court of equity notwithstanding any other remedies that may be available to Landlord.

Section 24.9 Tenant's Payment of All Costs and Expenses. Tenant shall pay Landlord all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant shall also pay Landlord all costs and expenses, including reasonable attorneys' fees and disbursements incurred by Landlord in enforcing any of the covenants and provisions of this Lease, unless Tenant is the prevailing party in any action or

proceeding commenced to enforce any of the covenants or provisions of this Lease. All of the sums paid or obligations incurred by Landlord, with interest and costs, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 24.10 Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including such rights and remedies as may be necessary to adequately protect Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under the Lease, shall include, without limitation, all of the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the Base Rent payable hereunder, for the then current Lease Year;

(g) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure

Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C. § 365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including the assurances referred to in Title 11 U.S.C. § 365(b), as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Lease.

Section 24.11 Funds Held by Depositary. If this Lease shall terminate as a result of an Event of Default, any funds held by Depositary shall be paid to Tenant, or any Person claiming through Tenant, unless (i) any amounts are owed hereunder to Landlord in which case such funds shall be paid to Landlord to the extent of such amounts owed to Landlord or (ii) a Recognized Mortgagee has entered into a new lease pursuant to Sections 11.4 hereof, in which case such funds shall continue to be held by Depositary pursuant to the terms of such new lease. Notwithstanding the foregoing, any insurance proceeds or condemnation award then made available shall be retained by the Depositary and disbursed directly to Landlord for any Construction Work or other work to be performed by Landlord pursuant to this Article 24 .

Section 24.12 Funds Held by Tenant. From and after the date, if any, on which Tenant receives notice from Landlord that an Event of Default shall has occurred hereunder, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof or any awards payable in connection with the condemnation of the Premises or any portion thereof theretofore paid to Tenant (except to the extent that such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Article 8 or Article 9), except to (i) a creditor that is not an Affiliate of Tenant or a Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of Tenant, in payment of amounts then due and owing by Tenant to such creditors, (ii) an Affiliate of Tenant or a Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of Tenant, in payment of amounts then due and owing by Tenant to such Affiliate or such other

Person for items and services provided to Tenant in connection with its operations conducted at the Premises or any portion thereof to the extent such amounts do not exceed those that are customarily and reasonably paid in arm's length transactions to Persons who are not Affiliates or such members, partners, directors, officers or family members for comparable items and services, (iii) the holders of Recognized Mortgages, in payment of the principal amount, all unpaid and accrued interest and other sums then outstanding under such Recognized Mortgages and any other amounts payable pursuant to such Recognized Mortgages, (iv) in the case of insurance proceeds or condemnation awards, to the parties performing any Restoration, and (v) to satisfy Requirements; provided however, that the foregoing provisions of this Section 24.12 shall not prohibit Tenant from making distributions to such directors, officers or shareholders of Tenant or to such partners or tenants-in-common comprising Tenant, if, after making any such distributions to such directors, officers or shareholders of Tenant or to such partner or tenants-in-common comprising Tenant, Tenant shall have retained an amount which is not less than the amount which Landlord reasonably claims is due and owing in connection with such Event of Default or reasonably claims will be adequate to cure such Event of Default. The foregoing shall be subject to the rights of Landlord upon termination of this Lease pursuant to Section 24.3 and the last sentence of Section 24.11.

Section 24.13 Rights Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.14 Survival. The rights and remedies of Landlord and the other provisions of this Article 24 shall survive the expiration or earlier termination of this Lease.

ARTICLE 25
NOTICES

Section 25.1 Notices. All notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) personally delivered with proof of delivery thereof, (ii) sent by United States certified mail, return receipt requested, postage prepaid, (iii) sent by reputable overnight courier service or (iv) transmitted by electronic transmission (with written confirmation of receipt);, in each case addressed to the respective parties as follows:

If to Landlord:

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: Executive Vice President, Real Estate Transaction Services

with a copy to:

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: General Counsel

and to:

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attn: Asset Management Division Head

and to:

New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

If to Tenant:

Ferrara Bros. LLC
120-05 31st Avenue
Flushing, New York 11354
Attention: Joseph Ferrara, Jr., Esq.

With a copy to:

Sullivan PC
7 East 20th Street
New York, New York 10003
Attention: Peter Sullivan, Esq.

or to such other address or party as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt. Notices shall be deemed given when received if delivered personally or by overnight courier or by facsimile (provided receipt of such facsimile is confirmed prior to 5:00 p.m. on a Business Day, otherwise delivery shall be deemed given on the following Business Day), or if mailed then two (2) Business Days after such mailing in the United States, with failure to accept delivery to constitute delivery for purposes hereof.

ARTICLE 26
STREET WIDENING

Section 26.1 Proceedings for Widening Street. If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alteration upon the Premises, or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, curbs or appurtenances, Tenant shall comply promptly with such requirements as are required by law, at its sole cost and expense, and if Tenant shall fail to comply with such requirements within thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, if, within such thirty (30) day period, Tenant shall fail to commence to remedy such failure or shall fail to diligently and continuously, subject to Unavoidable Delays, prosecute the same to completion), then, Landlord, upon notice to Tenant may comply with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder and shall be payable by Tenant to Landlord on demand.

Section 26.2 Contest of Proceedings. Tenant shall be permitted to contest in good faith any proceedings or orders for street widening or any changes or alterations resulting therefrom or necessitated thereby; provided, that such contest shall be brought in accordance with the provisions of Section 34.3 hereof as though Tenant were contesting a Requirement thereunder.

Section 26.3 Distribution of Award. Any award made in connection with such proceedings shall be deemed to be an award made in connection with a taking of less than all or Substantially All of the Premises and shall be paid, distributed and applied in accordance with the provisions of Section 9.2 hereof.

ARTICLE 27
EXCAVATIONS AND SHORING

Section 27.1 Excavations on Adjacent Property. If any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, then Tenant, at its option, shall either:

(a) afford to Landlord or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation the right to enter upon the Premises in a reasonable manner for the purpose of doing such work as may be necessary to preserve any of the walls of the Buildings or other structures on the Premises from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant; provided, that such representative is available when the entry and work are scheduled to be done, and in all events such work shall be performed with reasonable diligence (subject to Unavoidable Delays) in accordance with, and subject to, any applicable Requirements, or

(b) perform or cause to be performed, at Landlord's or such other Person's expense, all such work as may be necessary to preserve any of the walls of the Buildings from injury or damage and to support them by proper foundations.

Section 27.2 No Claim Against Landlord. Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder.

ARTICLE 28
CERTIFICATES BY LANDLORD AND TENANT

Section 28.1 Certificate of Tenant. Tenant shall, within fifteen (15) days after notice by Landlord, execute, acknowledge and deliver to Landlord or any other Person specified by Landlord, a statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, (b) stating (i) whether Tenant has given Landlord notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease, and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default and (c) stating such other information as Landlord may reasonably request.

Section 28.2 Certificate of Landlord. Landlord shall, within fifteen (15) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, (b) stating (i) whether an Event of Default has occurred or whether Landlord has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and (ii) whether, to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default and (c) stating such other information as Tenant may reasonably request.

Section 28.3 Substantial Completion Certificate. Upon Tenant's satisfaction of the conditions required with respect to Substantial Completion of the Construction Work, Landlord, upon request of Tenant, shall deliver a certificate in recordable form confirming same and setting forth the date on which the Construction Work has been Substantially Completed.

Section 28.4 Authority of Party Executing Certificate. If the party delivering a certificate described in this Article 28 shall be other than an individual, the instrument shall be signed by a person authorized to execute on behalf of said party and the delivery of such instrument shall be a representation to such effect. Any such certificate may be relied upon by any prospective transferee of the interest of Landlord or Tenant hereunder or by any prospective Mortgagee or Recognized Mortgagee.

ARTICLE 29
CONSENTS AND APPROVALS

Section 29.1 Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 29.2 Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event of a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met (such that the consent or approval should have been granted), the consent or approval shall be deemed granted but the granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 29.3 No Unreasonable Delay; Reasonable Satisfaction. If it is provided that a particular consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed and any matter required to be done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party.

Section 29.4 No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

ARTICLE 30
SURRENDER AT END OF TERM

Section 30.1 Surrender of Premises. Upon the Expiration of the Term (or upon a termination of this Lease and re-entry by Landlord upon the Premises (or a portion thereof) pursuant to Article 24 hereof), Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises (or applicable portion thereof) to Landlord, in good order,

condition and repair, reasonable wear and tear excepted, with a fence erected around the perimeter of the Premises, free and clear of all Subleases, liens and encumbrances other than (a) those liens and encumbrances which Landlord shall have consented and agreed to in writing and (b) with regard to the Original Premises only, the Title Matters. For the avoidance of doubt, it is the agreement of the Parties that with regard to the Expansion Space, upon the Expiration of the Term (or upon a termination of this Lease and re-entry by Landlord upon the Premises (or portion thereof) pursuant to Article 24 hereof), Tenant shall surrender the Expansion Space to Landlord free and clear of all Subleases, liens, encumbrances and exceptions to title other than those caused by Landlord or a prior owner of fee title in and to the property constituting the Expansion Space. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 30.2 Delivery of Subleases, Etc. Upon the Expiration of the Term (or upon a termination of this Lease and re-entry by Landlord upon the Premises (or a portion thereof) pursuant to Article 24 hereof), Tenant shall deliver to Landlord, Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original (or, if unavailable, true copies of) licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for the Building, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Building, together with a duly executed assignment thereof to Landlord, and all financial reports, books and records required by Article 36 hereof, and any and all other documents of every kind and nature whatsoever in Tenant's possession relating to the operation of the Premises, all to the extent necessary for the continued operation or maintenance of the Premises.

Section 30.3 Personal Property and Plant Equipment. Upon the Expiration of the Term (or upon a termination of this Lease and re-entry by Landlord upon the Premises (or a portion thereof) pursuant to Article 24 hereof), Tenant shall remove all Plant Equipment (other than the CNG (Compressed Natural Gas) Station) and all Tenant's Equipment; provided that in both cases Tenant shall immediately and at its sole cost and expense repair and restore, or cause to be repaired and restored, the Premises to the condition existing prior to the installation of such Plant Equipment and Tenant Equipment and repair any damage to the Premises due to such removal and in the case of Plant Equipment upon removal Tenant shall return the Premises to a vacant condition, removing all foundations and footings and leaving the Premises graded and paved. It is understood and agreed that upon termination of this Lease Tenant is required to remove all Plant Equipment (other than the CNG (Compressed Natural Gas) Station) from the Premises in accordance with the immediately preceding sentence unless, upon the request of Tenant, Landlord consents to allow Tenant to leave any of the Plant Equipment on the Premises. Any Tenant Equipment or Plant Equipment (other than the CNG (Compressed Natural Gas) Station) or other personal property of Tenant or of any Subtenant which shall remain on the Premises for thirty (30) days after the termination of this Lease (without Landlord consent) and after the removal of Tenant or such Subtenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant ("Abandoned Property"), and either may be retained by Landlord as its property or be disposed of, without accountability in such manner as Landlord may see fit, subject to the rights of any Recognized Mortgagee if a new lease has not been entered into pursuant to Section 11.4 hereof; provided, however, that Landlord

may remove such Abandoned Property and Tenant shall be responsible for all costs incurred by Landlord in removing such Abandoned Property and in returning the Premises to the condition required by this Section 30.3. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant after the expiration of such ten (10) day period.

Section 30.4 Survival Clause. The provisions of this Article 30 shall survive the Expiration of the Term.

ARTICLE 31
ENTIRE AGREEMENT

Section 31.1 Entire Agreement. This Lease, together with the Exhibits hereto, contain all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein and therein. Notwithstanding the foregoing provisions of this Section 31.1, Tenant's indemnification obligations set forth in the Pre-Development License and in the Demolition License (and any other obligations that survive as set forth in such licenses) shall remain in force and effect in accordance with the terms of those licenses and in the event of any conflict between Tenant's indemnification obligations in such licenses and in this Lease, the terms most beneficial to Landlord shall control.

ARTICLE 32
QUIET ENJOYMENT

Section 32.1 Quiet Enjoyment. Landlord covenants that, as long as no Event of Default has occurred and has not been remedied, Tenant shall and may (subject to the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrances except for Title Matters, any and all matters affecting title in connection with the Expansion Space, and those encumbrances created or suffered by Tenant.

Section 32.2 Access and Inspection. Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees shall have the right to enter the Premises upon reasonable notice to Tenant (except that no notice shall be required in the case of an emergency as determined by Landlord in its reasonable discretion) during regular business hours, and in accordance with Tenant's reasonable instructions.

ARTICLE 33
SECURITY DEPOSIT AND GOOD FAITH DEPOSIT

Section 33.1 Security Deposit. As collateral security for Tenant's obligation to perform the Initial Construction Work, pay Rental and any other amounts payable by Tenant under this Lease, as and when payment of such Rental or other amounts becomes due and payable, and for the faithful performance of all other terms, covenants and conditions of this Lease (including terms and covenants that survive the expiration or earlier termination of this

Lease, or Tenant vacating the Premises), and for any liability that Tenant may incur to Landlord in connection with this Lease, Tenant shall, on or before the Effective Date, deposit with Lease Administrator an amount equal to (i) six (6) months Base Rent in the amount of One Hundred and Ten Thousand Dollars ("110,000.00") (as such deposit may be adjusted under this Article 33), plus (ii) the Good Faith Deposit until such time as the Good Faith Deposit is released in accordance with the terms of Section 33.5 hereof (the amounts set forth in clauses (i) and (ii) being, collectively, the "Security Deposit") by check drawn against an account maintained with a bank that is a member of the New York Clearinghouse.

(a) The Security Deposit shall be deposited by Lease Administrator in an interest bearing account. All interest that may accrue thereon shall belong to Lease Administrator and shall be paid to Lease Administrator as compensation for its services hereunder and Lease Administrator may withdraw and retain for its own account the interest accrued on the Security Deposit from time to time in its discretion and Tenant shall not have any rights in and to the interest. Tenant shall, within fifteen (15) days after demand, furnish Landlord and Lease Administrator with a tax identification number for use in respect of such deposit.

(b) Intentionally Omitted.

(c) If Landlord shall have drawn against the cash Security Deposit and applied all or any portion thereof to sums due to Landlord following the occurrence of an Event of Default hereunder, then Tenant shall deposit with Landlord, within fifteen (15) days of demand therefor, a sufficient amount of cash to bring the balance of the cash then held by Landlord to the amount of the Security Deposit then required hereunder.

Section 33.2 Application of Security Deposit. Without limiting its rights and remedies hereunder, at law or in equity, Landlord and/or Lease Administrator may use, retain or apply all or any portion of the Security Deposit to satisfy (i) any cost or expense arising from the occurrence of an Event of Default hereunder, (ii) any other cost or expense incurred by Landlord or Lease Administrator in connection with the failure of Tenant (beyond any applicable cure period) to pay Rental or any other amount payable by Tenant hereunder, when such Rental or other amount becomes due and payable, (iii) the failure of Tenant to perform when due (beyond any applicable cure period) any other term, covenant or condition of this Lease, or (iv) any other liability incurred by Tenant to Landlord and/or Lease Administrator under this Lease as and when due (beyond any applicable cure period), in each case, provided that the application of any portion of the Security Deposit to the cure of any such Event of Default shall not be deemed to have cured such Event of Default unless the entire outstanding amount due or damages suffered by Landlord and/or Lease Administrator, as the case may be, shall have been paid in full and the Security Deposit shall have been replenished by Tenant so that the balance thereof is equal to the amount immediately prior to such application.

Section 33.3 Adjustment of Security Deposit. On every fifth (5^{th}) anniversary of the Effective Date (each, a "Security Deposit Readjustment Date"), Tenant shall deposit an amount equal to the excess of six (6) months Base Rent at the rate then in effect over the then amount of the Security Deposit (excluding accrued interest and the amount of the Good Faith Deposit) with Lease Administrator, as an adjustment to the Security Deposit, so that on every

Security Deposit Adjustment Date the Security Deposit on deposit with Lease Administrator shall be no less than six (6) months Base Rent at the rate then in effect plus the Good Faith Deposit for so long as it is required to be a part of the Security Deposit in accordance with the terms of this Article 33.

Section 33.4 Return of Security Deposit. If Tenant shall not then be in default of any of the terms, covenants and provisions of this Lease, any remaining portion of the Security Deposit, shall be returned to Tenant after delivery of the outgoing condition survey and inspection report provided in accordance with Section 14.7 hereof and provided that Tenant is not required to perform any work pursuant to the outgoing condition survey and inspection report in accordance with Section 14.7, within ninety (90) days after the delivery of such survey and inspection report and delivery of the Premises to Landlord in accordance with the provisions of Article 30 hereof, upon receipt by Lease Administrator of a request for such return in writing from Tenant.

Section 33.5 Good Faith Deposit. As further provided in the Pre-Development Agreement, as of the Effective Date the Parties acknowledge that Tenant has deposited Fifty Thousand Dollars ($50,000.00) with Landlord (the "Good Faith Deposit") as additional security for Tenant's timely implementation and development of the Project. On the Effective Date, the Good Faith Deposit (including all interest earned thereon), shall be added to the Security Deposit and applied as provided in this Article 33 and in Article 24. In the event that Tenant shall achieve Final Completion of the Initial Construction Work on or before the Final Completion Date and provided that no Default or Event of Default then exists Landlord shall return the Good Faith Deposit (or so much of the Good Faith Deposit as remains after any application as provided in this Lease) to Tenant upon receipt by Lease Administrator of a request for such return in writing from Tenant; provided, however, that (i) if a Default or Event of Default is then outstanding, the Good Faith Deposit shall be delivered to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of such Default or Event of Default, the Good Faith Deposit shall no longer be a part of the Security Deposit and Tenant shall have no further right in or to the Good Faith Deposit except that if only a Default or Event of Default described in Section 24.1(b), (c), (d), (e), or (f) arising solely due to an Unavoidable Delay exceeding thirty (30) calendar days is then outstanding, Landlord shall return the Good Faith Deposit as remains (after any application as provided in this Lease) to Tenant unless Landlord has already returned the Good Faith Deposit to Tenant pursuant to the terms of Section 24.3(e) (for the avoidance of doubt, Landlord's obligation, if any, with respect to return of the Good Faith Deposit shall be satisfied if Landlord returns such deposit pursuant to the terms either Section 24.3(e) or this Section 33.5 hereof).

ARTICLE 34
ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 34.1 Tax Contest Proceedings. Tenant shall have the exclusive right to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith, in accordance with the Charter and the New York City Administrative Code. If the attribution by DOF provided for in Section 3.4 hereof is not contestable by the standard legal procedures for contesting or seeking reductions in assessment valuation, Tenant

shall have the right to contest or dispute with Landlord whether, for the purpose of determining the PILOT due under this Lease, said attribution by DOF is correct and reasonable in the context of normal assessment practice in the City, said contest to be resolved by an appropriate court. Tenant shall, during the pendency of such proceeding, comply with the provisions of Section 34.2(b) below or Section 3.5 for so long as PILOT is payable hereunder.

Section 34.2 Imposition Contest Proceedings. Tenant shall have the right to contest, at its own cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.1 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, is, by reason of such postponement or deferment, in danger of being forfeited and if Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 34.2(b) hereof by reason of nonpayment thereof, and

(b) Tenant has deposited with Depositary cash, bond or other security (which may include, without limitation and at Tenant's election, a guaranty from a creditworthy entity) in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that are reasonably expected to be assessed against, or become a charge on the Premises or any part thereof in or during the pendency of such proceedings *minus* an amount equal to fifty (50%) percent of the Security Deposit then on deposit pursuant to Article 33 (excluding the Good Faith Deposit). Such deposit shall be held in an interest-bearing account or in city, state or federal government obligations. The provisions of this subsection (b) shall be deemed waived if a deposit or other security is maintained for the same purpose with a Recognized Mortgagee. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depositary shall return to Tenant any amount or other security deposited with it with respect to such imposition, together with the interest, if any, earned thereon. However, if Depositary is so requested by Tenant, Depositary shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable and, except as otherwise specifically provided herein, return any balance to Tenant. Except as provided above, if, at any time during the continuance of such proceedings, Landlord, in its reasonable judgment, shall deem insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Landlord's demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord reasonably may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, may, after not less than three (3) Business Days, notice to Tenant, be applied by Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be

returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand. Nothing contained in this subsection shall be deemed to limit Tenant's obligation to make deposits provided for in Article 5 hereof.

Section 34.3 Requirement Contest. Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that, before instituting any such proceeding, Tenant shall furnish Depositary with a surety company bond, cash deposit, letter of credit, guaranty or other security in form and amount satisfactory to Landlord, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced promptly after Tenant makes its election to contest such Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, guaranty or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 16.1(a) hereof if the Premises, or any part thereof, are in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith.

ARTICLE 35
APPRAISALS

Section 35.1 Procedure for Appraisals. In each instance where this Lease calls for an appraisal, such appraisal shall be conducted as follows:

(a) Landlord shall select an appraiser no more than six (6) months and no less than three (3) months before the date when an appraisal must be completed under this Lease unless the parties agree otherwise or if such period is not practicable, then in such time as is practicable under the circumstances (particularly with respect to an appraisal required in connection with the terms set forth in Exhibit Q hereof) in any instance where an appraisal is needed under this Lease. The appraiser so selected shall prepare an appraisal report and value estimate (the value estimate so set forth in the appraisal report shall be the "Landlord's Appraisal"). For purposes of any appraisal conducted for purposes of calculating Fair Market Rent (which shall be conducted in accordance with the terms of this Article 35), such appraisal shall reflect the use of the Land without value given or attributed by the appraiser to the improvements and the Buildings constructed on the Premises by Tenant. Landlord shall deliver a copy of Landlord's Appraisal and the associated appraisal report to Tenant.

(b) With respect to any Landlord's Appraisal conducted for purposes of determining Fair Market Rent, Tenant shall, within fifteen (15) days of receipt of Landlord's Appraisal, provide notice to Landlord that Tenant either accepts or rejects the results of the appraisal. If Tenant accepts Landlord's Appraisal, or if Tenant fails to respond within the timeframe contemplated in the previous sentence, such appraisal shall then become the approved appraisal for the Premises or for the Expansion Space, as applicable (the "Fair Market Value

Appraisal"). If Tenant rejects Landlord's Appraisal, Tenant's notice shall also contain an explanation of Tenant's objections to the appraisal and the basis for those objections. Landlord shall have the option, within fifteen (15) days of receipt of Tenant's comments, either to reject Tenant's comments by notice to Tenant of such rejection or to accept Tenant's comments to Landlord's Appraisal and agree to corresponding adjustments to the appraised value of the Premises or the Expansion Space, as applicable. If Landlord accepts Tenant's comments, then Landlord's Appraisal, as adjusted, shall then become the Fair Market Value Appraisal. If Landlord rejects Tenant's comments, then Tenant shall have the right, by notice to Landlord given within ten (10) days after Landlord's notice of rejection ("Tenant Appraisal Notice"), to commission its own appraisal at its own expense. The appraiser so selected by Tenant shall prepare an appraisal report and value estimate (the value estimate so set forth in the appraisal report shall be the "Tenant's Appraisal"). Tenant's Appraisal and the associated appraisal report must be submitted to Landlord within thirty (30) days following the giving of Tenant's Appraisal Notice. If Tenant fails to deliver Tenant's Appraisal Notice or Tenant's Appraisal timely, then Landlord's Appraisal shall be deemed the Fair Market Value Appraisal.

(c) If the value of the Premises or the Expansion Space, as applicable, reflected in Tenant's Appraisal is within ten percent (10%) of the value of the Premises or the Expansion Space, as applicable, reflected in Landlord's Appraisal, the average of Tenant's Appraisal and Landlord's Appraisal shall become the Fair Market Value Appraisal. If the value of the Premises or the Expansion Space, as applicable, reflected in Tenant's Appraisal differs by more than ten percent (10%) from the value of the Premises or the Expansion Space, as applicable, reflected in Landlord's Appraisal, then Landlord shall, within fifteen (15) days following delivery of Tenant's Appraisal, provide notice to Tenant that Landlord either accepts or rejects the results of Tenant's Appraisal. If Landlord accepts Tenant's Appraisal, such appraisal shall then become the Fair Market Value Appraisal. If Landlord rejects Tenant's Appraisal, Landlord's notice shall also contain an explanation of Landlord's objections to the appraisal and the basis for those objections. Tenant shall have the option, by notice given to Landlord within fifteen (15) days following Landlord's notice, either to reject Landlord's comments or to accept Landlord's comments to the appraisal and agree to corresponding adjustments to the appraised value of the Premises or the Expansion Space, as applicable. If Tenant accepts Landlord's comments, then Tenant's Appraisal, as adjusted, shall then become the Fair Market Value Appraisal. If Tenant rejects Landlord's comments, then a third appraisal of the Premises shall be commissioned by Landlord, which third appraiser ("Third Appraiser") shall be appointed within ten (10) days by the mutual agreement of Landlord's appraiser and Tenant's appraiser, or, in the absence of agreement, by the process prescribed by the American Arbitration Association or other recognized mediation or arbitration service provider selected by Landlord. The Third Appraiser shall be given a copy of Landlord's Appraisal and Tenant's Appraisal, and shall select as the fair market value of the Premises or the Expansion Space, as applicable, the value set forth in either Landlord's Appraisal or Tenant's Appraisal, and the value so selected by the Third Appraiser shall be the Fair Market Value Appraisal.

(d) Any appraiser selected or appointed pursuant to this Article 35 shall be a member of the American Institute of Real Estate Appraisers or MAI (or a successor organization), shall be an appraiser acceptable to Lease Administrator, and shall have at least fifteen (15) years of experience appraising commercial properties in the City. All appraisers

chosen or appointed pursuant to this Article 35 shall be sworn fairly and impartially to perform their duties as such appraiser.

(e) Tenant shall pay the costs of all appraisals conducted pursuant to this Lease, including appraisals commissioned by Landlord or Lease Administrator, and shall deliver payment to Landlord or Lease Administrator (as the case may be) within thirty (30) days of demand for such payment. Furthermore, the Parties acknowledge that separate appraisals will be conducted with respect to the Original Premises and the Expansion Space as required pursuant to the terms of this Lease.

ARTICLE 36
FINANCIAL REPORTS

Section 36.1 Statement.

(a) Effective upon the Substantial Completion Date, Tenant shall furnish to Landlord, for as long as the City is the owner of the Premises and to the extent that the Administrative Code of the City Section 11-208.1 (or successor thereto) is then in force and effect, income and expense statements of the type required by such code section (or successor thereto) as if Tenant were the "owner" of the Premises as such term is used in said Section 11-208.1, such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and shall be submitted notwithstanding that the City holds fee title to the Premises, that the Premises may therefore not be "income-producing property" as that concept is used in Section 11-208.1, or that PILOT rather than real estate taxes are being paid with respect to the Premises.

(b) As soon as practicable after the end of each Lease Year, Tenant shall furnish to Landlord a certification signed by a Principal of Tenant of the calculation of the Production Payment set forth in Section 3.2(c) and Dockage fees and Wharfage fees set forth in Section 3.9 and the amounts payable by Tenant to Landlord with respect to both such sections. In addition, in the event that for any Lease Year during the Abatement Period Tenant shall notify Landlord that Tenant shall not be required to pay Dockage and Wharfage for such Lease Year pursuant to the terms of Section 3.9(d) hereof, Tenant shall furnish to Landlord financial statements limited to the operations of Tenant at the Premises and g the Expansion Space (including balance sheets as at the end of such period and the related statements of income, balances, earnings, retained earnings and changes in financial position), showing negative net income from such operations for such Lease Year, audited by Tenant's independent accountant, and setting forth, in accordance with generally accepted accounting principles, in each case, in comparative form, the corresponding figures for the previous Lease Year.

Section 36.2 Maintenance of Books and Records. Tenant shall keep and maintain, at an office in the City, complete and accurate books and records of accounts of the operations of the Premises from which Landlord may determine for each Lease Year the items to be shown or set forth on the statements and/or reports to be delivered to Landlord pursuant to Sections 36.1 hereof and shall preserve, for a period of at least six (6) years after the end of each applicable period of time, the records of its operations of the Premises. However, if, at the

expiration of such six (6) year period, Landlord is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest. Tenant shall also promptly furnish to Landlord copies of all of Tenant's operating statements and financial reports from time to time furnished to each Recognized Mortgagee.

Section 36.3 Books and Records; Inspection and Audits of Books and Records. Landlord, the Comptroller and/or Landlord's agents or representatives shall have the right from time to time during regular business hours, upon five (5) Business Days' notice, to inspect, audit and, at its option, duplicate all of Tenant's books and records and all other papers and files of Tenant relating to the operation of the Premises or to this Lease for the period for which Tenant is required to maintain its records as provided in Section 36.2. Landlord shall be responsible for the cost and expense of such inspection, audit, and duplication; provided, that if such inspection or audit reveals that Tenant has understated any figures or data provided to Landlord pursuant to this Article 36, then Tenant shall promptly reimburse Landlord for such out-of-pocket costs and expenses. If the Comptroller establishes a policy allowing the City to provide in future leases similar to this Lease for a right to audit that extends less than the six (6) year period provided in Section 36.2 hereof, then such shorter period shall be applicable hereunder, but in no event shall such period be less than one (1) year. Tenant shall produce such books, records, papers and files from time to time upon the request of Landlord, the Comptroller and/or Landlord's agents or representatives. Subject to applicable law, Landlord and the Comptroller shall hold in confidence, and shall cause Landlord's agents and representatives to hold in confidence, all information obtained from Tenant's books, records, papers and files, except as may be necessary for the enforcement of Landlord's rights under this Lease.

Section 36.4 Survival Clause. The obligations of Tenant under this Article 36 shall survive the Expiration of the Term.

ARTICLE 37
RECORDING OF LEASE

Section 37.1 Tenant to Record. Landlord and Tenant shall promptly execute the Memorandum of Lease and of any amendments hereto (in the form attached as Exhibit M to this Lease) and Tenant shall cause the Memorandum of Lease or amendments to be recorded in the office of the Register of the City of New York (Kings County) promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith. Neither Tenant nor Landlord shall record this Lease under any circumstances unless expressly required by all Recognized Mortgagees.

ARTICLE 38
SUBORDINATION

Section 38.1 No Subordination. Except as otherwise specifically provided herein, Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or supplemented, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's interest in

this Lease and the leasehold estate created hereby or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises. This Lease and the leasehold estate of Tenant created thereby and all rights of Tenant hereunder are and shall be subject to the Title Matters.

ARTICLE 39
NONDISCRIMINATION AND AFFIRMATIVE ACTION; INVESTIGATIONS

Section 39.1 Nondiscrimination and Affirmative Action.

(a) Obligations. So long as the City is the owner of the Premises, Tenant shall be bound by the following requirements:

(i) Tenant will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, lay-off and termination and all other terms and conditions of employment;

(ii) Tenant will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(iii) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (A) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (B) that Tenant is an equal opportunity employer;

(iv) Tenant will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write the Division of Labor Services of the Department of Small Business Services, General Counsel's Office, 110 William Street, New York, New York 10038 (212-513-6300)"; and

(v) Tenant, as "Owner" (as such term is used in AIA Form 201), will include, or cause to be included, the following provisions in every construction contract of One Million Dollars ($1,000,000.00) or more or subcontract of Seven Hundred Fifty Thousand Dollars ($750,000.00) or more in such a manner that the provision will be binding upon all contractors and subcontractors, and will cause each contractor or subcontractor engaged in Initial Construction Work or any Capital Improvement to comply with the following provisions:

"By signing this contract, contractor agrees that it:

(1) will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprentice-ship, layoff and termination and all other terms and conditions of employment;

(2) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of contractor (A) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (B) that contractor is an equal opportunity employer; and

(4) will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write Division of Labor Services of the Department of Small Business Services, General Counsel's Office, 110 William Street, New York, New York 10038 (212-513-6300)".

Promptly upon Landlord's request therefor, Tenant shall provide evidence to Landlord that any such contract or subcontract (or proposed contract or subcontract) contains the required language.

Section 39.2 Generally. Nothing in this Article 39 shall be construed as an acknowledgement that the Initial Construction Work or any Construction Work is a "public work" as such term is used in Section 220 of the New York State Labor Law or a "construction project" under Executive Order No. 50, and Tenant's employment and other obligations under Section 39.1 above are not "public work" or "construction project", nor shall Tenant's, employment and other obligations herein specifically agreed to by Tenant be construed as an

acknowledgement of the application of other requirements that may apply, either now or in the future, to "public work" by operation of law, judicial decision, legislation, rules and regulations or otherwise.

Section 39.3 Cooperation by Tenant. Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. If:

(a) any Person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation, or any public benefit corporation organized under the laws of the State of New York; or

(b) any Person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of a Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York, or any political subdivision thereof, or any local development corporation within New York City, then the commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

Section 39.4 Adjournments of Hearing, Etc. If Tenant or any agent, employee or associate of Tenant requests an adjournment in any proceeding investigating the events surrounding the negotiation and consummation of this Lease of up to thirty (30) days, such adjournment shall be granted. If a further adjournment is sought it must be done by a written request to the agency head or commissioner who convened the hearing, at least three (3) Business Days prior to the scheduled hearing date, setting forth the reasons for the request. If the commissioner or agency head denies the request for an additional adjournment, then Tenant, its agent, employee or associate must appear at the scheduled hearing or commence an action to obtain a court order, pursuant to Article 78 of the Civil Practice Laws and Rules, substantiating a claim that the denial of the adjournment was capricious or arbitrary. If Tenant, its agent, employee or associate fails to appear at the rescheduled hearing or to diligently pursue such judicial relief, as the case may be, then, if in the sole judgment of the commissioner or agency head the failure to appear would have a material adverse effect on the investigation, the commissioner or agency head who convened the hearing may suspend this Lease pending the

final determination pursuant to Section 39.6 below without the City incurring any penalty or damages for delay or otherwise; provided, that the right to suspend this Lease shall not be invoked if Tenant shall have discharged or disassociated itself from such agent, employee or associate and said agent, employee or associate is not reemployed either directly or indirectly or otherwise compensated by Tenant.

Section 39.5 Penalties. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any Person, or any entity of which such Person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged, to an unaffiliated and unrelated Recognized Mortgagee for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination. Monies due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.

Section 39.6 Criteria for Determination. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (a) and (b) below, and may also consider, if relevant and appropriate, the criteria established in subsections (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) the entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including the discipline, discharge or disassociation of any Person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;

(b) the relationship of the Person who refused to testify to any entity that is a party to the hearing, including whether the Person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the Person has within the entity;

(c) the nexus of the testimony sought to the subject entity and its contract, leases, permits or license with the City; and

(d) the effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 39.5 above; provided, that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 39.3 above gives notice and proves that such interest was previously acquired. Under either circumstance the

party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

Section 39.7 Solicitation. In addition to, and notwithstanding any other provision of this Lease, the commissioner or other agency head whose agency is a party in interest to this Lease may declare a Default under this Lease in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City, any solicitation from Tenant or Principals of Tenant of money, goods, requests of future employment or other benefit or thing of value, which request is made by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by Tenant or affecting the performance of Tenant's obligations under this Lease. Tenant may cure such Default by removing such Principal of Tenant and causing him to divest himself from any interest in this Lease or the Premises.

Section 39.8 Definitions. As used in this Article 39:

(a) The term "License" or "Permit" means a license, permit, franchise or concession not granted as matter of right.

(b) The term "entity" means any firm, partnership, corporation, association or Person that receives moneys, benefits, licenses, leases or permits from or through New York City or otherwise transacts business with New York City.

(c) The term "Member" means any Person associated with another Person or entity as a partner, director, officer, principal or employee.

Section 39.9 Employment Reporting and Requirements. Tenant shall comply with the follow employment reporting and related requirements.

(a) With regard to each period from July 1 through June 30 (a "Fiscal Year") any part of which falls within the seven (7) year period following the Effective Date (such seven (7) year period, the "Reporting Period"), Tenant shall submit to Landlord, for each Fiscal Year, by August 1 following the end of such Fiscal Year, an employment and benefits report (the "Employment Report") in the form annexed hereto as Exhibit K or another form as provided by Landlord (Form of Employment Report) (with the dates therein updated to reflect the applicable Fiscal Year). Tenant shall include in such Employment Report information collected by Tenant from Subtenants.

(b) During the Reporting Period, Tenant shall, in good faith, consider such proposals as the City and/or any City-related entities may make with regard to jobs Tenant may seek to fill in relation to its activities on or concerning the Premises and shall provide the City and such entities with the opportunity to (i) refer candidates who are City residents having the requisite education and experience for the positions in question, and/or (ii) create a program to train City residents for those jobs (it being understood that Tenant shall not be required to hire any candidate which Tenant, in good faith, considers unqualified for the applicable position).

(c) Each Sublease entered into by Tenant prior to the end of the Reporting Period shall include provisions requiring the Subtenant:

(i) with regard to each Fiscal Year during the Reporting Period, to complete with regard to itself and its sub-subtenants items 1-5, 15 and 16 of the Employment Report (with the dates therein updated to reflect the applicable Fiscal Year), to sign such report and to submit it to Tenant before August 1 immediately following such Fiscal Year; and

(ii) in good faith, to consider such proposals as the City and/or City-related entities may make with regard to any jobs such Subtenant may seek to fill in relation to its activities on or concerning the Premises, and to provide the City and such entities with the opportunity to (A) refer candidates who are City residents having the requisite experience for the positions in question, and/or (B) create a program to train City residents for those jobs, and to report to Landlord, upon Landlord's request, regarding the status of its consideration of such proposals (it being understood that Tenant shall not be required to hire any candidate which Tenant, in good faith, considers unqualified for the applicable position).

(d) Each Sublease shall provide that both Tenant and Landlord and their respective designees shall be beneficiaries of each such agreement by the Subtenant. Tenant shall reserve the right, on behalf of itself and Landlord, and their respective designees, as such third party beneficiaries, to seek specific performance by such Subtenant, at the expense of such Subtenant, of the obligations set forth in this Section 39.9.

(e) Tenant shall retain for six (6) years all forms completed by Tenant and any Subtenants and, at Landlord's request, shall permit Landlord upon reasonable notice, to inspect such forms and provide Landlord copies thereof.

Section 39.10 Tenant Covenants. Tenant covenants and agrees to be bound by the following covenants, which shall be binding for the benefit of Landlord and enforceable by Landlord against Tenant to the fullest extent permitted by law and equity:

(a) Tenant (and any lessees of the Premises or any part thereof) shall comply with all applicable federal, state, and local laws in effect from time to time prohibiting discrimination or segregation by reason of age, race, creed, religion, sex, color, national origin, ancestry, sexual orientation or affectional preference, disability, or marital status (collectively, "Prohibited Distinctions") in the sale, lease, or occupancy of the Premises.

(b) Tenant shall not effect or execute any agreement, lease, conveyance, or other instrument whereby the sale, lease or occupancy of the Premises, or any part thereof, is restricted upon the basis of any Prohibited Distinction.

(c) Tenant (and any lessees of the Premises or any part thereof) shall include the covenants of (a) and (b) in any agreement, lease, conveyance, or other instrument with respect to the sale, lease or occupancy of the Premises entered into after the date hereof.

(d) Tenant shall comply with the provisions of Executive Order No. 50, as amended, and shall incorporate the language required thereby in any construction contract related to Construction Work.

ARTICLE 40
ADVERTISING AND SIGNAGE

Section 40.1 Advertising and Signage. No advertisement, notice or sign shall be placed or affixed to the outside of any Building or on any other part of the Premises which fails to comply with all applicable Requirements.

ARTICLE 41
MISCELLANEOUS

Section 41.1 Captions. The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 41.2 Table of Contents. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 41.3 Reference to Landlord and Tenant. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 41.4 Relationship of Landlord and Tenant. This Lease is not to be construed to create a partnership or joint venture between the parties, it being the intention of the parties hereto only to create a landlord and tenant relationship.

Section 41.5 Person Acting on Behalf of a Party Hereunder. If more than one Person is named as or becomes a party hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each Person acting through or named as a party shall be fully liable for all of such party's obligations hereunder, subject to Sections 41.6 and 41.8 hereof. Any notice by a party to any named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 41.6 Landlord's Liability. The liability of Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, the proceeds of any insurance policies relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof. Neither Landlord nor any of the directors, officers, employees, shareholders, agents or servants of Landlord shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises and this Lease. No other property or assets of Landlord or any property of the directors, officers, employees, shareholders, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. Notwithstanding anything herein contained to the contrary, Landlord's interest in the Premises and this Lease shall not be deemed to include (i) any rights, claims or interests of the City that may exist at any time pursuant to any loan document or any note or mortgage to which the City is a party or given

to the City in connection with the Premises, (ii) any rights, claims or interests of the City that may arise at any time from, or be a result of, its acting in its governmental capacity, or (iii) any rents, issues or proceeds from, or in connection with, the Premises which have been distributed by the City. The provisions of this Section 41.6 shall survive the Expiration of the Term.

Section 41.7 Remedies Cumulative. Each right and remedy of any party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by any party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by any party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 41.8 Intentionally Omitted.

Section 41.9 Merger. There shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 41.10 Performance at Tenant's Sole Cost and Expense. Except as otherwise specifically provided herein, when Tenant exercises any of the rights, or renders or performs any of its obligations hereunder, Tenant hereby acknowledges that it shall so do at Tenant's sole cost and expense.

Section 41.11 Waiver, Modification, Etc. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default thereof by Tenant or Landlord's failure to perform them shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default thereof.

Section 41.12 Depositary Charges and Fees. Tenant shall pay any and all fees, charges and expenses owing to Depositary in connection with any services rendered by Depositary pursuant to the provisions of this Lease.

Section 41.13 Ownership of Deposited Funds. Except as provided in Section 5.1(b), subject to application in accordance with the terms of this Lease, all funds held by Depositary pursuant to this Lease, while held by Depositary, shall be and shall be deemed to be the property of Tenant, subject to a perfected security interest therein in favor of any Recognized Mortgagee or Landlord.

Section 41.14 Governing Law. This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 41.15 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 41.16 Change in Policy. If at any time subsequent to the Effective Date, Landlord shall cease to require provisions similar to the provisions of Sections 39.1, 39.9 or 41.17 hereof in its ground leases with Tenants, or if such provisions in such other ground leases with Tenant or an Affiliate of Tenant are less restrictive than the provisions of Section 39.1, 39.9 or 41.17 hereof, then the provisions of such Section shall be deemed modified to conform to such less restrictive provisions, or if such other ground leases with Tenant or an Affiliate of Tenant omit provisions dealing with the subject matter described in such Section altogether, then such Section shall be deemed terminated and of no further force or effect. Landlord shall promptly notify Tenant of any such deemed modification or termination.

Section 41.17 Indictment.

(a) If any grand jury impaneled by any federal or state court files an indictment with such court charging Tenant or any Principal of Tenant (such indicted Person, the "Indicted Party") with having committed an intentional felony in connection with the Project or any other matter, then Landlord shall convene a hearing (the "Hearing") before a panel of three persons consisting of (i) the City's Deputy Mayor for Housing and Economic Development, (ii) the President of NYCEDC and (iii) the Corporation Counsel of the City, or a duly authorized designee of any of them, or such substitute persons as the City's Mayor may designate (the "Hearing Officers"). Such hearing shall be held upon not less than forty-five (45) days written notice to the Indicted Party and Tenant for the purpose of determining whether it is in the best interest of the City to require the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be. At the Hearing, Tenant and the Indicted Party shall have the opportunity to be represented by counsel and to make a presentation to the Hearing Officers orally and in writing. The Hearing Officers shall consider and address in reaching their determination (x) the nexus of the conduct charged in the indictment to this Lease, (y) the deleterious effect which an Assignment of the Indicted Party's interest in this Lease or in Tenant, as the case may be, would have on the economic development interests of the City which this Lease is intended to promote, and (z) any other relevant matters. The Hearing Officers shall render a decision in writing within twenty (20) days of the last day of the Hearing. If the Hearing Officers decide by a majority vote that it is in the best interest of the City to require an Assignment by the Indicted Party, then Landlord shall notify the Indicted Party and Tenant of the Hearing Officers' decision within five (5) days of the date thereof. The Indicted Party shall assign its interest in this Lease or in Tenant, as the case may be, within six (6) months of the date of the notice of such decision by the Hearing officers to an Assignee Reasonably Satisfactory to Landlord. The Indicted Party may receive the consideration for such Assignment in installment payments; provided that such consideration shall be for a sum certain (if paid in money) and that following such Assignment the Indicted Party shall have no further interest in the Project or in any profits therefrom.

(b) Any failure of (i) the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be, or (ii) an Assignee Reasonably Satisfactory to Landlord, acting as a trustee (as contemplated below), to assign the Indicted Party's interest in this Lease or in Tenant, as the case may be, following a Conviction within the time and in the manner

provided hereunder, shall be deemed to be a Default by Tenant hereunder. Upon the occurrence of such Default, Landlord and the Recognized Mortgagee shall have all of the rights and remedies provided hereunder in the case of a Default by Tenant.

(c) "Assignee Reasonably Satisfactory to Landlord" means any Person who is (x) a Recognized Mortgagee or (y) that delivers to Landlord a Required Disclosure Statement without any modifications thereto that are not acceptable to Landlord acting in its sole discretion and is not an Affiliate of the Indicted Party and who is either (A) a Person who is satisfactory to the Recognized Mortgagee and who is financially capable of performing the Indicted Party's obligations as set forth hereunder or (B) a Person (other than a Person who is, or who is a member of the immediate family (whether by birth or marriage) of, a member, partner, director or officer of the Indicted Party) who is acting in a fiduciary capacity as an independent trustee for the benefit of the Indicted Party for the purpose of actively managing this Lease or the Indicted Party's Interest in Tenant, as the case may be. The trust agreement between the Indicted Party and the trustee shall be reasonably satisfactory to Landlord and the Recognized Mortgagee. The trust agreement shall provide in substance, inter alia, as follows:

(i) If (x) the Indicted Party is found not guilty of the felony for which it is indicted by a court of competent jurisdiction or (y) the felony charges against such Indicted Party are dismissed, then the trustee shall reassign the Indicted Party's interest in Tenant or in this Lease, as the case may be, to the Indicted Party.

(ii) If (x) the Indicted Party is found guilty of the felony for which it is indicted by a court of competent jurisdiction and such verdict is affirmed by the court having ultimate jurisdiction to hear an appeal of such conviction or the period of appeal expires or the Indicted Party waives any right to appeal such determination or (y) the Indicted Party pleads guilty to the felony for which it is indicted (either (x) or (y) above, a "Conviction"), then the trustee shall assign this Lease or the Indicted Party's interest in Tenant, as the case may be, within six months of the date of the Conviction to an Assignee Reasonably Satisfactory to Landlord pursuant to subsection (a) above.

(iii) During the pendency of any such trust, the Indicted Party shall exercise no control over the Project, but may make contributions to the Project and receive distributions therefrom.

(d) This Section 41.17 shall apply only for so long as the City or an agency or instrumentality thereof shall be the owner of the Premises.

Section 41.18 Claims. Any and all claims asserted by or against Landlord arising under this Lease or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in New York City. To effect this agreement and intent, Landlord and Tenant agree as follows:

(a) If Landlord initiates any action against Tenant in Federal Court or in New York State Court, service of process may be made on Tenant either in person, wherever Tenant may be found, or by registered mail (return receipt requested) addressed to Tenant at its

address as set forth in this Lease, or to such other address as Tenant may provide to Landlord in writing.

(b) With respect to any action between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court outside New York City, and (iii) to move for a change of venue to New York State Court outside New York City.

(c) With respect to any action between Landlord and Tenant in Federal court located in the City, Tenant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal court outside the City.

(d) If Tenant commences any action against Landlord in a court located other than in the City and State of New York, then, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, then Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 41.19 FIRPTA Provisions. During the Term, Landlord shall furnish Tenant with certifications substantially in the form of Exhibit L (FIRPTA Form) annexed hereto at such time(s) as (a) there is any transfer in interest in Landlord or (b) Landlord transfers by whatsoever means or by operation of law all or any portion of its interest in the Premises. In the event Tenant is at any time (and from time to time) required to pay any withholding or similar tax (regardless of how the same may be characterized) attributable to Landlord's status as a non-resident alien, foreign corporation or other foreign person under applicable laws and regulations, Tenant, notwithstanding anything in this Lease to the contrary, shall be permitted to offset the amount so withheld against payments of Rental payable hereunder.

Section 41.20 Invalidity of Certain Provisions. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law; provided that such invalidity or unenforceability shall not materially affect the transactions contemplated in this Lease.

Section 41.21 Lease Administrator. Tenant understands, acknowledges and agrees that, until Tenant is notified to the contrary by Landlord, Lease Administrator will administer this Lease on behalf of Landlord, and unless and until such notice is received, Tenant agrees to accept from Lease Administrator any notices of default, notices of termination, bills, invoices and any other notices and demands executed and/or delivered by Lease Administrator (or any entity designated by Lease Administrator to act on its behalf) as having been fully authorized by Landlord and having the same force, effect and validity as if executed and/or delivered by Landlord. Tenant shall have the right to rely on any consent, approval or waiver given in writing by Lease Administrator as if the same were given by Landlord, without any

obligation to question or further confirm the same. Notwithstanding anything in the foregoing to the contrary, it is understood that Lease Administrator has no authority to bind the Landlord to any amendments to this Lease.

Section 41.22 Right to Use Renderings and Photographs. Notwithstanding any other provisions of this Lease, Lease Administrator shall have the right to use photographs and artist's renderings of the Project in its marketing and promotional materials, subject to the copyright and other intellectual property rights of such photographer, architect or artist.

Section 41.23 Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which will be deemed an original and all of which taken together shall constitute but one and the same agreement, and it shall not be necessary in making proof of this Lease to produce or account for more than one such counterpart.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD: THE CITY OF NEW YORK, acting by and through its DEPARTMENT OF SMALL BUSINESS SERVICES

By: _____
Name:
Title: Commissioner of Small Business Services

Approved as to Form:

By: _____
Acting Corporation Counsel

TENANT: FERRARA BROS. , LLC

By: _____
Name:
Title:

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

On _____, 2016, before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

_____
Notary Public

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

On _____, 2016, before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

_____
Notary Public

EXHIBIT A

Legal Description of Land

LEGAL DESCRIPTION OF ORIGINAL PREMISES

Metes and Bounds Description
Tax Block 644, Lot 50
Borough of Brooklyn, City and State of New York

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

BEGINNING at a point on the westerly side of 3rd Avenue (180 fee wide), distant 100.17 feet northerly from the corner formed by the intersection of the northerly side of 25th Street (60 feet wide) with the westerly side of 3rd Avenue;

RUNNING THENCE northerly, along the westerly side of 3rd Avenue, 180.50 feet to a point;

RUNNING THENCE westerly, at right angles to the westerly side of 3rd Avenue, 214.39 feet to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 17.14 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 171.57 feet to the existing bulkhead of Gowanus Bay;

RUNNING THENCE southerly, along the existing bulkhead of Gowanus Bay and at right angles to the last mentioned course, 59.51 feet to a point;

RUNNING THENCE easterly, at right angles to the last mentioned course, 87.95 feet to a point;

RUNNING THENCE southerly, at right angles to the last mentioned course, 103.85 feet to a point;

RUNNING THENCE easterly, at right angles to the westerly side of 3rd Avenue, 298.00 feet to the westerly side of 3rd Avenue, the point or place of BEGINNING.

The above parcel having an area of 57, 591 square feet.

LEGAL DESCRIPTION OF EXPANSION SPACE

Tax Block 644 Part of Tax Lots 1 and 109
Borough of Brooklyn, City and State of New York

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

BEGINNING at a point on the northerly side of 25th Street (60 feet wide) distant 250 feet westerly from the corner formed by the intersection of the northerly side of 25th Street with the westerly side of 3rd Avenue (180 feet wide);

RUNNING THENCE northerly, at right angles to the northerly side of 25th Street, 100.17 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 48.00 feet to a point;

RUNNING THENCE northerly, at right angles to the last mentioned course, 103.85 feet to a point;

RUNNING THENCE westerly, at right angles to the last mentioned course, 124.48 feet to the existing bulkhead of Gowanus Bay;

RUNNING THENCE the following two courses and distance along the existing bulkhead of Gowanus Bay;

1. THENCE southerly, along a line forming an angle of 90 degrees 17 minutes 29 seconds on the southeast with the last mentioned course, 78.90 feet to a point;

2. THENCE westerly, along a line forming an angle of 91 degrees 03 minutes 30 seconds on the northwest with the last mentioned course, 152.13 feet to a point;

RUNNING THENCE southerly, along a line forming an angle of 90 degrees 46 minutes 00 seconds on the southeast with the last mentioned course, 62.91 feet to a point;

RUNNING THENCE southeasterly, along a line forming an angle of 111 degrees 51 minutes 27 seconds on the northeast with the last mentioned course, 161.62 feet to a point;

RUNNING THENCE easterly, along a line forming an angle of 158 degrees 08 minutes 33 seconds on the northeast with the last mentioned course, 175.00 feet to the northerly side of 25th Street, the point or place of BEGINNING.

The above parcel having an area of 44,635 square feet.

EXHIBIT B

PROJECT COMMITMENTS

Tenant shall construct the Project, which shall include without limitation all of the Plant Equipment set forth in Exhibit O attached hereto and making the minimum investment in the Project set forth below in this Exhibit B, in accordance with the following schedule and the terms of the Lease, including without limitation Section 13 "Initial Construction Work":

Item	Minimum Investment	Commencement Date	Completion Date
Demolition of Existing Buildings on Site & Environmental Remediation ("Demolition and Remediation Work")	**$2,100,000.00**	The Scheduled Demolition and Remediation Commencement Date has occurred.	Scheduled Demolition and Remediation Completion Date is _____ .
Construction	**$3,225,000.00**	Scheduled Construction Commencement Date is 90 days following the Effective Date. Scheduled Construction Commencement Date is _____.	Scheduled Construction Completion Date is 18 months following the Scheduled Construction Commencement Date Final Completion Date is not later than six (6) months following the Scheduled Construction Completion Date. Final Completion Date is _____.
Additional Items: Building enclosure, Installation of Cladding, Heating System, New Road for Lafarge, Etc.	**$1,294,000.00**		
Concrete Manufacturing Plant	**$4,799,000.00**		

CNG Fueling Station Dispensers	**$1,300,000.00**		
Total	**$12,718,000.00**		

All dates referenced in the above Project Commitments shall be subject to Unavoidable Delays; provided, however, that in no event shall Unavoidable Delays extend any of the dates set forth in the above Project Commitments by more than thirty (30) calendar days.

EXHIBIT C

FORM OF LIVING WAGE AGREEMENTLIVING WAGE AGREEMENT

This LIVING WAGE AGREEMENT (this "Agreement") is made as of [_____], by [_____] ("Obligor") in favor of Tenant, the Lease Administrator, the City, the DCA and the Comptroller (each as defined below) (each, an "Obligee"). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

1. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

"Affiliate" means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

"Asserted Cure" has the meaning specified in paragraph 10(a).

"Asserted LW Violation" has the meaning specified in paragraph 10(a).

"City" means The City of New York.

"Comptroller" means the Comptroller of The City of New York or his or her designee.

"Concessionaire" means a Person that has been granted the right by Tenant, an Affiliate of Tenant or any tenant, subtenant, leaseholder or subleaseholder of Tenant or of an Affiliate of Tenant to operate at the Premises for the primary purpose of selling goods or services to natural persons at the Premises.

"Control" or "Controls", including the related terms "Controlled by" and "under common Control with", means the power to direct the management and policies of a Person (a) through the ownership, directly or indirectly, of not less than a majority of its voting equity, (b) through the right to designate or elect not less than a majority of the members of its board of directors, board of managers, board of trustees or other governing body, or (c) by contract or otherwise.

"Covered Counterparty" means a Covered Employer whose Specified Contract is directly with Obligor or an Affiliate of Obligor to lease, occupy, operate or perform work at the Obligor Premises.

"Covered Employer" means any of the following Persons: (a) Obligor, (b) a tenant, subtenant, leaseholder or subleaseholder of Obligor that leases any portion of the Obligor Premises (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (c) a Concessionaire that operates on any portion of the Obligor Premises, and (d) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b) or (c) above to perform work for a period of more than ninety days on any portion of the Obligor Premises, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term "Covered Employer" shall not include (i) a Person of the type described in Section 6-134(d)(2), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual

consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Premises if residential units comprise more than 75% of the total Premises area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Lease Administrator has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) a Person that is a "building services contractor" (as defined in the LW Law) so long as such Person is paying its "building service employees" (as defined in the Prevailing Wage Law) no less than the applicable "prevailing wage" (as defined in the Prevailing Wage Law), or (vii) intentionally omitted.

"DCA" means the Department of Consumer Affairs of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

"Lease Administrator" means New York City Economic Development Corporation, having its principal office at 110 William Street, New York, New York 10038.

"LW" has the same meaning as the term "living wage" as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the "living wage rate" component of the LW shall be eleven dollars and sixty-five cents per hour ($11.65/hour) and the "health benefits supplement rate" component of the LW shall be one dollar and sixty-five cents per hour ($1.65/hour). The annual adjustments to the "living wage rate" and "health benefits supplement rate" will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

"LW Agreement" means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Attachment 1 (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

"LW Agreement Delivery Date" means, with respect to any Covered Counterparty, the latest of (a) the effective date of such Covered Counterparty's Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the Obligor Premises and (c) the date of this Agreement.

"LW Law" means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"LW Term" means the period commencing on the date of this Agreement and ending on the earlier to occur of (a) the later to occur of (i) intentionally omitted, or (ii) the date that is ten years after the Effective Date (as defined in the Project Agreement); or (b) the end of the term of Obligor's Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

"LW Violation Final Determination" has the meaning specified in paragraph 10(a)(i),

paragraph 10(a)(ii)(1) or paragraph 10(a)(ii)(2), as applicable.

"LW Violation Initial Determination" has the meaning specified in paragraph 10(a)(ii).

"LW Violation Notice" has the meaning specified in paragraph 10(a).

"LW Violation Threshold" means $100,000 multiplied by 1.03^n, where "n" is the number of full years that have elapsed since January 1, 2015.

"Obligor Premises" means the applicable portion of the Premises covered by the Specified Contract of Obligor.

"Operational Date" means the date that Obligor commences occupancy, operations or work at the Obligor Premises.

"Owed Interest" means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

"Owed Monies" means, as the context shall require, either (a) the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Obligor failed to obtain a LW Agreement from a Covered Counterparty as required under paragraph 5 below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty's LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

"Person" means any natural person, sole proprietorship, partnership, association, joint venture, limited liability company, corporation, governmental authority, governmental agency, governmental instrumentality or any form of doing business.

"Pre-Existing Covered Counterparty" has the meaning specified in paragraph 5.

"Pre-Existing Specified Contract" has the meaning specified in paragraph 5.

"Premises" means the land and real property improvements located at the real property designated as Block 644, Lot 50 on the Tax Map for the Borough of Brooklyn.

"Prevailing Wage Law" means Section 6-130 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"Project Agreement" means that certain Lease, dated as of [_____], between the City and the Tenant (as amended, restated, supplemented or otherwise modified from time to time).

"Qualified Workforce Program" means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

"Site Employee" means, with respect to any Covered Employer, any natural person who works at the Obligor Premises and who is employed by, or contracted or subcontracted to work for, such Covered Employer, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term "Site Employee" shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Premises unless the primary work location or home base of such person is at the Obligor Premises (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Premises shall thereafter constitute a Site Employee).

"Small Business Cap" means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the "living wage rate" component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

"Specified Contract" means (a) in the case of Obligor, the [_____], dated as of [_____], by and between Obligor and [_____], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

"Tenant" means Ferrara Bros. LLC., a Delaware limited liability company, having its principal office at_____.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.

3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Premises, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Premises that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.

5. During the LW Term, Obligor shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty; provided that Obligor shall only be required to use commercially reasonable efforts (without any obligation to commence any action or proceedings) to obtain an LW Agreement from a Covered Counterparty whose Specified Contract with Obligor was entered into prior to the date hereof (a "Pre-Existing Covered Counterparty" and a "Pre-Existing Specified Contract"). Prior to the renewal or extension of any Pre-Existing Specified Contract (or prior to entering into a new Specified Contract with a Pre-Existing Covered Counterparty), Obligor shall cause or otherwise require the Pre-Existing Covered Counterparty to execute an LW Agreement, provided that the foregoing shall not preclude Obligor from renewing or extending a Pre-Existing Specified Contract pursuant to any renewal or extension options granted to the Pre-Existing Covered Counterparty in the Pre-Existing Specified Contract as such option exists as of the date hereof. Obligor shall deliver a copy of each Covered Counterparty's LW Agreement to the Lease Administrator, the DCA and the Comptroller at the notice address specified in paragraph 12 below and promptly upon written request. Obligor shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

6. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Landlord, the DCA and the Comptroller within 30 days thereof.

7. Obligor hereby acknowledges and agrees that the Lease Administrator, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Lease Administrator shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 10 below. Obligor hereby agrees that the DCA, the Comptroller and the Lease Administrator may, as their sole and exclusive remedy for any violation of Obligor's obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 10 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 10 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Lease Administrator or the DCA.

8. No later than 30 days after Obligor's receipt of a written request from the Lease Administrator, the DCA and/or the Comptroller, Obligor shall provide to the Lease Administrator, the DCA and the Comptroller (a) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Lease Administrator, the DCA and/or the Comptroller, Obligor shall provide to the Lease Administrator, the DCA and the Comptroller (b) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (c) certified payroll records in respect of the direct Site Employees of Obligor, and/or (d) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.

9. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to Tenant such data in respect of employment, jobs and wages at the Obligor Premises as of June 30 of such year that is needed by Tenant for it to comply with its reporting obligations under the Project Agreement.

10. Violations and Remedies.

    (a) If a violation of this Agreement shall have been alleged by the Lease Administrator, the DCA and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Lease Administrator, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under paragraph 10(b), (c), (d), (e) and/or (f) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Obligor's receipt of the LW Violation Notice, Obligor may either:

        (i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or

        (ii) Provide written notice to the Lease Administrator, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Lease Administrator and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Obligor's receipt of the LW Violation Initial Determination, Obligor may either:

(1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or

(2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

(b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Lease Administrator or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.

(c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Lease Administrator or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.

(d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in

lieu of the remedies specified in subparagraph (c) above and at the direction of the Lease Administrator or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.

(e) If Obligor fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph 5 above, then at the discretion of the Lease Administrator or the DCA (but not both), Obligor shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (b), (c) and (d) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Obligor.

(f) Obligor shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (i) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site Employees for all past and present LW Violation Final Determinations (or that would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (ii) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude Obligor from extending or renewing a Specified Contract pursuant to any renewal or extension options granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

(g) It is acknowledged and agreed that (i) the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 10, and (ii) in no event will the Specified Contract between Obligor and a given Covered Counterparty be permitted to be terminated or rescinded by the Lease Administrator, the DCA or the Comptroller by virtue of violations by Obligor or a Covered Counterparty.

11. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.

12. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:

(a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].

(b) If to the Lease Administrator, to New York City Economic Development Corporation, 110 William Street, New York, NY, 10038, Attention: General Counsel.

(c) If to the DCA, to Department of Consumer Affairs of the City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.

(d) If to the Comptroller, to Office of the Comptroller of the City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.

13. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.

14. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.

15. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

[_____]

By: _____
Name:
Title:

ATTACHMENT 1
FORM OF LIVING WAGE AGREEMENT

LIVING WAGE AGREEMENT

This LIVING WAGE AGREEMENT (this "Agreement") is made as of [_____], by [_____] ("Obligor") in favor of Tenant, the Lease Administrator, the City, the DCA and the Comptroller (each as defined below) (each, an "Obligee"). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

1. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

"Asserted Cure" has the meaning specified in paragraph 9(a).

"Asserted LW Violation" has the meaning specified in paragraph 9(a).

"City" means The City of New York.

"Comptroller" means the Comptroller of The City of New York or his or her designee.

"Covered Employer" means Obligor; provided, however, that the term "Covered Employer" shall not include (i) a Person of the type described in Section 6-134(d)(2), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Premises if residential units comprise more than 75% of the total Premises area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Lease Administrator has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) a Person that is a "building services contractor" (as defined in the LW Law) so long as such Person is paying its "building service employees" (as defined in the Prevailing Wage Law) no less than the applicable "prevailing wage" (as defined in the Prevailing Wage Law), or (vii) intentionally omitted.

"DCA" means the Department of Consumer Affairs of the City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

"Lease Administrator" means New York City Economic Development Corporation, having its principal office at 110 William Street, New York, New York 10038.

"LW" has the same meaning as the term "living wage" as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the "living wage rate" component of the LW shall be

eleven dollars and sixty-five cents per hour ($11.65/hour) and the "health benefits supplement rate" component of the LW shall be one dollar and sixty-five cents per hour ($1.65/hour). The annual adjustments to the "living wage rate" and "health benefits supplement rate" will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

"LW Law" means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"LW Term" means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) intentionally omitted or (ii) the date that is ten years after the Effective Date (as defined in the Project Agreement); or (b) the end of the term of Obligor's Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

"LW Violation Final Determination" has the meaning specified in paragraph 9(a)(i), paragraph 9(a)(ii)(1) or paragraph 9(a)(ii)(2), as applicable.

"LW Violation Initial Determination" has the meaning specified in paragraph 9(a)(ii).

"LW Violation Notice" has the meaning specified in paragraph 9(a).

"LW Violation Threshold" means $100,000 multiplied by 1.03^n, where "n" is the number of full years that have elapsed since January 1, 2015.

"Obligor Premises" means the applicable portion of the Premises covered by the Specified Contract of Obligor.

"Operational Date" means the date that Obligor commences occupancy, operations or work at the Obligor Premises.

"Owed Interest" means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

"Owed Monies" means the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis.

"Person" means any natural person, sole proprietorship, partnership, association, joint venture, limited liability company, corporation, governmental authority, governmental agency, governmental instrumentality or any form of doing business.

"Premises" means the land and real property improvements located at the real property designated as Block 644, Lot 50 on the Tax Map for the Borough of Brooklyn.

"Prevailing Wage Law" means Section 6-130 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"Project Agreement" means that certain Lease, dated as of [_____], between the City and the Tenant (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Tenant has or will receive financial assistance from the City.

"Qualified Workforce Program" means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

"Site Employee" means any natural person who works at the Obligor Premises and who is employed by, or contracted or subcontracted to work for, Obligor, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term "Site Employee" shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Premises unless the primary work location or home base of such person is at the Obligor Premises (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Premises shall thereafter constitute a Site Employee).

"Small Business Cap" means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the "living wage rate" component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

"Specified Contract" means (a) in the case of Obligor, the [_____], dated as of [_____], by and between Obligor and [_____], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

"Tenant" means Ferrara Bros. LLC., a Delaware limited liability company, having its principal office at_____.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.

3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Premises, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Premises that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have

been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.

5. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Lease Administrator, the DCA and the Comptroller within 30 days thereof.

6. Obligor hereby acknowledges and agrees that the Lease Administrator, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Lease Administrator shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 9 below. Obligor hereby agrees that the DCA, the Comptroller and the Lease Administrator may, as their sole and exclusive remedy for any violation of Obligor's obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 9 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 9 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Lease Administrator or the DCA.

7. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Lease Administrator, the DCA and/or the Comptroller, Obligor shall provide to the Lease Administrator, the DCA and the Comptroller (a) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (b) certified payroll records in respect of the direct Site Employees of Obligor, and/or (c) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.

8. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to its counterparty to its Specified Contract such data in respect of employment, jobs and wages at the Obligor Premises as of June 30 of such year that is needed by Tenant for it to comply with its reporting obligations under the Project Agreement.

9. Violations and Remedies.

(a) If a violation of this Agreement shall have been alleged by the Lease Administrator, the DCA and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Lease Administrator, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under paragraph 9(b), (c) and/or (d) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Obligor's receipt of the LW Violation Notice, Obligor may either:

(i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or

(ii) Provide written notice to the Landlord, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Lease Administrator and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Obligor's receipt of the LW Violation Initial Determination, Obligor may either:

(1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or

(2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a

"LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

(b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Lease Administrator or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.

(c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Lease Administrator or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee, and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.

(d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Lease Administrator or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.

(e) It is acknowledged and agreed that the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 9.

10. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.

11. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:

(e) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].

(f) If to the Lease Administrator, to New York City Economic Development Corporation, 110 William Street, New York, NY, 10038, Attention: General Counsel.

(g) If to the DCA, to Department of Consumer Affairs of the City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.

(h) If to the Comptroller, to Office of the Comptroller of the City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.

12. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.

13. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.

14. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

[_____]

By: _____
Name:
Title:

EXHIBIT D

TITLE MATTERS ORIGINAL PREMISES

Except as otherwise provided in, and subject to the terms of, the Lease, the Original Premises are leased subject to the following:

1. Any state of facts shown on the Survey prepared by Montrose Surveying Co., LLP, dated November 21, 2014 (Surveyt No.64876-1);

2. Building restrictions and regulations now or hereafter in force and present and future zoning laws, ordinances, resolutions and regulations of all boards, bureaus, commissions and bodies of any municipal, county, state or federal sovereigns now having or hereafter acquiring jurisdiction of the Premises and the use and improvement thereof;

3. Rights, easements, licenses or privileges to use vaults, areas, tunnels, ramps or structures under highways, roads, streets, avenues or sidewalks on which the Premises abut, and consents or grants prior to the date of this Lease for the erection of any structures on, under or above said highways, roads, streets, avenues or sidewalks and any grants, easements, licenses or consents with respect to present or future sewers, public utility lines, pipes, conduits and equipment;

4. Violations of law, ordinances, regulations, orders or requirements, if any, whether or not of record and whether or not the same might be disclosed by an examination and inspection or search of the Premises, noted or issued by any federal, state, municipal or other governmental department or authority having jurisdiction, as the same may exist on the Effective Date of this Lease;

5. Dedications, restrictions, covenants, consents, easements and agreements, if any, made or given by any prior owner of the Premises;

6. Any encroachments existing on the Effective Date of this Lease;

7. An easement reserved for Landlord, its tenants and designees to repair, maintain or perform work on any utility lines on the Premises, including, without limitation, electrical lines;

8. An easement for the City, its agents and representatives, to construct, install or repair any sewer, water line or any other public utility or improvement.

9. Permanent Easement for Subterranean Utilities and Access acquired by the People of the State of New York under condemnation map dated 4/18/06 and recorded 4/18/06 as CRFN 2006000213544.

10. Permanent Easement for Subterrranean Power Transmission Lines acquired by the People of the State of New York under condemnation map dated 4/18/06 and recorded 4/18/06 as CRFN 2006000213552;

11. Right of the US Government to establish harbor, bulkhead or pierhead lines or to change or alter any such existing lines and to remove or compel removal of fill and improvements thereon (including buildings or other structures) from land now or formerly lying below the high water mark of Gowanus Bay without compensation;

12. Rights of the People of the State of New York or City of New York in those portions of premises now or formely under the waters of Gowanus Bay.

13. Taxes, tax liens, tax sales, water rates, sewer rents and assessments not yet due and payable;

14. Any encroachments existing on the Effective Date of this Lease;

15. Letters Patent recorded in Liber 1579 page 281.

16. Grant of Land Under Water recorded 1/2/1877 in Liber 1263 page 220.

17. Railroad Consent recorded 1/26/1892 in Liber 2090 page 153.

TITLE MATTERS EXPANSION SPACE

THIS EXHIBIT IS APPLICABLE TO THE EXPANSION SPACE ON AND AFTER THE EXPANSION SPACE COMMENCEMENT DATE

.

All matters affecting title to the Expansion Space.

For the avoidance of doubt, Tenant accepts the Expansion Space on the Expansion Space Commencement Date subject to all matters affecting title and Landlord shall not be required to take any action with regard to title matters affecting the Expansion Space at any time; provided however, that notwithstanding the foregoing, Tenant is required to surrender the Expansion Space to Landlord upon the expiration or earlier termination of the Lease free and clear of all Subleases, liens, encumbrances and exceptions to title in accordance with the terms of Section 30.1 of the Lease.

EXHIBIT E

REQUIRED DISCLOSURE STATEMENT

[See Attached]

New York City Economic Development Corporation®

Internal Background Investigation Questionnaire

THIS FORM IS FOR: Contracts under $100,000,
Land Sales, Leases, Licenses, Permits,
NYCIDA Projects and any Discretionary Reviews

New York City Economic Development Corporation • New York City Industrial Development Agency • Apple Industrial Development Corp.
110 William Street, New York, NY 10038

INSTRUCTIONS FOR COMPLETING NYCEDC INTERNAL BACKGROUND INVESTIGATION QUESTIONNAIRE

1. Please submit, with this Questionnaire, the organizational documents for the submitting business entity.

2. For purposes of completing this Questionnaire, the following defined terms shall have the meanings given to them below (unless provided otherwise with respect to specific questions in the Questionnaire):

   "Affiliate" – A Person is "affiliated with" or an "affiliate" of another Person if the Person controls, is controlled by or is under common control with that other Person.

   "Applicant" – The submitting business entity.

   "Control" – A Person controls another Person if the Person (i) owns ten percent (10%) or more of the voting interest or has a ten percent (10%) or greater ownership interest in that other Person or (ii) directs or has the right to direct the management or operations of that other Person or (iii) is a member of that other Person's Board of Directors*.

   "Executive Officer" – Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Applicant, by whatever titles known, and all other executive officers of Applicant.

   "Family Member" – With respect to a particular Person, includes spouse, children, grandchildren, parents, parents-in-law, brothers, sisters, brothers-in-law, sisters-in-law, and all family members living in the same household as such Person (except if such individuals are minors).

   "Person" – Any individual, corporation, partnership, joint venture, sole proprietorship, limited liability company, trust or other entity.

   "Principal" – each of the following Persons is a Principal of the Applicant and must be identified in Section B, Part I on page 2 of the Questionnaire.

   - Executive Officers
   - Persons that "Control" the Applicant
   - For Limited Liability Companies, ALL members
   - For Partnerships, ALL general partners and ALL partners performing on the contract or able to bind the Partnership

*For a not-for-profit corporation, ONLY the Chairperson of the Board of Directors and any director who is also an employee of Applicant needs to be considered for purposes of determining "Control" under this clause (iii).

SECTION A

The following questionnaire is to be completed by Persons desiring to do business with the New York City Economic Development Corporation or the New York City Industrial Development Agency or Apple Industrial Development Corp.

This form may be duplicated for additional space. PLEASE COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY.
Refer to attached instruction sheet for specific instructions and definitions of terms required to complete this Questionnaire.

BUSINESS NAME: _____ EIN/SSN: _____

BUSINESS ADDRESS: _____

City State Zip Code

BUSINESS TELEPHONE: _____ TYPE OF ENTITY: _____

BUSINESS FAX: _____ BUSINESS E-MAIL: _____

SECTION B

I. PRINCIPALS OF APPLICANT

PRINCIPAL NAME	TITLE	HOME ADDRESS	PERCENTAGE OF VOTING INTEREST	PERCENTAGE OF OWNERSHIP	DATE OF BIRTH	SOCIAL SECURITY NUMBER/EMPLOYER IDENTIFICATION NUMBER
(1)						
(2)						
(3)						
(4)						
(5)						

II. FAMILY MEMBERS OF EACH INDIVIDUAL PRINCIPAL

Note: Only the following Family Members need to be identified in this Section B. Part II:

- Spouse
- Family Members who are employed by, are officers of or have a less than 10% voting or ownership interest in the Applicant
- Family Members who are directly or indirectly providing services and/or supplies with respect to the subject project (e.g. consultants, subcontractors, suppliers or an employee thereof)

PRINCIPAL NAME	IMMEDIATE FAMILY MEMBER	RELATIONSHIP TO PRINCIPAL	HOME ADDRESS
(1)			
(2)			
(3)			
(4)			
(5)			

SECTION B (Continued)

PROVIDE A DETAILED RESPONSE TO ALL QUESTIONS CHECKED "YES" ON THE FOLLOWING PAGE

NO YES

1. Does the Applicant or any Principal have any Affiliates? If yes, please identify the Affiliates, with SSN/EIN and respective addresses, and describe the nature of the affiliation, on the following page.

2. In the past 7 years, has the Applicant, any Principal, or any entity affiliated with the Applicant (each of the foregoing individually, a "Subject Person" and collectively, the "Subject Persons") been adjudicated bankrupt or placed in receivership, filed bankruptcy, or is any Subject Person currently the subject of any bankruptcy or similar proceedings? If yes, please explain on the following page.

3. In the past 5 years, has any Subject Person been a plaintiff or defendant in any civil proceeding (including any court and federal, state and local regulatory agency proceedings) other than a domestic relations proceeding (e.g., divorce, separation, support, alimony, maintenance, adoption, custody)? If yes, please identify all adjudicated, settled and pending lawsuits on the following page.

4. In the past 5 years, has any Subject Person or any Family Member identified in Section B. Part II (a "Subject Family Member"):

   - been disqualified as a bidder, or defaulted or terminated, on a permit, license, concession, franchise, lease, or other agreement with the City of New York or any governmental agency? If yes, please explain on the following page.

   - failed to file any required tax returns or to pay any applicable federal, state, or New York City taxes or other assessed New York City charges or fines, including but not limited to water and sewer charges and administrative fees? If yes, please explain on the following page.

5. In the past 10 years, has any Subject Person or any Subject Family Member used an EIN, SSN, name, trade name, or abbreviation other than the name or number provided in response to Section A or Section B, Part I or II of this Questionnaire or provided in response to question 1 above, as the case may be? If yes, please specify on the following page.

6. In the past 5 years, has any Subject Person, any Subject Family Member, any Affiliate of any Subject Family Member or any managerial employee of Applicant:

   - been the subject of any criminal investigation and/or civil anti-trust investigation (by any federal, state or local prosecuting or investigative agency) and/or investigation by any governmental agency (including, but not limited to federal, state and local regulatory agencies)? If yes, please explain on the following page.

   - had any judgment, injunction or sanction obtained against it in any judicial or administrative action or proceeding other than a domestic relations proceeding or motor vehicle proceeding? If yes, please explain on the following page.

7. In the past 10 years, has any Subject Person, any Subject Family Member, any Affiliate of any Subject Family Member or any managerial employee of Applicant been convicted, after trial or by plea, of any criminal offense and/or are there any felony or misdemeanor charges pending against any of them? If yes, please explain on the following page.

Section B (Continued)

INDICATE QUESTION #

BELOW PROVIDE A DETAILED EXPLANATION TO ALL QUESTIONS CHECKED "YES". IF YOU NEED MORE SPACE, PHOTOCOPY THIS PAGE AND ATTACH IT TO THIS QUESTIONNAIRE.

Section C – IDENTIFICATION OF PROPERTY INTERESTS

1. Identify Project Property:

   Block & Lot(s): _____

   Street Address: _____

   Borough of _____

2. The following, together with attachment(s) hereto, if any, is a complete list of properties in which any of the Subject Persons or any of the Subject Family Members have an ownership interest and which are located in the City of New York, together with a statement as to each such property of any current arrears in real estate taxes, sewer rents, sewer surcharges, water charges or assessments due and owing to the City of New York.

PROPERTY OWNED IN THE CITY OF NEW YORK

PROPERTY OWNER	BOROUGH	BLOCK/LOT	STREET ADDRESS	DATE OF PURCHASE	AMOUNT OF ARREARS	TYPE OF ARREARS

SECTION C (Continued)

PROVIDE A DETAILED RESPONSE TO ALL QUESTIONS CHECKED "YES" ON THE FOLLOWING PAGE

NO YES

3. In the past 5 years, has any Subject Person or any Subject Family Member, been a former owner of the Project Property?

4. Is any Subject Person or any Subject Family Member a tenant of the City of New York? If yes, please list below; Agency, Borough, Block, Lot, Account Number, Monthly Rent, and Current Balance.

5. Has any Subject Person or any Subject Family Member previously purchased property from the City of New York? If yes, please list below; Agency, Borough, Block, Lot, Sale Date, Parcel Number, and Closing Date.

6. Does any Subject Person or any Subject Family Member have a mortgage with the City of New York? If yes, please list below; Agency, Borough, Block, Lot, Account Number, Principal Amount, Monthly Installment, and Current Balance.

Section C (Continued)

INDICATE QUESTION #

BELOW PROVIDE A DETAILED EXPLANATION TO ALL QUESTIONS CHECKED "YES". IF YOU NEED MORE SPACE, PHOTOCOPY THIS PAGE AND ATTACH IT TO THIS QUESTIONNAIRE.

CERTIFICATION

A FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE OR ANY FALSE INFORMATION WILLFULLY OR FRAUDULENTLY SUBMITTED IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE APPLICANT NOT RESPONSIBLE WITH RESPECT TO THE PRESENT PROJECT OR FUTURE PROJECTS INVOLVING THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, THE NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, APPLE INDUSTRIAL DEVELOPMENT CORP. AND THE CITY OF NEW YORK AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand the items contained in the foregoing 8 pages of this questionnaire and pages of attachments, if any, and that, having made due inquiry, I supplied full, complete, and truthful answers to each item therein to the best of my knowledge, information and belief; that I will notify the New York City Economic Development Corporation, the New York City Industrial Development Agency, or Apple Industrial Development Corp., as the case may be, in writing of any change in circumstance occurring after the submission of this Questionnaire and before (i) the execution of any contract or agreement with any of them and/or the City of New York and (ii) in the case of an agreement to purchase or enter into a ground lease for real property and/or a financing through or straight lease or retention transaction with the New York City Industrial Development Agency, the closing of the transaction; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the New York City Economic Development Corporation, the New York City Industrial Development Agency, or Apple Industrial Development Corp., as the case may be, will rely on the information supplied by me in this Questionnaire as an inducement to enter into a contract or agreement and to close a transaction with the Applicant.

Sworn to me

This ___ Day of _____ 20___

_____
Notary Public

_____
Name of Applicant

By: _____
Signature of Authorized Person

_____
Print Name and Title of Authorized Person

_____
Date

EXHIBIT F

SCHEMATICS

[Attach Schematics Approved by Lease Administrator under the Pre-Development Agreement]

EXHIBIT G

APPROVED PLANS AND SPECIFICATIONS

[Intentionally Omitted]

EXHIBIT H -1

M/WBE PARTICIPATION PROPOSAL

Project Name: Moore McCormack

Respondent Name: Ferrara Bros. Building Materials Corp.
Attention: Joseph J. Ferrara, V.P.
120-05 31st Avenue
Flushing, NY 11354
Telephone: (718) 939-3030
e-mail: jjferrara@ferraraconcrete.com

Date: September 12, 2014

Ferrara Bros. Building Materials Corp. ("FB") is committed to utilizing a qualified M/WBE for the demolition and construction work required for this project. FB estimates that at least 25% ("Participation Goal") of the dollar value of the work required will be subcontracted to qualified M/WBE firms. FB will make good faith efforts to meet the Participation Goal.

After many interviews and meetings, FB has hired Gateway Demo/Civil Corp. of 41 Bethpage Road, Hicksville, NY 11801 ("Gateway"), a certified M/WBE for the: (i) demolition; (ii) construction management; and (iii) general contracting portion of this project.

As an experienced public sector contractor, Gateway is uniquely suited to build and manage this project. Working together with FB's internal team to help build this concrete plant, depending on the scope of work, it is now estimated that the dollar value of work required and which will be performed by Gateway may exceed 50% broken out as follows: (i) demolition (100%); (ii) construction management (50%); and (iii) general contracting (50%).

In order to get a headstart on this project, the initial meeting between AECOM, Gateway and FB is scheduled for Tuesday, September 16, 2014.

EXHIBIT H -2

SAMPLE M/WBE PARTICIPATION PLAN

Electronic copies of forms may be obtained by emailing opportunityMWDBE@nycedc.com

MWBE Participation Plan Check One: ☐ Initial Plan ☐ Amended Plan 7/3/2014

The purpose of this form is to ensure that appropriate planning and consideration go into the consultant and contractor utilization process, and to serve as documentation of your commitment to attain at least the minimum level of MWBE participation as represented by the goal(s) you committed to in the MWBE Participation Proposal. Please complete the forms and return (1) an Excel copy of the form and (2) an executed PDF to opportunityMWDBE@nycedc.com. Any questions should also be directed to this email address.

I affirm that the following statements are true and accurate:

1. I will make and thoroughly document every good faith effort to meet the Participation Goal.
2. This MWBE Participation Plan lists all consultants and contractors that are expected to work on this project as of the date above, whether MWBE or not.
3. I will immediately provide an updated MWBE Participation Plan to NYCEDC when consultants and contractors are added to or removed from the project, or if contract values change materially.

x_____ Signature of Authorized Representative

_____ Name & Title

_____ Date

Project Information		Project Calculations	
Site of Activity		Total Hard and Soft Cost Projection	$0.00
Developer/Purchaser		Costs Allocated to Date	$0.00
Project Manager		Total Amount to Count toward MWBE Goal	$0.00
Email		Projected MWBE Goal Attainment (Allocated Costs Only)	0.00%
Phone		Projected MWBE Goal Attainment (Total Hard and Soft Costs)	0%

Design Consultants & Construction Contractors

Company	MWBE? ("Y" or "N")	Award Amount	Services to be Provided	Hiring Company *List only direct sub relationships. Should be the entity that will make payments to the company*	Is Hiring Company MWBE? ("Y" or "N")	Amount to Count
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0

EXHIBIT H -3

M/WBE PROGRAM REQUIREMENTS

1. M/WBE Program. Section 6-129 of the Administrative Code of the City of New York (hereinafter "Section 6-129") establishes a program for participation in City procurement by M/WBEs, certified in accordance with Section 1304 of the City Charter by the New York City Department of Small Business Services ("DSBS"). The Lease Administrator has adopted an M/WBE program to further participation by MBEs and WBEs in projects administered by Lease Administrator. The Tenant shall comply with all requirements of the Lease Administrator's M/WBE program set forth herein.

2. Minority and Women-Owned Business Enterprises. M/WBE firms must be certified by DSBS to credit such firms' participation toward attainment of the Participation Goal. Such certification must occur prior to the firms' commencement of work.

3. Participation Goal.

a) Tenant commits to a Participation Goal of 25% for the Initial Construction Work, as is set forth in the M/WBE Participation Proposal attached to this Lease as Exhibit H-1.

b) The Participation Goal represents the percentage of the hard costs and soft costs associated with the Initial ConstructionWork (the "Eligible Costs") that may be calculated as follows:

i. Contractors: The total dollar amount that Tenant has paid or is obligated to pay to contractors certified with DSBS as MBEs or WBEs for Eligible Costs shall be credited toward fulfilment of the Participation Goal, provided that the value of such a contractor's participation shall be determined by subtracting from this total dollar amount any amounts that the contractor has paid or is obligated to pay to direct subcontractors or suppliers upon completion of such subcontractors or suppliers work or services.

ii. Direct Subcontractors: The total dollar amount that a contractor has paid or is obligated to pay to subcontractors certified with DSBS as MBEs or WBEs for Eligible Costs shall be credited toward fulfilment of the Participation Goal, provided that the value of such a direct subcontractor's participation shall be determined by subtracting from this total dollar value any amounts that the direct subcontractor has paid or is obligated to pay to indirect subcontractors or suppliers upon completion of such indirect subcontractors or suppliers work or services.

iii. Indirect Subcontractors: The total dollar amount that a subcontractor has paid or is obligated to pay to its subcontractors certified with DSBS as MBEs or WBEs for Eligible Costs shall be credited toward fulfilment of the Participation Goal.

iv. Suppliers: 60% of the dollar amount spent on materials or supplies as a part of the Eligible Costs, when such materials or supplies are purchased by the Tenant, contractors or direct subcontractors from suppliers certified with DSBS as MBEs or WBEs, shall be credited toward fulfilment of the Participation Goal.

v. Joint Ventures: A contractor, direct subcontractor or indirect subcontractor that is a qualified joint venture, as defined in Section 6-129(c)(24), shall be permitted to count a percentage of its own participation toward fulfillment of the Participation Goal. The value of such a contractor, direct subcontractor or indirect subcontractor's participation shall be determined by subtracting from this total dollar amount any amounts that the contractor, direct subcontractor or indirect subcontractor pays to subcontractors or suppliers, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an M/WBE partner is entitled pursuant to the joint venture agreement. If a contractor, direct subcontractor or indirect subcontractor claims credit for participation as a qualified joint venture, then upon Lease Administrator's request, Tenant must promptly provide a copy of the joint venture agreement for review and confirmation of the M/WBE partner's profit share as used in calculating credit toward fulfilment of the Participation Goal.

Participation Goal Calculation Example (for illustrative purposes only):

Eligible Costs:	**$100 million**		
Participation Goal:	**25%**	**Actual Participation Amount:**	**27.4%**
Dollar Value of Participation Goal:	$25 million	Dollar Value of Participation Amount:	$27.4 million
	Payment	**Dollar Value of M/WBE Participation**	**Credit toward Participation Goal:**
Design Phase: $10 million is paid to an architecture firm as contractor for pre-construction work, firm is a joint venture with an M/WBE JV partner and profits are shared 50/50 pursuant to the JV Agreement	$10 million	$10 million (no amounts subcontracted out and no supplies needed) multiplied by the 50% JV Interest = $5 million	5%
Construction Management/GC Level: $90 million is paid to Contractor to serve as Construction Manager, CM is NOT an M/WBE Firm.	$90 million	$0	0%
Direct Subcontractor Level: CM pays $80 million to multiple direct subcontractors. Two direct subcontractors are M/WBE firms and $50 million of the $80 million is paid to these two firms.	$50 million	$50 million minus amounts spent by these two M/WBE direct subcontractor firms on indirect subcontractors ($30 million) and supplies ($10 million, *see below*) = $10 million	10%
Indirect Subcontractor Level: $30 million is paid by Direct Subcontractors to multiple indirect subcontractors, $10 million of the $30 million is paid to Indirect Subcontractors that are M/WBE Firms	$10 million	$10 million	10%
Supplier Inclusion: $10 million is spent by Direct Subcontractors on supplies. Of that, $4 million is spent on supplies purchased from M/WBE suppliers.	$4 million	60% of the $4 million purchased from M/WBE suppliers = $2.4 million	2.40%
		TOTAL:	**27.4%**

4. M/WBE Compliance Reports.

a) The Tenant, or a designee on behalf of the Tenant, shall provide the Lease Administrator with written statements in the form attached hereto as Exhibit H-4 ("M/WBE Compliance Reports"), certified under penalty of perjury, reporting the status of the Tenant's compliance with its M/WBE Participation Plan and Participation Goal for the period covered by the report. The Tenant shall submit an M/WBE Compliance Report to the Lease Administrator quarterly.

b) In addition to the foregoing, the Tenant shall submit a final, cumulative M/WBE Compliance Report to the Lease Administrator within thirty (30) days of the completion of the Initial ConstructionWork. The Tenant shall set forth in such final report the information required in prior M/WBE Compliance Reports, including information for all M/WBE contractors, subcontractors and suppliers who were paid for Eligible Costs during the Work.

5. Modification of the Tenant's Participation Plan.

a) The Tenant may request modification of its M/WBE Participation Plan after it has been approved. The Lease Administrator may grant such request if it determines that the Tenant has established, with appropriate documentary and other evidence, that the Tenant has made good faith efforts to meet the Participation Goal.

b) Good faith efforts shall be documented by Tenant requesting a modification and such documentation shall be provided to the Lease Administrator upon the Lease Administrator's request. In determining whether the Tenant has made good faith efforts to meet the Participation Goal, the Lease Administrator will consider, along with any other relevant factors, evidence submitted by the Tenant showing that the Tenant or Tenant's contractors or subcontractors, as appropriate, have, without limitation, conducted the following:

i. Direct Outreach. The Tenant, or Tenant's contractors or subcontractors, as appropriate, provided timely notice to M/WBEs of specific opportunities to participate in the Work;

ii. NYCEDC Assistance. The Tenant submitted timely requests for assistance to the Lease Administrator's M/WBE liaison officer and provided the Lease Administrator with a description of how the Lease Administrator's recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs;

iii. Advertised Opportunities. The Tenant, or Tenant's contractors or subcontractors, as appropriate, advertised opportunities to participate in the Initial Construction Work in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations;

iv. Follow Up with M/WBEs. The Tenant, or Tenant's contractors or subcontractors, as appropriate, sent timely written notices to advise M/WBEs that their interest in the Work was solicited;

v. Substitution of Work. The Tenant, or Tenant's contractors or subcontractors, as appropriate, made efforts to identify portions of the Work that could be substituted for portions originally designated for the participation by M/WBEs in the M/WBE Participation Plan and for which the Tenant claims an inability to retain M/WBEs;

vi. M/WBE Suppliers. The Tenant, or Tenant's contractors or subcontractors, as appropriate, made efforts to identify materials or supplies that could be purchased from suppliers certified with DSBS as MBEs or WBEs.

vii. Meeting with M/WBEs. The Tenant, or Tenant's contractors or subcontractors, as appropriate, held meetings with M/WBEs prior to the date their proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their proposals were solicited; and

viii. Negotiated with M/WBEs. The Tenant, or Tenant's contractors or subcontractors, as appropriate, made efforts to negotiate with M/WBEs to perform specific subcontracts or act as suppliers or service providers.

c) The Lease Administrator's M/WBE Director or Senior Vice President for Contracts will provide written notice to the Tenant of the determination on whether the Tenant has made all good faith efforts to meet the Participation Goal.

6. Compliance Audits. This Lease may be audited by the Lease Administrator to determine the Tenant's compliance with the requirements of the Tenant's M/WBE Participation Proposal and M/WBE Participation Plan.

7. Enforcement. In the event the Lease Administrator determines that the Tenant, its contractors or subcontractors, have violated the M/WBE Program Requirements set forth herein or the M/WBE Participation Plan including, without limitation, a determination that the Tenant has failed to use good faith efforts to fulfill its Participation Goal, the Lease Administrator may (i) assess liquidated damages set forth in Section 8, below; and/or (ii) assert any other right or remedy it has under the Lease.

8. Liquidated Damages. If the Tenant fails to use good faith efforts to fulfill its Participation Goal, the Landlord and/or Lease Administrator may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of the Initial ConstructionWork required to be awarded to M/WBE contractors, subcontractors and suppliers to meet the Participation Goal and the dollar amount the Tenant actually awarded and paid to such M/WBEs. In view of the difficulty of accurately ascertaining the loss which the Landlord or Lease Administrator will suffer by reason of the Tenant's failure to meet the Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the Landlord or Lease Administrator will suffer by reason of such failure, and not as a penalty.

9. Evaluations. The Tenant's record in implementing its M/WBE Participation Plan shall be a factor in the evaluation of its performance. If Tenant's compliance with its M/WBE Participation Plan and/or the M/WBE Program Requirements is found to be unsatisfactory, including but not limited to, Tenant's failure to use good faith efforts to fulfill its Participation

Goal, Landlord or Lease Administrator may, after consultation with the Director of the Mayor's Office for Contracts, file an advice of caution form in VENDEX as caution data.

EXHIBIT H -4

SAMPLE M/WBE COMPLIANCE REPORT AND SUBCONTRACTOR VERIFICATION FORM

Electronic copies of forms may be obtained by emailing opportunityMWDBE@nycedc.com

MWBE COMPLIANCE REPORT

7/3/2014

The purpose of this form is to track actual payments to subcontractors and monitor progress towards MWBE goals.

The following information indicates the payment amounts made by the developer **to the NYC-certified MWBE subcontractors** on this project. The payments as shown are made in compliance with contract documents for the below referenced project.

MWBE Compliance Reports are due, completed and signed, within thirty (30) days of the end of each quarter. For example, payments made between July 1st through September 30th must be reported no later than October 31st. If no payments have been made to certified MWBE subcontracotrs in a given quarter, enter "NONE"under Business Name in the first row. Please complete the forms and return (1) an Excel copy of the form and (2) an executed PDF to opportunityMWDBE@nycedc.com. **Failure to submit this form will result in non-compliance and may affect developer's Vendex status.**

Select Quarter:

- ☐ Q1: July - September; due Oct. 15th
- ☐ Q2: October - December; due Jan. 15th
- ☐ Q3: January - March; due April 15th
- ☐ Q4: April - June; due July 15th

x_____ Signature of Authorized Representative

_____ Name & Title

_____ Date

Project Information		Project Calculations	
Site of Activity		Total Hard and Soft Costs Projection	$0.00
Developer/Purchaser		Hard and Soft Costs to Date	$0.00
Project Manager		Total Payment Amounts to Count toward MWBE Goal	$0.00
Email		MWBE Goal Attainment to Date (based on costs incurred to date)	0.00%
Phone		Portion of MWBE Goal Fulfilled to Date (based on total expected cost of the project)	0%

Payment Data

Company	MWBE? ("Y" or "N")	Payments (cumulative)	Services Provided	Hiring Company *List only direct sub relationships. Should be the entity that will make payments to the company*	Is Hiring Company MWBE? ("Y" or "N")	Amount to Count
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0
						$0

SAMPLE SUBCONTRACTOR VERIFICATION REPORT

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
CONTRACTOR/SUBCONTRACTOR CUMULATIVE PAYMENT VERIFICATION FORM

MWBE?	PROJECT/DEVELOPMENT NAME	TYPE OF WORK	REPORT QUARTER
YES ☐ NO ☐			

PRIME CONTRACTOR	SUBCONTRACTOR
NAME	NAME
ADDRESS	ADDRESS
PHONE	PHONE
FED. ID No.	FED. ID No.

AWARD AMOUNT: $_____

PAYMENT- CURRENT QUARTER: $_____

TOTAL PAYMENT TO DATE: $_____

ADDIIONAL NOTES (Use this space to explain special circumstances)

CERTIFICATION AND NOTARIZATION

I certify that the total payments above reflect the value of the work and that the work was performed solely by the Subcontractor named above, through employees of the Subcontractor who were under direct supervision of employees of the Subcontractor; that payments have been made by the Contractor and received by the Subcontractor as specified above; that there were no rebates, refunds or offsets applied to any payments unless the same is noted above; and that it is known to me to be true of my own knowledge.

Prime Contractor's Signature	Subcontractor's Signature
Title:	Title:
Sworn before me this	Sworn before me this
Day of , 20	Day of , 20
Notary Public	Notary Public

If this affidavit is verified by an oath administered by a Notary Public in a foreign country other than Canada, it must be accompanied by certificate authenticating the authority of the Notary who administered the oath.

NYCEDC
Opportunity M/W/DBE

EXHIBIT I

ENVIRONMENTAL CONDITIONS

Phase I Environmental Site Assessment Former Moore-McCormack Facility, 730 Third Avenue, Brooklyn, New York, Prepared by AECOM, 125 Broad Street, New York, NY 10281, AECOM Project No: 60331991, dated November 21, 2014;

Phase II Site Investigation Results Report for Former Moore-McCormack Facility, 730 Third Avenue, Brooklyn, New York, Prepared by AECOM, 125 Broad Street, New York, NY 10281, AECOM Project No: 60331991, dated June 2015

Report of Asbestos Containing Materials and Hazardous Materials Survey at Moore McCormack Building 740 3rd Avenue, Brooklyn, NY, prepared for NYCEDC by TRC Environmental Corporatio,1430 Broadway, 10th Floor,New York, New York 10018,February 2007,
TRC Project Number: 113429-0130

EXHIBIT J-1

HIRENYC: CONSTRUCTION PROGRAM

HireNYC: Construction applies to all contracts related to Tenant's Construction Activities (as defined below) for goods, services, and construction with a value of $1,000,000 or more. With respect to this program, "Construction Activities" are any endeavors, actions and processes undertaken in furtherance of the Project (i) to improve, alter, build or demolish the Premises; (ii) as a prerequisite to improve, alter, build, or demolish the Premises; or (iii) to facilitate, monitor or supervise the improvement, alteration, building or demolition of the Premises.
The requirements of HireNYC: Construction do not limit Tenant's ability to assess the qualifications of prospective workers or to make final hiring and retention decisions. The program does not require Tenant to employ any particular worker.

HireNYC: Construction will apply to Tenant and its successors and assigns with regard to the Initial Construction Work. Consistent with these obligations, Tenant will also incorporate the requirements of HireNYC: Construction into all contracts related to Construction Activities for goods, services and construction with a value of $1,000,000 or more between Tenant and any contractor and will require its contractors to include the requirements in their subcontracts with a value of $1,000,000 or more.

Tenant will participate in HireNYC: Construction from the time it enters into its initial contract for Construction Activities until the end of the Construction Activities for the Initial Construction Work. After or near the end of the Construction Activities for the Initial Construction Work, Tenant will transition into HireNYC: Permanent, applicable to permanent positions.

I. HireNYC: Construction Requirements.

a. Enrollment. Tenant must enroll in the program through the HireNYC portal (http://www.nyc.gov/html/sbs/wf1/html/contact/targeted_hiring.shtml) within 20 business days of full execution of this Lease. Tenant will provide information about its Project, designate a primary contact and state whether it intends to hire for any entry to mid-level job opportunities arising from Construction Activities related to the Lease that are located in the City, and, if so, the approximate start date of the first hire. For the purposes of HireNYC: Construction "entry to mid-level job opportunities" are employment opportunities that require, as determined by the New York State Department of Labor,[2] any of the following minimum levels of education: less than a high school diploma, a high school diploma or equivalent, postsecondary non-degree award, some college, no degree or an associate's degree.

[2] See Columns F and G of https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls.

b. Job Recruitment Requirements.

i. Tenant must update the HireNYC portal with:

- all new and replacement entry to mid-level job opportunities arising from Construction Activities related to the Lease that are located in the City, if any,
- the requirements of the jobs to be filled,
- the number of positions,
- the anticipated schedule of initiating the hiring process for these positions, and
- the contact information for Tenant's representative charged with overseeing hiring.

ii. Tenant must provide this information for such an entry or mid-level job opportunity no fewer than 30 business days prior to the intended first day of employment for the applicable entry or mid-level position (although Tenant is encouraged to provide that information as early as practicable). With respect to such an available entry or mid-level position, the period beginning on the date that Tenant provides that information and ending on the date 15 business days later will be known as the "Recruitment Period." During the Recruitment Period for an entry or mid-level position, Tenant must exclusively consider and only hire candidates provided by DSBS; provided that, after the tenth business day of that Recruitment Period, DSBS will not send any additional candidates for the applicable position to Tenant for exclusive consideration.

iii. At the request of DSBS, Tenant will also be required to provide information on Tenant's construction schedule for Project milestones, deadlines or delivery dates and expected new hiring required, which information may be used by DSBS to create a tailored recruitment plan.

iv. DSBS will screen applicants based on Tenant's employment requirements and refer applicants whom DSBS believes are qualified to Tenant for interviews. Tenant must interview referred applicants whom it believes are qualified for the available position.

v. After completing an interview of a candidate referred through HireNYC: Construction, Tenant must provide feedback through the portal within 20 business days to indicate whether the candidate was hired. If a candidate is not interviewed, Tenant must provide information on why such candidate was not qualified for consideration

within 20 business days of the candidate's referral. In addition, Tenant must provide the start date of and compensation for new hires, and additional information reasonably requested by DSBS about such hires, within 20 business days after the start date.

vi. This Section I(b) shall not apply to positions that Tenant intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York (the "Building Service Code"). Tenant shall not be required to report such openings through the HireNYC portal. However, Tenant shall enroll through the HireNYC portal pursuant to section I(a), above, and, if additional positions that are not governed by the Building Service Code subsequently become open, the provisions of this Section I(b) will apply.

c. Reporting Requirements. In the event Tenant does not have any job openings covered by HireNYC: Construction in any given year, Tenant must provide an annual update through the HireNYC portal to that effect. For this purpose, the reporting year will run from the date of the full execution of the Lease and each anniversary date, until the end of the Project's Construction Activities for the Initial Construction Work.

II. Construction Requirements.

a. Tenant's construction contractors or consultants must comply with HireNYC: Construction requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the Construction Activities and located in the City) and for all nonunion trade jobs as set forth above.

b. In addition, Tenant's construction contractors or consultants shall reasonably cooperate with DSBS and the Lease Administrator on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this Project.

III. Breach and Liquidated Damages.

a. If Tenant or its contractors or their subcontractors fail to comply with the terms of HireNYC: Construction (1) by not enrolling its business through the HireNYC portal; (2) by not informing DSBS through the HireNYC portal, as required, of open positions; or (3) by failing to interview a qualified candidate, NYCEDC may assess liquidated damages in the amount of $2,500 per breach. For all other events of noncompliance with the terms of HireNYC: Construction, NYCEDC may assess liquidated damages in the amount of $500 per breach.

b. The failure of Tenant or its contractors or their subcontractors to interview a qualified candidate will be determined by NYCEDC in its sole discretion based on factors such as, and without limitation, the information provided through the HireNYC portal, the recruitment plan, if any, and an assessment of whether Tenant or its contractors or their subcontractors acted in good faith with respect to a referred candidate. If no reason is provided for failing to interview a referred candidate or if only insufficient information is provided within 20 business days of a candidate's referral, then such candidate will be deemed to be qualified (and liquidated damages may apply). Regardless as to the number of candidates that Tenant may fail to interview for a particular job opening, no more than five candidates will be used to calculate the total amount of liquidated damages attributable to that job opening.

c. In the event Tenant or its contractors or their subcontractors breaches the requirements of HireNYC: Construction during the term of the Lease, NYCEDC may hold the Tenant in default.

EXHIBIT J-2

HIRENYC: PERMANENT

TENANT'S HIRE NYC: PERMANENT PROGRAM PLAN

Project Name: Moore McCormack

Respondent Name: Ferrara Bros. LLC.
Attention: Joseph J. Ferrara, V.P.
120-05 31st Avenue
Flushing, NY 11354
Telephone: (718) 939-3030
e-mail: jjferrara@ferraraconcrete.com

Date: September 2, 2014

Ferrara Bros. LLC. ("FB" or "Tenant") understands and is committed to the NYCEDC HireNYC Program goal of creating employment opportunities for low – and moderate – income individuals from the NYC community, enabling them to participate in the City's economic growth (such persons being hereinafter referred to as the target population ("Target Population") defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at **http://www.nyc.gov/html/ceo/downloads/pdf/poverty_measure_2011.pdf**).

Tenant's HireNYC Program will be in effect for a period of eight (8) years from the commencement of the first business operations at the project location ("HireNYC Program Term").

To this end, FB is submitting this HireNYC Plan (Tenant's HireNYC Program") as Tenant'scommitment to the HireNYC Program goals and requirements. In this effort, FB will work in good faith to achieve the HireNYC program goals and comply with HireNYC program requirements. FB also agrees to work with NYCEDC and HireNYC Program staff in implementing Tenant's HireNYC Program for the Moore McCormack project.

Teanat's HireNYC Program will apply toTenant, its successors and assigns, and to all tenants (including any separate operator of the compressed natural gas facility) (which term also includes Subtenants) at the Premises during the HireNYC Program Term.

I. Tenant's HireNYC Program Goals

Subject to legal obligations, existing collective bargaining agreements and employees' ability to request transfers from other similar facilities currently operated by FB, FB will use good faith efforts to achieve the following goals ("Goals"):

Hiring: 50% of all new permanent jobs created by the Project (including jobs created by Subtenants, but excluding jobs relocated from other sites),will be filled by members of the Target Population referred by the Designated City Agency (hereinafter defined) for a period beginning, for each employer, at commencement of business operations and continuing through the end of the HireNYC Program Term .

Retention: 40% of all employees whose hiring satisfied the Hiring Goal will be retained for at least nine (9) months from date of hire.

Advancement: 30% of all employees whose hiring satisfied the Hiring Goal will be promoted to a higher paid position within one (1) year of date of hire.

Training: We will work with NYCEDC and the Designated City Agency (designated by NYCEDC and notified to FB) to provide educational/skill enhancing opportunities to members of the Target Population if applicable.

II. Tenant's Hire NYC Program Requirements

Through FB's use of good faith efforts to achieve the HireNYC Goals, we will also comply with the following:

1. FB's liaison for workforce development will be: Brian Ferrara, Operations Manager; Telephone: (718) 939-3030; e-mail: bferrara@ferraraconcrete.com.

2. FB will:

    a. use good faith efforts to achieve the Goals;

b. provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least three (3) months before commencing hiring;

c. notify NYCEDC six (6) weeks prior to commencing business operations;

d. during initial hiring for any new permanent jobs associated with the commencement of business at the Premises, consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;

e. during ongoing hiring for any new permanent jobs, consider only applicants referred by the Designated City Agency for the first five (5) business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;

f. submit to NYCEDC an annual HireNYC Employment Report in the form provided by NYCEDC;

g. cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with Tenant's HireNYC Program;

h. provide information related to Tenant's HireNYC Program and the hiring process to NYCEDC upon request; and

i. allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.

III. Permanent Jobs

We expect to create, either directly or through our tenants, initially approximately 25 and ramping up to approximately 45 permanent jobs sometime in the first several years. These jobs are:

- Concrete Mixer Drivers
- Concrete Plant Batcher(s)
- Assistant Dispatcher(s)
- Concrete Quality Control and Testing Technicians
- Mechanics and maintenance men
- Front end loader operators
- Laborers
- Office Clerk/Assistant Batcher
- Operations Manager

The majority of jobs created will be concrete mixer driver positions which require: (i) a Commercial Driver's License (CDL); (ii) a clean drivers abstract; and (iii) NRMCA CDP

certification to comply with NYC Department of Buildings - BC 1905.8.2. All positions except Manager are covered by various existing collective bargaining agreements and, except for laborers, are considered skilled or semi-skilled positions.

IV. Training and Workforce Development

FB provides on the job training as well as requiring of many of its employees, various industry certification programs such as Concrete Delivery Professional (CDP®); Concrete Technologist offered by the National Ready-Mixed Concrete Association (NRMCA) and American Concrete Institute (ACI) certification programs. In addition, a variety of training programs, such as 10 hour OSHA safety training, are offered by the labor organizations that FB has collective bargaining agreements with.

V. Recruitment and hiring

We agree to work with NYCEDC and the Designated City Agency to interview candidates from the Target Population. NYCEDC and the Designated City Agency will screen candidates based on the job descriptions we will provide 3 months before the commencement of hiring.

VI. General Requirements

1. Tenant shall incorporate the terms of its HireNYC Program into all tenant and subtenant leases obligating tenants and subtenants to comply with the Goals and other requirements in Tenant's HireNYC Program to the same extent as Tenant is required to comply with such Goals and other requirements.

2. Enforcement. In the event NYCEDC determines that Tenant, its tenants or subtenants, have violated any ofTenant's HireNYC Program requirements, including, without limitation, a determination that Tenent, its tenants or subtenants, have failed to use good faith efforts to fulfill the Goals, NYCEDC may (1) assess liquidated damages set forth immediately below; and/or (2)assert any right or remedy it has under the Lease to whichTenant's HireNYC Program applies.

3. Liquidated Damages. If Tenant, its tenants or subtenants, do any of the following:

   (i) fail to comply with their obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (b), (c), (d), and/or (e), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the program; or
   (ii) fail to comply with their obligations set forth in Section II(2) clauses , (f), (g), and/or (h), and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC, then, in the case of clause (i), NYCEDC may assess liquidated damages in the amount of $2,500.00 for each position for which the Designated City Agency was unable to refer applicants or otherwise

participate in hiring as required by the program, and in the case of clause (ii), NYCEDC may assess damages for breach of each requirement in the amount of $1,000.00 In view of the difficulty of accurately ascertaining the loss which NYCEDC will suffer by reason of Tenant's failure to comply with program requirements, the foregoing amounts are hereby fixed and agreed as the liquidated damages that NYCEDC will suffer by reason of such failure, and not as a penalty.

Tenant shall be liable for and shall pay to NYCEDC all damages assessed against Tenant , any tenant or subtenant at the project upon receipt of demand from NYCEDC.

EXHIBIT K

Form of Employment Report

[On following page]

Annual Employment Report

As of June 30, _____

The Tenant under that certain Agreement of Lease dated as of _____, between the City of New York, as landlord, and New York City Economic Development Corporation, as tenant (as subsequently assigned to [_____] and as it may be amended from time to time, the "Lease") shall, each year during the term of the Lease, complete and submit, and cause each of its subtenants to complete and submit, this Annual Employment Report no later than August 1st of such year.

Name of Tenant/Subtenant _____(the "Reporting Entity")
Tax ID # of Reporting Entity _____
Address of Reporting Entity _____
_____
Contact Person for Reporting Entity _____
Contact Information for Contact Person for Reporting Entity _____

Please provide the following information for the Reporting Entity as of June 30th of the current calendar year (do not include anyone employed by a contractor or consultant of Reporting Entity or any employee on the payroll of Reporting Entity not based at the Premises (as defined in the Lease)):

Number of existing FULL TIME JOBS _____

Number of existing PART TIME JOBS _____

Certification: I, the undersigned, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete, and that I understand it is submitted pursuant to agreement. The Reporting Entity hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to New York City Economic Development Corporation ("EDC") or to such other party as shall be the Lease Administrator under the Lease, and/or to their respective successors and assigns (collectively, the "Information Recipients"), any and all employment information under its control which is pertinent to the Reporting Entity and the Reporting Entity's employees. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Reporting Entity itself, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information ") may be disclosed by the Information Recipients in connection with its/their services on behalf of the City of New York, by the City of New York, and/or as may be necessary to comply with law. Without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 62 of 2010 (as it may be amended, replaced or superseded from time to time), (y) other reports required of the Information Recipients, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of the Lease.

Authorized Signatory of Reporting Entity: Name: _____
Title: _____

Signature: _____ Date: _____

If you have any questions, please call the EDC Compliance Helpline at (212) 312-3968.

Please fax or mail this completed form to:

New York City Economic Development Corporation
110 William Street, New York, NY 10038
Attention: Compliance
Fax: (212) 312-3918

EXHIBIT L

FIRPTA FORM

To inform [Tenant] that no withholding is required with respect to the payment of Rent and any other charges payable to the undersigned under the Lease for certain premises located in [borough], New York dated _____, 20__, the undersigned hereby certifies the following:

1. The undersigned is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. The undersigned's U.S. employer identification number is _____; and

3. The undersigned's office address is _____ and place of incorporation (if applicable) is _____.

4. The undersigned understands that this certification may be disclosed to the Internal Revenue Service by [Tenant] and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete.

[Signature and date]

[Title]

EXHIBIT M

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE (this "Memorandum") made as of _____,___ 2016 by and between THE CITY OF NEW YORK, a municipal corporation of the State of New York acting by and through its Commissioner of Small Business Services of the City of New York Department of Small Business Services ("Landlord"), having an address at City Hall, New York, NY 10007, and FERRARA BROS.LLC., a Delaware limited liability company, having an address at 120-05 31st Avenue, Flushing, New York 11354 ("Tenant").

RECITALS

WHEREAS, Landlord and Tenant entered into an Agreement of Lease (the "Ground Lease") dated as of the date hereof pursuant to which the Landlord leased to Tenant certain real property (including all buildings, structures and/or improvements now or hereafter located thereat), designated as Block 644, Lot 50 on the Tax Map for the Borough of Brooklyn, City and State of New York, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Premises"); and

WHEREAS, the parties desire to record this Memorandum to provide notice that the Landlord has granted to the Tenant certain rights, title and interests in and to the Premises.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Demise and Term. Landlord has leased the Premises to Tenant for a term commencing on the date hereof and expiring at 11:59 p.m. on the last day of the twenty-fifth (25th) Lease Year (as defined below) or such earlier date upon which the Ground Lease may be terminated in accordance with the terms therein, subject to the extension options referenced in Section 2 below. As used herein, "Lease Year" shall mean the period commencing on the date hereof and ending on _____, 20__ *[Actual date to be filled in upon execution]* and each succeeding twelve (12) month period during the Term.

2. Rights of Extension or Renewal. Tenant has five (5) consecutive options to extend the term for five (5) years each.

3. Memorandum Subject to Ground Lease. This Memorandum is subject to all of the terms, conditions and provisions of the Ground Lease, and shall not be construed to vary or otherwise affect such terms, conditions and provisions or the rights and obligations of the parties thereto. In the event of any conflicts between the terms, conditions and provisions of the Ground Lease and this Memorandum, the terms, conditions and provisions of the Ground Lease shall govern and control.

5. Counterparts. This Memorandum may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same Memorandum.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first written above.

LANDLORD:

THE CITY OF NEW YORK, acting by and through its DEPARTMENT OF SMALL BUSINESS SERVICES

By: _____
Name:
Title:

TENANT:

FERRARA BROS. LLC

By: _____
Name:
Title:

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 2016 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

_____

Notary Public

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.

_____

Notary Public

Exhibit A
to Memorandum of Lease

DESCRIPTION OF PREMISES

[to be added hereto]

EXHIBIT N

AS-BUILT DRAWINGS FOR BULKHEAD

[See Attached]

EXHIBIT O

PLANT EQUIPMENT

BATCH PLANT:

- AGGREGATE HANDLING SYSTEM
- ONE (1) AGGREGATE STORAGE BIN, SIX COMPARTMENTS, 600 TON CAPACITY (720 TON CPMB)
- TWO (2) AGGREGATE WEIGH HOPPERS
- SIX (6) CEMENT STORAGE SILOS
- TWO (2) CEMENT WEIGH HOPPERS
- TWO (2) WATER WEIGH HOPPERS
- CHARGING CHUTE WORK
- COMPRESSED AIR EQUIPMENT
- CENTRAL DUST COLLECTION
- ELECTRICAL SYSTEM
- ROLLMASTER MIXER, 12YD
- SICOMA TWIN SHAFT MIXER, 12YD
- TWO (2) ONE TON ICE BIN HOPPERS
- EMERGENCY MOTORS FOR THE ROLLMASTER
- MIXER DRY BATCH LOADING BAY
- CENTRAL DUST COLLECTION RECYCLING SYSTEM ANTI-OVERFILL SYSTEM
- MOISTURE PROBES
- WATER RESERVE TANK ABOVE WEIGH BATCHER
- CONTINUOUS LEVEL SENSORS
- DIFFUSERS FOR THE AGGREGATE BIN HEATING SYSTEM

CONCRETE COOLING SYSTEM:

- FOUR (4) SEA CONTAINERS
- ICE MAKER UNIT
- CONDENSER UNIT
- PNEUMATIC TRANSFER UNIT

MISC:

CNG (COMPRESSED NATURAL GAS) STATION *

RECLAIM SYSTEM

TRUCK WASHOUT STATION

ONE (1) FRONT END LOADER

*Notwithstanding anything to the contrary in this Lease, the CNG (Compressed Natural Gas) Station will effective upon purchase by Tenant and all times thereafter but, in all events, subject to this Lease, constitute the property of Landlord and shall be left on the Premises upon the expiration or earlier termination of this Lease.

EXHIBIT P

BERTHING ACCOUNT

BERTHING ACCOUNT FORM

The undersigned hereby gives notice that the following vessel(s) has berthed at the Premises in Kings County:

Company Name: Owned/ Operated By:

Address: Agent:

Gross Reg. Tonnage: Overall Length: Beam: Draft:

Pier/ Berth No. Located At:

For the Period from: To:

Amount of Cargo
to be discharged: Loaded:

Description of Cargo: To be worked: ( ) Inshore ( )
Offshore

Remarks:

Contact: _____ Stevedore:
_____
_____
_____

Wharfage: _____ Dockage:
_____
_____
_____
_____

_____

_____

_____

Date of berthing:_____

EXHIBIT Q

CERTAIN LEASE TERMS APPLICABLE TO THE EXPANSION SPACE

The total square footage of the Expansion Space is 44,635 square feet ("Expansion Space Floor Area").

Notwithstanding anything to the contrary in this Lease, the following terms shall apply to the Expansion Space:

Base Rent:

1. In the event that the Expansion Space Sublease terminates prior to December 31, 2035 (the "Expansion Space Sublease Expiration Date") and the Expansion Space becomes a part of the Premises in accordance with the terms of this Lease, for each successive Specified Period provided below, or portion thereof, occurring from the Expansion Space Commencement Date through the Expansion Space Sublease Expiration Date, annual Base Rent for the Expansion Space shall be in an amount equal to the following:

(A) For the period commencing on the Expansion Space Commencement Date through the last day of the Specified Period set forth below in which the Expansion Space Commencement Date occurs: the greater of (i) the annual Fair Market Rent for the Expansion Space as of a Determination Date not earlier than one hundred eighty (180) days prior to the Expansion Space Commencement Date and (ii) the following amounts during such Specified Period (the greater of the amount determined in accordance with clauses (i) and (ii) of this paragraph to apply for each 12-month period, or portion thereof, occurring during such applicable Specified Period):

Specified Period	Per Annum	$ Per Square Foot	x	Expansion Space Floor Area
1/1/2015-12/312019	$ 172,291.10	$3.86	*multiplied by*	44,635
1/1/2020-12/31/2024	$ 180,771.75	$4.05	*multiplied by*	44,635
1/1/2025-12/312029	$ 189,698.75	$4.25	*multiplied by*	44,635
1/1/2030-Expansion Space - Sublease Expiration Date (12/31/2035)	$ 199,072.10	$4.46	*multiplied by*	44,635

(B) Thereafter, for each successive Specified Period set forth above through the Expansion Space Sublease Expiration Date: the greater of (i) the annual Fair Market Rent for the Expansion Space as of a Determination Date not earlier than one hundred eighty (180) days prior to the last day of the 12 month period immediately preceding the first day of the applicable Specified Period occurring prior to the Expansion Space Sublease Expiration Date and (ii) the above amounts during the applicable Specified Period (the greater of the amount determined in

accordance with clauses (i) and (ii) in this paragraph 1(B) to apply for each successive Specified Period, or portion thereof, occurring prior to the Expansion Space Subleasse Expiration Date.

Notwithstanding the foregoing, if the Fair Market Rent provided in clause (i) of each of the foregoing paragraphs has not yet been determined in accordance with Section 35.1 hereof as of the Expansion Space Commencement Date (or as of the first day of the applicableSpecified Period), then Tenant shall pay annual Base Rent in accordance with clause (ii) of each such paragraph until such determination has been made, and when such determination has been made, if the annual Fair Market Rent is higher than the amount pursuant to clause (ii) of such paragraph, the annual Fair Market Rent shall thereafter be the annual Base Rent for the applicable Specified Period and an appropriate retroactive adjustment shall be made for any underpayment.

For the avoidance of doubt, it is the intention of the parties that in the event that the Expansion Space Sublease terminates and the Expansion Space becomes a part of the Premises prior December 31, 2035, then Tenant shall pay annual Base Rent on the Expansion Space pursuant to this paragraph 1 equal to the higher of the Fair Market Rent and the above schedule for each Specified Period, or portion thereof, set forth above occurring prior to December 31, 2035, such annual Base Rent to be recalculated based on a new annual Fair Market Rent determination for each successive Specified Period occurring in the time-frame covered by this paragraph (1).

2. From the Expansion Space Sublease Expiration Date through the last day of the Initial Term, annual Base Rent for the Expansion Space shall be equal to the following (i) for the first 12-month period, annual Base Rent shall equal the greater of (y) the annual Fair Market Rent for the Expansion Space as of a Determination Date not earlier than one hundred eighty (180) days prior to the Expansion Space Sublease Expiration Date and (z) the product of the Base Rent in effect for the Expansion Space for the 12-month period immediately preceding such first 12-month period (and if Tenant has not previously paid Base Rent for the Expansion Space, then the Base Rent for such prior 12-month period calculated pursuant to the schedule provided in paragraph (1) above in this Exhibit Q) *multiplied by* the Annual Base Rent Increase Amount and (ii) for each successive 12-month period through the last day of the Initial Term, annual Base Rent shall equal (y) the product of the Base Rent for the immediately prior 12-month period *multiplied by* (z) the Annual Base Rent Increase Amount; provided that if the Fair Market Rent provided in clause (i)(y) has not yet been determined in accordance with Section 35.1 hereof as of the Expansion Space Sublease Expiration Date, then Tenant shall pay Base Rent in accordance with clause (i)(z) of this paragraph (2) until such determination has been made, and when such determination has been made, an appropriate retroactive adjustment shall be made for any underpayment.

3. For each Lease Year during each Extension Term, the annual Base Rent for the Expansion Space shall be equal to the following: (i) for the first Lease Year of the applicable Extension Term, annual Base Rent shall equal the greater of (y) the annual Fair Market Rent for the Expansion Space as of a Determination Date not earlier than one hundred eighty (180) days prior to the last day of the Lease Year immediately preceding the first Lease Year of the applicable Extension Term and (z) the product of the annual Base Rent in effect for the Lease Year immediately preceding the first Lease Year of the applicable Extension Term *multiplied by* the Annual Base Rent Increase Amount and (ii) for the second through fifth Lease Years of the

applicable Extension Term, annual Base Rent shall equal (y) the product of annual Base Rent for the immediately prior Lease Year *multiplied by* (z) the Annual Base Rent Increase Amount ; provided that if the Fair Market Rent provided in clause (i)(y) has not yet been determined in accordance with Section 35.1 hereof as of the first day of the applicable Extension Term, then Tenant shall pay Base Rent in accordance with clause (i)(z) of this paragraph (3) until such determination has been made, and when such determination has been made, an appropriate retroactive adjustment shall be made for any underpayment.

In no event shall the terms of Sections 3.2 or 3.3of the Lease apply with respect to the calculation or payment of Base Rent for the Expansion Space .

Dockage and Wharfage:

Notwithstanding anything to the contrary in this Lease, it is the intention of Landlord and Tenant that during the Abatement Period Tenant shall be required to pay the full amount of Dockage and Wharfage on the Expansion Space without abatement, offset or reduction of any kind. Accordingly, in the event that the Expansion Space Commencement Date shall occur prior to the last day of the Abatement Period, notwithstanding anything to the contrary in this Lease, for the period from the Expansion Space Commencement Date through the last day of the Abatement Period, Dockage and Wharfage on the portion of the Premises equal to the Expansion Space shall be calculated and payable as follows:

(a) Beginning on the Expansion Space Commencement Date through the last day of the Abatement Period, Tenant shall pay to Landlord, as Additional Rent, Dockage with respect to any vessels berthed at the Expansion Space at the rates set forth in the Port Authority Tariff, Subrules 34-472, 34-482 and 34-483 as they may be amended or supplemented from time to time by the Port Authority or its successor in function.

(b) Beginning on the Expansion Space Commencement Date through the last day of the Abatement Period, Tenant shall pay to Landlord, as Additional Rent, Wharfage for cargo passing or conveyed over, onto or under the Expansion Space or between vessels berthed at the Expansion Space, at the rates set forth in the Port Authority Tariff, Subrule 34-590, as it may be amended or supplemented from time to time by the Port Authority or its successor in function.

(c) Dockage fees and Wharfage fees with respect to the Expansion Space described in the immediately preceding paragraphs (a) and (b), respectively, shall be payable in arrears in monthly installments as follows. At the end of every month during the Term from the Expansion Space Commencement through the last day of the Abatement Period (and at the end of any partial month during such period), Tenant shall provide Landlord with written notice (the "Expansion Space Dockage and Wharfage Fee Notice") not later than the first day of the following month of the full amount of Dockage fees and Wharfage fees payable by Tenant with respect to the Expansion Space for such prior month calculated as provided in the immediately preceding paragraphs (a) and (b) (the "Expansion Space Dockage and Wharfage Payment Amount"), accompanied by copies of the applicable Berthing Account annexed as

Exhibit P hereto and any additional evidence of such calculation as Landlord may reasonably require and Tenant shall pay to Landlord an amount equal to the full Expansion Space Dockage and Wharfage Payment Amount (without deduction or offset of any kind) within two (2) days of the date on which Tenant is required to deliver the Expansion Space Dockage and Wharfage Fee Notice. For the avoidance of doubt, the terms of Section 3.9 of the Lease shall not apply with respect to Dockage fees and Wharfage fees payable by Tenant with respect to the Expansion Space as described in this Exhibit Q and Tenant shall pay the full amount of such fees to Landlord on a monthly basis calculated as provided in this Exhibit Q without reduction, off-set, abatement or diminution of any kind.

On and after the the Abatement Period and provided that the Expansion Space Commencement Date has occurred, the Expansion Space shall be included as part of the Premises for all purposes of calculating Dockage and Wharfage pursuant to Section 3.9 of the Lease and the terms of this Exhibit Q with respect to Dockage and Wharfage shall not apply.

EXHIBIT R

EXPANSION SPACE SUBLEASE

[copy of agreement, as fully executed and delivered, to be attached hereto]

EXHIBIT S

CONSENT TO EXPANSION SPACE SUBLEASE

[a copy of the agreement, as fully executed and delivered, to be attached hereto]

EXHIBIT T

SECTION 21.1(b) ENVIRONMENTAL CONSULTANT SCOPE OF WORK

1. **During Phase II Investigation**

Site walkthrough with Tenant's consultant.

Review Tenant's consultant's report and provide comments on the remediation plan which shall be incorporated into the remediation plan by Tenant's consultant.

2. **During Premises Remediation**

Present onsite at all times when intrusive work is occurring (except if the work is the removal of an underground storage tank in which case one visit at the beginning of the removal is required) and two visits a week until completion.

Oversee and approve all aspects of the test and disposal of all soil and other media to be removed from the Premises.

Review Tenant's consultant's final report and provide comments which shall be incorporated prior to submission to any Governmental Authority.

3. **Premises Management Plan**

Review and provide comments on Site Management Plan which shall be incorporation in the plan.

3. **Meetings**

Attendance at all regulatory meetings, at Lease Administrator's discretion.

Exhibit B: City Environmental Quality Review Determination

ENVIRONMENTAL ASSESSMENT STATEMENT (EAS)
AND
SUPPLEMENTAL STUDIES TO THE EAS

Moore McCormack Lease & Development CEQR Review

25th Street Pier (Block 644, p/o Lot 1)
Brooklyn, NY 11232

CEQR No. TBD

Lead Agency:
New York City Department of Small Business Services
110 William Street, 7th Floor
New York, NY 10038

Prepared for:
Peter Sullivan
Sullivan Gardner, P.C.
7 East 20th Street
New York, NY 10003

Prepared by:
AECOM
125 Broad Street
New York, NY 10004

AECOM Project No. 60331991

September, 2016

City Environmental Quality Review
ENVIRONMENTAL ASSESSMENT STATEMENT (EAS) SHORT FORM

FOR UNLISTED ACTIONS ONLY • *Please fill out and submit to the appropriate agency* (see instructions)

Part I: GENERAL INFORMATION

1. Does the Action Exceed Any Type I Threshold in 6 NYCRR Part 617.4 or 43 RCNY §6-15(A) (Executive Order 91 of 1977, as amended)? ☐ YES ☒ NO

If "yes," STOP and complete the FULL EAS FORM.

2. Project Name Moore McCormack Lease & Development

3. Reference Numbers

CEQR REFERENCE NUMBER (to be assigned by lead agency)	BSA REFERENCE NUMBER (if applicable)
15SBS003K	
ULURP REFERENCE NUMBER (if applicable)	OTHER REFERENCE NUMBER(S) (if applicable) (e.g., legislative intro, CAPA)

4a. *Lead Agency Information*			**4b. Applicant Information**		
NAME OF LEAD AGENCY: New York City Department of Small Business Services			NAME OF APPLICANT: Ferrara Bros. Materials Corp.		
NAME OF LEAD AGENCY CONTACT PERSON: Rob Holbrook			NAME OF APPLICANT'S REPRESENTATIVE OR CONTACT PERSON: Peter Sullivan		
ADDRESS: 110 William Street			ADDRESS: 7 East 20th Street		
CITY: New York	STATE: NY	ZIP: 10038	CITY: New York	STATE: NY	ZIP: 10003
TELEPHONE: (212) 212- 3706	EMAIL: rholbrook@nycedc.com		TELEPHONE: (212) 687-5900	EMAIL: ps@sullivanlegal.net	

5. *Project Description*

The proposed project would lead to the relocation of the Ferrara Bros. Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier in Sunset Park, Brooklyn. Ferrara Bros. Materials Corp. proposes to construct and operate a new concrete batching plant and compressed natural gas (CNG) fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility. The project site (Block 644, p/o Lot 1) is located within the Southwest Brooklyn Industrial Business Zone. Three vacant buildings currently occupy the project site, containing a combined footprint of approximately 29,100 square feet. These buildings are highly deteriorated and are anticipated to be demolished as part of the proposed project. Ferrara Bros. Materials Corp. will enter into a long-term ground lease with the New York City Department of Small Business Services.

Project Location

BOROUGH: Brooklyn	COMMUNITY DISTRICT(S): 7	STREET ADDRESS: 24th Street and Third Avenue
TAX BLOCK(S) AND LOT(S): Block 644, p/o Lot 1		ZIP CODE: 11232

DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS: The Project Site is located at 24th Street and Third Avenue, along the west side of Third Avenue, between 23rd and 25th Streets.

EXISTING ZONING DISTRICT, INCLUDING SPECIAL ZONING DISTRICT DESIGNATION, IF ANY: M3-1 | ZONING SECTIONAL MAP NUMBER: 16b

6. *Required Actions or Approvals* (check all that apply)

City Planning Commission: ☐ YES ☒ NO ☐ UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

☐ CITY MAP AMENDMENT	☐ ZONING CERTIFICATION	☐ CONCESSION
☐ ZONING MAP AMENDMENT	☐ ZONING AUTHORIZATION	☐ UDAAP
☐ ZONING TEXT AMENDMENT	☐ ACQUISITION—REAL PROPERTY	☐ REVOCABLE CONSENT
☐ SITE SELECTION—PUBLIC FACILITY	☐ DISPOSITION—REAL PROPERTY	☐ FRANCHISE
☐ HOUSING PLAN & PROJECT	☐ OTHER, explain:	

☐ SPECIAL PERMIT (if appropriate, specify type: ☐ modification; ☐ renewal; ☐ other); EXPIRATION DATE:

SPECIFY AFFECTED SECTIONS OF THE ZONING RESOLUTION

Board of Standards and Appeals: ☐ YES ☒ NO

☐ VARIANCE (use)

☐ VARIANCE (bulk)
☐ SPECIAL PERMIT (if appropriate, specify type: ☐ modification; ☐ renewal; ☐ other); EXPIRATION DATE:
SPECIFY AFFECTED SECTIONS OF THE ZONING RESOLUTION

***Department of Environmental Protection*:** ☐ YES ☒ NO If "yes," specify:

Other City Approvals Subject to CEQR (check all that apply)

☐ LEGISLATION
☐ RULEMAKING
☐ CONSTRUCTION OF PUBLIC FACILITIES
☐ 384(b)(4) APPROVAL
☒ OTHER, explain: Ground lease approval by City Council, per City Charter Sec. 1301 (2)(f).
☐ FUNDING OF CONSTRUCTION, specify:
☐ POLICY OR PLAN, specify:
☐ FUNDING OF PROGRAMS, specify:
☐ PERMITS, specify:

Other City Approvals Not Subject to CEQR (check all that apply)

☐ PERMITS FROM DOT'S OFFICE OF CONSTRUCTION MITIGATION AND COORDINATION (OCMC)
☐ LANDMARKS PRESERVATION COMMISSION APPROVAL
☐ OTHER, explain:

State or Federal Actions/Approvals/Funding: ☐ YES ☒ NO If "yes," specify:

7. Site Description: The directly affected area consists of the project site and the area subject to any change in regulatory controls. Except where otherwise indicated, provide the following information with regard to the directly affected area.

Graphics: The following graphics must be attached and each box must be checked off before the EAS is complete. Each map must clearly depict the boundaries of the directly affected area or areas and indicate a 400-foot radius drawn from the outer boundaries of the project site. Maps may not exceed 11 x 17 inches in size and, for paper filings, must be folded to 8.5 x 11 inches.

☒ SITE LOCATION MAP ☒ ZONING MAP ☒ SANBORN OR OTHER LAND USE MAP
☒ TAX MAP ☐ FOR LARGE AREAS OR MULTIPLE SITES, A GIS SHAPE FILE THAT DEFINES THE PROJECT SITE(S)
☒ PHOTOGRAPHS OF THE PROJECT SITE TAKEN WITHIN 6 MONTHS OF EAS SUBMISSION AND KEYED TO THE SITE LOCATION MAP

Physical Setting (both developed and undeveloped areas)

Total directly affected area (sq. ft.): 53,000
Waterbody area (sq. ft) and type: N/A
Roads, buildings, and other paved surfaces (sq. ft.): 53,000
Other, describe (sq. ft.): N/A

8. Physical Dimensions and Scale of Project (if the project affects multiple sites, provide the total development facilitated by the action)

SIZE OF PROJECT TO BE DEVELOPED (gross square feet): 78,515
NUMBER OF BUILDINGS: 2
GROSS FLOOR AREA OF EACH BUILDING (sq. ft.): 1750 & 3900
HEIGHT OF EACH BUILDING (ft.): 125 & 15
NUMBER OF STORIES OF EACH BUILDING: 12 & 1

Does the proposed project involve changes in zoning on one or more sites? ☐ YES ☒ NO
If "yes," specify: The total square feet owned or controlled by the applicant:
The total square feet not owned or controlled by the applicant:

Does the proposed project involve in-ground excavation or subsurface disturbance, including, but not limited to foundation work, pilings, utility lines, or grading? ☒ YES ☐ NO
If "yes," indicate the estimated area and volume dimensions of subsurface permanent and temporary disturbance (if known):
AREA OF TEMPORARY DISTURBANCE: 78,515 sq. ft. (width x length) VOLUME OF DISTURBANCE: 392,575 cubic ft. (width x length x depth)
AREA OF PERMANENT DISTURBANCE: 78,515 sq. ft. (width x length)

Description of Proposed Uses (please complete the following information as appropriate)

	Residential	***Commercial***	***Community Facility***	***Industrial/Manufacturing***
Size (in gross sq. ft.)				TBD
Type (*e.g.,* retail, office, school)	units			Concrete batching facility and CNG fueling station

Does the proposed project increase the population of residents and/or on-site workers? ☒ YES ☐ NO
If "yes," please specify: NUMBER OF ADDITIONAL RESIDENTS: 0 NUMBER OF ADDITIONAL WORKERS: 10 on-site workers; 30 drivers
Provide a brief explanation of how these numbers were determined: Provided by applicant

Does the proposed project create new open space? ☐ YES ☒ NO If "yes," specify size of project-created open space: sq. ft.

Has a No-Action scenario been defined for this project that differs from the existing condition? ☐ YES ☒ NO
If "yes," see Chapter 2, "Establishing the Analysis Framework" and describe briefly:

9. *Analysis Year* CEQR Technical Manual Chapter 2

ANTICIPATED BUILD YEAR (date the project would be completed and operational): 2017		
ANTICIPATED PERIOD OF CONSTRUCTION IN MONTHS: 3-6 Months		
WOULD THE PROJECT BE IMPLEMENTED IN A SINGLE PHASE? ☒ YES ☐ NO		IF MULTIPLE PHASES, HOW MANY?
BRIEFLY DESCRIBE PHASES AND CONSTRUCTION SCHEDULE:		

10. Predominant Land Use in the Vicinity of the Project (check all that apply)

☐ RESIDENTIAL ☒ MANUFACTURING ☒ COMMERCIAL ☐ PARK/FOREST/OPEN SPACE ☐ OTHER, specify:

Part II: TECHNICAL ANALYSIS

INSTRUCTIONS: For each of the analysis categories listed in this section, assess the proposed project's impacts based on the thresholds and criteria presented in the CEQR Technical Manual. Check each box that applies.

- If the proposed project can be demonstrated not to meet or exceed the threshold, check the "no" box.
- If the proposed project will meet or exceed the threshold, or if this cannot be determined, check the "yes" box.
- For each "yes" response, provide additional analyses (and, if needed, attach supporting information) based on guidance in the CEQR Technical Manual to determine whether the potential for significant impacts exists. Please note that a "yes" answer does not mean that an EIS must be prepared—it means that more information may be required for the lead agency to make a determination of significance.
- The lead agency, upon reviewing Part II, may require an applicant to provide additional information to support the Short EAS Form. For example, if a question is answered "no," an agency may request a short explanation for this response.

	YES	NO
1. *LAND USE, ZONING, AND PUBLIC POLICY*: CEQR Technical Manual Chapter 4		
(a) Would the proposed project result in a change in land use different from surrounding land uses?	☐	☒
(b) Would the proposed project result in a change in zoning different from surrounding zoning?	☐	☒
(c) Is there the potential to affect an applicable public policy?	☐	☒
(d) If "yes," to (a), (b), and/or (c), complete a preliminary assessment and attach.		
(e) Is the project a large, publicly sponsored project?	☐	☒
○ If "yes," complete a PlaNYC assessment and attach.		
(f) Is any part of the directly affected area within the City's Waterfront Revitalization Program boundaries?	☒	☐
○ If "yes," complete the Consistency Assessment Form.		
2. *SOCIOECONOMIC CONDITIONS*: CEQR Technical Manual Chapter 5		
(a) Would the proposed project:		
○ Generate a net increase of 200 or more residential units?	☐	☒
○ Generate a net increase of 200,000 or more square feet of commercial space?	☐	☒
○ Directly displace more than 500 residents?	☐	☒
○ Directly displace more than 100 employees?	☐	☒
○ Affect conditions in a specific industry?	☐	☒
3. *COMMUNITY FACILITIES*: CEQR Technical Manual Chapter 6		
(a) Direct Effects		
○ Would the project directly eliminate, displace, or alter public or publicly funded community facilities such as educational facilities, libraries, hospitals and other health care facilities, day care centers, police stations, or fire stations?	☐	☒
(b) Indirect Effects		
○ **Child Care Centers:** Would the project result in 20 or more eligible children under age 6, based on the number of low or low/moderate income residential units? (See Table 6-1 in Chapter 6)	☐	☒
○ **Libraries:** Would the project result in a 5 percent or more increase in the ratio of residential units to library branches? (See Table 6-1 in Chapter 6)	☐	☒
○ **Public Schools:** Would the project result in 50 or more elementary or middle school students, or 150 or more high school students based on number of residential units? (See Table 6-1 in Chapter 6)	☐	☒
○ **Health Care Facilities and Fire/Police Protection:** Would the project result in the introduction of a sizeable new neighborhood?	☐	☒
4. *OPEN SPACE*: CEQR Technical Manual Chapter 7		
(a) Would the proposed project change or eliminate existing open space?	☐	☒
(b) Is the project located within an under-served area in the Bronx, Brooklyn, Manhattan, Queens, or Staten Island?	☐	☒
○ If "yes," would the proposed project generate more than 50 additional residents or 125 additional employees?	☐	☐
(c) Is the project located within a well-served area in the Bronx, Brooklyn, Manhattan, Queens, or Staten Island?	☐	☒
○ If "yes," would the proposed project generate more than 350 additional residents or 750 additional employees?	☐	☐
(d) If the project in located an area that is neither under-served nor well-served, would it generate more than 200 additional residents or 500 additional employees?	☐	☒

	YES	NO
5. *SHADOWS*: CEQR Technical Manual Chapter 8		
(a) Would the proposed project result in a net height increase of any structure of 50 feet or more?	☒	☐
(b) Would the proposed project result in any increase in structure height and be located adjacent to or across the street from a sunlight-sensitive resource?	☒	☐
6. *HISTORIC AND CULTURAL RESOURCES*: CEQR Technical Manual Chapter 9		
(a) Does the proposed project site or an adjacent site contain any architectural and/or archaeological resource that is eligible for or has been designated (or is calendared for consideration) as a New York City Landmark, Interior Landmark or Scenic Landmark; that is listed or eligible for listing on the New York State or National Register of Historic Places; or that is within a designated or eligible New York City, New York State or National Register Historic District? (See the GIS System for Archaeology and National Register to confirm)	☐	☒
(b) Would the proposed project involve construction resulting in in-ground disturbance to an area not previously excavated?	☐	☒
(c) If "yes" to either of the above, list any identified architectural and/or archaeological resources and attach supporting information on whether the proposed project would potentially affect any architectural or archeological resources.		
7. *URBAN DESIGN AND VISUAL RESOURCES*: CEQR Technical Manual Chapter 10		
(a) Would the proposed project introduce a new building, a new building height, or result in any substantial physical alteration to the streetscape or public space in the vicinity of the proposed project that is not currently allowed by existing zoning?	☐	☒
(b) Would the proposed project result in obstruction of publicly accessible views to visual resources not currently allowed by existing zoning?	☐	☒
8. *NATURAL RESOURCES*: CEQR Technical Manual Chapter 11		
(a) Does the proposed project site or a site adjacent to the project contain natural resources as defined in Section 100 of Chapter 11?	☒	☐
○ If "yes," list the resources and attach supporting information on whether the proposed project would affect any of these resources.		
(b) Is any part of the directly affected area within the Jamaica Bay Watershed?	☐	☒
○ If "yes," complete the Jamaica Bay Watershed Form, and submit according to its instructions.		
9. *HAZARDOUS MATERIALS*: CEQR Technical Manual Chapter 12		
(a) Would the proposed project allow commercial or residential uses in an area that is currently, or was historically, a manufacturing area that involved hazardous materials?	☒	☐
(b) Does the proposed project site have existing institutional controls (*e.g.*, (E) designation or Restrictive Declaration) relating to hazardous materials that preclude the potential for significant adverse impacts?	☐	☒
(c) Would the project require soil disturbance in a manufacturing area or any development on or near a manufacturing area or existing/historic facilities listed in Appendix 1 (including nonconforming uses)?	☒	☐
(d) Would the project result in the development of a site where there is reason to suspect the presence of hazardous materials, contamination, illegal dumping or fill, or fill material of unknown origin?	☐	☒
(e) Would the project result in development on or near a site that has or had underground and/or aboveground storage tanks (*e.g.*, gas stations, oil storage facilities, heating oil storage)?	☐	☒
(f) Would the project result in renovation of interior existing space on a site with the potential for compromised air quality; vapor intrusion from either on-site or off-site sources; or the presence of asbestos, PCBs, mercury or lead-based paint?	☐	☒
(g) Would the project result in development on or near a site with potential hazardous materials issues such as government-listed voluntary cleanup/brownfield site, current or former power generation/transmission facilities, coal gasification or gas storage sites, railroad tracks or rights-of-way, or municipal incinerators?	☐	☒
(h) Has a Phase I Environmental Site Assessment been performed for the site?	☒	☐
○ If "yes," were Recognized Environmental Conditions (RECs) identified? Briefly identify: Impacted soil and groundwater; concrete sump pump; potential USTs; 5, 10 and 55 gallon drums; potential former hydrolic piston system.	☐	☐
10. *WATER AND SEWER INFRASTRUCTURE*: CEQR Technical Manual Chapter 13		
(a) Would the project result in water demand of more than one million gallons per day?	☐	☒
(b) If the proposed project located in a combined sewer area, would it result in at least 1,000 residential units or 250,000 square feet or more of commercial space in Manhattan, or at least 400 residential units or 150,000 square feet or more of commercial space in the Bronx, Brooklyn, Staten Island, or Queens?	☐	☒
(c) If the proposed project located in a separately sewered area, would it result in the same or greater development than the amounts listed in Table 13-1 in Chapter 13?	☐	☒
(d) Would the proposed project involve development on a site that is 5 acres or larger where the amount of impervious surface would increase?	☐	☒
(e) If the project is located within the Jamaica Bay Watershed or in certain specific drainage areas, including Bronx River, Coney	☐	☒

	YES	NO
Island Creek, Flushing Bay and Creek, Gowanus Canal, Hutchinson River, Newtown Creek, or Westchester Creek, would it involve development on a site that is 1 acre or larger where the amount of impervious surface would increase?		
(f) Would the proposed project be located in an area that is partially sewered or currently unsewered?	☐	☒
(g) Is the project proposing an industrial facility or activity that would contribute industrial discharges to a Wastewater Treatment Plant and/or generate contaminated stormwater in a separate storm sewer system?	☐	☒
(h) Would the project involve construction of a new stormwater outfall that requires federal and/or state permits?	☐	☒
11. *SOLID WASTE AND SANITATION SERVICES*: CEQR Technical Manual Chapter 14		
(a) Using Table 14-1 in Chapter 14, the project's projected operational solid waste generation is estimated to be (pounds per week): 1,106		
○ Would the proposed project have the potential to generate 100,000 pounds (50 tons) or more of solid waste per week?	☐	☒
(b) Would the proposed project involve a reduction in capacity at a solid waste management facility used for refuse or recyclables generated within the City?	☐	☒
12. *ENERGY*: CEQR Technical Manual Chapter 15		
(a) Using energy modeling or Table 15-1 in Chapter 15, the project's projected energy use is estimated to be (annual BTUs): 1,496,610,000		
(b) Would the proposed project affect the transmission or generation of energy?	☐	☒
13. *TRANSPORTATION*: CEQR Technical Manual Chapter 16		
(a) Would the proposed project exceed any threshold identified in Table 16-1 in Chapter 16?	☐	☒
(b) If "yes," conduct the screening analyses, attach appropriate back up data as needed for each stage and answer the following questions:		
○ Would the proposed project result in 50 or more Passenger Car Equivalents (PCEs) per project peak hour?	☒	☐
If "yes," would the proposed project result in 50 or more vehicle trips per project peak hour at any given intersection? ***It should be noted that the lead agency may require further analysis of intersections of concern even when a project generates fewer than 50 vehicles in the peak hour. See Subsection 313 of Chapter 16 for more information.*	☐	☒
○ Would the proposed project result in more than 200 subway/rail or bus trips per project peak hour?	☐	☒
If "yes," would the proposed project result, per project peak hour, in 50 or more bus trips on a single line (in one direction) or 200 subway trips per station or line?	☐	☐
○ Would the proposed project result in more than 200 pedestrian trips per project peak hour?	☐	☒
If "yes," would the proposed project result in more than 200 pedestrian trips per project peak hour to any given pedestrian or transit element, crosswalk, subway stair, or bus stop?	☐	☐
14. *AIR QUALITY*: CEQR Technical Manual Chapter 17		
(a) *Mobile Sources*: Would the proposed project result in the conditions outlined in Section 210 in Chapter 17?	☐	☒
(b) *Stationary Sources*: Would the proposed project result in the conditions outlined in Section 220 in Chapter 17?	☒	☐
○ If "yes," would the proposed project exceed the thresholds in Figure 17-3, Stationary Source Screen Graph in Chapter 17? (Attach graph as needed)	☐	☒
(c) Does the proposed project involve multiple buildings on the project site?	☒	☐
(d) Does the proposed project require federal approvals, support, licensing, or permits subject to conformity requirements?	☐	☒
(e) Does the proposed project site have existing institutional controls (*e.g.*, (E) designation or Restrictive Declaration) relating to air quality that preclude the potential for significant adverse impacts?	☐	☒
15. *GREENHOUSE GAS EMISSIONS*: CEQR Technical Manual Chapter 18		
(a) Is the proposed project a city capital project or a power generation plant?	☐	☒
(b) Would the proposed project fundamentally change the City's solid waste management system?	☐	☒
(c) If "yes" to any of the above, would the project require a GHG emissions assessment based on the guidance in Chapter 18?	☐	☐
16. *NOISE*: CEQR Technical Manual Chapter 19		
(a) Would the proposed project generate or reroute vehicular traffic?	☒	☐
(b) Would the proposed project introduce new or additional receptors (see Section 124 in Chapter 19) near heavily trafficked roadways, within one horizontal mile of an existing or proposed flight path, or within 1,500 feet of an existing or proposed rail line with a direct line of site to that rail line?	☐	☒
(c) Would the proposed project cause a stationary noise source to operate within 1,500 feet of a receptor with a direct line of sight to that receptor or introduce receptors into an area with high ambient stationary noise?	☒	☐
(d) Does the proposed project site have existing institutional controls (*e.g.*, (E) designation or Restrictive Declaration) relating to noise that preclude the potential for significant adverse impacts?	☐	☒

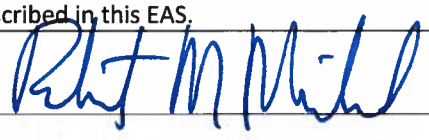
	YES	NO
17. *PUBLIC HEALTH*: CEQR Technical Manual Chapter 20		
(a) Based upon the analyses conducted, do any of the following technical areas require a detailed analysis: Air Quality; Hazardous Materials; Noise?	☒	☐
(b) If "yes," explain why an assessment of public health is or is not warranted based on the guidance in Chapter 20, "Public Health." Attach a preliminary analysis, if necessary.		
18. *NEIGHBORHOOD CHARACTER*: CEQR Technical Manual Chapter 21		
(a) Based upon the analyses conducted, do any of the following technical areas require a detailed analysis: Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Open Space; Historic and Cultural Resources; Urban Design and Visual Resources; Shadows; Transportation; Noise?	☒	☐
(b) If "yes," explain why an assessment of neighborhood character is or is not warranted based on the guidance in Chapter 21, "Neighborhood Character." Attach a preliminary analysis, if necessary. See Section 2.9 of the attached Supplemental Studies		
19. *CONSTRUCTION*: CEQR Technical Manual Chapter 22		
(a) Would the project's construction activities involve:		
o Construction activities lasting longer than two years?	☐	☒
o Construction activities within a Central Business District or along an arterial highway or major thoroughfare?	☐	☒
o Closing, narrowing, or otherwise impeding traffic, transit, or pedestrian elements (roadways, parking spaces, bicycle routes, sidewalks, crosswalks, corners, *etc.*)?	☐	☒
o Construction of multiple buildings where there is a potential for on-site receptors on buildings completed before the final build-out?	☐	☒
o The operation of several pieces of diesel equipment in a single location at peak construction?	☐	☒
o Closure of a community facility or disruption in its services?	☐	☒
o Activities within 400 feet of a historic or cultural resource?	☐	☒
o Disturbance of a site containing or adjacent to a site containing natural resources?	☒	☐
o Construction on multiple development sites in the same geographic area, such that there is the potential for several construction timelines to overlap or last for more than two years overall?	☐	☒
(b) If any boxes are checked "yes," explain why a preliminary construction assessment is or is not warranted based on the guidance in Chapter 22, "Construction." It should be noted that the nature and extent of any commitment to use the Best Available Technology for construction equipment or Best Management Practices for construction activities should be considered when making this determination. See Chapter 2.10		

20. *APPLICANT'S CERTIFICATION*

I swear or affirm under oath and subject to the penalties for perjury that the information provided in this Environmental Assessment Statement (EAS) is true and accurate to the best of my knowledge and belief, based upon my personal knowledge and familiarity with the information described herein and after examination of the pertinent books and records and/or after inquiry of persons who have personal knowledge of such information or who have examined pertinent books and records.

Still under oath, I further swear or affirm that I make this statement in my capacity as the applicant or representative of the entity that seeks the permits, approvals, funding, or other governmental action(s) described in this EAS.

APPLICANT/REPRESENTATIVE NAME	DATE
AECOM - Robert M. Michel, AICP	9/06/16

SIGNATURE 

PLEASE NOTE THAT APPLICANTS MAY BE REQUIRED TO SUBSTANTIATE RESPONSES IN THIS FORM AT THE DISCRETION OF THE LEAD AGENCY SO THAT IT MAY SUPPORT ITS DETERMINATION OF SIGNIFICANCE.

Part III: DETERMINATION OF SIGNIFICANCE (To Be Completed by Lead Agency)

INSTRUCTIONS: In completing Part III, the lead agency should consult 6 NYCRR 617.7 and 43 RCNY § 6-06 (Executive Order 91 or 1977, as amended), which contain the State and City criteria for determining significance.

1. For each of the impact categories listed below, consider whether the project may have a significant adverse effect on the environment, taking into account its (a) location; (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude.

IMPACT CATEGORY	Potentially Significant Adverse Impact YES	NO
Land Use, Zoning, and Public Policy	☐	☒
Socioeconomic Conditions	☐	☒
Community Facilities and Services	☐	☒
Open Space	☐	☒
Shadows	☐	☒
Historic and Cultural Resources	☐	☒
Urban Design/Visual Resources	☐	☒
Natural Resources	☐	☒
Hazardous Materials	☐	☒
Water and Sewer Infrastructure	☐	☒
Solid Waste and Sanitation Services	☐	☒
Energy	☐	☒
Transportation	☐	☒
Air Quality	☐	☒
Greenhouse Gas Emissions	☐	☒
Noise	☐	☒
Public Health	☐	☒
Neighborhood Character	☐	☒
Construction	☐	☒

2. Are there any aspects of the project relevant to the determination of whether the project may have a significant impact on the environment, such as combined or cumulative impacts, that were not fully covered by other responses and supporting materials? ☐ YES ☒ NO

If there are such impacts, attach an explanation stating whether, as a result of them, the project may have a significant impact on the environment.

3. Check determination to be issued by the lead agency:

☐ **Positive Declaration**: If the lead agency has determined that the project may have a significant impact on the environment, and if a Conditional Negative Declaration is not appropriate, then the lead agency issues a *Positive Declaration* and prepares a draft Scope of Work for the Environmental Impact Statement (EIS).

☐ **Conditional Negative Declaration:** A *Conditional Negative Declaration* (CND) may be appropriate if there is a private applicant for an Unlisted action AND when conditions imposed by the lead agency will modify the proposed project so that no significant adverse environmental impacts would result. The CND is prepared as a separate document and is subject to the requirements of 6 NYCRR Part 617.

☒ **Negative Declaration:** If the lead agency has determined that the project would not result in potentially significant adverse environmental impacts, then the lead agency issues a *Negative Declaration*. The *Negative Declaration* may be prepared as a separate document (see template) or using the embedded Negative Declaration on the next page.

4. ***LEAD AGENCY'S CERTIFICATION***

TITLE Deputy Commisioner	LEAD AGENCY Department of Small Buisness Services
NAME Andrew Schwartz	DATE 10-7-16
SIGNATURE	

NEGATIVE DECLARATION (Use of this form is optional)

Statement of No Significant Effect

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York and 6 NYCRR, Part 617, State Environmental Quality Review, Department of Small Buisness Services assumed the role of lead agency for the environmental review of the proposed project. Based on a review of information about the project contained in this environmental assessment statement and any attachments hereto, which are incorporated by reference herein, the lead agency has determined that the proposed project would not have a significant adverse impact on the environment.

Reasons Supporting this Determination

The above determination is based on information contained in this EAS, which finds that the proposed project:

1. The proposed project would not have significant adverse impacts in the following areas: Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction.

2. The project site has historically been occupied by manufacturing and industrial uses and would remain that way. However, the currently vacant project site would be improved with the construction of a concrete batching plant.

No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable. This Negative Declaration has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law (SEQRA).

TITLE	LEAD AGENCY
Deputy Commisioner	Department of Small Buisness Services
NAME Andrew Schwartz	DATE 10-7-16
SIGNATURE	

AECOM Environment

Prepared for:
Peter Sullivan
Sullivan Gardner, PC
7 East 20th Street
New York, NY 10003

Prepared by:
AECOM
125 Broad Street
New York, NY 10004

Moore McCormack Lease & Development CEQR Review

Supplemental Studies to the Environmental Assessment Statement

September, 2016

Site:
25th Street Pier (Block 644, p/o Lot 1)
Brooklyn, NY 11232

Prepared for:
Peter Sullivan
Sullivan Gardner, PC
7 East 20th Street
New York, NY 10003

Prepared by:
AECOM
125 Broad Street
New York, NY 10004

City Environmental Quality Review
ENVIRONMENTAL ASSESSMENT STATEMENT (EAS) SHORT FORM

FOR UNLISTED ACTIONS ONLY • *Please fill out and submit to the appropriate agency* (see instructions)

Part I: GENERAL INFORMATION

1. *Does the Action Exceed Any Type I Threshold in 6 NYCRR Part 617.4 or 43 RCNY §6-15(A) (Executive Order 91 of 1977, as amended)?* ☐ YES ☒ NO

If "yes," **STOP** and **complete the FULL EAS FORM**.

2. *Project Name* Moore McCormack Lease & Development

3. *Reference Numbers*

CEQR REFERENCE NUMBER (to be assigned by lead agency)	BSA REFERENCE NUMBER (if applicable)
TBD	TBD
ULURP REFERENCE NUMBER (if applicable)	OTHER REFERENCE NUMBER(S) (if applicable) (*e.g.*, legislative intro, CAPA)

4a. *Lead Agency Information*			**4b. *Applicant Information***		
NAME OF LEAD AGENCY New York City Department of Small Business Services			NAME OF APPLICANT Ferrara Bros. Materials Corp.		
NAME OF LEAD AGENCY CONTACT PERSON			NAME OF APPLICANT'S REPRESENTATIVE OR CONTACT PERSON Peter Sullivan		
ADDRESS 110 William Street			ADDRESS 7 East 20th Street		
CITY New York	STATE NY	ZIP 10038	CITY New York	STATE NY	ZIP 10003
TELEPHONE	EMAIL		TELEPHONE (212) 687-5900	EMAIL ps@sullivanlegal.net	

5. *Project Description*

The proposed project would lead to the relocation of the Ferrara Bros. Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier in Sunset Park, Brooklyn. Ferrara Bros. Materials Corp. proposes to construct and operate a new concrete batching plant and compressed natural gas (CNG) fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility. The project site (Block 644, p/o Lot 1) is located within the Southwest Brooklyn Industrial Business Zone. Three vacant buildings currently occupy the project site, containing a combined footprint of approximately 29,100 square feet. These buildings are highly deteriorated and are anticipated to be demolished as part of the proposed project. Ferrara Bros. Materials Corp. will enter into a long-term ground lease with the New York City Department of Small Business Services.

Project Location

BOROUGH Brooklyn	COMMUNITY DISTRICT(S) 7	STREET ADDRESS 24th Street and Third Avenue
TAX BLOCK(S) AND LOT(S) Block 644, p/o Lot 1		ZIP CODE 11232

DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS The Project Site is located at 24th Street and Third Avenue, along the west side of Third Avenue, between 23rd and 25th Streets.

EXISTING ZONING DISTRICT, INCLUDING SPECIAL ZONING DISTRICT DESIGNATION, IF ANY M3-1 | ZONING SECTIONAL MAP NUMBER 16b

6. *Required Actions or Approvals* (check all that apply)

City Planning Commission: ☐ YES ☒ NO ☐ UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

☐ CITY MAP AMENDMENT	☐ ZONING CERTIFICATION	☐ CONCESSION
☐ ZONING MAP AMENDMENT	☐ ZONING AUTHORIZATION	☐ UDAAP
☐ ZONING TEXT AMENDMENT	☐ ACQUISITION—REAL PROPERTY	☐ REVOCABLE CONSENT
☐ SITE SELECTION—PUBLIC FACILITY	☐ DISPOSITION—REAL PROPERTY	☐ FRANCHISE
☐ HOUSING PLAN & PROJECT	☐ OTHER, explain:	

☐ SPECIAL PERMIT (if appropriate, specify type: ☐ modification; ☐ renewal; ☐ other); EXPIRATION DATE:

SPECIFY AFFECTED SECTIONS OF THE ZONING RESOLUTION

Board of Standards and Appeals: ☐ YES ☒ NO

☐ VARIANCE (use)

☐ VARIANCE (bulk)
☐ SPECIAL PERMIT (if appropriate, specify type: ☐ modification; ☐ renewal; ☐ other); EXPIRATION DATE:
SPECIFY AFFECTED SECTIONS OF THE ZONING RESOLUTION

***Department of Environmental Protection*:** ☐ YES ☒ NO If "yes," specify:

Other City Approvals Subject to CEQR (check all that apply)

☐ LEGISLATION
☐ RULEMAKING
☐ CONSTRUCTION OF PUBLIC FACILITIES
☐ 384(b)(4) APPROVAL
☒ OTHER, explain: Ground lease approval by City Council, per City Charter Sec. 1301 (2)(f).
☐ FUNDING OF CONSTRUCTION, specify:
☐ POLICY OR PLAN, specify:
☐ FUNDING OF PROGRAMS, specify:
☐ PERMITS, specify:

Other City Approvals Not Subject to CEQR (check all that apply)

☐ PERMITS FROM DOT'S OFFICE OF CONSTRUCTION MITIGATION AND COORDINATION (OCMC)
☐ LANDMARKS PRESERVATION COMMISSION APPROVAL
☐ OTHER, explain:

***State or Federal Actions/Approvals/Funding*:** ☐ YES ☒ NO If "yes," specify:

7. *Site Description:* *The directly affected area consists of the project site and the area subject to any change in regulatory controls. Except where otherwise indicated, provide the following information with regard to the directly affected area.*

***Graphics*:** *The following graphics must be attached and each box must be checked off before the EAS is complete. Each map must clearly depict the boundaries of the directly affected area or areas and indicate a 400-foot radius drawn from the outer boundaries of the project site. Maps may not exceed 11 x 17 inches in size and, for paper filings, must be folded to 8.5 x 11 inches.*

☒ SITE LOCATION MAP ☒ ZONING MAP ☒ SANBORN OR OTHER LAND USE MAP
☒ TAX MAP ☐ FOR LARGE AREAS OR MULTIPLE SITES, A GIS SHAPE FILE THAT DEFINES THE PROJECT SITE(S)
☒ PHOTOGRAPHS OF THE PROJECT SITE TAKEN WITHIN 6 MONTHS OF EAS SUBMISSION AND KEYED TO THE SITE LOCATION MAP

Physical Setting (both developed and undeveloped areas)

Total directly affected area (sq. ft.): 53,000
Waterbody area (sq. ft) and type: N/A
Roads, buildings, and other paved surfaces (sq. ft.): 53,000
Other, describe (sq. ft.): N/A

8. *Physical Dimensions and Scale of Project* (if the project affects multiple sites, provide the total development facilitated by the action)

SIZE OF PROJECT TO BE DEVELOPED (gross square feet): TBD
NUMBER OF BUILDINGS: TBD
GROSS FLOOR AREA OF EACH BUILDING (sq. ft.): TBD
HEIGHT OF EACH BUILDING (ft.): TBD
NUMBER OF STORIES OF EACH BUILDING: TBD

Does the proposed project involve changes in zoning on one or more sites? ☐ YES ☒ NO
If "yes," specify: The total square feet owned or controlled by the applicant:
The total square feet not owned or controlled by the applicant:

Does the proposed project involve in-ground excavation or subsurface disturbance, including, but not limited to foundation work, pilings, utility lines, or grading? ☒ YES ☐ NO
If "yes," indicate the estimated area and volume dimensions of subsurface permanent and temporary disturbance (if known):
AREA OF TEMPORARY DISTURBANCE: TBD sq. ft. (width x length)
VOLUME OF DISTURBANCE: TBD cubic ft. (width x length x depth)
AREA OF PERMANENT DISTURBANCE: TBD sq. ft. (width x length)

Description of Proposed Uses (please complete the following information as appropriate)

	Residential	***Commercial***	***Community Facility***	***Industrial/Manufacturing***
Size (in gross sq. ft.)				TBD
Type (*e.g.,* retail, office, school)	units			Concrete batching facility and CNG fueling station

Does the proposed project increase the population of residents and/or on-site workers? ☒ YES ☐ NO
If "yes," please specify:
NUMBER OF ADDITIONAL RESIDENTS: 0
NUMBER OF ADDITIONAL WORKERS: 10 on-site workers; 30 drivers
Provide a brief explanation of how these numbers were determined: Provided by applicant

Does the proposed project create new open space? ☐ YES ☒ NO If "yes," specify size of project-created open space: sq. ft.

Has a No-Action scenario been defined for this project that differs from the existing condition? ☐ YES ☒ NO
If "yes," see Chapter 2, "Establishing the Analysis Framework" and describe briefly:

9. *Analysis Year* CEQR Technical Manual Chapter 2

ANTICIPATED BUILD YEAR (date the project would be completed and operational): 2017		
ANTICIPATED PERIOD OF CONSTRUCTION IN MONTHS: N/A		
WOULD THE PROJECT BE IMPLEMENTED IN A SINGLE PHASE? ☒ YES ☐ NO		IF MULTIPLE PHASES, HOW MANY?
BRIEFLY DESCRIBE PHASES AND CONSTRUCTION SCHEDULE:		

10. *Predominant Land Use in the Vicinity of the Project* (check all that apply)

☐ RESIDENTIAL ☒ MANUFACTURING ☒ COMMERCIAL ☐ PARK/FOREST/OPEN SPACE ☐ OTHER, specify:

Part II: TECHNICAL ANALYSIS

INSTRUCTIONS: For each of the analysis categories listed in this section, assess the proposed project's impacts based on the thresholds and criteria presented in the CEQR Technical Manual. Check each box that applies.

- If the proposed project can be demonstrated not to meet or exceed the threshold, check the "no" box.
- If the proposed project will meet or exceed the threshold, or if this cannot be determined, check the "yes" box.
- For each "yes" response, provide additional analyses (and, if needed, attach supporting information) based on guidance in the CEQR Technical Manual to determine whether the potential for significant impacts exists. Please note that a "yes" answer does not mean that an EIS must be prepared—it means that more information may be required for the lead agency to make a determination of significance.
- The lead agency, upon reviewing Part II, may require an applicant to provide additional information to support the Short EAS Form. For example, if a question is answered "no," an agency may request a short explanation for this response.

	YES	NO
1. *LAND USE, ZONING, AND PUBLIC POLICY*: CEQR Technical Manual Chapter 4		
(a) Would the proposed project result in a change in land use different from surrounding land uses?	☐	☒
(b) Would the proposed project result in a change in zoning different from surrounding zoning?	☐	☒
(c) Is there the potential to affect an applicable public policy?	☐	☒
(d) If "yes," to (a), (b), and/or (c), complete a preliminary assessment and attach.		
(e) Is the project a large, publicly sponsored project?	☐	☒
○ If "yes," complete a PlaNYC assessment and attach.		
(f) Is any part of the directly affected area within the City's Waterfront Revitalization Program boundaries?	☒	☐
○ If "yes," complete the Consistency Assessment Form.		
2. *SOCIOECONOMIC CONDITIONS*: CEQR Technical Manual Chapter 5		
(a) Would the proposed project:		
○ Generate a net increase of 200 or more residential units?	☐	☒
○ Generate a net increase of 200,000 or more square feet of commercial space?	☐	☒
○ Directly displace more than 500 residents?	☐	☒
○ Directly displace more than 100 employees?	☐	☒
○ Affect conditions in a specific industry?	☐	☒
3. *COMMUNITY FACILITIES*: CEQR Technical Manual Chapter 6		
(a) Direct Effects		
○ Would the project directly eliminate, displace, or alter public or publicly funded community facilities such as educational facilities, libraries, hospitals and other health care facilities, day care centers, police stations, or fire stations?	☐	☒
(b) Indirect Effects		
○ **Child Care Centers:** Would the project result in 20 or more eligible children under age 6, based on the number of low or low/moderate income residential units? (See Table 6-1 in Chapter 6)	☐	☒
○ **Libraries:** Would the project result in a 5 percent or more increase in the ratio of residential units to library branches? (See Table 6-1 in Chapter 6)	☐	☒
○ **Public Schools:** Would the project result in 50 or more elementary or middle school students, or 150 or more high school students based on number of residential units? (See Table 6-1 in Chapter 6)	☐	☒
○ **Health Care Facilities and Fire/Police Protection:** Would the project result in the introduction of a sizeable new neighborhood?	☐	☒
4. *OPEN SPACE*: CEQR Technical Manual Chapter 7		
(a) Would the proposed project change or eliminate existing open space?	☐	☒
(b) Is the project located within an under-served area in the Bronx, Brooklyn, Manhattan, Queens, or Staten Island?	☐	☒
○ If "yes," would the proposed project generate more than 50 additional residents or 125 additional employees?	☐	☐
(c) Is the project located within a well-served area in the Bronx, Brooklyn, Manhattan, Queens, or Staten Island?	☐	☒
○ If "yes," would the proposed project generate more than 350 additional residents or 750 additional employees?	☐	☐
(d) If the project in located an area that is neither under-served nor well-served, would it generate more than 200 additional residents or 500 additional employees?	☐	☒

	YES	NO
5. *SHADOWS*: CEQR Technical Manual Chapter 8		
(a) Would the proposed project result in a net height increase of any structure of 50 feet or more?	☒	☐
(b) Would the proposed project result in any increase in structure height and be located adjacent to or across the street from a sunlight-sensitive resource?	☒	☐
6. *HISTORIC AND CULTURAL RESOURCES*: CEQR Technical Manual Chapter 9		
(a) Does the proposed project site or an adjacent site contain any architectural and/or archaeological resource that is eligible for or has been designated (or is calendared for consideration) as a New York City Landmark, Interior Landmark or Scenic Landmark; that is listed or eligible for listing on the New York State or National Register of Historic Places; or that is within a designated or eligible New York City, New York State or National Register Historic District? (See the GIS System for Archaeology and National Register to confirm)	☐	☒
(b) Would the proposed project involve construction resulting in in-ground disturbance to an area not previously excavated?	☐	☒
(c) If "yes" to either of the above, list any identified architectural and/or archaeological resources and attach supporting information on whether the proposed project would potentially affect any architectural or archeological resources.		
7. *URBAN DESIGN AND VISUAL RESOURCES*: CEQR Technical Manual Chapter 10		
(a) Would the proposed project introduce a new building, a new building height, or result in any substantial physical alteration to the streetscape or public space in the vicinity of the proposed project that is not currently allowed by existing zoning?	☐	☒
(b) Would the proposed project result in obstruction of publicly accessible views to visual resources not currently allowed by existing zoning?	☐	☒
8. *NATURAL RESOURCES*: CEQR Technical Manual Chapter 11		
(a) Does the proposed project site or a site adjacent to the project contain natural resources as defined in Section 100 of Chapter 11?	☒	☐
○ If "yes," list the resources and attach supporting information on whether the proposed project would affect any of these resources.		
(b) Is any part of the directly affected area within the Jamaica Bay Watershed?	☐	☒
○ If "yes," complete the Jamaica Bay Watershed Form, and submit according to its instructions.		
9. *HAZARDOUS MATERIALS*: CEQR Technical Manual Chapter 12		
(a) Would the proposed project allow commercial or residential uses in an area that is currently, or was historically, a manufacturing area that involved hazardous materials?	☒	☐
(b) Does the proposed project site have existing institutional controls (*e.g.*, (E) designation or Restrictive Declaration) relating to hazardous materials that preclude the potential for significant adverse impacts?	☐	☒
(c) Would the project require soil disturbance in a manufacturing area or any development on or near a manufacturing area or existing/historic facilities listed in Appendix 1 (including nonconforming uses)?	☒	☐
(d) Would the project result in the development of a site where there is reason to suspect the presence of hazardous materials, contamination, illegal dumping or fill, or fill material of unknown origin?	☐	☒
(e) Would the project result in development on or near a site that has or had underground and/or aboveground storage tanks (*e.g.*, gas stations, oil storage facilities, heating oil storage)?	☐	☒
(f) Would the project result in renovation of interior existing space on a site with the potential for compromised air quality; vapor intrusion from either on-site or off-site sources; or the presence of asbestos, PCBs, mercury or lead-based paint?	☐	☒
(g) Would the project result in development on or near a site with potential hazardous materials issues such as government-listed voluntary cleanup/brownfield site, current or former power generation/transmission facilities, coal gasification or gas storage sites, railroad tracks or rights-of-way, or municipal incinerators?	☐	☒
(h) Has a Phase I Environmental Site Assessment been performed for the site?	☒	☐
○ If "yes," were Recognized Environmental Conditions (RECs) identified? Briefly identify: Impacted soil and groundwater; concrete sump pump; potential USTs; 5, 10 and 55 gallon drums; potential former hydrolic piston system.	☐	☐
10. *WATER AND SEWER INFRASTRUCTURE*: CEQR Technical Manual Chapter 13		
(a) Would the project result in water demand of more than one million gallons per day?	☐	☒
(b) If the proposed project located in a combined sewer area, would it result in at least 1,000 residential units or 250,000 square feet or more of commercial space in Manhattan, or at least 400 residential units or 150,000 square feet or more of commercial space in the Bronx, Brooklyn, Staten Island, or Queens?	☐	☒
(c) If the proposed project located in a separately sewered area, would it result in the same or greater development than the amounts listed in Table 13-1 in Chapter 13?	☐	☒
(d) Would the proposed project involve development on a site that is 5 acres or larger where the amount of impervious surface would increase?	☐	☒
(e) If the project is located within the Jamaica Bay Watershed or in certain specific drainage areas, including Bronx River, Coney	☐	☒

	YES	NO
Island Creek, Flushing Bay and Creek, Gowanus Canal, Hutchinson River, Newtown Creek, or Westchester Creek, would it involve development on a site that is 1 acre or larger where the amount of impervious surface would increase?		
(f) Would the proposed project be located in an area that is partially sewered or currently unsewered?	☐	☒
(g) Is the project proposing an industrial facility or activity that would contribute industrial discharges to a Wastewater Treatment Plant and/or generate contaminated stormwater in a separate storm sewer system?	☐	☒
(h) Would the project involve construction of a new stormwater outfall that requires federal and/or state permits?	☐	☒
11. *SOLID WASTE AND SANITATION SERVICES*: CEQR Technical Manual Chapter 14		
(a) Using Table 14-1 in Chapter 14, the project's projected operational solid waste generation is estimated to be (pounds per week): 1,106		
○ Would the proposed project have the potential to generate 100,000 pounds (50 tons) or more of solid waste per week?	☐	☒
(b) Would the proposed project involve a reduction in capacity at a solid waste management facility used for refuse or recyclables generated within the City?	☐	☒
12. *ENERGY*: CEQR Technical Manual Chapter 15		
(a) Using energy modeling or Table 15-1 in Chapter 15, the project's projected energy use is estimated to be (annual BTUs): 1,496,610,000		
(b) Would the proposed project affect the transmission or generation of energy?	☐	☒
13. *TRANSPORTATION*: CEQR Technical Manual Chapter 16		
(a) Would the proposed project exceed any threshold identified in Table 16-1 in Chapter 16?	☐	☒
(b) If "yes," conduct the screening analyses, attach appropriate back up data as needed for each stage and answer the following questions:		
○ Would the proposed project result in 50 or more Passenger Car Equivalents (PCEs) per project peak hour?	☒	☐
If "yes," would the proposed project result in 50 or more vehicle trips per project peak hour at any given intersection? ***It should be noted that the lead agency may require further analysis of intersections of concern even when a project generates fewer than 50 vehicles in the peak hour. See Subsection 313 of Chapter 16 for more information.*	☐	☒
○ Would the proposed project result in more than 200 subway/rail or bus trips per project peak hour?	☐	☒
If "yes," would the proposed project result, per project peak hour, in 50 or more bus trips on a single line (in one direction) or 200 subway trips per station or line?	☐	☐
○ Would the proposed project result in more than 200 pedestrian trips per project peak hour?	☐	☒
If "yes," would the proposed project result in more than 200 pedestrian trips per project peak hour to any given pedestrian or transit element, crosswalk, subway stair, or bus stop?	☐	☐
14. *AIR QUALITY*: CEQR Technical Manual Chapter 17		
(a) *Mobile Sources*: Would the proposed project result in the conditions outlined in Section 210 in Chapter 17?	☐	☒
(b) *Stationary Sources*: Would the proposed project result in the conditions outlined in Section 220 in Chapter 17?	☒	☐
○ If "yes," would the proposed project exceed the thresholds in Figure 17-3, Stationary Source Screen Graph in Chapter 17? (Attach graph as needed)	☐	☒
(c) Does the proposed project involve multiple buildings on the project site?	☒	☐
(d) Does the proposed project require federal approvals, support, licensing, or permits subject to conformity requirements?	☐	☒
(e) Does the proposed project site have existing institutional controls (*e.g.*, (E) designation or Restrictive Declaration) relating to air quality that preclude the potential for significant adverse impacts?	☐	☒
15. *GREENHOUSE GAS EMISSIONS*: CEQR Technical Manual Chapter 18		
(a) Is the proposed project a city capital project or a power generation plant?	☐	☒
(b) Would the proposed project fundamentally change the City's solid waste management system?	☐	☒
(c) If "yes" to any of the above, would the project require a GHG emissions assessment based on the guidance in Chapter 18?	☐	☐
16. *NOISE*: CEQR Technical Manual Chapter 19		
(a) Would the proposed project generate or reroute vehicular traffic?	☒	☐
(b) Would the proposed project introduce new or additional receptors (see Section 124 in Chapter 19) near heavily trafficked roadways, within one horizontal mile of an existing or proposed flight path, or within 1,500 feet of an existing or proposed rail line with a direct line of site to that rail line?	☐	☒
(c) Would the proposed project cause a stationary noise source to operate within 1,500 feet of a receptor with a direct line of sight to that receptor or introduce receptors into an area with high ambient stationary noise?	☒	☐
(d) Does the proposed project site have existing institutional controls (*e.g.*, (E) designation or Restrictive Declaration) relating to noise that preclude the potential for significant adverse impacts?	☐	☒

	YES	NO
17. *PUBLIC HEALTH*: CEQR Technical Manual Chapter 20		
(a) Based upon the analyses conducted, do any of the following technical areas require a detailed analysis: Air Quality; Hazardous Materials; Noise?	☒	☐
(b) If "yes," explain why an assessment of public health is or is not warranted based on the guidance in Chapter 20, "Public Health." Attach a preliminary analysis, if necessary.		
18. *NEIGHBORHOOD CHARACTER*: CEQR Technical Manual Chapter 21		
(a) Based upon the analyses conducted, do any of the following technical areas require a detailed analysis: Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Open Space; Historic and Cultural Resources; Urban Design and Visual Resources; Shadows; Transportation; Noise?	☒	☐
(b) If "yes," explain why an assessment of neighborhood character is or is not warranted based on the guidance in Chapter 21, "Neighborhood Character." Attach a preliminary analysis, if necessary. See Section 2.9 of the attached Supplemental Studies		
19. *CONSTRUCTION*: CEQR Technical Manual Chapter 22		
(a) Would the project's construction activities involve:		
○ Construction activities lasting longer than two years?	☐	☒
○ Construction activities within a Central Business District or along an arterial highway or major thoroughfare?	☐	☒
○ Closing, narrowing, or otherwise impeding traffic, transit, or pedestrian elements (roadways, parking spaces, bicycle routes, sidewalks, crosswalks, corners, *etc.*)?	☐	☒
○ Construction of multiple buildings where there is a potential for on-site receptors on buildings completed before the final build-out?	☐	☒
○ The operation of several pieces of diesel equipment in a single location at peak construction?	☐	☒
○ Closure of a community facility or disruption in its services?	☐	☒
○ Activities within 400 feet of a historic or cultural resource?	☐	☒
○ Disturbance of a site containing or adjacent to a site containing natural resources?	☒	☐
○ Construction on multiple development sites in the same geographic area, such that there is the potential for several construction timelines to overlap or last for more than two years overall?	☐	☒
(b) If any boxes are checked "yes," explain why a preliminary construction assessment is or is not warranted based on the guidance in Chapter 22, "Construction." It should be noted that the nature and extent of any commitment to use the Best Available Technology for construction equipment or Best Management Practices for construction activities should be considered when making this determination. See Chapter 2.10		

20. *APPLICANT'S CERTIFICATION*

I swear or affirm under oath and subject to the penalties for perjury that the information provided in this Environmental Assessment Statement (EAS) is true and accurate to the best of my knowledge and belief, based upon my personal knowledge and familiarity with the information described herein and after examination of the pertinent books and records and/or after inquiry of persons who have personal knowledge of such information or who have examined pertinent books and records.

Still under oath, I further swear or affirm that I make this statement in my capacity as the applicant or representative of the entity that seeks the permits, approvals, funding, or other governmental action(s) described in this EAS.

APPLICANT/REPRESENTATIVE NAME	DATE
AECOM - David Cuff	1/29/14

SIGNATURE

PLEASE NOTE THAT APPLICANTS MAY BE REQUIRED TO SUBSTANTIATE RESPONSES IN THIS FORM AT THE DISCRETION OF THE LEAD AGENCY SO THAT IT MAY SUPPORT ITS DETERMINATION OF SIGNIFICANCE.

Part III: DETERMINATION OF SIGNIFICANCE (To Be Completed by Lead Agency)

INSTRUCTIONS: In completing Part III, the lead agency should consult 6 NYCRR 617.7 and 43 RCNY § 6-06 (Executive Order 91 or 1977, as amended), which contain the State and City criteria for determining significance.

1. For each of the impact categories listed below, consider whether the project may have a significant adverse effect on the environment, taking into account its (a) location; (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude.

IMPACT CATEGORY	Potentially Significant Adverse Impact YES	NO
Land Use, Zoning, and Public Policy	☐	☐
Socioeconomic Conditions	☐	☐
Community Facilities and Services	☐	☐
Open Space	☐	☐
Shadows	☐	☐
Historic and Cultural Resources	☐	☐
Urban Design/Visual Resources	☐	☐
Natural Resources	☐	☐
Hazardous Materials	☐	☐
Water and Sewer Infrastructure	☐	☐
Solid Waste and Sanitation Services	☐	☐
Energy	☐	☐
Transportation	☐	☐
Air Quality	☐	☐
Greenhouse Gas Emissions	☐	☐
Noise	☐	☐
Public Health	☐	☐
Neighborhood Character	☐	☐
Construction	☐	☐

2. Are there any aspects of the project relevant to the determination of whether the project may have a significant impact on the environment, such as combined or cumulative impacts, that were not fully covered by other responses and supporting materials? ☐ YES ☐ NO

If there are such impacts, attach an explanation stating whether, as a result of them, the project may have a significant impact on the environment.

3. Check determination to be issued by the lead agency:

☐ **Positive Declaration**: If the lead agency has determined that the project may have a significant impact on the environment, and if a Conditional Negative Declaration is not appropriate, then the lead agency issues a *Positive Declaration* and prepares a draft Scope of Work for the Environmental Impact Statement (EIS).

☐ **Conditional Negative Declaration:** A *Conditional Negative Declaration* (CND) may be appropriate if there is a private applicant for an Unlisted action AND when conditions imposed by the lead agency will modify the proposed project so that no significant adverse environmental impacts would result. The CND is prepared as a separate document and is subject to the requirements of 6 NYCRR Part 617.

☐ **Negative Declaration:** If the lead agency has determined that the project would not result in potentially significant adverse environmental impacts, then the lead agency issues a *Negative Declaration*. The *Negative Declaration* may be prepared as a separate document (see template) or using the embedded Negative Declaration on the next page.

4. ***LEAD AGENCY'S CERTIFICATION***

TITLE	LEAD AGENCY
NAME	DATE
SIGNATURE	

NEGATIVE DECLARATION (Use of this form is optional)

Statement of No Significant Effect

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York and 6 NYCRR, Part 617, State Environmental Quality Review, assumed the role of lead agency for the environmental review of the proposed project. Based on a review of information about the project contained in this environmental assessment statement and any attachments hereto, which are incorporated by reference herein, the lead agency has determined that the proposed project would not have a significant adverse impact on the environment.

Reasons Supporting this Determination

The above determination is based on information contained in this EAS, which finds that the proposed project:

No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable. This Negative Declaration has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law (SEQRA).

TITLE	LEAD AGENCY
NAME	DATE
SIGNATURE	

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Figures

Tables

Appendices

1.0 PROJECT OVERVIEW

The proposed project involves the relocation of the Ferrara Brothers Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier (the "project site") in Sunset Park, Brooklyn. The project site (Block 644, p/o Lot 1) is located within the Southwest Brooklyn Industrial Business Zone. The three vacant buildings on the project site, containing a combined footprint of approximately 29,100 square feet, are currently being demolished. Ferrara Bros. proposes to construct and operate a new concrete batching plant and compressed natural gas (CNG) fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility.

Ferrara Bros. intends to have 30 concrete trucks operating from the proposed location and have 10 full-time employees on site. The concrete plant would begin operations at 6 a.m. and continue until 4p.m. There would be two access points to the project site: one access point would be along 25th Street, west of Third Avenue, for trucks entering the site and the second access point will be along Third Avenue, between 24th and 25th Streets, for trucks exiting the site.

The proposed facility would be a concrete plant, also referred to as a "batch plant" or a "batching plant." The three main ingredients to make concrete would be combined at the site, loaded into concrete trucks and delivered to work sites. The three main concrete ingredients are aggregate (the proposed facility would use stone as the aggregate), sand and cement. At the proposed project site, the aggregate would be delivered by barge and cement would be provided by the adjacent existing plant. Barges to the site would be transported by a tug boat, which would tow the aggregate barge along the water, proximate to the site, and return to remove the barge when it is fully off-loaded. Only sand would be delivered to the project site by truck. The proposed concrete plant would be a "ready mix" facility - that is, all ingredients, including water, are combined within the enclosed batch plant. The mixture is then discharged into a ready mix concrete truck.

Ferrara Bros. will enter into a long-term ground lease with the New York City Department of Small Business Services (NYCSBS). As the proposed use for the project site is maritime-related, the disposition of the project site via a long-term ground lease is subject to City Charter Section 1301 (2)(f) and requires the approval of the City Council. The approval of the lease disposition is subject to City Environmental Quality Review and the Department of Small Business Services will act as lead agency for the review. The anticipated build year of the proposed project is 2017.

1.1 Purpose and Need

New York City Economic Development Corporation (EDC) seeks to support the retention and growth of industrial businesses in the City and strengthen the City's industrial sector by helping small industrial businesses stay and grow in the City. This sector is an integral part of the City's economy that offers opportunities for growth and new development. Approval of the proposed action would allow Ferrara Bros. to locate to a new site that would allow the company to take advantage of maritime materials transport opportunities (via barge) and direct access to Third Avenue, which is designated a "Through Truck Route" by the New York City Department of Transportation, as well as the Gowanus Expressway (I-278). The proposed project would help to retain this local New York City-based business and relocate it to a new site that is currently vacant and not in use.

1.2 Project Location

The project site is located on the upland portion of the 25th Street Pier in the Sunset Park neighborhood in south Brooklyn (Block 644, p/o Lot 1). The site is situated along the west side of Third Avenue, between 23rd and 25th Streets (as shown in **Figures 1-1** and **1-2**), and is located within the Southwest Brooklyn Industrial Business Zone, as well as the Sunset Park Significant Maritime Industrial Area. A key to the photographs of the project site and the surrounding project study area are shown in **Figure 1-3**, with photographs of the project site and the surrounding study area shown in **Figure 1-4**. The project site is located within Brooklyn Community District (CD) 7.

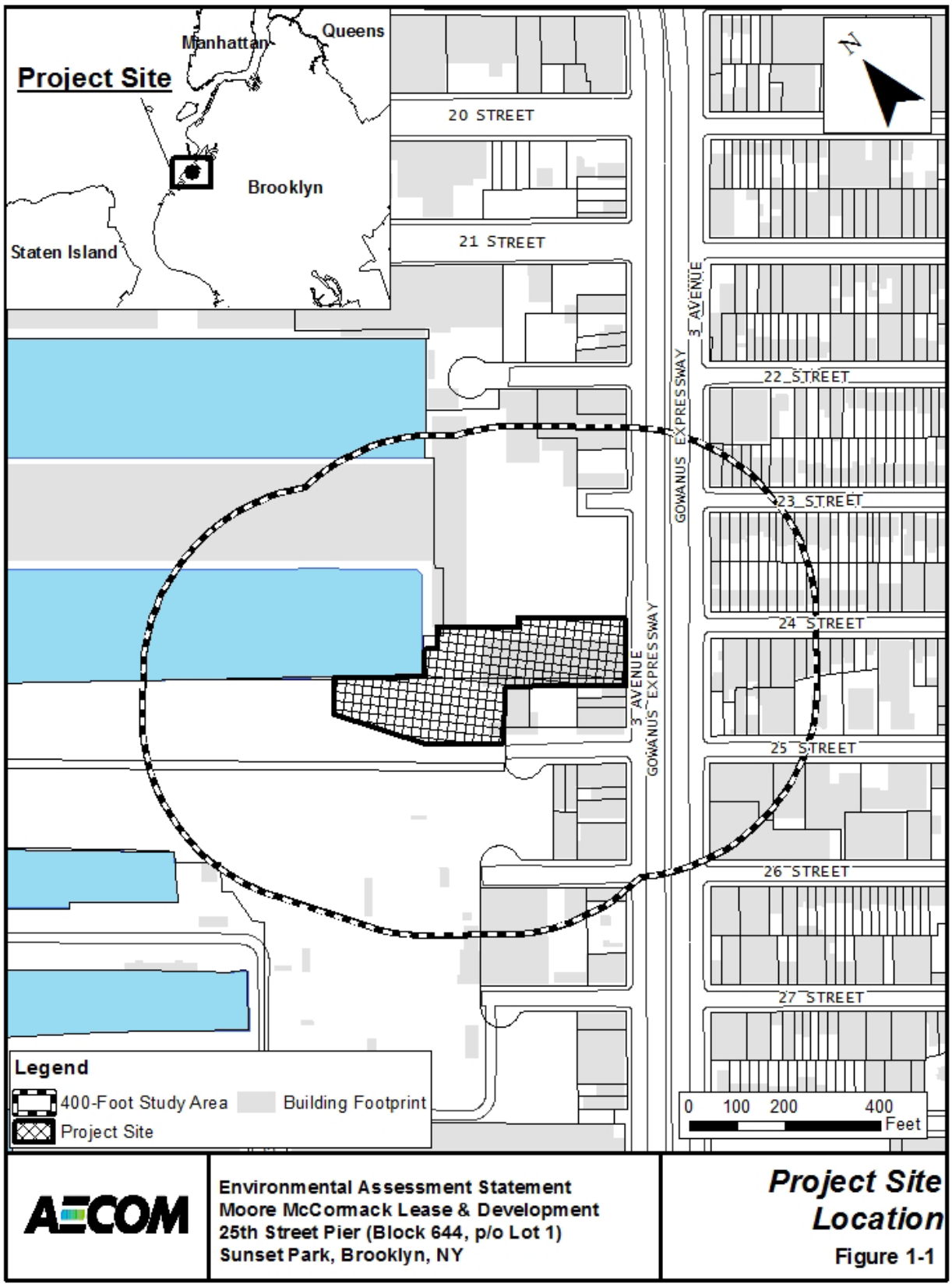


Figure 1-1 Project Site Location

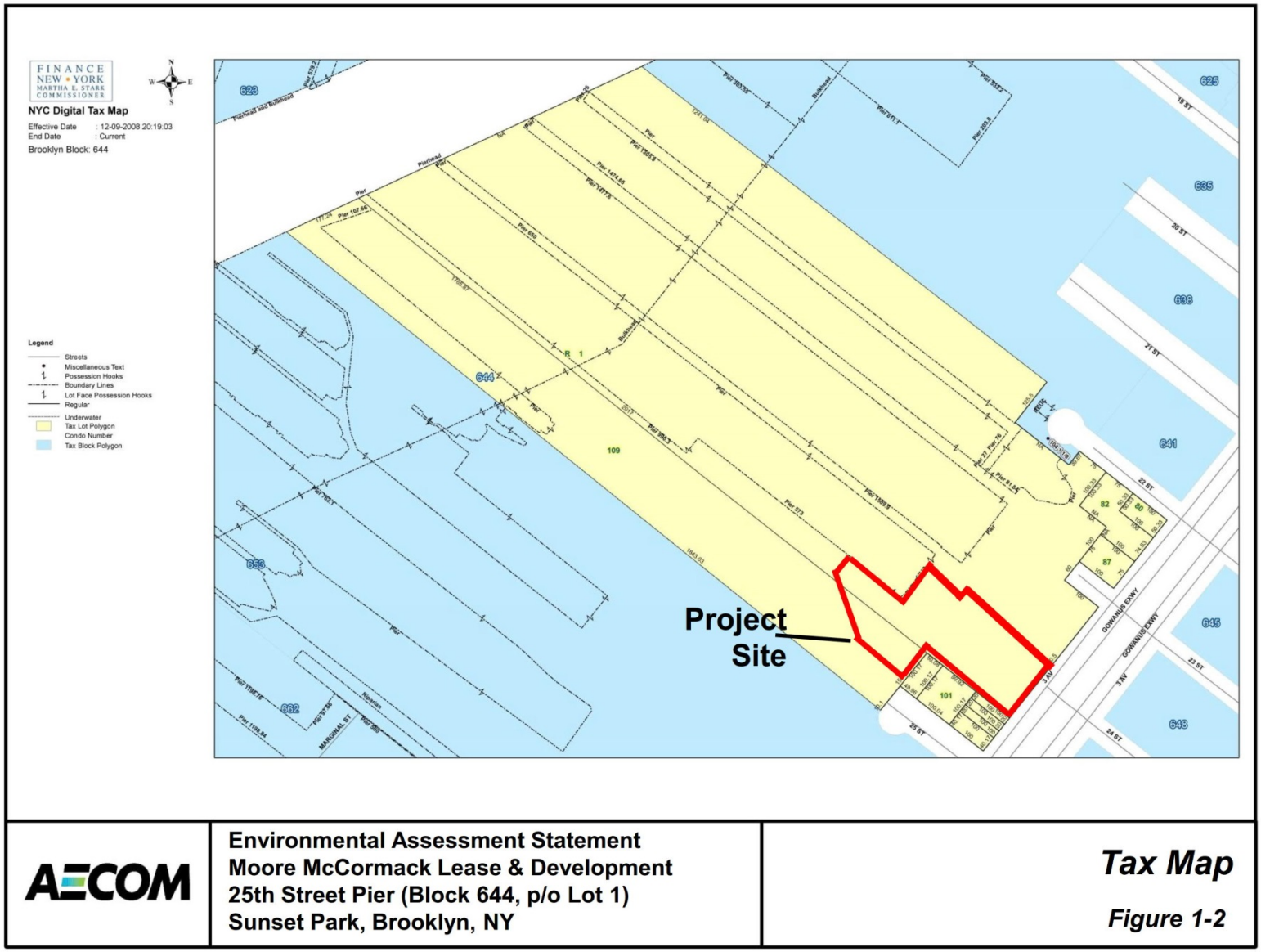


Figure 1-2 Tax Map

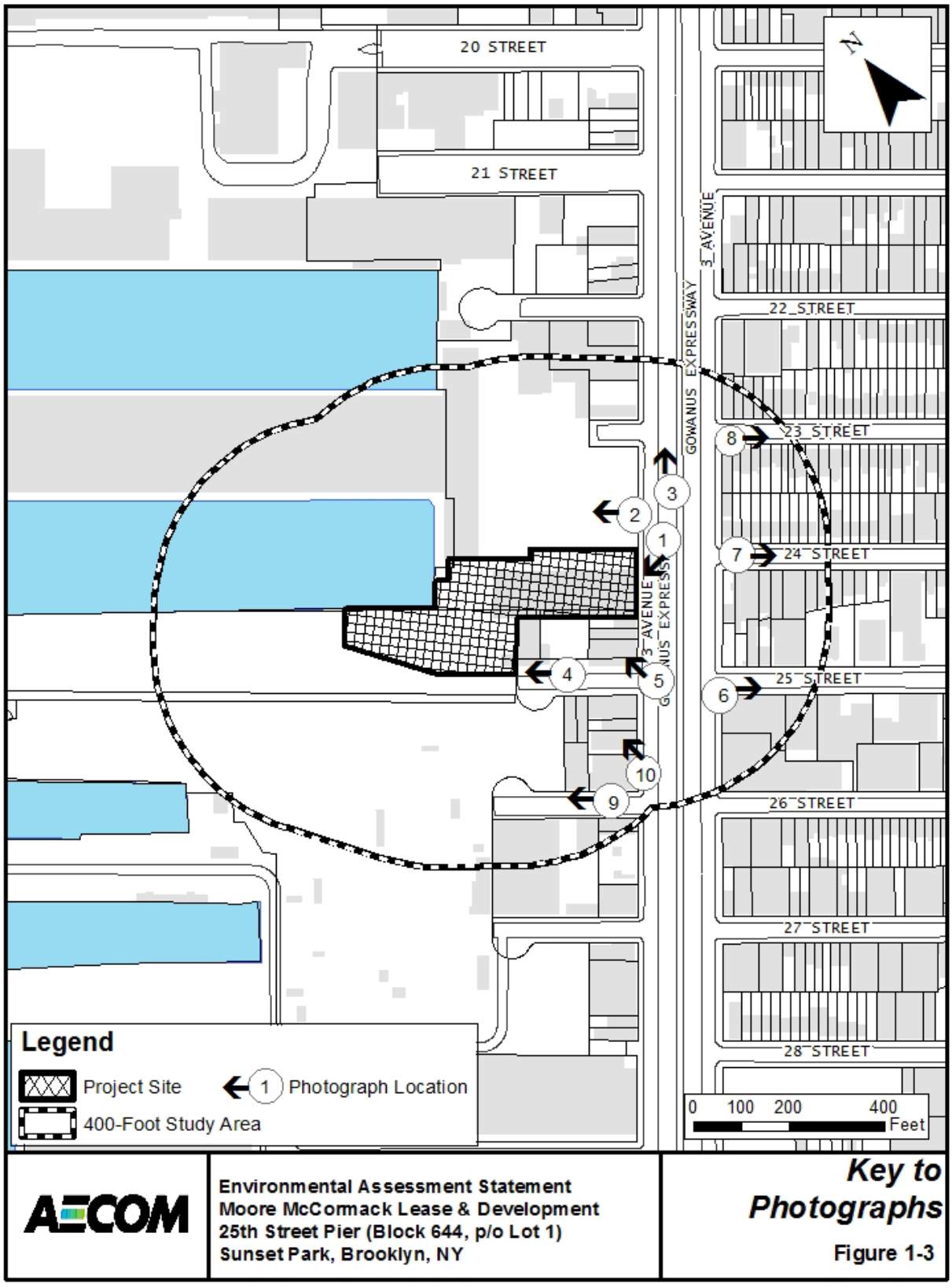


Figure 1-3 Photographs of the Site and Surrounding Area

Photograph 1

View of project site at Third Avenue and 24th Street, looking southwest

Photograph 2

View of project site and adjacent industrial facility, looking west

Photograph 3

View of Third Avenue and elevated Brooklyn-Queens Expressway, looking north

Photograph 4

View of LaFarge cement distribution facility directly west of the project site, looking west

Photograph 5

View of industrial/manufacturing and commercial uses along Third Avenue, looking northwest

Photograph 6

View of industrial/manufacturing and commercial uses along 25th Street, looking east

Photograph 7

View of multi-family residential uses along 24th Street, looking northeast

Photograph 8

View of single- and multi-family residential uses along 23rd Street, looking east

Photograph 9

View of industrial/manufacturing uses and Con Edison facility, looking west from 26th Street

Photograph 10

View of commercial uses on Third Avenue, looking northwest from 26th Street

This environmental assessment studies the potential for environmental impacts related to the proposed action occurring in a study area of approximately 400 feet around the project site. The 400-foot study area is generally bound to the north by 22nd Street, to the east by the midblock point between Third and Fourth Avenues, to the south by 26th Street, and to the west by the 25th Street Pier and the Gowanus Bay.

1.3 Required Actions

The proposed action is a discretionary public action subject to City Environmental Quality Review (CEQR) regulations as outlined in the *CEQR Technical Manual*. Through CEQR, agencies review discretionary actions for the purpose of identifying the effects those actions may have on the environment. The *CEQR Technical Manual* is intended to provide guidance for city agencies, project sponsors, and the public in the procedures and substance of the CEQR process. This environmental assessment will assist and guide decision-makers in reaching conclusions and ensure that they have a full understanding of the potential environmental consequences of the proposed action. The regulations are intended to permit the analysis of environmental factors and to clarify social and environmental issues prior to the decision-making stage of a project. This assessment provides a way to systematically consider environmental effects with other aspects of project planning and design.

Actions determined not to have a significant impact on the environment, or Type II actions as promulgated by 6 NYCRR Part 617.5 are not subject to environmental review. Actions that are subject to environmental review are Type I actions and Unlisted actions. Type I actions are those actions that are listed in 6 NYCRR Part 617.4. Unlisted actions are all other actions not listed as Type I or Type II. The proposed action does not fit any of the specific categories listed as Type I actions in 6 NYCRR Part 617.4, or Type II actions in 6 NYCRR Part 617.5, and is therefore an Unlisted action.

EDC and NYCSBS intend to enter into a long-term lease agreement with the Ferrara Bros. to operate a concrete batching plant and CNG fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility. This site will be made available to Ferrara Bros. on a long-term ground lease basis, and will enter into a lease agreement for the project site with NYCSBS. Disposition of the project site is subject to City Charter section 1301(2)(f), which is applicable to maritime-related uses.

2.0 ENVIRONMENTAL REVIEW

The following technical sections are provided as supplemental assessments to the Environmental Assessment Statement ("EAS") Short Form. In "Part II: Technical Analyses" of the EAS Short Form there is a series of technical thresholds for each analysis area in the respective chapter of the *CEQR Technical Manual*. If the proposed project was demonstrated not to meet or exceed the threshold, the 'NO' box in that section was checked on the EAS Short Form; thus additional analyses were not needed. If the proposed project was expected to meet or exceed the threshold, or if this was not able to be determined, the 'YES' box was checked on the EAS Short Form, resulting in a preliminary analysis to determine whether further analyses were needed. For those technical sections, the relevant chapter of the *CEQR Technical Manual* was consulted for guidance on providing additional analyses (and supporting information, if needed) to determine whether detailed analysis was needed.

A 'YES' answer was provided in the following technical analyses areas on the EAS Short Form:

- Shadows,
- Natural Resources,
- Hazardous Materials,
- Transportation,
- Air Quality,
- Noise,
- Neighborhood Character, and
- Construction Impacts

In addition, although the proposed action did not require a 'YES' answer for Land Use, Zoning and Public Policy, a preliminary assessment is provided to provide background information for the proposed action.

In the following technical sections, where a preliminary or more detailed assessment was necessary, the discussion is divided into Existing Conditions, the Future No-Action Conditions (the Future Without the Proposed Action), and the Future With-Action Conditions (the Future With the Proposed Action).

2.1 LAND USE, ZONING AND PUBLIC POLICY

The *CEQR Technical Manual* recommends procedures for analysis of land use, zoning and public policy to ascertain the impacts of a project on the surrounding area. Land use, zoning and public policy are described in detail below.

2.1.1 Land Use

Existing Conditions

Existing land use patterns on city blocks within approximately 400 feet of the project site are presented in **Figure 2.1-1**. The *CEQR Technical Manual* suggests that a land use, zoning and public policy study area should extend 400 feet from the site of the proposed action. The 400-foot study area is generally bound to the north by 22nd Street, to the east by the midblock point between Third and Fourth Avenues, to the south by 26th Street, and to the west by the 25th Street Pier and the Gowanus Bay.

A field survey was conducted to determine the existing land use patterns and neighborhood characteristics of the study area. Land use within the study area is generally comprised of a combination of industrial/manufacturing related uses, commercial (office and retail) buildings, transportation/utility and parking uses, and some multi-story residential buildings. Several of these residential buildings, particularly along the eastern blockface of Third Avenue, are occupied with ground floor commercial uses.

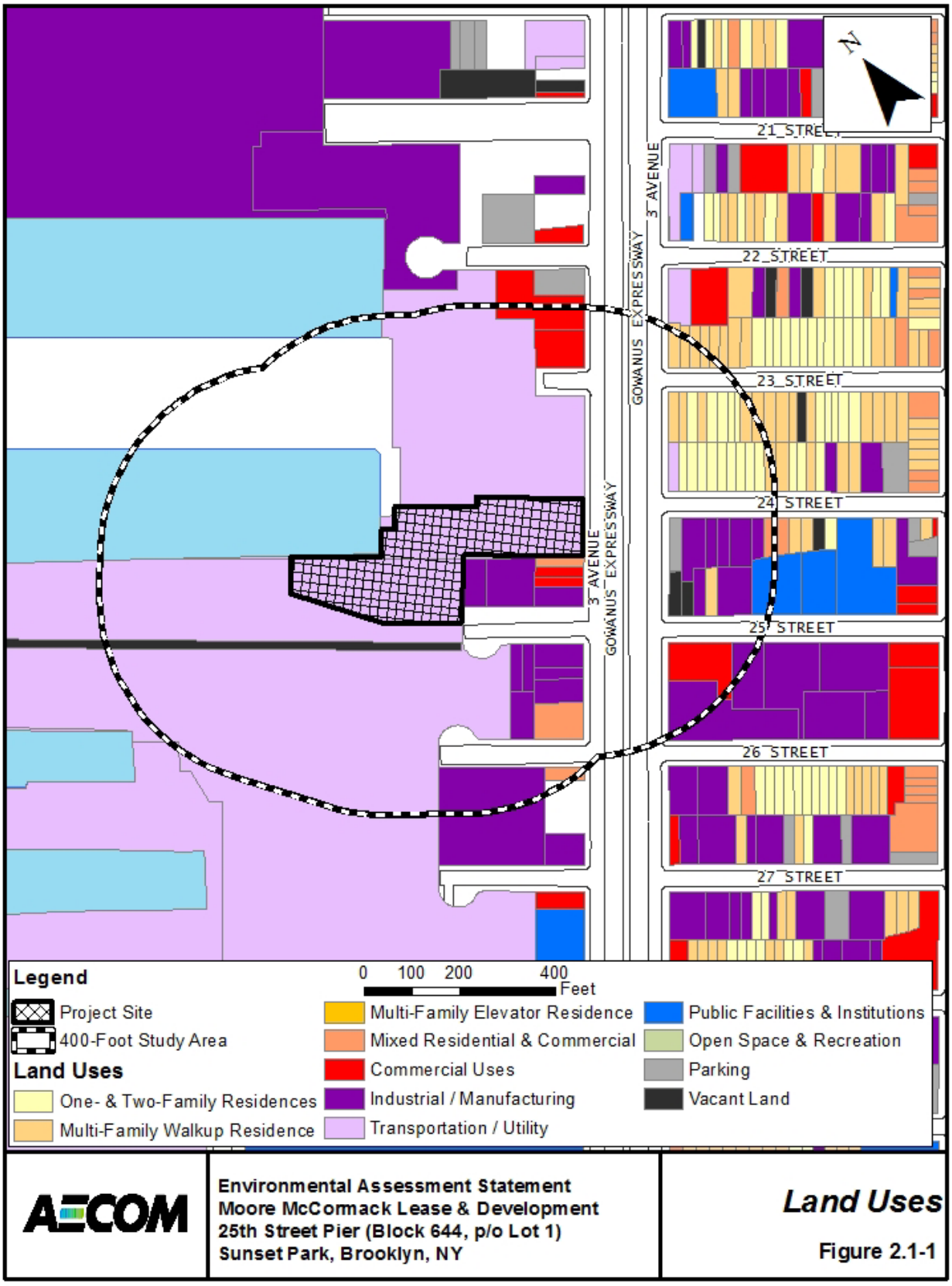


Figure 2.1-1 Land Use Map

Three vacant buildings on the project site, containing a combined footprint of approximately 29,100 square feet, are currently being demolished. This activity was the subject of a separate CEQR review (16SBS002K). Directly west of the project site, on the western portion of the 25th Street Pier is a cement distribution facility operated by LaFarge North America. In 2005, LaFarge leased the pier from the city to develop the 6.8-acre site into a cement storage and shipping terminal, which began operation in 2006. As part of this lease agreement, LaFarge performed maritime-related renovations to the 25th Street pier and constructed four silos of approximately 146 feet in height. On-site operations involve the transport of cement products to the 25th Street pier by barge. These products are then transferred from barge to dock, where they are processed and distributed regionally by truck.

South of the project site, the western portion of the study area is developed with a variety of industrial/manufacturing uses, including building material warehouses and various distribution facilities. Several commercial uses are present in the southwestern portion of the study area, including a pet supply store, a grocery store and a plumbing contractor. In the northern portion of the study area, west of Third Avenue, are additional commercial uses. These uses consist of a furniture showroom, a carwash and automotive detailer and an insurance agency. Further west, the area north of 26th Street contains an active Con Edison facility, which includes large electrical generators and is classified as a transportation/utility use.

The portion of the study area east of Third Avenue is generally developed with a mix of uses. South of 24th Street, the study area generally includes various industrial/manufacturing uses, as well as warehouse and distribution-related uses. Transportation/utility and parking related uses are also present, including several used car dealerships and auto service stations. Some low-density residential buildings are located within this portion of the study area, most notably north of 24th Street. These buildings are generally attached and include single- and multi-family residences. Other multiple-story residential buildings, some occupied with ground floor commercial uses, are scattered throughout the study area. Various commercial-related uses and buildings are also located within these areas fronting both sides of Third Avenue.

The elevated Gowanus Expressway (I-278) divides the project study area, with the area underneath utilized for vehicle parking. A few vacant lots are scattered throughout the project study area. With the exception of the Our Lady of Czestochowa church at the eastern limit of the project study area, there are no other community facility uses. In addition, there are no public open spaces/outdoor recreational parks in the study area.

The general mix of land use observed in the project study area generally reflects the distribution of land use observed throughout Brooklyn CD 7, which is summarized below in **Table 2.1-1.** The most prominent land uses within Brooklyn CD 7 are open space/recreation and one- and two-family residences, followed by transportation/utility uses and industrial uses.

Future No-Action Conditions

In the future without the proposed action, the project site is not expected to undergo any significant changes or development.

Future With-Action Conditions

The proposed project would replace three vacant and highly deteriorated buildings with an active cement batching plant that would be consistent with surrounding land use. The proposed action would not create any significant adverse land use impacts to the surrounding neighborhood, which is primarily developed with industrial/warehouse, commercial office/retail, and transportation and parking-related uses. Such existing land uses are compatible with the proposed cement batching facility. Therefore, the proposed action is not expected to have any significant adverse impacts on the surrounding land uses.

Table 2.1-1 Land Use Distribution for Brooklyn Community District 7 (2014)

LAND USE	PERCENT OF TOTAL
Residential Uses	
1-2 Family	16.4
Multi-Family	12.5
Mixed Residential/Commercial	4.0
Subtotal of Residential Uses	*32.9*
Non-Residential Uses	
Commercial / Office	3.0
Industrial	13.0
Transportation/Utility	16.4
Institutions	3.7
Open Space/Recreation	28.2
Parking Facilities	0.9
Vacant Land	1.4
Miscellaneous	0.4
Subtotal of Non-Residential Uses	*67.1*
TOTAL	**100.0**

Source: *Community District Profiles, New York City Department of City Planning.*
Note: Percentages may not add up to 100.0 percent due to rounding.

2.1.2 Zoning

The *New York City Zoning Resolution* dictates the use, density and bulk of developments within New York City. Additionally, the Zoning Resolution provides required and permitted accessory parking regulations. The City has three basic zoning district classifications – residential (R), commercial (C), and manufacturing (M). These classifications are further divided into low-, medium-, and high-density districts.

Existing Conditions

Zoning designations within and around the project study area are depicted in **Figure 2.1-2**, while **Table 2.1-2** summarizes use, floor area and parking requirements for the zoning districts in the study area.

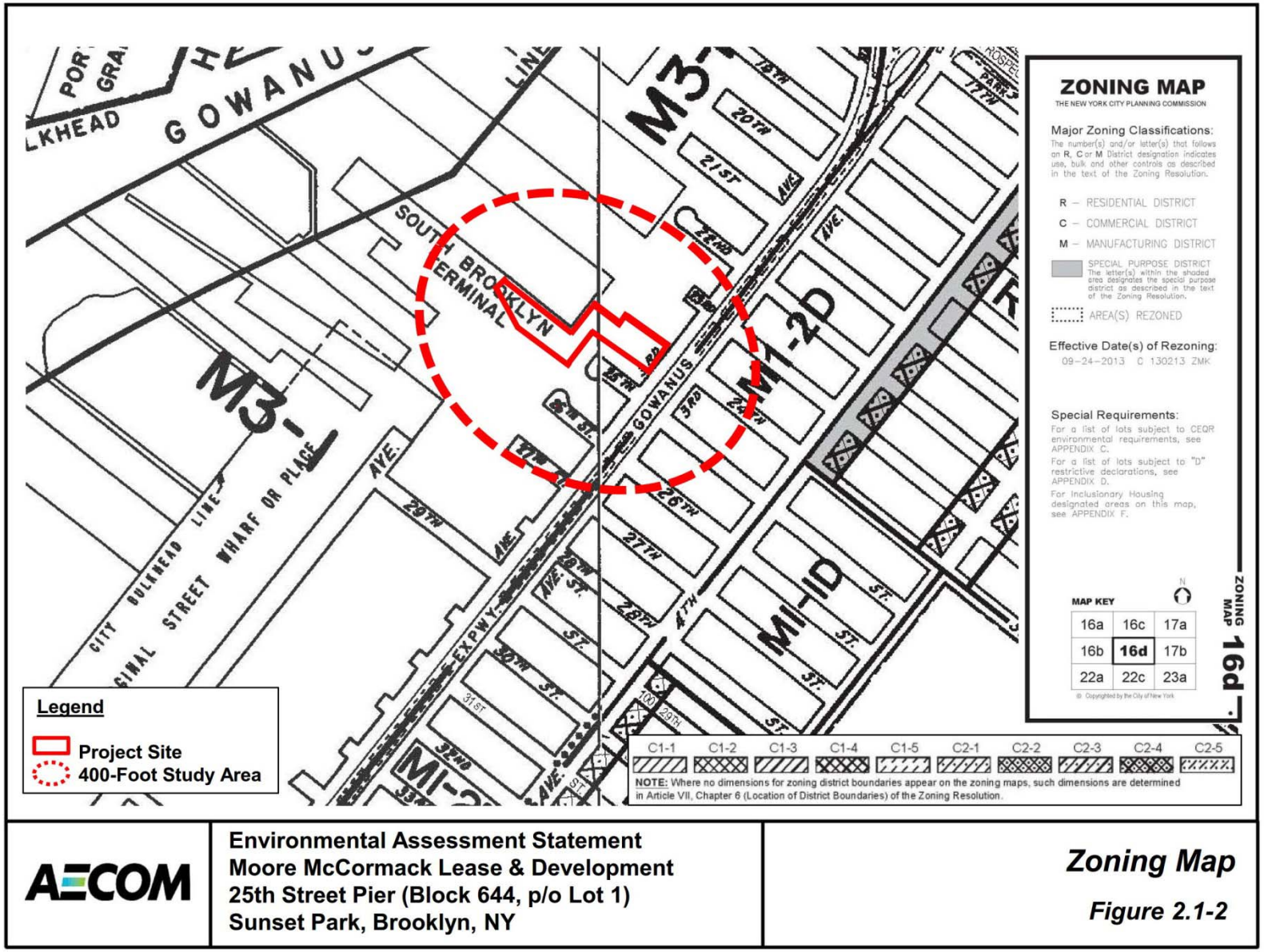


Figure 2.1-2 Zoning Map

Table 2.1-2 Summary of Zoning Regulations

Zoning District	Type and Use Groups (UG)	Floor Area Ratio (FAR)	Parking (Required Spaces)
M3-1	Heavy Industrial UGs 6-14 & 16-18	2.0 FAR for Manufacturing 2.0 FAR for Commercial	Varies by Use
M1-2D	Light Industrial UGs 4-14, 16, 17, (UGs 1-2 allowed with CPC authorization)	2.0 FAR for Manufacturing 2.0 FAR for Commercial 4.8 FAR for Community Facilities 1.65 FAR for Residential (with CPC authorization)	Varies by Use

Source: Zoning Handbook, New York City Department of City Planning, January 2006

The project site and portion of the study area west of Third Avenue are zoned M3-1. M3 districts are for heavy industries that generate noise, traffic or pollutants. Typical uses include power plants, solid waste transfer facilities, recycling plants and fuel supply depots. Similar to M2 districts, M3 districts are usually located near the waterfront and buffered from residential areas. Large M3 districts are mapped along the Arthur Kill in Staten Island, along the East River shore of the South Bronx, and along Newtown Creek in Brooklyn and Queens. Smaller M3 districts, many accommodating public utilities, are located along the waterfront in all five boroughs. M3-1 Use Groups 6 through 14, and 16 through 18, which include many commercial establishments, general service uses and all manufacturing use groups are permitted in M3-1 districts. Within this zoning district, a maximum manufacturing FAR of 2.0 is allowed, along with a maximum FAR of 2.0 for commercial uses. Community facilities are not allowed as-of-right in M3 districts.

An M1-2D district is mapped in the portion of the study area east of Third Avenue. The M1 district is often a buffer between M2 or M3 districts and adjacent residential or commercial districts. Outside the project study area, residential zoning districts are located east of Fourth Avenue. Light industries typically found in M1 districts include woodworking shops, auto storage and repair shops, and wholesale service and storage facilities. Offices and most retail uses are also permitted. Certain community facilities, such as hospitals, are allowed in M1 districts only by special permit, but houses of worship are allowed as-of-right. In M1-2D districts, residential uses may be permitted by authorization of the City Planning Commission in accordance with the provisions of Section 42-47 (Residential Uses in M1-2D Districts), subject to the regulations of Sections 43-61 (Bulk Regulations for Residential Uses in M1-2D Districts). A maximum FAR of 2.0 for manufacturing and commercial uses is allowed in an M1-2D district, with a maximum 4.8 FAR for community facilities and 1.65 for residential uses.

Future No-Action Conditions

In the future without the proposed action, zoning changes are not expected to occur on the project site. The project site would remain zoned M3-1, and there are no planned zoning changes that would affect the project site.

Future With-Action Conditions

In the future with the proposed action, zoning changes are not expected to occur on the project site. The project site would remain as part of the mapped M3-1 zoning district. The use of the project site as a concrete batching plant is consistent within an M3-1 zoning district, which allows heavy industrial uses that conform to minimum performance standards. The proposed project would also conform to all bulk regulations of the M3-1 zoning district. Therefore, significant adverse zoning impacts are not anticipated and further assessments of zoning are not warranted.

2.1.3 Public Policy

In addition to zoning, other public policies can affect the allowable land uses on a project site. Several public policies are applicable to the proposed project, including the City's Waterfront Revitalization Program, the City's Industrial Business Zone policy, and the City's Significant Industrial and Maritime Area program, as discussed below. The project site is not part of or subject to an Urban Renewal Plan, Community 197-a Plan, Criteria for the Location of City Facilities ("Fair Share" criteria), Solid Waste Management Plan, Business Improvement District, or the New York City Landmarks Law. The proposed action is also not considered a large publicly sponsored project, and thus consistency review with the City's adopted PlaNYC for sustainability is not warranted.

Waterfront Revitalization Program (WRP) / Coastal Zone Management

The project site is located within the City's Coastal Zone. The federal Coastal Zone Management Act of 1972, established to support and protect the nation's coastal areas, sets forth standard policies for the review of proposed projects along coastlines. As part of the Federal Coastal Zone Management Program, New York State has adopted a state Coastal Zone Management Program, designed to achieve a balance between economic development and preservation that would promote waterfront revitalization and water-dependent uses; protect fish, wildlife, open space, scenic areas, public access to the shoreline, and farmland. The program is also designed to minimize adverse changes to ecological systems, erosion, and flood hazards.

The state program contains provisions for local governments to develop their own local waterfront revitalization programs. New York City has adopted such a program (New York City Waterfront Revitalization Program, New York City Department of City Planning, revised 1999). The Local Waterfront Revitalization Program (WRP) establishes the City's Coastal Zone, and includes policies that address the waterfront's economic development, environmental preservation, and public use of the waterfront, while minimizing the conflicts among those objectives.

The New WRP was originally adopted in 1982 as a 197-a Plan in coordination with local, State, and Federal laws and regulations. Prior to its adoption, both local and State programs adhered to a list of 44 state and 12 local policies designated to protect and improve the waterfront. A newly revised, as of February 2016, WRP has streamlined the consistency review process in NYC. Under the revised WRP, there are ten policy objectives to address that fall under four categories of waterfront functions. A proposed project may be deemed consistent with the WRP when it would not substantially hinder and, where possible, would promote one or more of the ten WRP policies dealing with: (1) residential and commercial development; (2) water-dependent and industrial uses; (3) commercial and recreation boating; (4) coastal ecological systems; (5) water quality; (6) flooding and erosion; (7) solid waste and hazardous substances; (8) public access; (9) scenic resources; and (10) historical and cultural resources.

The proposed project would lead to the relocation of the Ferrara Bros. concrete plant, currently located on the west side of the Gowanus Bay at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier (the "project site") in Sunset Park, Brooklyn. Ferrara Bros. proposes to construct and operate a new concrete batching plant and compressed natural gas (CNG) fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility. The project site (Block 644, p/o Lot 1) is located within the Southwest Brooklyn Industrial Business Zone. Three vacant buildings currently occupy the project site, containing a combined footprint of approximately 29,100 square feet. Ferrara Bros. will enter into a long-term ground lease with the New York City Department of Small Business Services. As the proposed use for the project site is maritime-related, the disposition of the project site via the long-term ground lease is subject to City Charter Section 1301 (2)(f) and requires the approval of the City Council.

As indicated on **Figure 2.1-3**, the project site is located on the waterfront, situated on the upland portion of the 25th Street Pier in Sunset Park, and is located within NYC's Coastal Zone. Actions located within the City's Coastal Zone generally require submission of the NYC WRP Consistency Assessment Form (CAF). This form is intended to assist an applicant in certifying that a proposed project is consistent with

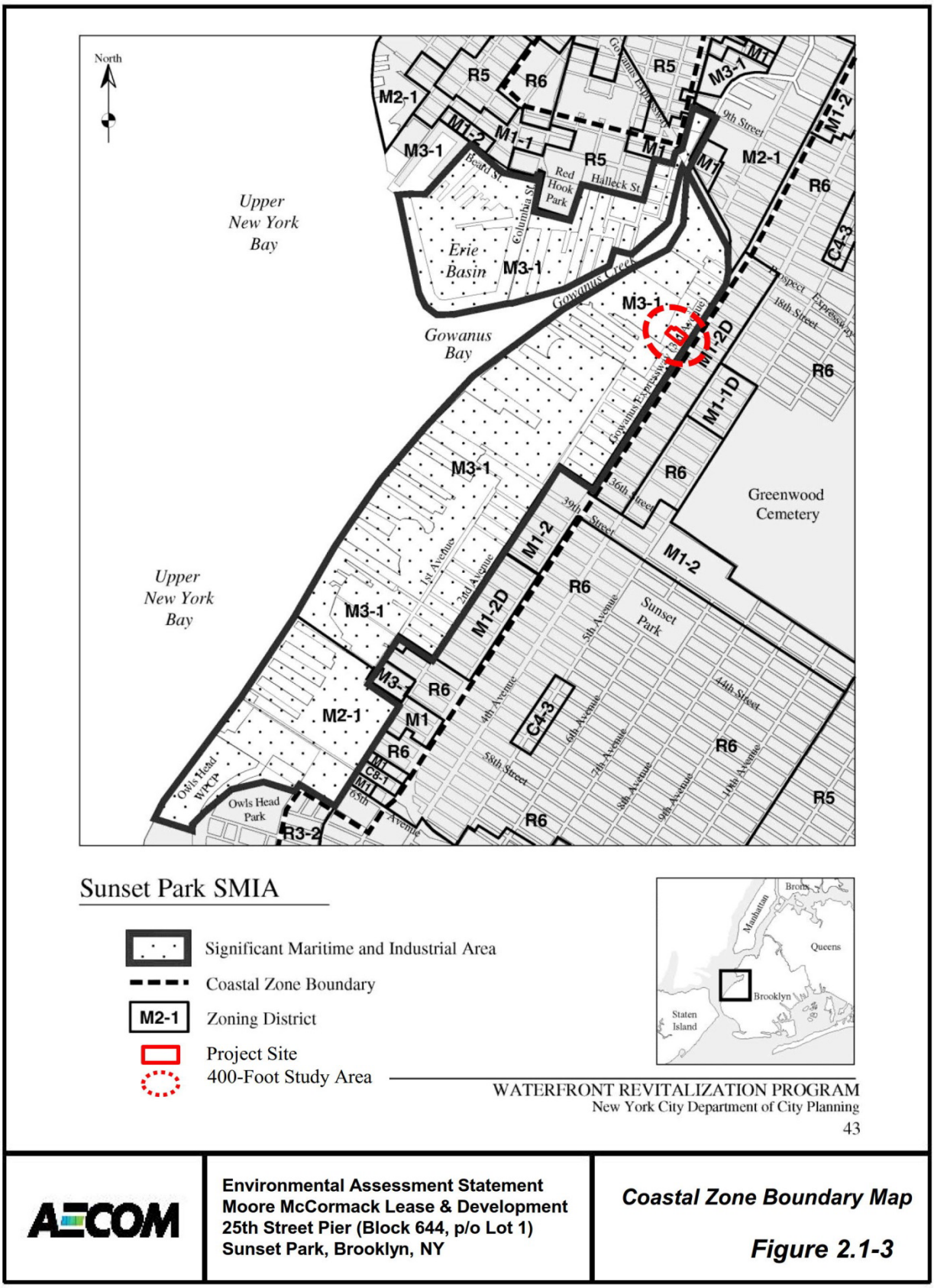


Figure 2.1-3 Coastal Zone Map

the WRP. The completed CAF and accompanying information is used by NYC and State agencies to review the applicant's certification of consistency. A copy of the completed CAF has been attached to this document (see **Appendix A**).

The CAF requires a proposed action to be characterized according to a list of 45 sub-policies that fall under the 10 major policy objectives. For each sub-policy the action is to be characterized as to whether it will "promote," "hinder," or have no relevance to the policy. "Promote" or "Hinder" answers to any of the questions indicate that a particular policy or policies of the WRP may be relevant and would warrant further examination. "N/A" answers indicate that the particular policy is not applicable to the proposed project. Per the CAF, the following policies warranted further assessment: 1.1, 1.2, 2.1 and 7.2. Therefore, these policies are addressed below.

POLICY 1: Support and facilitate commercial and residential redevelopment in areas well suited to such development.

1.1 Encourage commercial and residential redevelopment in appropriate Coast zone areas.

The NYC Economic Development Corp proposes a long-term lease with Ferrara Bros. which would lead to the relocation of the concrete plant to a new waterfront location on the upland portion of the 25th Street Pier in Sunset Park, Brooklyn. Ferrara Bros. proposes to construct and operate a new concrete batching plant and CNG fueling station on the project site. The proposed action would result in the redevelopment of a vacant and deteriorated waterfront site, which advances the goals of the WRP.

This relocation will help preserve Ferrara's employment in the city. The site is situated adjacent to the Lafarge cement facility and allows synergy between the two facilities.

1.2 Encourage redevelopment in the Coastal Zone where public facilities and infrastructure are adequate or will be developed.

The project site is fully served by the water and sewer infrastructure necessary for the Ferrara operations. Transportation infrastructure is also consistent with the proposed use. The area surrounding the project site has good transportation access. The project site contains frontage on Third Avenue, which is designated a "Through Truck Route" by the New York City Department of Transportation and is proximate to the Gowanus Expressway (I-278).

POLICY 2: Support water-dependent and industrial uses in New York City coastal areas that are well suited to their continued operation.

2.1 Promote water-dependent and industrial uses in Significant Maritime and Industrial Areas.

The project site is located in the Sunset Park SMIA, which is further discussed below. The project site and portion of the study area west of Third Avenue are zoned M3-1. M3 districts are suitable for heavy industries that generate noise, traffic or pollutants. Typical uses include power plants, solid waste transfer facilities, recycling plants and fuel supply depots. Sunset Park also has the presence of intermodal transportation options, including nearby marine terminals and pier infrastructure. The area surrounding the project site has good transportation access. The project site contains frontage on Third Avenue, which is a designated "Through Truck Route" by the New York City Department of Transportation and is proximate to the Gowanus Expressway (I-278).

The Farrara operation will take advantage of its waterfront location to bring in a large portion of its required raw materials by barge. Aggregate will be barged in for direct use in the concrete batch plant. Cement will be obtained from the adjacent Lefarge operation which also depends on barges to bring in materials. By exploiting its waterfront location, Ferrara, will limit the amount of truck traffic that would otherwise use the adjacent road network, while supporting the marine infrastructure.

POLICY 7: **Minimize environmental degradation and negative impacts on public health from solid waste, toxic pollutants, hazardous materials, and industrial materials that may pose risks to the environment and public health and safety.**

7.2 Prevent and remediate discharge of petroleum products.

As discussed in **Section 2.4** (Hazardous Materials) below, the project site was formerly used as a warehouse and assembly facility, and is adjacent to other manufacturing uses. Records with the Environmental Data Resources (EDR) indicate that underground storage tanks (USTs) were either abandoned in place or removed from the project site. Visual inspection of the project site indicated additional Recognized Environmental Conditions (RECs), including impacted soil and groundwater, a concrete sump pump and various 5, 10 and 55 gallon drums that have the potential to discharge to the environment. As a result of these RECs, the Phase I ESA concluded that any development of the project site should address the methods of proper excavation and disposal of impacted soil and groundwater, as well as best methods to address the potential for direct contact with these RECs. Additionally, it was concluded that further geophysical and subsurface evaluations were needed to confirm the presence of USTs on the project site. As a result of these determinations, a Phase II Environmental Site Investigation (ESI) and Focused Subsurface Investigation are planned for the project site.

The project sponsor is committed to adhering to the above recommendations, and following all necessary hazardous materials remediation procedures per applicable local, state, and federal procedures. As such, significant adverse impacts related to hazardous materials are not anticipated, and the proposed project would be consistent with Policy 7.2.

Southwest Brooklyn Industrial Business Zone

The project site is located within the Sunset Park Industrial Business Zone (IBZ). In early 2006, 16 IBZs were created across the City where expanded business services are available for industrial and manufacturing businesses. This designation fosters high performing business districts by creating competitive advantages over locating in areas outside of NYC. The IBZs are supported by tax credits for relocating within them, zone-specific planning efforts, and direct business assistance from Industrial Providers of NYC Business Solutions Industrial and Transportation. In view of the purposes of IBZs, to foster industrial sector growth by creating real estate certainty, the Mayor's Office has stated that it will not support the rezoning of these areas for residential use.

The proposed action is compatible with the goals of the IBZ to support and retain businesses, and the proposed action does not contain any residential components. The redevelopment of the project site would further of the goals of Industrial Policy by supporting the placement of new business in this section of Brooklyn.

Sunset Park Significant Maritime and Industrial Area

The project site is located within the Sunset Park Significant Maritime and Industrial Area (SMIA) and the proposed action includes a maritime-related industrial facility. The Significant Maritime and Industrial Areas (SMIA) were designated in the 1992 Comprehensive Waterfront Plan to protect and encourage concentrated working waterfront uses. These six areas are characterized by clusters of industrial firms and water-dependent businesses. At nearly 600 acres, the Sunset Park SMIA extends from Erie Basin to Owls Head, an area characterized by water-dependent facilities, concentrations of industrial activity, well-buffered manufacturing districts, and vacant sites and brownfields of significant size. A small portion of the SMIA abuts the Gowanus Canal, a waterway near the project site that was designated a Superfund Site in 2010.

2.2 SHADOWS

The *CEQR Technical Manual* defines a shadow as the condition that results when a building or other built structure blocks the sunlight that would otherwise directly reach a certain area, space or feature. An incremental shadow is the additional or new shadow that a building or other built structure resulting from

a proposed project would cast on a sunlight-sensitive resource during the year. The sunlight-sensitive resources of concern are those resources that depend on sunlight or for which direct sunlight is necessary to maintain the resource's usability or architectural integrity, including public open space, architectural resources and natural resources. Shadows can have impacts on publicly accessible open spaces or natural features by adversely affecting their use and important landscaping and vegetation. In general, increases in shadow coverage make parks feel darker and colder, affecting the experience of park patrons. Shadows can also have impacts on historic resources whose features are sunlight-sensitive, such as stained-glass windows, by obscuring the features or details which make the resources significant.

Shadows also vary according to time of day and season. Shadows cast during the morning and evening, when the sun is low in the sky, are longer, while midday shadows are shorter in length. Shadows in winter, when the sun arcs low across the southern sky, are also longer throughout the day than at corresponding times in spring and fall seasons. During the summer, the high arc of the sun casts shorter shadows than at any other time of year, and early and late shadows are cast towards the south.

The *CEQR Technical Manual* states that a shadows assessment considers projects that result in new shadows long enough to reach sunlight-sensitive resources. Therefore, a shadows assessment is required only if the project would either result in: (a) new structures (or additions to existing structures including the addition of rooftop mechanical equipment) of 50 feet or more; or, (b) be located adjacent to, or across the street from, a sunlight-sensitive resource. However, a project located adjacent to or across the street from a sunlight-sensitive open space resource (which is not a designated New York City Landmark or listed on the State/National Registers of Historic Places, or eligible for these programs) may not require a detailed shadow assessment if the project's height increase is ten feet or less.

The sunlight-sensitive resources of concern are those resources that depend on sunlight or for which direct sunlight is necessary to maintain the resource's usability or architectural integrity, including public open space, architectural resources and natural resources. In general, shadows on city streets and sidewalks or on other buildings are not considered significant. Some open spaces also contain facilities that are not sensitive to sunlight. These are usually paved, such as handball or basketball courts, contain no seating areas and no vegetation, no unusual or historic plantings, or contain only unusual or historic plantings that are shade tolerant. These types of facilities do not need to be analyzed for shadow impacts. Additionally, it is generally not necessary to assess resources located to the south of projected development sites, as shadows cast by the action-generated development would not be cast in the direction of these resources. Furthermore, shadows occurring within one and one-half hour of sunrise or sunset generally are not considered significant in accordance with the *CEQR Technical Manual*.

The project site is located directly east of the Gowanus Bay, which as a surface water body is considered a sunlight sensitive resource of concern under *CEQR*. Therefore, preliminary shadow screening assessments were performed.

2.2.1 Preliminary Shadow Screening Assessment

The shadow assessment begins with a preliminary screening assessment to ascertain whether a project's shadow may reach any sunlight-sensitive resources at any time of the year. If the screening assessment does not eliminate this possibility, a detailed shadow analysis is generally required in order to determine the extent and duration of the incremental shadows resulting from a proposed project. The proposed project would include the construction of a concrete batching plant and a CNG fueling station. The project site is located directly east of the Gowanus Bay, which is considered a sunlight-sensitive resource under CEQR. The effects of shadows on a sunlight-sensitive resource are site-specific; therefore, as noted in the *CEQR Technical Manual*, a detailed assessment were performed for the proposed structures.

2.2.2 Detailed Shadow Analyses

The *CEQR Technical Manual* states that a detailed shadow analysis is warranted when the screening analyses does not rule out the possibility that project-generated shadows would reach any sunlight-

sensitive resources. The detailed shadow analysis establishes a baseline condition (the Future No-Action Condition) that is compared to the future condition resulting from the proposed project (the Future With-Action Condition), to illustrate the shadows cast by existing or future buildings and distinguish the additional (incremental) shadow cast by a project.

To evaluate the extent and duration of new shadow that would be added to a sunlight-sensitive resource as a result of the proposed action, shadows from the site that would exist under the Future No-Action Condition were defined. In the future without the proposed project, the existing structures would remain on the site and shadow conditions would not change, as no new structures would be built on the site. As such, existing shadow conditions would remain the same under the Future No-Action Condition.

Under the Future With-Action Condition, the proposed action would cast shadows onto the adjacent natural resource from the proposed on-site structure. All of the shadows cast from the proposed building are considered net new incremental shadows, as no shadows would cast under the Future No-Action Condition. The results of the detailed shadow analyses on the identified resource of concern are shown in Appendix B and show the shadows enter and exit times within Gowanus Bay.

Conclusion

The shadow from the proposed action would not result in a substantial reduction in sunlight on the Gowanus Bay. While the shadow from the proposed structure would reach the resource on all four analysis dates, the actual shadow cast on the Gowanus Bay would be minimal compared to the overall surface area of water in the bay. Further, the area around the bay is not built-up, allowing most of the bay to receive a substantial amount of sunlight exposure during the course of the day. Thus, the project-generated shadow that would be cast on the Gowanus Bay would not lead to a significant adverse shadow impact on this sunlight-sensitive resource.

Therefore, significant adverse impacts are not expected from net new incremental shadows as a result of the proposed action, and further shadow analyses are not warranted.

2.3 NATURAL RESOURCES

An assessment of a proposed project's impact on natural resources is typically performed for projects that either would occur on or near natural resources, or for projects that would result in either the direct or indirect disturbance of such resources. The *CEQR Technical Manual* defines natural resources as (1) the City's biodiversity (plants, wildlife and other organisms); (2) any aquatic or terrestrial areas capable of providing suitable habitat to sustain the life processes of plants, wildlife, and other organisms; and (3) any areas capable of functioning in support of the ecological systems that maintain the City's environmental stability.

The project site is located in a developed urban environment (the majority of the properties and streets surrounding the project site are paved), and the majority of the property is occupied by three vacant buildings. As a result, the project site does not include any natural resources nor does it provide any areas capable of functioning in support of ecological systems.

However, the project site is located adjacent to the Gowanus Bay, which has a bulkhead along the shoreline adjacent to the project site. The proposed action and the resulting nature of construction would occur more than 100 feet inland from the Gowanus Bay, and would not alter existing bulkheads or otherwise lead to negative effects on the waters of the Gowanus Bay. In addition, the Gowanus Canal, which connects to the Gowanus Bay immediately north of the project site, was designated a Superfund Site in 2010, which indicates that the potential of the canal, and the bay it connects to, to provide suitable habitat to sustain the life processes of plants, wildlife, and other organisms is generally low. Therefore, no significant adverse natural resource impacts are anticipated as a result of the proposed action.

2.4 HAZARDOUS MATERIALS

A hazardous material is any substance that poses a threat to human health or the environment. Substances that can be of concern include, but are not limited to, heavy metals, volatile and semi-volatile organic compounds (VOCs and SVOCs), methane, polychlorinated biphenyls (PCBs), and hazardous wastes (defined as substances that are chemically reactive, ignitable, corrosive, or toxic). According to the *CEQR Technical Manual*, the potential for significant impacts from hazardous materials can occur when: a) hazardous materials exist on a site; and b) an action would increase pathways to their exposure; or c) an action would introduce new activities or processes using hazardous materials.

There is the possibility that in-ground disturbances will occur as a result of the proposed action. As a result of this likelihood, in addition to the project site's location within an M3-1 zoning district and its former use as a warehouse and assembly facility, a further review of the project site's potential for hazardous material contamination was conducted.

2.4.1 Phase I Environmental Site Assessment (ESA)

In November, 2014, a Phase I ESA was performed at the project site. As part of this Phase I, AECOM conducted a site visit and performed regulatory research, a historical review, and a review and analysis of the project site's environmental database. In conducting the Phase I ESA, the subject property was assessed for visible signs of possible contamination, and public records were researched for the subject property and adjacent properties (as applicable). Based on the investigation performed, this Phase I ESA revealed the following recognized environmental conditions (RECs) in connection with the subject property:

- The presence of known impacted soil and groundwater at the subject property due to either historic fill and/or impacts from previous operations.

- The potential for existing or former underground storage tanks (USTs), including the UST along the northwest border of the subject property identified in the 1926 Sanborn Fire Insurance Map.

- An apparent concrete sump located on the northern portion of the subject property near the two story portion of the building may or may not be related to the discharge of stormwater and/or wastewater to the municipal sewer system.

- Various 5, 10, and 55 gallon drums found within the maintenance garage are a potential source of discharge to the environment. Many of these drums are exposed to the elements and are rusted, and some of the drums are located on an unstable mezzanine within the garage.

- Two round plates located in the garage floor identified in the 2004 Phase I ESA Report may be a part of a former hydraulic piston system and will require further evaluation. The overhead gantry crane in the garage area may have contained some lubricating oil will also require further evaluation.

No controlled RECs (CRECs) or historical RECs (HRECs) were identified in connection with the subject property. However, based on the investigation performed, the following de minimis conditions were identified:

- De minimis oil staining was identified in the area of the garage where 5, 10, and 55-gallon drums of the petroleum products were observed as well as throughout the former maintenance garage. The concrete floors in the vicinity of this staining were observed to be in fair condition with no significant cracks.

The Phase I ESA concluded that any future development of the project site should address the methods of proper excavation and disposal of impacted soil and groundwater, as well as best methods to address the potential for direct contact with these RECs. Additionally, it was concluded that further geophysical

and subsurface evaluations were needed to confirm the presence of USTs on the project site. As a result of these determinations, a Phase II Environmental Site Investigation (ESI) and Focused Subsurface Investigation were prepared in June, 2015.

2.4.2 Phase II Environmental Site Investigation (ESI)

The Phase II SI Results Report presented the findings of an environmental subsurface site investigation to evaluate the following potential environmental concerns:

- Potential environmental impacts to the soil and groundwater from the subject property and from potential offsite sources.
- Evaluate whether any potential soil vapors resulting from environmental impacts on the subject property or from offsite sources which could impact future occupants at the subject property.
- Evaluate the type of petroleum within the 5, 10, and 55 gallon drums found inside the maintenance garage (one sample from the 5 gallon drums, one sample from the 10 gallon drums, one sample from the 55 gallon drums) in order to classify the contents for proper disposal.
- Evaluate what may be under the two round plates identified during the 2004 Phase I Site Investigation in the former maintenance garage.

The field investigation was conducted on March 3, 2015 and from March 24 to March 26, 2015. The field investigation consisted of the following activities:

- Performed a geophysical survey to better define the locations of underground utilities in the area of the proposed investigation activities, including a concrete sump, possible sewer manhole, and potential underground storage tanks (USTs);
- Advanced seven soil borings for the collection of surface and subsurface soil samples.
- Collected grab ground water samples from four of the seven soil borings to evaluate potential environmental impacts.
- Collected three soil vapor samples to evaluate potential soil vapors under the subject property.
- Collected three sets of composite samples from the drums found inside the maintenance garage (one from the 5 gallon drums, one from the 10 gallon drums, one from the 55 gallon drums) in order to classify the contents for proper disposal.
- Conduct an inspection of the former maintenance garage to determine what may be located underneath the two round plates identified in a 2004 Phase I Site Investigation.

The investigation was performed in general accordance with New York State Department of Environmental Conservation (NYSDEC) DER-10 *Technical Guidance for Site Investigation and Remediation* dated May 2010. The investigation findings were evaluated based on the soil cleanup objectives (SCO) as presented in 6 NYCRR Part 375, Environmental Remediation Programs.

Conclusions and Recommendations

The Phase II had the following conclusions and recommendations:

Soils

Based upon the analytical results of the soil samples collected from the subject property, the soils are impacted with limited amounts of VOCs, SVOCs and metals that are typical of historic fill while the limited

amount of VOCs is likely indicative of a historic spill. Future use of the subject property will need to address the proper management and disposal of excavated soil and the need to control direct contact to the any remaining soils through the use of engineered controls such as the replacement of excavated soil with clean fill and the installation of paved surfaces. It may also be necessary to remove additional soils in the area of soil borings SB-3 and SB-4 due to the detection of metals, particularly lead, which were higher than any of the other borings advanced at the subject property. A soil management plan should be developed as part of the proposed construction activities in order to properly handle and dispose of impacted soil that will be likely be removed from the subject property.

Groundwater

Based upon the analytical results of the groundwater samples collected from the subject property, the groundwater appears to be minimally impacted from the historic fill rather than from re appears to be no significant impact to groundwater from current and/or previous operations or from potential offsite sources. Thus, any groundwater removed from the property as part of the proposed construction activities may be managed as non-hazardous contaminated water.

A groundwater management plan should be developed as part of the proposed construction activities in order to properly handle and dispose of impacted groundwater that will be likely be removed from the subject property.

Soil Vapor

The results of the soil vapor samples demonstrate a low potential for impacts should future structures be constructed at the subject property. However, it is recommended that a soil vapor barrier be constructed below the foundation of any proposed building to be constructed at the subject property as a precaution.

Analytical Results – Drum Samples

The results of the samples collected from the drums located in the former maintenance garage indicate that the drums contain hydraulic oil and diesel fuel and/or No. 2 fuel oil. It is recommended that the contents of the drums be immediately removed by a waste oil recycler and that all of the drums at the subject property be properly disposed.

Evaluation of Former Maintenance Garage

Despite AECOM's best efforts to survey the floor of the former maintenance garage, field personnel could not locate the floor plates identified in the 2004 Phase I ESA report. It is recommended that the floor of the former maintenance garage be inspected once the buildings have been razed and the debris from the floor has been removed.

Based upon our review of the submitted documentation, DEP had the following comments and recommendations to EDC listed in their July 28, 2016 letter (see Appendix C):

- DEP concurs with AECOM's recommendation that a soil vapor barrier be constructed below the foundation and floor slab of any proposed building to be constructed at the subject property as a precaution.

- EDC should instruct the applicant to develop and submit a Remedial Action Plan (RAP) for the proposed project for review and approval. The RAP should delineate that contaminated soils should be properly disposed of in accordance with the applicable NYSDEC regulations. Additional testing of the soils may be required by the disposal and/or recycling facility.

- EDC should instruct the applicant to submit a site-specific Construction Health and Safety Plan (CHASP) on the basis of workers exposure to contaminants for the proposed for the proposed construction project. The CHASP should be submitted to DEP for review and approval. Construction activities should not occur without DEP's written approval of the CHASP.

- EDC should instruct the applicant that excavated soils, which are temporarily stockpiled on-site, must be covered with polyethylene sheeting while disposal options are determined. Additional testing may be required by the disposal/recycling facility. Excavated soil should not be reused for grading purposes.

- EDC should instruct the applicant that if any petroleum-impacted soils (which display petroleum odors and/or staining) are encountered during the excavation/grading activities, the impacted soils should be removed and properly disposed of in accordance with all NYSDEC regulations.

- EDC should instruct the applicant that dust suppression must be maintained by the contractor during the excavating and grading activities at the site.

- EDC should instruct the applicant that all known or found underground storage tanks and aboveground storage tanks (including dispensers, piping, and fill-ports) must be properly removed/closed in accordance with all applicable NYSDEC regulations.

- EDC should instruct the applicant that if de-watering into New York City storm/sewer drains will occur during the proposed construction, a New York City Department of Environmental Protection Sewer Discharge Permit must be obtained prior to the start of any de-watering activities at the site.

- EDC should instruct the applicant that for all areas, which either will be landscaped or covered with grass (not capped), a minimum of one (1) feet of clean fill/top soil must be: imported from an approved facility/source and graded across all landscaped/grass covered areas of the sites not capped with concrete/asphalt. The clean fill/top soil must be segregated at the source/facility, have qualified environmental personnel collect representative samples at a frequency of one (1) sample for every 250 cubic yards, analyze the samples for Target Compound List VOCs, SVOCs, pesticides, PCBs, and Target Analyte List metals by a NYSDOH Environmental Laboratory Approval Program certified laboratory, compared to NYSDEC Part 375 Environmental Remediation Programs. Upon completion of the investigation activities, the consultant should submit a detailed clean soil report to DEP for review and approval. The report should include, at a minimum, an executive summary, narrative of the field activities, laboratory data, and comparison of soil analytical results (i.e., NYSDEC Part 375 Environmental Remediation Programs).

- EDC should inform the applicant that all drums on the subject property should be properly recycled/disposed of in accordance with all applicable federal, state, and local regulations.

The Applicant is committed to conducting out all activities and recommendations listed above in DEP's letter. Therefore no significant adverse hazardous materials impacts are expected as a result of the proposed action.

2.5 TRANSPORTATION

The project site is located along the west side of Third Avenue, between 23rd and 25th Streets. The 400-foot study area is generally bound to the north by 22nd Street, to the east by the midblock point between Third and Fourth Avenues, to the south by 26th Street, and to the west by the 25th Street Pier and the Gowanus Bay.

The roadway network of the project study area is laid out in a grid pattern. Within the study area, Third Avenue generally runs north-south, while 22nd through 26th Streets run east-west. The elevated Gowanus Expressway (I-278), which is a six-lane divided freeway, runs above Third Avenue. Third Avenue has the functional classification of a "Principal Arterial-Other" roadway under the National Highway System (NHS), and the Gowanus Expressway (I-278) is classified as an "Interstate." North of the project site, 20th Street has an NHS functional classification of a "Minor Arterial" roadway. Several blocks east of the project study area, Fourth Avenue is classified as a "Principal Arterial-Other" roadway. All other roadways in the project study area and immediate vicinity are classified as "Local Roadways" under NHS. Within the study area, Third Avenue is

designated as “Local Truck Route” and the Gowanus Expressway (I-278) is designated as a “Through Truck Route” by the New York City Department of Transportation (NYCDOT).

Trip Generation Projections

The trip generation projections (see **Table 2.5-1**) are based on detailed information provided by the Ferrara Bros. The operations of the current Ferrara Bros. concrete plant were used to make the trip generation assumptions, which are as follows:

- Ferrara Bros. intends to have 30 concrete trucks at the proposed location that make 3 runs per day for a total of 180 runs. However, only 10 concrete trucks would stay on the project site overnight, so 20 concrete truck return runs do not occur (e.g., the trucks stay parked at construction sites overnight), thus reducing the total number to 160 runs.

- The proposed location will have 10 on-site plant employees plus 10 truck drivers that will drive back and forth to the project site each day, for a total of 40 total daily personal vehicle trips generated by the site (i.e., 20 inbound trips in the morning, and 20 outbound trips in the evening).

- There will be a total of 28 material delivery truck trips generated (i.e., 14 inbound and 14 outbound) that would occur throughout the day.

- All 30 concrete trucks will access the site via Third Avenue. The sand delivery trucks (14 trucks) will use 25th Street entrance.

- On the facility site, cement and cement supplements will be transported by cement trucks from the pier area near the back of the facility. These trucks will not need to use any public streets. The total number of cement trucks on site will be 5 per day,

- The plant begins operation at 6 a.m. and continues until 4 p.m. with some remaining trucks coming back to the site between 4 p.m. and 5 p.m.

- Approximately 60 percent of the trucks entering and exiting the facility would travel to/from points north of the project site and 40 percent would travel to/from points south of the project site.

2.5.1 Traffic Screening

The preliminary screening thresholds in the *CEQR Technical Manual* suggests that any project which generates 50 or more peak hour incremental vehicle trips through a single intersection in any given peak hour is likely to warrant a detailed traffic operations analysis. Conversely, projects that are anticipated to generate fewer than 50 peak hour incremental vehicle trips through a single intersection generally do not warrant detailed traffic assessments, and potential traffic impacts are not expected. In addition, for projects that are expected to generate a significant number of trucks, which are considered to be “equivalent” to more than one car, such vehicle trips should be converted to passenger car equivalents (PCEs) to determine if the peak hour trip threshold is exceeded.

Table 2.5-1 Projected Trip Generation Estimate

Time Period	Concrete Truck Trips In	Concrete Truck Trips Out	Concrete Total Truck Trips	Concrete Trucks on Project Site*	Material Delivery Truck Trips In	Material Delivery Truck Trips Out	Material Delivery Total Truck Trips	Truck Trips in PCE (1 Truck Trip = 2.5 PCEs)	Personal Vehicle Trips	Total PCEs
Start				10						
6 AM - 7 AM	4	10	14	4	1	0	1	37.5	20	57.5
7 AM - 8 AM	8	8	16	4	2	1	3	47.5	0	47.5
8 AM - 9 AM	**8**	**8**	**16**	4	1	2	3	**47.5**	**0**	**47.5**
AM - 10 AM	10	10	20	4	2	2	4	60	0	60
10 AM - 11 AM	10	10	20	4	2	2	4	60	0	60
11 AM - 12 PM	10	10	20	4	2	2	4	60	0	60
12 PM - 1 PM	**8**	**8**	**16**	4	2	1	3	**47.5**	**0**	**47.5**
1 PM - 2 PM	8	8	16	4	1	2	3	47.5	0	47.5
2 PM - 3 PM	6	6	12	4	1	1	2	35	0	35
3 PM - 4 PM	6	2	8	8	0	1	1	22.5	18	40.5
4 PM - 5PM	**2**	**0**	**2**	**10**	**0**	**0**	**0**	**5**	**2**	**7**
Total	**80**	**80**	**160**		**14**	**14**		**470**	**40**	**510**

* Ten trucks will be parked on the site over night
Note: Shaded cells represent typical peak hours for background traffic on the local street system.

Table 2.5-1 shows the projected numbers of vehicle trips and corresponding PCE trips, on an hour-by-hour basis, for the operating hours of the concrete plant. As shown in **Table 2.5-1**, the PCE vehicle trips generated by the proposed project would not exceed the 50 peak-hour vehicle trip CEQR threshold during the peak hours of the local street system. Even though the number of site-generated vehicle trips during off-peak hours would exceed 50 trips during some hours of the day (i.e., 6 a.m. to 7 a.m., and 9 a.m. to 12 p.m.), when these vehicle trips are distributed spatially among the local intersections, it is projected that there would be less than 50 peak-hour project generated vehicle trips at any of the intersections surrounding the project site (see **Figure 2.5-1)**. There will be three access points to the project site: one access point will be along 25th Street that will be used by the sand delivery trucks, the second access point will be along Third Avenue at 24th Street that will be used by the concrete mixing trucks and the third access point will be along Third Avenue (between 24th and 25th Streets) that may be used by the concrete mixing trucks, but is not considered a primary access point. Therefore, significant adverse traffic impacts are not expected and a more detailed analysis of potential traffic impacts related to the proposed action is not warranted.

2.5.2 Parking

According to the *CEQR Technical Manual*, projects that do not trigger the need for a detailed traffic study generally do not warrant a detailed parking analysis, and significant adverse parking impacts are generally not expected. In addition, all employee parking will be accommodated on the project site. Therefore, as the Proposed Action does not warrant a traffic assessment, no detailed assessment of the potential for parking-related impacts as a result of the Proposed Action are warranted.

2.5.3 Transit and Pedestrian Screening

The surrounding area is well served by public transit and most trips to and from the project site that are not made entirely by private automobile would occur via bus or subway. One block east of the project site is the 25th Street subway station of the "R" subway line operated by New York City Transit (NYCT). Within the study area, numerous buses are routed on the Gowanus Expressway, including five express buses to the Manhattan core. The B37 bus line is routed on Third Avenue in the study area, and travels north towards Fourth Avenue and Dean Street in the Park Slope neighborhood of Brooklyn, and south towards Shore Road and Third Avenue in the Fort Hamilton neighborhood of Brooklyn.

The *CEQR Technical Manual* indicates that a project would likely need to generate 200 or more transit trips during any peak hour in order to warrant a detailed analysis of transit impacts. Any number of transit trips above this screening threshold would generally warrant a detailed transit analysis. Based on the projected number of employees working on-site (10 full time employees and up to 30 concrete truck drivers), the project site would not generate 200 or more transit trips. Therefore, significant adverse transit impacts are not expected and further assessment of potential transit impacts related to the proposed action is not warranted.

For pedestrians, the *CEQR Technical Manual* recommends that a detailed pedestrian analysis be performed for projects that have the potential to generate over 200 or more net incremental pedestrian trips during any peak hour on any one pedestrian element (i.e., a sidewalk, crosswalk, or corner). Any number of pedestrian trips above this screening threshold would generally warrant a detailed pedestrian analysis. Based on the projected number of employees working on-site (10 full time employees and up to 30 concrete truck drivers), the project site would not generate more than 200 pedestrian trips. Therefore, significant adverse pedestrian impacts are not expected and further assessment of potential transit impacts related to the proposed action is not warranted.

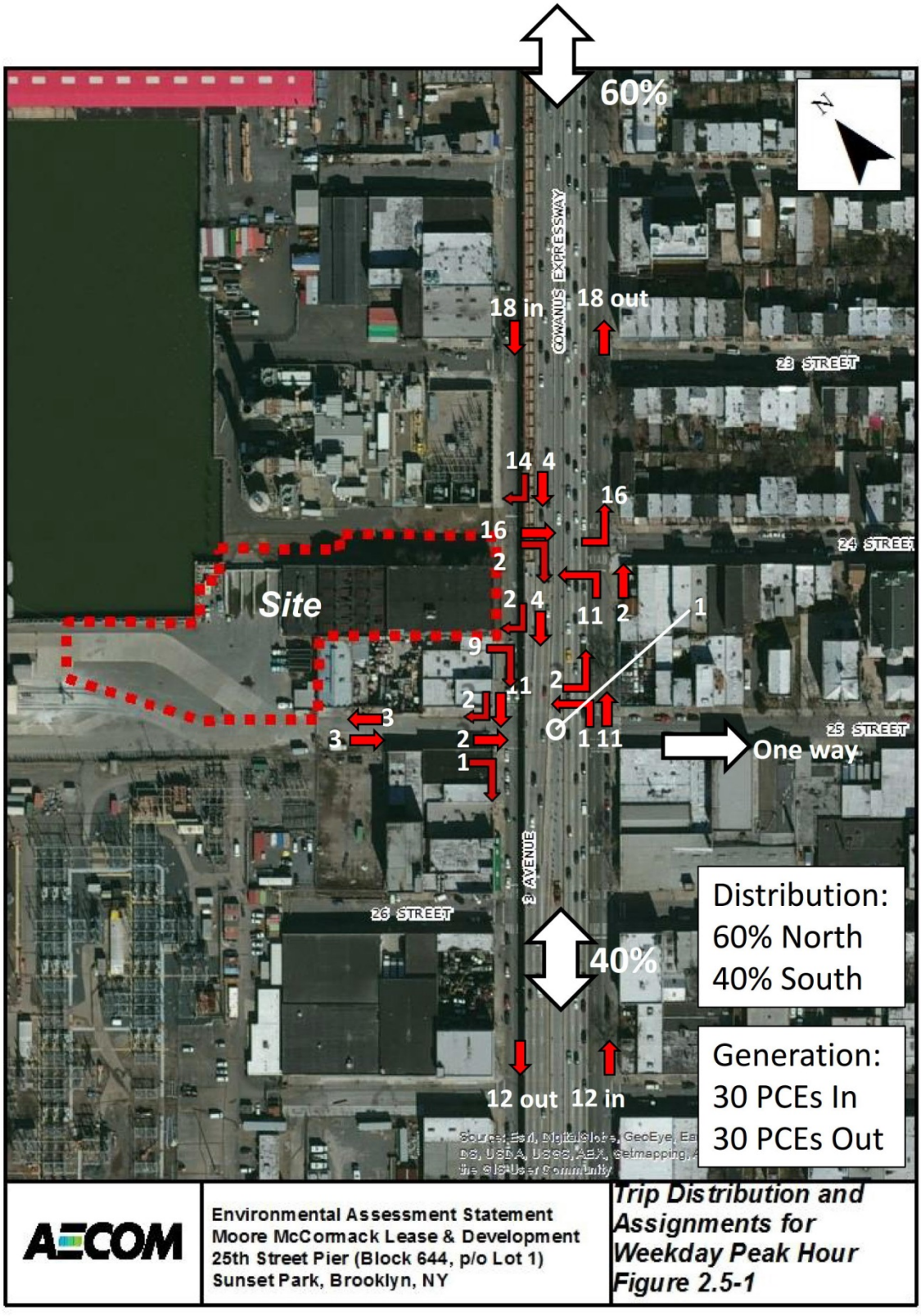


Figure 2.5-1

Figure 2.5-1 Trip Distribution and Assignments for Weekday Peak Hour

Conclusion

As discussed above, the PCE vehicle trips generated by the proposed project would not exceed the 50 peak-hour vehicle trip CEQR threshold at any intersection during the any peak hour and all employee parking will be accommodated on the project site; thus no significant adverse traffic and parking impacts are expected to result from the proposed project. Further, the number of transit trips and pedestrian trips generated by the project site would be less than the 200 transit/pedestrian CEQR trip threshold and no significant adverse transit and pedestrian impacts are expected to occur as a result of the proposed project. Therefore, no significant adverse transportation impacts would be generated and no further transportation assessment is warranted by the proposed action.

2.6 AIR QUALITY

The United States Environmental Protection Agency (USEPA), under the requirements of the 1970 Clean Air Act (CAA), as amended in 1977 and 1990, has established National Ambient Air Quality Standards (NAAQS) for six contaminants referred to as criteria pollutants (40 CFR 50). These are ozone (O_3), carbon monoxide (CO), nitrogen dioxide (NO_2), relatively coarse inhalable particulates (PM_{10}), fine particulate matter ($PM_{2.5}$), lead (Pb), and sulfur dioxide (SO_2).

When assessing the potential for significant air quality impacts, the *CEQR Technical Manual* seeks to determine a proposed action's effect on ambient air quality or the quality of the surrounding air. Ambient air can be affected by motor vehicles, referred to as "mobile sources," or by fixed facilities, referred to as "stationary sources." This can occur during operation and/or construction of a proposed project.

The *CEQR Technical Manual* generally recommends an assessment of the potential impact of mobile sources on air quality when an action increases traffic or causes a redistribution of traffic flows, creates any other mobile sources of pollutants (such as diesel train usage), or adds new uses near mobile sources (e.g., roadways, parking lots, garages). The *CEQR Technical Manual* generally recommends assessments when new stationary sources of pollutants are created, when a new use might be affected by existing stationary sources, or when stationary sources are added near existing sources and the combined dispersion of emissions would impact surrounding areas.

2.6.1 Mobile Sources

According to the *CEQR Technical Manual*, projects, whether site-specific or generic, have the potential to result in significant adverse mobile source air quality impacts when they may increase or cause a redistribution of traffic, create any other mobile sources of pollutants (such as diesel trains, helicopters etc.), or add new uses near mobile sources (roadways, garages, parking lots, etc.). Automobiles and vehicular traffic in general are typically considered mobile sources of air pollutants. Changes in local traffic volumes, traffic patterns, or the types of vehicles moving through a given area could result in significant adverse air quality impacts.

As stated in the *CEQR Technical Manual*, if a project would generate peak-hour auto traffic or divert existing peak-hour traffic resulting in 170 or more auto trips in this area of Brooklyn, a detailed mobile-source assessment of potential monoxide (CO) impacts is warranted. In addition, for arterial roadways/expressway near the site, if a project would generate 23 peak-hour heavy-duty diesel vehicle (HDDV) or equivalent trips, a detailed mobile source assessment of potential impacts from particulate matter (PM_{10} and $PM_{2.5}$) would be warranted.

As discussed in **Section 2.5**, "Transportation" and demonstrated in **Table 2.5-1** and **Figure 2.5-1** in the EAS, the facility generated 24 total peak hour truck trips that would split 60 and 40 percent through 24th Street/3rd Avenue and 25th Street/3rd Avenue intersections. Therefore the proposed action would not exceed 170 auto trips or 23 peak-hour HDDV equivalent trips at any intersection during a peak hour and would not exceed the CEQR screening thresholds for both particulate matter (PM_{10} and $PM_{2.5}$) and CO. Therefore, no further assessment of mobile source air quality is warranted and significant adverse impacts on air quality generated by mobile sources are not expected as a result of the proposed action.

2.6.2 Stationary Sources

The proposed plant operation would generate pollutant emissions from loader, conveyor, silo, boiler, trucks, material handling process, surface fugitive dust, etc. The site plot plan is shown in **Figure 2.6-1**. The anticipated plant operational process would include:

- Aggregated materials transferring from barge to storage bins and then convey to the process silos.
- Sand materials delivered by trucks to storage bins and then convey to the process silos.
- Cement delivered by trucks and materials mixed with water.
- Concrete transferred to ready mix trucks and removed off-site.

The detail process scheme that generates relevant pollutants is described in **Table 2.6-1** and all sources have been grouped as identified in **Table 2.6-1** for further dispersion modeling purposes.

Emission Rate Estimate

The following on-site emission sources are considered in the analysis:

- Trucks and tugs and off-road equipment (loader) diesel engine exhausts.
- Surface dust resulting from the movement of trucks and off-road equipment.
- Dust from material handling activities.

Specific process information used to calculate emissions generated (see **Table 2.6-2**) included the following:

- The number and type of diesel off-road equipment to be used;
- The equipment usage (hours per day) rates;
- The equipment load (a percentage of the maximum horsepower) factors;
- The plant work schedule and throughput;
- The average speed of all off-road equipment and delivery vehicles;
- The internal routes and travel distances for each material delivery and concrete trucks;
- The tug engine running time during each aggregate material delivery.

Concrete Batching Plant General Fugitive Emission Rates

Fugitive sources in a batch plant include the transfer of dry cement, sand and aggregate, truck loading, mixer loading, vehicle traffic, and wind erosion from sand and aggregate storage piles. Generalized fugitive emission factors for above transfer processes associated with a concrete batching plant operation established in USEPA's AP-42 "A Compilation of Air Pollution Emission Factors.", Subchapter 11.12 were used for below process:

Aggregate Storage & Handling

1. Storage will be in three sided bays to prevent wind from picking up and dispersing dust.
2. Piles will be covered with tarps when not being accessed to effectively eliminating any open exposure.
3. Sprinklers positioned at the front of the piles will spray at intervals (adjusted to prevailing wind and temperature conditions) to assure that aggregate remains moist and dust free at all times.
4. Payloaders will deliver the aggregate into low hoppers/bins from which conveyors deliver it to the concrete mixers.

Figure 2.6-1 Site Plot Plan

Table 2.6-1 Ferrara Brothers Concrete Batch Plant Emission Sources

Process #	Plant Process
Area Source 1a	
Mobile Emissions	
1b	Dry Cement Delivery Trucks Exhaust - In / Out
1c	Dry Cement Delivery Trucks Exhaust - Idling
1d	Dry Cement Delivery Trucks Fugitive Dust - In / Out
10b	Ready Mix Trucks Exhaust - In / Out
10c	Ready Mix Trucks Exhaust - Idling
10d	Ready Mix Trucks Fugitive Dust - In / Out
Area Source 1b	
Mobile Emissions	
10b	Ready Mix Trucks Exhaust - In / Out
10d	Ready Mix Trucks Fugitive Dust - In / Out
Area Source 2	
Mobile Emissions	
2b	Stone Delivery Barge Tug Exhaust - Arrival / Departure
2c	Barge Unloading Crane Generators
3b	Sand Delivery Haul Trucks Exhaust - In / Out
3c	Sand Delivery Haul Trucks Exhaust - Idling
3d	Sand Delivery Haul Trucks Fugitive Dust - In / Out
3e	Construction Equipment Exhaust - Front End Loader for Sand and Stone
3f	Construction Equipment Fugitive Dust - Front End Loader for Sand and Stone
Stationary Emissions	
2a	Aggregate Transfer
3a	Sand Transfer
Batch Plant	
1a	Cement unloading to elevated storage silo
1a	Cement supplement unloading to elevated storage silo
9a	Sand / Stone Batch Plant Loading
9b	Weigh Hopper Loading
10a	Concrete Truck Loading - Mixer Plant to Ready Mix Truck
Other Stationary Emissions	
11	Water Heating Boiler

Table 2.6-2 Ferrara Brothers Concrete Batch Plant Modeled Emission Rates (gram/second)

Pollutant	CO	NO_2[1]		SO_2	PM_{10}	$PM_{2.5}$	
Time Average	Hourly	Hourly	Annual	Hourly	Daily	Daily	Annual
Area Source 1a	1.63E-01	2.44E-02	4.29E-03	7.70E-06	4.45E-03	1.51E-03	4.92E-04
Area Source 1b North Entrance	2.71E-04	3.27E-04	1.03E-05	3.70E-07	7.56E-04	1.97E-04	6.42E-05
Area Source 1b South Entrance	1.05E-04	1.27E-04	3.99E-06	1.44E-07	2.94E-04	7.64E-05	2.50E-05
Area Source 2	1.31E-01	3.31E-01	2.37E-02	2.41E-04	6.83E-02	3.65E-03	1.19E-03
Batch Plant	-	-	-	-	9.42E-03	1.41E-03	4.61E-04
Water Heating Boiler	3.62E-01	2.16E-01	9.94E-03	2.59E-03	3.35E-03	3.35E-03	1.51E-03

Notes:
[1] Hourly NO_2 emission rates are calculated as NOx.

- Hoppers will be completely enclosed, except for one side where the payloaders will deliver the aggregate. This structure will largely prevent wind from drying and dispersing any dust.
- Conveyors moving the aggregate into the batch plant building will be enclosed.
- The aggregate hoppers will have sprinklers positioned to spray down the operations and eliminate dust.

Cement Storage and Handling

1. Cement tanker trucks will deliver directly to the batch plant.
2. Transfer of cement from the truck to the batch plant will be completely enclosed via a pneumatic tube system, with no opportunity for dust emission. A tube leading to the cement silos within the batch plant would be attached to connection points on the tanker truck hoppers. Cement would be pumped from the truck to the silo through the tube.

Batch Plant/Concrete Production

1. Both the cement silos and the concrete mixers will be completely enclosed within a single structure.
2. There will be 8 cement silos in the batch plant building. Each silo will have its own filter (C& W dust collector model # CP 3335S) to collect cement dust as silo air pressure is equalized. These dust collectors vent within the enclosed building.
3. There will be 2 concrete loading mixers in the batch plant building. Each will have its own filter (C & W dust collectors model # CP- 10000). These dust collectors vent outside the enclosed building.
4. All trucks will be loaded within the enclosed batch plant to contain any dust that may be generated by the operation.
5. Trucks will be loaded using a telescoping boot that eliminates the potential for spills that could eventually be a source of dust.

Site Conditions and Standard Operating Procedures (SOP)

1. All of the open areas in the proposed facility will be paved. This will greatly reduce the sources of fugitive dust.
2. Truck movement will be contained to specific areas that will be maintained as dust free through the use of regular sweeping and watering with sprinklers. These sprinklers will be deployed at approximately 20-minute intervals, depending on prevailing wind and temperature conditions.

3. When silo hoses are disconnected, cement tankers, SOPs will dictate that any spillage is swept up and the affected area hosed down.
4. After concrete trucks leave the enclosed batch plant building SOPs will require that they be washed down with water.

The facility hourly, daily and annual throughputs were multiplied with the above emission factors to determine hourly, daily and annual average emissions rates.

Off-road Equipment Emission Rates

It is anticipated that a loader will be operated primarily between the aggregated material storage bins, fine and coarse aggregate unloading areas, and the conveyor to the processing silos to perform unloading and loading materials. The loader will be present on-site, but is anticipated to be operational (engine running) only when it is needed to upload or load materials from time to time. The loader running duration was based on the size of loader bucket and the daily processing capacity (i.e., the processing volumes for aggregated materials).

Loader exhaust emission factors (grams per brake-horsepower hour) for PM_{10} and $PM_{2.5}$ were applied using United States Environmental Protection Agency (USEPA) certified tiered emission factors. It is anticipated that the equipment would be a USEPA emission standard or newer equipment but the conservative emission standard engine was assumed.

Appropriate load factor was also applied to the loader. The load factor is the power level that an engine is operating relative to its rated capacity. Engines typically operate at a variety of speeds and loads, and operation at rated power for extended periods is rare. For example, at a 0.6 (or 60 percent) load factor, an engine rated at 100 horsepower (hp) would be producing an average of 60 hp over the course of normal operation. Load factor was assigned to the loader using guidance provided by the USEPA, Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling (April 2004).

Fugitive dusts in terms of PM_{10} emissions generated from the loader movement on paved surface during loading and uploading process were estimated using the USEPA AP-42 guidance presented in Subchapter 13.2.1. The vehicle miles travelled (VMT) by the loader are estimated based on the multiplication of total engine running hours and travel speed of 5 miles per hour.

On-road Truck Emission Rates

The geometry of the site, including tight turning radii, would restrict the traveling speeds of all on-site vehicles. The on-site speeds are anticipated to be slower than 5 miles per hour (mph); these low travel speeds are reflected in the calculation of the emissions.

Engine exhaust emission factors for on-site delivery and concrete trucks were obtained from the USEPA MOVES emission factor model. 90% of concrete trucks will run on compressed natural gas (CNG) and 10% will run on diesel. Emission factors were manufacturer data from Peterbilt for 8.9 liter ISL G CNG engines in concrete trucks, which Ferrara Brothers has committed to using. It was assumed that each truck would travel along the identified truck routes with a 5-mile per hour travel speed and each trip would idle for an average of 5 minutes.

Fugitive dusts in terms of PM_{10} emissions generated from the on-site truck movement on paved surface during transferring materials were estimated using the same approach for off-road equipment as discussed above.

Sand Pile Wind Erosion

The aggregate piles will be covered eliminating wind erosion from the piles. Therefore, sand pile wind erosion is not applicable in the air quality analysis.

Tug Boat Emission Rates

The emissions from the tug boat that deliver barges to and from the plant for transporting aggregated materials were calculated using the engine power level for the tug, operational hours per trip around the plant and number of deliveries per week provided by the plant owner based on current operational condition at the existing facility. Tug emissions were calculated using the methodologies, emission factors, and load factors related to diesel marine vessels obtained from *Current Methodologies in Preparing Mobile Source Port-related Emission Inventories* (USEPA 2009).

Stationary Point Source Emission Rates

The exhaust emissions rates for stationary combustion sources were predicted using emission factors from the USEPA AP-42 guidance Subchapter 1.4 for the low NOx natural gas fired water heating boiler.

Emission Control Strategies

Fugitive dust emissions reductions would be achieved through the implementation of best management practices. The plant would control visible dust caused during the batch operation and the moving of vehicles and equipment. The plant would apply plant-wide water suppression method to control dusts to become airborne from not only material transfer areas but also paved roads. Storage piles would be covered to eliminate any dust generated from wind erosion on the storage piles.

Dispersion Modeling

Atmospheric dispersion modeling was conducted to calculate criteria pollutant effects from the proposed concrete batching plant operations at off-site receptors, applying the USEPA refined dispersion model, AERMOD. AERMOD is a steady-state plume model that incorporates air dispersion based on planetary boundary layer turbulence structure and scaling concepts, including treatment of both surface and elevated sources, and both simple and complex terrain.

The emission rates from operational activities (shown in **Table 2.6-2**) were input to the AERMOD dispersion model, assuming operational emissions occurring between the hours of 7am and 6pm, with no nighttime and weekend emissions. Each modeled source location is shown in **Figure 2.6-2**. The elevation of the area emission sources (Areas 1a, 1b and 2) were placed at grade with approximate ground level release height. This model configuration was utilized for all receptor locations.

The boiler emissions will be released through an outside stack, source PS 3. The height of source PS 1 is 3 feet above the height of the proposed batch plant, which will be 125 feet. The site will be surrounded by an open fence along Third Avenue and several off-site existing buildings to the north and south. The area towards the water will be open. Due to the open areas along Third Avenue and around the site it is assumed that the fugitive emissions will be released at ground level.

Five year representative, hourly, sequential, pre-processed meteorological data for the period 2009 through 2014 will be applied, utilizing data from LaGuardia Airport to characterize surface winds and the Brookhaven National Weather Service (NWS) station to characterize upper level air movements, to estimate concentrations for selected averaging times from one hour to one year.

The modeled receptors as depicted in **Figure 2.6-3** include 1) ground-level receptors placed on the sidewalk closely adjacent to the site and 2) discrete receptors on nearby residences including one non-conforming building 2nd and 3rd floor as sensitive uses. Ground-level receptors were placed 1.8 meters above ground to represent the height of an average person. Elevated receptors (three floors) were also placed at each modeled residential building.

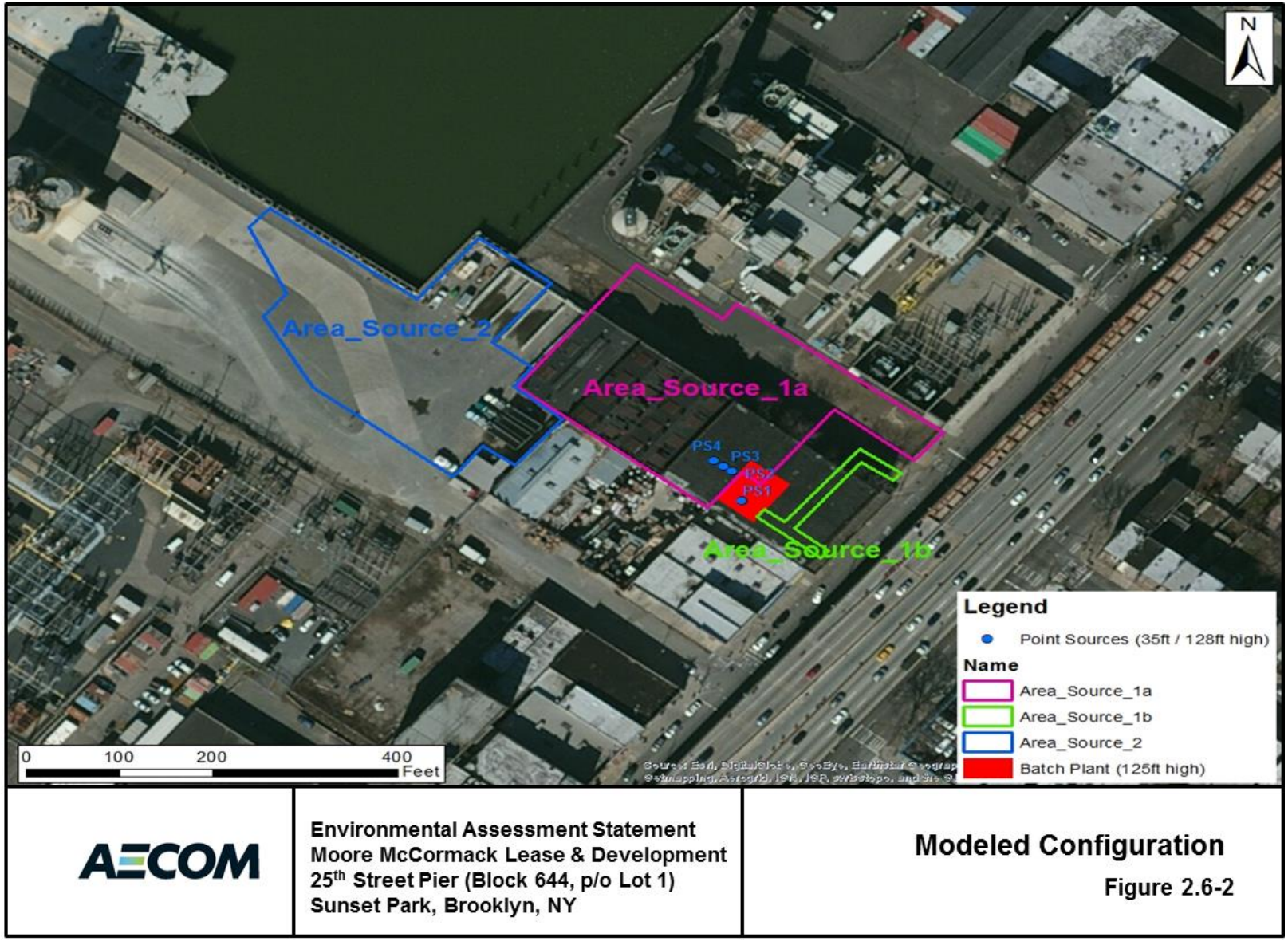


Figure 2.6-2 Modeled Configuration

Figure 2.6-3 Modeled Receptor Locations

Although CEQR considers pedestrian sidewalk is a reasonable receptor, given the short-duration for any pedestrian to stay at the same pedestrian spot within this industrial area including heavily travelled highway, only short-term impacts, i.e., 1-hour and 24-hour average conditions were modeled for respective pollutants for which the NAAQS are established.

Hourly NO_2 emissions were calculated using NOx emission rates. NOx emission concentration results were converted in the model to NO_2 using Tier 3 OLM conversion methods and an NO_2/NOx ratio of 0.9. Hourly background concentrations were added to the modeling results.

The predicted microscale reasonable worst-case concentrations contributed from on-site sources, plus the ambient background levels, where applicable, obtained from the most recent 3 years of NYSDEC monitoring data, were compared to the corresponding NAAQS to determine whether potential exceedances would occur from the proposed action. The assessment of potential $PM_{2.5}$ impacts was based on the project's absolute and incremental concentrations (highest 98 percentile concentrations contributed from the project activities: the maximum predicted concentration levels from the site plus the 98^{th} percentile monitored background levels) with comparison to the 2014 CEQR-established de minimis thresholds. The modeling results are summarized in **Table 2.6-3**.

Conclusions

Based on the assessment results (see **Table 2.6-3**), no exceedances of the impact significance thresholds were predicted for each analyzed pollutants at all receptor locations. Therefore the proposed project would not result in any significant air quality impacts.

Table 2.6-3 Predicted Worst-case Pollutant Concentrations

Pollutant	Average Time	Predicted Concentration (ug/m3)	Background (ug/m3)	Total (ug/m3)	NAAQS/ De Minimis Threshold (ug/m3)	Monitoring Station	Fail / Pass
NO_2	1-Hour	137.1	-	137.1	188	Queens College	Pass
	Annual	3.3	40.6	43.9	100		Pass
SO_2	1-Hour	3.4	37.6	41.0	196	Queens College	Pass
	3-Hour	3.1	44.8	47.9	1,300		Pass
CO	1-Hour	3135.3	2175.5	5310.8	40,000	Queens College	Pass
	8-Hour	699.4	1259.5	1958.9	10,000		Pass
PM_{10}	24-Hour	18.0	60	78.0	150	Division Street	Pass
$PM_{2.5}$	24-Hour	3.06	-	3.06	7.2	PS 314	Pass
	Annual	0.20	-	0.20	0.3		Pass

2.7 NOISE

2.7.1 Introduction

The *CEQR Technical Manual* defines noise as any unwanted sound, and sound is defined as any air pressure variation that the human ear can detect. According to the CEQR guidelines, an assessment of potential noise impacts evaluates three principal types of noise sources: mobile, stationary and construction. An assessment of potential mobile and stationary source impacts is provided in this chapter and an assessment of construction-related noise impacts is provided in **Section 2.9**, "Construction."

2.7.2 Acoustical Fundamentals

Sound is a fluctuation in air pressure. Sound pressure levels are measured in units called "decibels" ("dB"). The particular character of the sound that we hear is determined by the speed, or "frequency," at which the air pressure fluctuates, or "oscillates." Frequency defines the oscillation of sound pressure in terms of cycles per second. One cycle per second is known as 1 Hertz ("Hz"). People can hear over a relatively limited range of sound frequencies, generally between 20 Hz and 20,000 Hz, and the human ear does not perceive all frequencies equally well.

A-Weighted Sound Level – dB(A)

In order to establish a uniform noise measurement that simulates people's perception of loudness and annoyance, the decibel measurement is weighted to account for those frequencies most audible to the human ear. This is known as the A-weighted sound level, or dB(A), and it is the descriptor of noise levels most often used for community noise. As shown in **Table 2.7-1**, the threshold of human hearing is defined as 0 dB(A); very quiet conditions are approximately 40 dB(A); levels between 50 dB(A) and 70 dB(A) define the range of noise levels generated by normal daily activity; levels above 70 dB(A) would be considered noisy, and then loud, intrusive, and deafening as the scale approaches 130 dB(A). Generally, changes in noise levels of less than 3 dB(A) are barely perceptible to most listeners, whereas changes in noise levels of 10 dB(A) are normally perceived as doubling (or halving) of noise loudness. These guidelines permit direct estimation of an individual's probable perception of changes in noise levels.

Sound Level Descriptors

Because the sound pressure level unit of dB(A) describes a noise level at just one moment, and because very few noises are constant, other ways of describing noise over more extended periods have been developed. One way is to describe the fluctuating noise heard over a specific period as if it had been a steady, unchanging sound. For this condition, a descriptor called the "equivalent sound level," L_{eq}, can be computed. L_{eq} is the constant sound level that, in a given situation and period (e.g., one hour, denoted by $L_{eq}(1)$, or 24 hours, denoted by $L_{eq}(24)$), conveys the same sound energy as the actual time-varying sound. Statistical sound level descriptors, such as L_1, L_{10}, L_{50}, L_{90}, and L_x, are sometimes used to indicate noise levels that are exceeded 1, 10, 50, 90, and x percent of the time, respectively. For purposes of the proposed project, the L_{10} descriptor has been selected as the noise descriptor to be used in this noise impact evaluation. The one-hour L_{10} is the noise descriptor used in the *CEQR Technical Manual* noise exposure guidelines for city environmental impact review classification.

Table 2.7-1 Common Noise Levels

Sound Source	dB(A)
Military jet, air raid siren	130
Amplified rock music	110
Jet takeoff at 500 meters	100
Freight train at 30 meters	95
Train horn at 30 meters	90
Heavy truck at 15 meters	80–90
Busy city street, loud shout	80
Busy traffic intersection	70–80
Highway traffic at 15 meters, train	70
Predominantly industrial area	60
Light car traffic at 15 meters, city or commercial areas, or residential areas close to industry	50–60
Background noise in an office	50
Suburban areas with medium-density transportation	40–50
Public library	40
Soft whisper at 5 meters	30
Threshold of hearing	0

Source: Cowan, James P. Handbook of Environmental Acoustics, Van Nostrand Reinhold, New York, 1994. Egan, M. David, Architectural Acoustics. McGraw-Hill Book Company, 1988.

2.7.3 Noise Impact Criteria

The *CEQR Technical Manual* contains noise exposure guidelines for use in New York City environmental impact review, and required attenuation values to achieve acceptable interior noise levels. These values are shown in **Table 2.7-2**. Noise exposure is classified into four categories: “acceptable,” “marginally acceptable,” “marginally unacceptable,” and “clearly unacceptable.” The *CEQR Technical Manual* criteria are based on maintaining an interior noise level for the worst-case hour L_{10} less than or equal to 45 dB(A).

Additionally, according to the noise impact assessment guideline provided in the *CEQR Technical Manual*, to determine a significant impact during daytime hours, 65 dB(A) $L_{eq}(1)$ is the absolute noise level that should not be significantly exceeded. Therefore a three (3)-dB(A) L_{eq} increase over Future No-Action condition, although just barely perceptible to most listeners, is considered an indicator of noise impact significance when the daytime level is at or above 62 dB(A). These assessment guidelines were used to assess noise impacts from the proposed project.

Table 2.7-2 Noise Exposure Guidelines

Receptor Type	Time Period	Acceptable General External Exposure	Airport[3] Exposure	Marginally Acceptable General External Exposure	Airport[3] Exposure	Marginally Unacceptable General External Exposure	Airport[3] Exposure	Clearly Unacceptable General External Exposure	Airport[3] Exposure
1. Outdoor area requiring serenity and quiet[2]		$L_{10} \leq 55$ dBA	---------- Ldn ≤ 60 dBA ----------	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**
2. Hospital, Nursing Home		$L_{10} \leq 55$ dBA		$55 < L_{10} \leq 65$ dBA	---------- 60 < Ldn ≤ 65 dBA ----------	$65 < L_{10} \leq 80$ dBA	(1) 65 < Ldn ≤ 70 dBA, (2) 70 ≤ Ldn	$L_{10} > 80$ dBA	———————— Ldn ≤ 75 dBA ————————
3. Residence, residential hotel or motel	7 AM to 10 PM	$L_{10} \leq 65$ dBA		$65 < L_{10} \leq 70$ dBA		$70 < L_{10} \leq 80$ dBA		$L_{10} > 80$ dBA	
	10 PM to 7 AM	$L_{10} \leq 55$ dBA		$55 < L_{10} \leq 70$ dBA		$70 < L_{10} \leq 80$ dBA		$L_{10} > 80$ dBA	
4. School, museum, library, court, house of worship, transient hotel or motel, public meeting room, auditorium, out-patient public health facility		Same as Residential Day (7 AM-10 PM)		Same as Residential Day (7 AM-10 PM)		Same as Residential Day (7 AM-10 PM)		Same as Residential Day (7 AM-10 PM)	
5. Commercial or office		Same as Residential Day (7 AM-10 PM)		Same as Residential Day (7 AM-10 PM)		Same as Residential Day (7 AM-10 PM)		Same as Residential Day (7 AM-10 PM)	
6. Industrial, public areas only[4]	Note 4	Note 4		Note 4		Note 4		Note 4	

Notes:

(i) In addition, any new activity shall not increase the ambient noise level by 3 dB(A) or more.

[1] Measurements and projections of noise exposures are to be made at appropriate heights above site boundaries as given by American National Standards Institute (ANSI) Standards; all values are for the worst hour in the time period.

[2] Tracts of land where serenity and quiet are extraordinarily important and serve an important public need and where the preservation of these qualities is essential for the area to serve its intended purpose. Such areas could include amphitheaters, particular parks or portions of parks or open spaces dedicated or recognized by appropriate local officials for activities requiring special qualities of serenity and quiet. Examples are grounds for ambulatory hospital patients and patients and residents of sanitariums and old-age homes.

[3] One may use the FAA-approved L_{dn} contours supplied by the Port Authority, or the noise contours may be computed from the federally approved INM Computer Model using flight data supplied by the Port Authority of New York and New Jersey.

[4] External Noise Exposure standards for industrial areas of sounds produced by industrial operations other than operating motor vehicles or other transportation facilities are spelled out in the New York City Zoning Resolution, Sections 42-20 and 42-21. The referenced standards apply to M1, M2, and M3 manufacturing districts and to adjoining residence districts (performance standards are octave band standards).

Source: *New York City Department of Environmental Protection (adopted policy 1983)*

2.7.4 Impact Analysis

The noise analysis for the proposed project consists of two parts—a screening analysis to determine whether traffic generated by the proposed project would have the potential to result in significant mobile source noise impacts, and an analysis to determine whether the project would have the potential to result in significant stationary source impacts at nearby receptors.

Project Mobile Source Impact Screening

Mobile noise sources are those sources (principally automobiles, buses, trucks, aircraft, and trains) that move in relation to a noise-sensitive receptor. The proposed project would induce heavy truck and passenger vehicle trips to and from the project site.

The methodology for predicting future on-road traffic noise levels assumes that existing noise levels are dominated by, and are a function of, existing traffic volumes. Changes in future noise levels can therefore be determined by the proportional increase in traffic on the adjacent roadway due to a project. For example, if the existing traffic volume at an intersection were 100 vehicles per hour (vph), and the future traffic volume increased by 50 vph to 150 vph, the noise levels would increase by approximately 1.8

decibels (dBA). For an increase of 100 vph (a doubling of traffic volume) for a total of 200 vehicles per hour, noise levels would increase by 3 dBA. However, as different noise levels are generated by different types of vehicles (cars, trucks, buses, etc.), CEQR recommends using Passenger Car Equivalents (PCEs) to create a common unit of measurement to conservatively estimate noise from traffic. The PCE conversion factors are summarized below:

- Each Automobile or Light Truck: 1 Noise PCE
- Each Medium Truck: 13 Noise PCEs
- Each Bus: 18 Noise PCEs
- Each Heavy Truck: 47 Noise PCEs

According to the traffic analysis results described in **Section 2.5**, "Transportation," and the project-associated PCEs as summarized below in **Table 2.7-3**, the proposed project would not result in PCEs doubling at sensitive receptors in the project area during any peak hour. Thus, as PCEs would not double in the study area, no significant adverse mobile source noise impacts (i.e., an increase of 3-dB(A) or greater) due to project-generated vehicular traffic are anticipated as a result of the proposed action.

Table 2.7-3 PCEs Comparison

Location	Time Period	Worst-case Peak Hour Condition (AM)			Representative Noise Monitoring Location	Significant Noise Impact?
		No-Action PCE	With-Action PCE	Noise Increment (dB(A))		
746 Third Avenue (between 24th and 25th Streets)	AM	6,180	7,073	0.59	M1	No
183 24th Street (at Third Avenue)	MD	8,031	9,159	0.57	M2	No

Analysis of Stationary Noise Impacts on Nearby Sensitive Receptors

As discussed in the *CEQR Technical Manual,* if a project would result in a substantial unenclosed stationary source to be operating within 1,500 feet of a sensitive receptor, a detailed stationary source analysis may be appropriate. The proposed action would result in the operation of a new concrete batching plant and compressed natural gas (CNG) fueling station on the project site. As there are residential uses on the opposite side of Third Avenue and one residence adjacent to the project site's southern boundary, a stationary source noise analysis is provided.

The project site is situated in an M3-1 manufacturing district and is surrounded by heavy manufacturing and industrial uses common on the Third Avenue. Additionally, the elevated Gowanus Expressway (I-278), which is a six-lane divided freeway, runs above Third Avenue. Third Avenue has the functional classification of a "Principal Arterial-Other" roadway under the National Highway System (NHS), and is designated as "Local Truck Route" by the New York City Department of Transportation (NYCDOT). These characteristics contribute to high ambient noise levels in the vicinity of the project site.

Two noise monitoring locations near the project site were selected, and represent the two sensitive receptors nearest to the project site. The location of each noise monitoring site is shown on **Figure 2.7-1**. Noise measurements were conducted on Tuesday, January 20th, 2015. The first noise monitor was placed at 746 Third Avenue (between 24th and 25th Streets), which is a mixed-use building containing residential units on the second and third floors. The second noise monitor was placed at 183 24th Street, which contains a two-story residential building approximately 20 feet east of the Third Avenue northbound travel lane. These monitoring locations are generally representative of locations with the maximum potential for project-generated stationary source noise to affect the sensitive receptors near the project site.

Figure 2.7-1 Noise Monitoring Locations

At each receptor location, 20-minute noise measurements were made for three weekday time periods—Early Morning (5:00 to 7:00 AM), AM (7:00 to 9:00 AM), and PM (1:00 to 3:00 PM) to determine existing noise levels. Primary contributors to the ambient noise profile included heavy traffic on the elevated Gowanus Expressway (I-278) and truck and vehicular traffic on Third Avenue and surrounding roadways. **Table 2.7-4** summarizes the results of the baseline measurements for the weekday Early Morning, AM and PM analysis hours.

Table 2.7-4 Measured Noise Levels (dB(A))

Noise Monitoring Location [1]	Time	L_{eq}	L_{10}	Lmax	Lmin	L_1	L_{50}	L_{90}
1	AM	76.2	78.9	90.5	67.2	82.4	75.2	70.4
	MD	77.1	80.0	88.5	66.0	83.5	75.6	70.9
	PM	78.0	80.7	86.5	70.1	82.9	77.0	73.7
2	AM	73.4	76.5	81.8	61.1	79.9	72.3	67.2
	MD	73.8	76.7	84.9	64.4	80.9	72.4	67.0
	PM	73.8	76.3	83.5	65.8	79.2	72.9	69.9

[1] – Locations are shown on **Figure 2.7-1**

Activities and equipment from the proposed action have the potential to have significant noise impacts on nearby sensitive receptors. As such, stationary noise impacts due batch plant activities were analyzed at the closest sensitive receptor marked at location 1 in Figure 2.7-1. These activities and equipment include the batch plant processes, cement delivery trucks, concrete trucks, barge cranes for unloading coarse aggregate materials, sand delivery trucks, front end loader, etc.

Noise Impacts were assessed based on guidance from the CEQR Technical Manual chapters 22 and 19 and the FHWA Roadway Construction Noise Model (RCNM) using the formulas shown below:

$$LmaxD = Lmax50 - 20 \log(D/50) - shielding$$

Where:

D = Distance (ft)

And

$$L_{eq} = LmaxD + 10 \log(UF/100)$$

Where:

UF = Usage Factor

Hourly Lmax noise emission reference levels and usage factors provided by the FHWA RCNM were used to determine an hourly L_{eq} for each piece of equipment at the receptor. Then the number of equipment and the amount of time each piece would be operating per hour was added to the calculation. The proposed action will be building a wall along the entrance at 3rd Avenue, therefore shielding of 5 dB from this wall and existing buildings was used. Noise emission reference levels, usage factors, shielding, number of equipment, distance, and hourly time usage for each piece of equipment are shown in **Table 2.7-5**. Note, boiler noise reference levels were not available and are considered insignificant compared to the background and other project related noise levels. It was conservatively assumed that all equipment would operate together within the same hour.

Noise levels in dBA were totaled for all equipment and added to the measured background noise level. All estimated levels are shown in **Table 2.7-6**. As shown, noise increments as a result of the proposed action are less than 3 dBA and, as a result, no significant noise impacts are expected to occur.

Table 2.7-5 Noise Analysis Input Parameters

Process	Usage Factor (%)	Lmax at 50 ft	Shielding Noise Reduction	Estimated Maximum Hourly # of Equipment	Estimated Distance to Closest Sensitive Receptor (ft)	Estimated Time Usage per hour per Equipment (min)
Concrete Batch Plant	15	83	5	1	150	60
Dry Cement Delivery Trucks	20	82	5	1	150	60
Ready Mix Trucks	40	85	5	14.4	150	7.0
Ready Mix Trucks through South Gate	40	85	5	5.6	60	0.2
Water Heating Boiler	NA	NA	-	-	-	-
Barge Unloading Crane	16	85	5	2	500	60
Sand Delivery Haul Trucks	40	84	5	4	320	5.7
Front End Loader	40	80	5	1	320	60

Notes:
NA – Not Available

Table 2.7-6 Noise Impact Levels (dBA)

	AM	MD	PM
With-Action Noise Level (Leq)	71.3		
Measured Noise Level (Leq)	76.2	77.1	78.0
Total Noise Level (Leq)	77.3	78.0	78.7
Noise Increment	**1.1**	**0.9**	**0.7**

2.8 PUBLIC HEALTH

For most proposed projects, a public health analysis is not necessary. As stated in the *CEQR Technical Manual*, where no significant unmitigated adverse impact is found in other CEQR analysis areas, such as air quality, water quality, hazardous materials or noise, no public health analysis is generally warranted. However, since the proposed action includes the development of a new concrete batching plant and CNG fueling station, and as hazardous materials Phase I and Phase II site investigation activities were conducted at the project site, a preliminary public health assessment is provided below.

Public Health assessment to be provided in a later draft

Therefore, as there are no anticipated significant adverse impacts from the proposed facility or from hazardous materials, air quality or noise conditions at the project site, a detailed public health assessment is not warranted for this action and significant adverse impacts to public health are not expected to occur.

2.9 NEIGHBORHOOD CHARACTER

Neighborhood character, as defined in the *CEQR Technical Manual,* is considered to be an amalgam of the various elements that give a neighborhood its distinct personality. These elements include land use, socioeconomic conditions, open space, shadows, historic and cultural resources, urban design and visual resources, transportation, noise, as well as any other physical or social characteristics that help to define

a community. Not all these elements affect neighborhood character in all cases; a neighborhood usually draws its distinctive character from a few defining features.

According to the *CEQR Technical Manual,* if a project has the potential to result in any significant adverse impacts on any of the above technical areas, a preliminary assessment of neighborhood character may be appropriate. A significant impact identified in one of these technical areas is not automatically equivalent to a significant impact on neighborhood character; rather, it serves as an indication that neighborhood character should be examined.

In addition, depending on the project, a combination of moderate changes in several of these technical areas may potentially have a significant effect on neighborhood character. As stated in the *CEQR Technical Manual*, a "moderate" effect is generally defined as an effect considered reasonably close to the significant adverse impact threshold for a particular technical analysis area. When considered together, elements may have the potential to significantly affect neighborhood character. Moderate effects on several elements may affect defining features of a neighborhood and, in turn, a pedestrian's overall experience. If it is determined that two or more categories may have potential 'moderate effects' on the environment, CEQR states that an assessment should be conducted to determine if the proposed project result in a combination of moderate effects to several elements that cumulatively may affect neighborhood character. If a project would result in only slight effects in several analysis categories, then further analysis is generally not needed.

This chapter reviews the defining features of the neighborhood and examines the proposed project's potential to affect the neighborhood character of the surrounding study area. The study area is generally coterminous with the study area used for the land use and zoning analysis in **Chapter 2.1**. According to the CEQR Technical Manual, a preliminary analysis determines whether changes expected in other technical areas may affect a contributing element of neighborhood character.

Preliminary Assessment

Land Use, Zoning, and Public Policy

According to the *CEQR Technical Manual*, development resulting from a proposed project could alter neighborhood character if it introduces new land uses, conflicts with land use policy or other public plans for the area, changes land use character, or generates significant land use impacts.

The proposed action would replace three vacant and highly deteriorated buildings with an active maritime-related industrial/manufacturing use that would conform to existing land uses, the zoning district (M3-1) and neighborhood characteristics of the surrounding area. The proposed action would not create any significant adverse land use impacts to the surrounding neighborhood, which is primarily developed with industrial/warehouse, commercial office/retail, vacant piers and transportation and parking related uses. Such existing land uses are compatible with the proposed cement batching facility and CNG fueling station.

The project site would remain as part of the mapped M3-1 zoning district. The use of the project site as a concrete batching plant and CNG fueling station is consistent within an M3-1 zoning district, which as a matter of right allows heavy industrial uses that conform to minimum performance standards. The proposed action is also compatible and consistent with applicable public polices (see **Section 2.1**), including the Sunset Park Industrial Business Zone, Sunset Park Significant Maritime and Industrial Area and the New York City Waterfront Revitalization Program. Overall, the proposed facility would bear a positive effect on enhancing neighborhood character related to a new development on a currently underdeveloped site. As a result, the proposed project would not have the potential to significantly affect land use, zoning, and public policy in the vicinity of the project site.

Socioeconomic Conditions

According to CEQR, changes in socioeconomic conditions have the potential to affect neighborhood character when they result in substantial direct or indirect displacement or addition of population, employment, or businesses; or substantial differences in population or employment density.

The proposed action is not expected to result in any significant adverse impacts on socioeconomic conditions in the area. Three vacant buildings currently occupy the project site, containing a combined footprint of approximately 29,100 square feet. These buildings are highly deteriorated and are anticipated to be removed as part of the proposed project, which would involve the construction and operation of a new concrete batching plant and compressed natural gas (CNG) fueling station on the project site. It is expected that a total of 10 full-time employees would report to the project site. As a result, the proposed project would not involve direct displacement of existing businesses. No residential units are part of the proposed project, and as such, direct and indirect residential displacement would not occur.

Projects that would result in substantial new development that is markedly different from existing uses, development, and activities within the neighborhood may lead to indirect displacement. Industrial and manufacturing uses are predominant in this area, and the proposed action is not anticipated to result in indirect displacement of any existing businesses. Further, the proposed action would also not affect real estate market conditions in a way that would result in indirect displacement of residents or businesses. As such, no significant adverse impacts on socioeconomic conditions would occur as a result of the proposed action. Therefore, the proposed project would not have the potential to significantly affect socioeconomic conditions, a defining feature of neighborhood character, in the vicinity of the project site.

Open Space

According to CEQR, when an action would potentially have a direct or indirect effect on open space that would adversely affect utilization of existing resources, there is a potential to affect neighborhood character.

The proposed action would not result in any direct or indirect significant adverse impacts on area open spaces, and would not affect the utilization of the parks within the area. The proposed project would not result in the removal of any open spaces on the subject site, as none exist on the site. The proposed project would not result in any new residential development that could alter the utilization of area parks, and the new employees that are expected to work at the facility do not cross CEQR thresholds for further analyses (500 or more new employees). Therefore, the proposed project would not have the potential to significantly affect open space resources, a defining feature of neighborhood character, in the vicinity of the project site.

Urban Design and Visual Resources

According to the *CEQR Technical Manual*, in developed areas, urban design changes have the potential to affect neighborhood character by introducing substantially different building bulk, form, size, scale, or arrangement. Urban design changes may also affect block forms, street patterns, or street hierarchies, as well as streetscape elements such as street walls, landscaping, curb cuts, and loading docks. Visual resource changes could affect neighborhood character if they directly alter key visual features such as unique and important public view corridors and vistas, or block public visual access to such features.

The proposed action would not result in any changes to the area's block forms, street patterns, street hierarchies, or streetscape elements. The existing on-site buildings would be removed to make way for the proposed concrete batching plant and compressed natural gas (CNG) fueling station. Visual resource changes would also not occur, as the proposed project would not directly alter any key visual features, such as unique and important public view corridors and vistas, or block public visual access to such features. Therefore, significant adverse impacts to Neighborhood Character as they relate to urban design or visual resources are not warranted.

Shadows

According to CEQR, when shadows from a proposed project fall on a sunlight-sensitive resource and substantially reduce or completely eliminate direct sunlight exposure such that the public's use of the resource is significantly altered or the viability of vegetation or other resources is threatened, there is a potential to affect neighborhood character. However, as discussed in Chapter 2.2 (Shadows), there is no potential for significant adverse impacts from shadows that would affect Neighborhood Character.

Historic and Cultural Resources

According to CEQR, when an action would result in substantial direct changes to a historic and cultural resource or substantial changes to public views of a resource, or when a historic and cultural resource analysis identifies a significant impact in this category, there is a potential to affect neighborhood character.

The existing buildings on the project site are not designated local or S/NR historic resources or properties, nor is the project site part of any designated historic district, and no such historic resources or districts are located within the study area. As such, no significant adverse impacts on historic or cultural resources would occur as a result of the proposed action. The proposed project, therefore, would not have the potential to significantly affect historic and cultural resources, a defining feature of neighborhood character, in the vicinity of the project site.

Transportation

According to the *CEQR Technical Manual*, changes in traffic and pedestrian conditions can affect neighborhood character in a number of ways. For traffic to have an effect on neighborhood character, it must be a contributing element to the character of the neighborhood (either by its absence or its presence), and it must change substantially as a result of the action. According to the *CEQR Technical Manual*, such substantial traffic changes can include: changes in level of service (LOS) to C or below; change in traffic patterns; change in roadway classifications; change in vehicle mixes, substantial increase in traffic volumes on residential streets; or significant traffic impacts, as identified in the technical traffic analysis. Regarding pedestrians, when a proposed project would result in substantially different pedestrian activity and circulation, it has the potential to affect neighborhood character.

The project associated with the proposed action would not result in significant adverse traffic and pedestrian impacts and no significant adverse traffic impacts would occur during operational periods (see **Chapter 2.5**). The operations of the proposed facility would not significantly alter the levels of service on streets in the vicinity of the project site, as the proposed project would not generate over 50 vehicle-trips (the CEQR threshold for further study) through any intersection within the study area. Therefore, the proposed action would not result in significant changes in traffic and pedestrian conditions that would affect neighborhood character and result in a substantial effect. The proposed project would not substantially change the traffic patterns or levels of service, would not change roadway classifications or vehicle mixes, and would not result in a substantially different pedestrian activity and/or circulation patterns that would have the potential to affect neighborhood character.

Noise

According to the *CEQR Technical Manual*, for an action to affect neighborhood character with respect to noise, it would need to result in a significant adverse noise impact and a change in acceptability categories.

According to the traffic analysis results described in **Section 2.5**, “Transportation,” and the project-associated PCEs summarized in **Section 2.7**, “Noise,” the proposed project would not result in PCEs doubling at sensitive receptors in the project area during any peak hour. Thus, as PCEs would not double in the study area, no significant adverse mobile source noise impacts due to project-generated vehicular traffic are anticipated as a result of the proposed action. However, as discussed in Chapter 2.7 (Noise), there is no potential for significant adverse impacts from noise that would affect Neighborhood Character.

Conclusion

Of the relevant technical areas specified in the *CEQR Technical Manual* that contribute to neighborhood character, the proposed action would not cause significant adverse impacts regarding land use, zoning, and public policy; socioeconomic conditions; open space; shadows; historic and cultural resources; urban design and visual resources; transportation; or noise.

The reuse of the site as the proposed concrete batching plant and CNG fueling station is compatible within the industrial nature of the Third Avenue corridor, as well as the Southwest Brooklyn IBZ. Moderate adverse effects that would affect such a defining feature, either singly or in combination, have also not been identified for any of the technical study areas. Therefore, as the proposed action would not have a significant adverse neighborhood character impact and would not result in a significant adverse impact to a defining feature of the neighborhood, further analysis is not necessary.

2.10 CONSTRUCTION IMPACTS

Although the construction of new buildings or structures is temporary in nature, it can have disruptive and noticeable effects. The determination of whether these effects are significant, and if mitigating steps are required, is generally based on the duration and magnitude of the impact. Most projects consider the impacts that are related to traffic, air quality and noise. Assessments of other technical areas can also be appropriate for particular actions.

Construction for the proposed facility is expected to begin in 2017. The estimated duration of the construction period would be less than 24 months. According to the *CEQR Technical Manual*, this would be considered short-term and would not require an assessment of air quality or noise impacts, or other technical area including: open space, socioeconomic conditions, community facilities, land use, zoning, and public policy, neighborhood character, and infrastructure. Additionally, according to the *CEQR Technical Manual*, an analysis of construction activities on transportation is often not required, as many projects do not generate enough construction traffic to warrant such analysis. Construction activities would also not occur within 400 feet of any historic or cultural resources.

The proposed project would lead to construction activities near the Gowanus Bay, which is considered a natural resource. However, it is not expected that construction activities would disturb this natural resource. The construction related to the proposed project would occur approximately 100 feet inland from the Gowanus Bay, and would not alter existing bulkheads or otherwise lead to negative effects on the waters of the Gowanus Bay. Further, as discussed in **Section 2.3**, “Natural Resources”, the project site does not include any natural resources nor does it provide any areas capable of functioning in support of ecological systems. As a result, no significant adverse construction impacts are expected to occur as a result of the proposed action.

Appendix A:
Waterfront Revitalization Program (WRP) Consistency Assessment Form

FOR INTERNAL USE ONLY	WRP No. _____
Date Received: _____	DOS No. _____

NEW YORK CITY WATERFRONT REVITALIZATION PROGRAM
Consistency Assessment Form

Proposed actions that are subject to CEQR, ULURP or other local, state or federal discretionary review procedures, and that are within New York City's Coastal Zone, must be reviewed and assessed for their consistency with the *New York City Waterfront Revitalization Program (WRP)* which has been approved as part of the State's Coastal Management Program.

This form is intended to assist an applicant in certifying that the proposed activity is consistent with the WRP. It should be completed when the local, state, or federal application is prepared. The completed form and accompanying information will be used by the New York State Department of State, the New York City Department of City Planning, or other city or state agencies in their review of the applicant's certification of consistency.

A. APPLICANT INFORMATION

Name of Applicant: Ferrara Bros. Materials Corp.

Name of Applicant Representative: Sullivan P.C. as counsel executing on behalf of Ferrara Bros.

Address: 7 East 20th Street, New York, NY 10003

Telephone: (212) 687-5900 Email: ps@sullivanlegal.net

Project site owner (if different than above): City of New York

B. PROPOSED ACTIVITY

If more space is needed, include as an attachment.

1. Brief description of activity

The proposed project would lead to the relocation of the Ferrara Bros. Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier in Sunset Park, Brooklyn. Ferrara Bros. Materials Corp. proposes to construct and operate a new concrete batching plant and compressed natural gas (CNG) fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility. Three vacant buildings currently occupy the project site, containing a combined footprint of approximately 29,100 square feet. Ferrara Bros. Materials Corp. will enter into a long-term ground lease with the New York City Department of Small Business Services.

2. Purpose of activity

New York City Economic Development Corporation seeks to support the retention and growth of industrial businesses in the City and strengthen the City's industrial sector by helping small industrial businesses stay and grow in the City. This sector is an integral part of the City's economy that offers opportunities for growth and new development. Approval of the proposed action would allow Ferrara Bros. Materials Corp. to locate to a new project site that would allow the company to take advantage of maritime materials transport opportunities (via barge) and direct access to Third Avenue, which is a designated "Through Truck Route" by the New York City Department of Transportation, as well as the Gowanus Expressway (I-278). The proposed project would help to retain this local New York City-based business and relocate it to a new site that is currently vacant and not in use.

C. PROJECT LOCATION

Borough: Brooklyn Tax Block/Lot(s): Block 664, p/o Lot 1

Street Address: West side of Third Avenue, between 23rd and 24th Streets

Name of water body (if located on the waterfront): Gowanus Bay

D. REQUIRED ACTIONS OR APPROVALS

Check all that apply.

City Actions/Approvals/Funding

City Planning Commission ☐ Yes ☑ No

- ☐ City Map Amendment
- ☐ Zoning Map Amendment
- ☐ Zoning Text Amendment
- ☐ Site Selection – Public Facility
- ☐ Housing Plan & Project
- ☐ Special Permit
  (if appropriate, specify type: ☐ Modification ☐ Renewal ☐ other) Expiration Date: _____
- ☐ Zoning Certification
- ☐ Zoning Authorizations
- ☐ Acquisition – Real Property
- ☐ Disposition – Real Property
- ☐ Other, explain: _____
- ☐ Concession
- ☐ UDAAP
- ☐ Revocable Consent
- ☐ Franchise

Board of Standards and Appeals ☐ Yes ☑ No

- ☐ Variance (use)
- ☐ Variance (bulk)
- ☐ Special Permit
  (if appropriate, specify type: ☐ Modification ☐ Renewal ☐ other) Expiration Date: _____

Other City Approvals

- ☐ Legislation
- ☐ Rulemaking
- ☐ Construction of Public Facilities
- ☐ 384 (b) (4) Approval
- ☑ Other, explain: Approval by City Council of long-term ground lease under City Charter Section 1301 (2)(f)
- ☐ Funding for Construction, specify: _____
- ☐ Policy or Plan, specify: _____
- ☐ Funding of Program, specify: _____
- ☐ Permits, specify: _____

State Actions/Approvals/Funding

- ☐ State permit or license, specify Agency: _____ Permit type and number: _____
- ☐ Funding for Construction, specify: _____
- ☐ Funding of a Program, specify: _____
- ☐ Other, explain: _____

Federal Actions/Approvals/Funding

- ☐ Federal permit or license, specify Agency: _____ Permit type and number: _____
- ☐ Funding for Construction, specify: _____
- ☐ Funding of a Program, specify: _____
- ☐ Other, explain: _____

Is this being reviewed in conjunction with a Joint Application for Permits? ☐ Yes ☑ No

E. LOCATION QUESTIONS

1.	Does the project require a waterfront site?	☑ Yes	☐ No
2.	Would the action result in a physical alteration to a waterfront site, including land along the shoreline, land under water or coastal waters?	☑ Yes	☐ No
3.	Is the project located on publicly owned land or receiving public assistance?	☑ Yes	☐ No
4.	Is the project located within a FEMA 1% annual chance floodplain? *(6.2)*	☑ Yes	☐ No
5.	Is the project located within a FEMA 0.2% annual chance floodplain? *(6.2)*	☑ Yes	☐ No
6.	Is the project located adjacent to or within a special area designation? *See Maps – Part III of the NYC WRP. If so, check appropriate boxes below and evaluate policies noted in parentheses as part of WRP Policy Assessment (Section F).*	☑ Yes	☐ No

- ☑ Significant Maritime and Industrial Area (SMIA) (*2.1*)
- ☐ Special Natural Waterfront Area (SNWA) (*4.1*)
- ☐ Priority Martine Activity Zone (PMAZ) (*3.5*)
- ☐ Recognized Ecological Complex (REC) (*4.4*)
- ☐ West Shore Ecologically Sensitive Maritime and Industrial Area (ESMIA) (*2.2, 4.2*)

F. WRP POLICY ASSESSMENT

Review the project or action for consistency with the WRP policies. For each policy, check Promote, Hinder *or* Not Applicable (N/A). *For more information about consistency review process and determination, see* ***Part I*** *of the NYC Waterfront Revitalization Program. When assessing each policy, review the full policy language, including all sub-policies, contained within* ***Part II*** *of the WRP. The relevance of each applicable policy may vary depending upon the project type and where it is located (i.e. if it is located within one of the special area designations).*

For those policies checked Promote *or* Hinder, *provide a written statement on a separate page that assesses the effects of the proposed activity on the relevant policies or standards. If the project or action promotes a policy, explain how the action would be consistent with the goals of the policy. If it hinders a policy, consideration should be given toward any practical means of altering or modifying the project to eliminate the hindrance. Policies that would be advanced by the project should be balanced against those that would be hindered by the project. If reasonable modifications to eliminate the hindrance are not possible, consideration should be given as to whether the hindrance is of such a degree as to be substantial, and if so, those adverse effects should be mitigated to the extent practicable.*

		Promote	Hinder	N/A
1	**Support and facilitate commercial and residential redevelopment in areas well-suited to such development.**	☐	☐	☐
1.1	Encourage commercial and residential redevelopment in appropriate Coastal Zone areas.	☑	☐	☐
1.2	Encourage non-industrial development with uses and design features that enliven the waterfront and attract the public.	☐	☐	☑
1.3	Encourage redevelopment in the Coastal Zone where public facilities and infrastructure are adequate or will be developed.	☑	☐	☐
1.4	In areas adjacent to SMIAs, ensure new residential development maximizes compatibility with existing adjacent maritime and industrial uses.	☐	☐	☑
1.5	Integrate consideration of climate change and sea level rise into the planning and design of waterfront residential and commercial development, pursuant to WRP Policy 6.2.	☐	☐	☑

		Promote	Hinder	N/A
2	**Support water-dependent and industrial uses in New York City coastal areas that are well-suited to their continued operation.**	☐	☐	☐
2.1	Promote water-dependent and industrial uses in Significant Maritime and Industrial Areas.	☑	☐	☐
2.2	Encourage a compatible relationship between working waterfront uses, upland development and natural resources within the Ecologically Sensitive Maritime and Industrial Area.	☐	☐	☑
2.3	Encourage working waterfront uses at appropriate sites outside the Significant Maritime and Industrial Areas or Ecologically Sensitive Maritime Industrial Area.	☐	☐	☑
2.4	Provide infrastructure improvements necessary to support working waterfront uses.	☐	☐	☑
2.5	Incorporate consideration of climate change and sea level rise into the planning and design of waterfront industrial development and infrastructure, pursuant to WRP Policy 6.2.	☑	☐	☐
3	**Promote use of New York City's waterways for commercial and recreational boating and water-dependent transportation.**	☐	☐	☑
3.1.	Support and encourage in-water recreational activities in suitable locations.	☐	☐	☐
3.2	Support and encourage recreational, educational and commercial boating in New York City's maritime centers.	☐	☐	☐
3.3	Minimize conflicts between recreational boating and commercial ship operations.	☐	☐	☐
3.4	Minimize impact of commercial and recreational boating activities on the aquatic environment and surrounding land and water uses.	☐	☐	☐
3.5	In Priority Marine Activity Zones, support the ongoing maintenance of maritime infrastructure for water-dependent uses.	☐	☐	☐
4	**Protect and restore the quality and function of ecological systems within the New York City coastal area.**	☐	☐	☑
4.1	Protect and restore the ecological quality and component habitats and resources within the Special Natural Waterfront Areas.	☐	☐	☐
4.2	Protect and restore the ecological quality and component habitats and resources within the Ecologically Sensitive Maritime and Industrial Area.	☐	☐	☐
4.3	Protect designated Significant Coastal Fish and Wildlife Habitats.	☐	☐	☐
4.4	Identify, remediate and restore ecological functions within Recognized Ecological Complexes.	☐	☐	☐
4.5	Protect and restore tidal and freshwater wetlands.	☐	☐	☐
4.6	In addition to wetlands, seek opportunities to create a mosaic of habitats with high ecological value and function that provide environmental and societal benefits. Restoration should strive to incorporate multiple habitat characteristics to achieve the greatest ecological benefit at a single location.	☐	☐	☐
4.7	Protect vulnerable plant, fish and wildlife species, and rare ecological communities. Design and develop land and water uses to maximize their integration or compatibility with the identified ecological community.	☐	☐	☐
4.8	Maintain and protect living aquatic resources.	☐	☐	☐

		Promote	Hinder	N/A
5	**Protect and improve water quality in the New York City coastal area.**	☐	☐	☐
5.1	Manage direct or indirect discharges to waterbodies.	☐	☐	☑
5.2	Protect the quality of New York City's waters by managing activities that generate nonpoint source pollution.	☐	☐	☑
5.3	Protect water quality when excavating or placing fill in navigable waters and in or near marshes, estuaries, tidal marshes, and wetlands.	☐	☐	☑
5.4	Protect the quality and quantity of groundwater, streams, and the sources of water for wetlands.	☐	☐	☑
5.5	Protect and improve water quality through cost-effective grey-infrastructure and in-water ecological strategies.	☐	☐	☑
6	**Minimize loss of life, structures, infrastructure, and natural resources caused by flooding and erosion, and increase resilience to future conditions created by climate change.**	☑	☐	☐
6.1	Minimize losses from flooding and erosion by employing non-structural and structural management measures appropriate to the site, the use of the property to be protected, and the surrounding area.	☐	☐	☑
6.2	Integrate consideration of the latest New York City projections of climate change and sea level rise (as published in *New York City Panel on Climate Change 2015 Report, Chapter 2: Sea Level Rise and Coastal Storms*) into the planning and design of projects in the city's Coastal Zone.	☑	☐	☐
6.3	Direct public funding for flood prevention or erosion control measures to those locations where the investment will yield significant public benefit.	☐	☐	☑
6.4	Protect and preserve non-renewable sources of sand for beach nourishment.	☐	☐	☑
7	**Minimize environmental degradation and negative impacts on public health from solid waste, toxic pollutants, hazardous materials, and industrial materials that may pose risks to the environment and public health and safety.**	☐	☐	☐
7.1	Manage solid waste material, hazardous wastes, toxic pollutants, substances hazardous to the environment, and the unenclosed storage of industrial materials to protect public health, control pollution and prevent degradation of coastal ecosystems.	☐	☐	☑
7.2	Prevent and remediate discharge of petroleum products.	☑	☐	☐
7.3	Transport solid waste and hazardous materials and site solid and hazardous waste facilities in a manner that minimizes potential degradation of coastal resources.	☐	☐	☑
8	**Provide public access to, from, and along New York City's coastal waters.**	☐	☐	☑
8.1	Preserve, protect, maintain, and enhance physical, visual and recreational access to the waterfront.	☐	☐	☐
8.2	Incorporate public access into new public and private development where compatible with proposed land use and coastal location.	☐	☐	☐
8.3	Provide visual access to the waterfront where physically practical.	☐	☐	☐
8.4	Preserve and develop waterfront open space and recreation on publicly owned land at suitable locations.	☐	☐	☐

		Promote	Hinder	N/A
8.5	Preserve the public interest in and use of lands and waters held in public trust by the State and City.	☐	☐	☐
8.6	Design waterfront public spaces to encourage the waterfront's identity and encourage stewardship.	☐	☐	☐
9	**Protect scenic resources that contribute to the visual quality of the New York City coastal area.**	☐	☐	☑
9.1	Protect and improve visual quality associated with New York City's urban context and the historic and working waterfront.	☐	☐	☐
9.2	Protect and enhance scenic values associated with natural resources.	☐	☐	☐
10	**Protect, preserve, and enhance resources significant to the historical, archaeological, architectural, and cultural legacy of the New York City coastal area.**	☐	☐	☑
10.1	Retain and preserve historic resources, and enhance resources significant to the coastal culture of New York City.	☐	☐	☐
10.2	Protect and preserve archaeological resources and artifacts.	☐	☐	☐

G. CERTIFICATION

The applicant or agent must certify that the proposed activity is consistent with New York City's approved Local Waterfront Revitalization Program, pursuant to New York State's Coastal Management Program. If this certification cannot be made, the proposed activity shall not be undertaken. If this certification can be made, complete this Section.

"The proposed activity complies with New York State's approved Coastal Management Program as expressed in New York City's approved Local Waterfront Revitalization Program, pursuant to New York State's Coastal Management Program, and will be conducted in a manner consistent with such program."

Applicant/Agent's Name: Sullivan P.C. as counsel executing on behalf of Ferrara Bros. Materials Corp.

Address: 7 East 20th Street, New York, NY 10003

Telephone: (212) 687-5900 Email: ps@sullivanlegal.net

Applicant/Agent's Signature: 

Date: 4.26.16

Submission Requirements

For all actions requiring City Planning Commission approval, materials should be submitted to the Department of City Planning.

For local actions not requiring City Planning Commission review, the applicant or agent shall submit materials to the Lead Agency responsible for environmental review. A copy should also be sent to the Department of City Planning.

For State actions or funding, the Lead Agency responsible for environmental review should transmit its WRP consistency assessment to the Department of City Planning.

For Federal direct actions, funding, or permits applications, including Joint Applicants for Permits, the applicant or agent shall also submit a copy of this completed form along with his/her application to the NYS Department of State Office of Planning and Development and other relevant state and federal agencies. A copy of the application should be provided to the NYC Department of City Planning.

The Department of City Planning is also available for consultation and advisement regarding WRP consistency procedural matters.

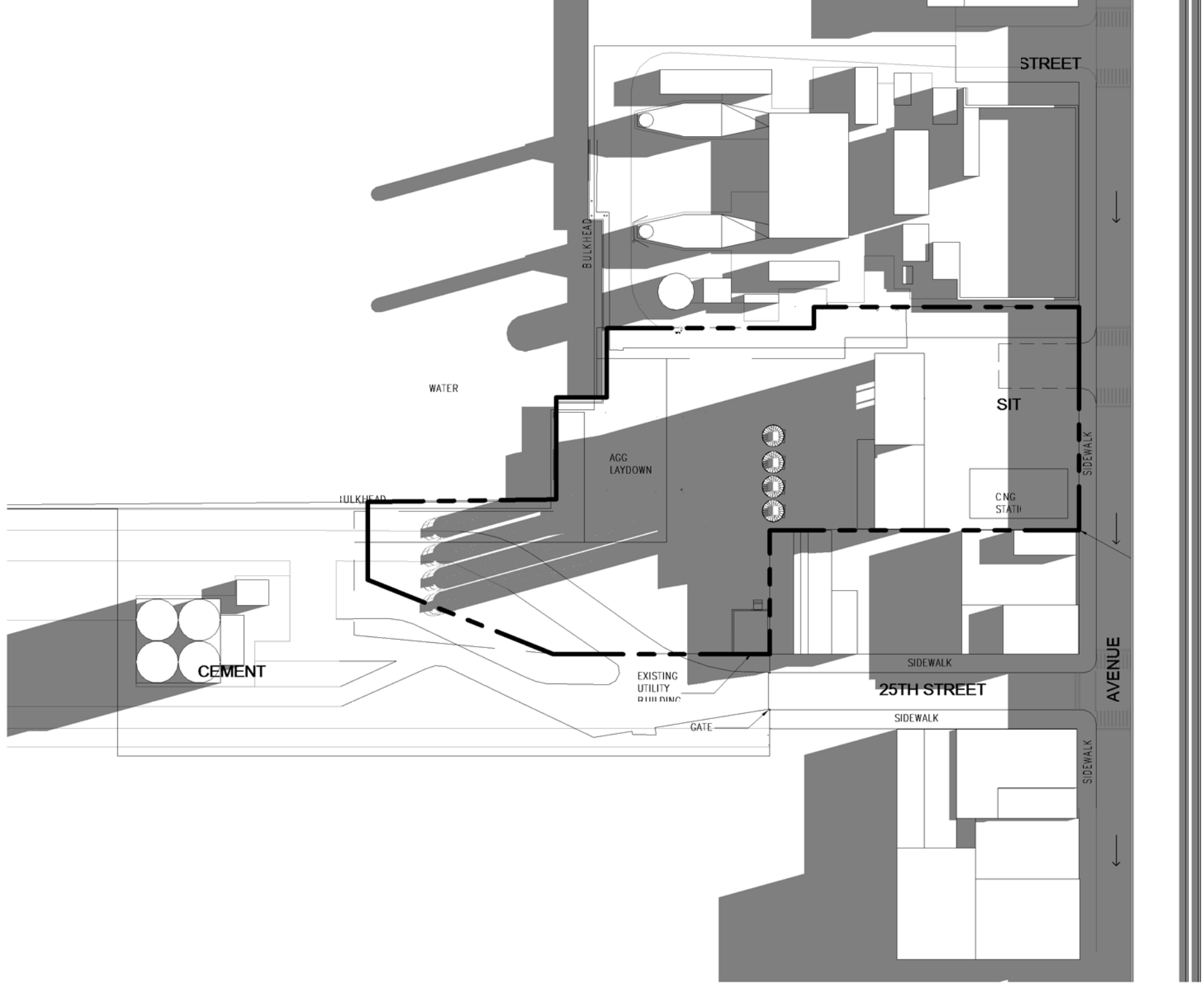
New York City Department of City Planning
Waterfront and Open Space Division
120 Broadway, 31st Floor
New York, New York 10271
212-720-3525
wrp@planning.nyc.gov
www.nyc.gov/wrp

New York State Department of State
Office of Planning and Development
Suite 1010
One Commerce Place, 99 Washington Avenue
Albany, New York 12231-0001
(518) 474-6000
www.dos.ny.gov/opd/programs/consistency

Applicant Checklist

- ☐ Copy of original signed NYC Consistency Assessment Form
- ☐ Attachment with consistency assessment statements for all relevant policies
- ☐ For Joint Applications for Permits, one (1) copy of the complete application package
- ☐ Environmental Review documents
- ☐ Drawings (plans, sections, elevations), surveys, photographs, maps, or other information or materials which would support the certification of consistency and are not included in other documents submitted. All drawings should be clearly labeled and at a scale that is legible.

Appendix B:
Detailed Shadow Diagrams



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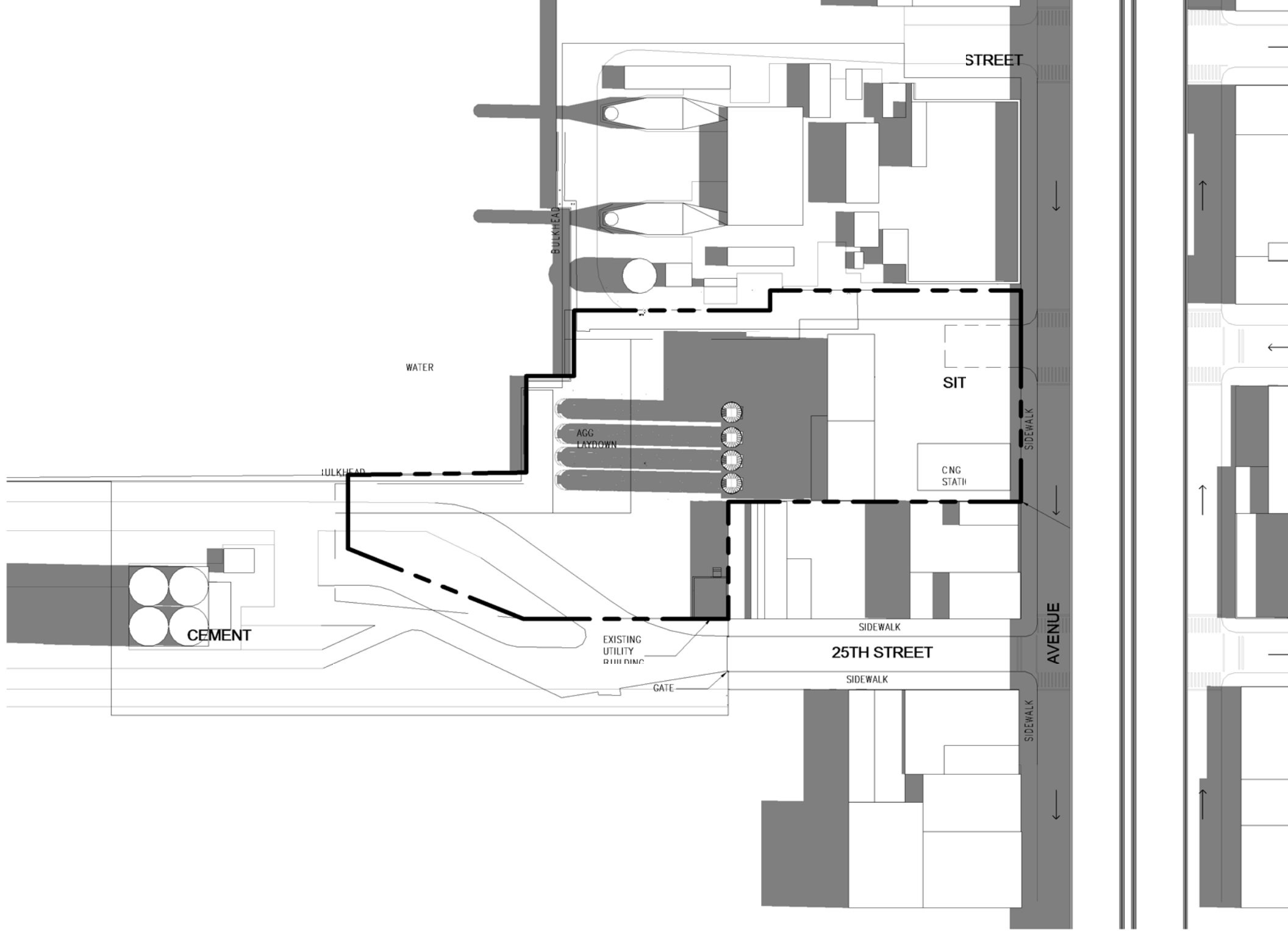

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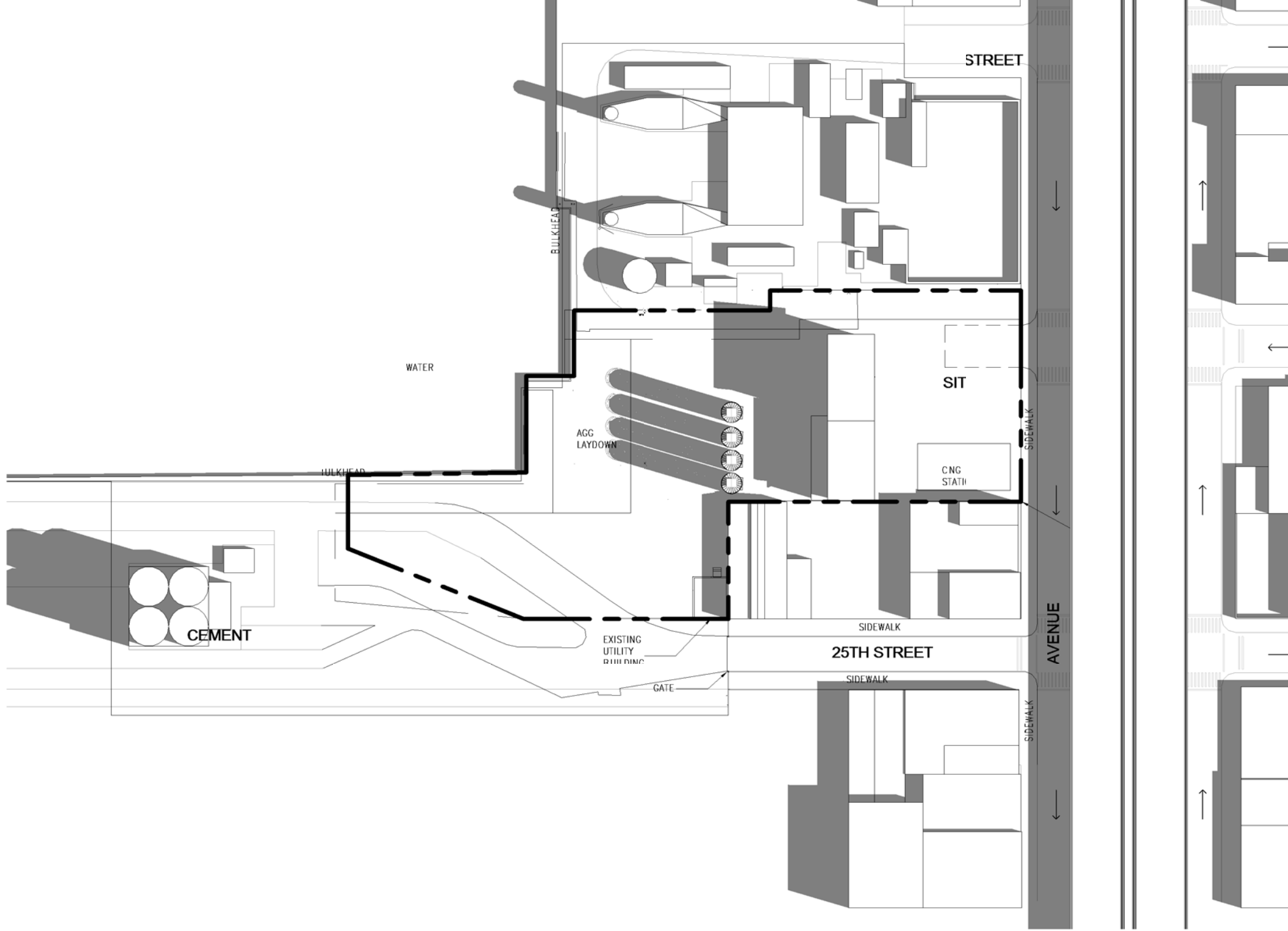

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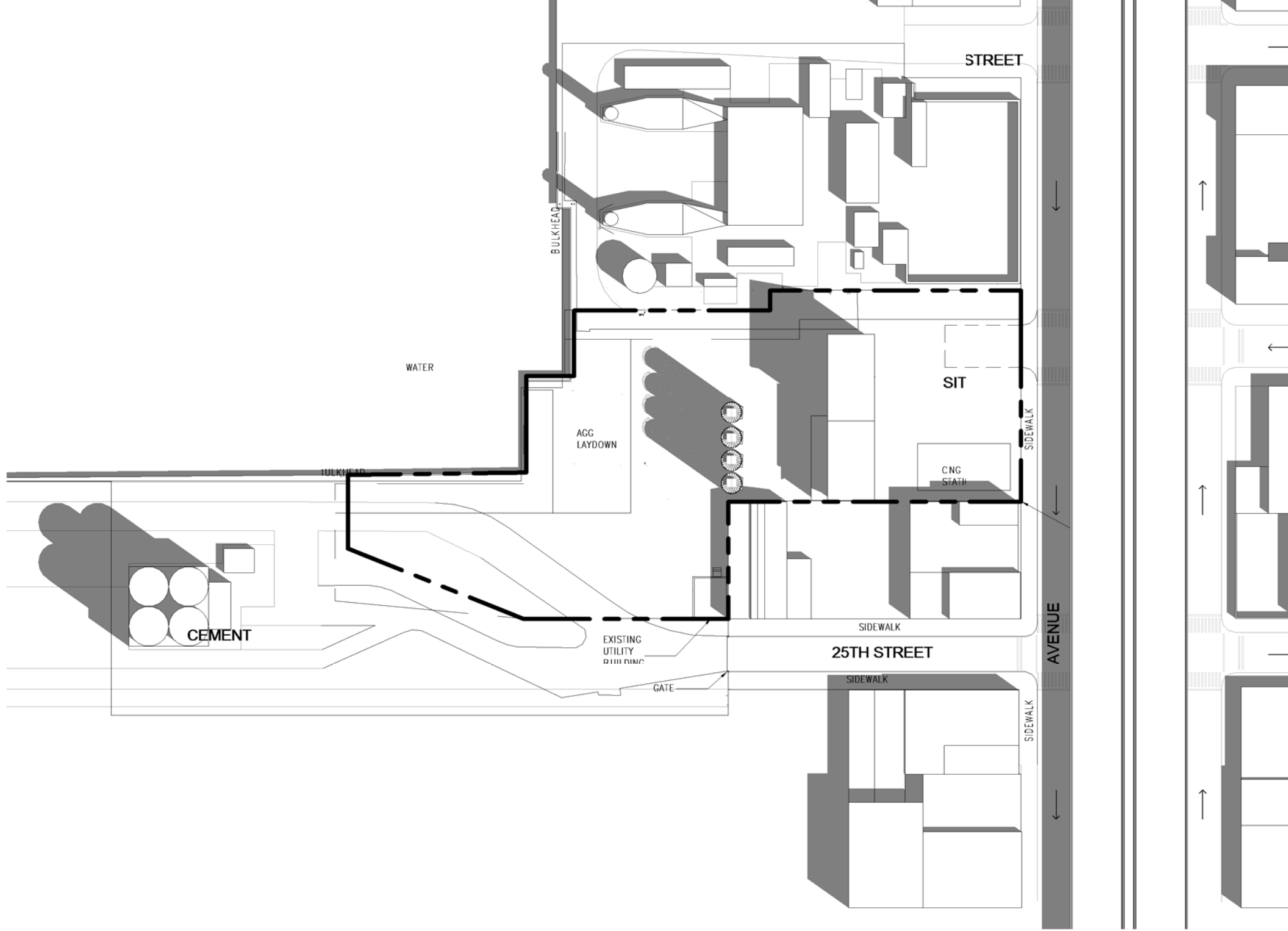

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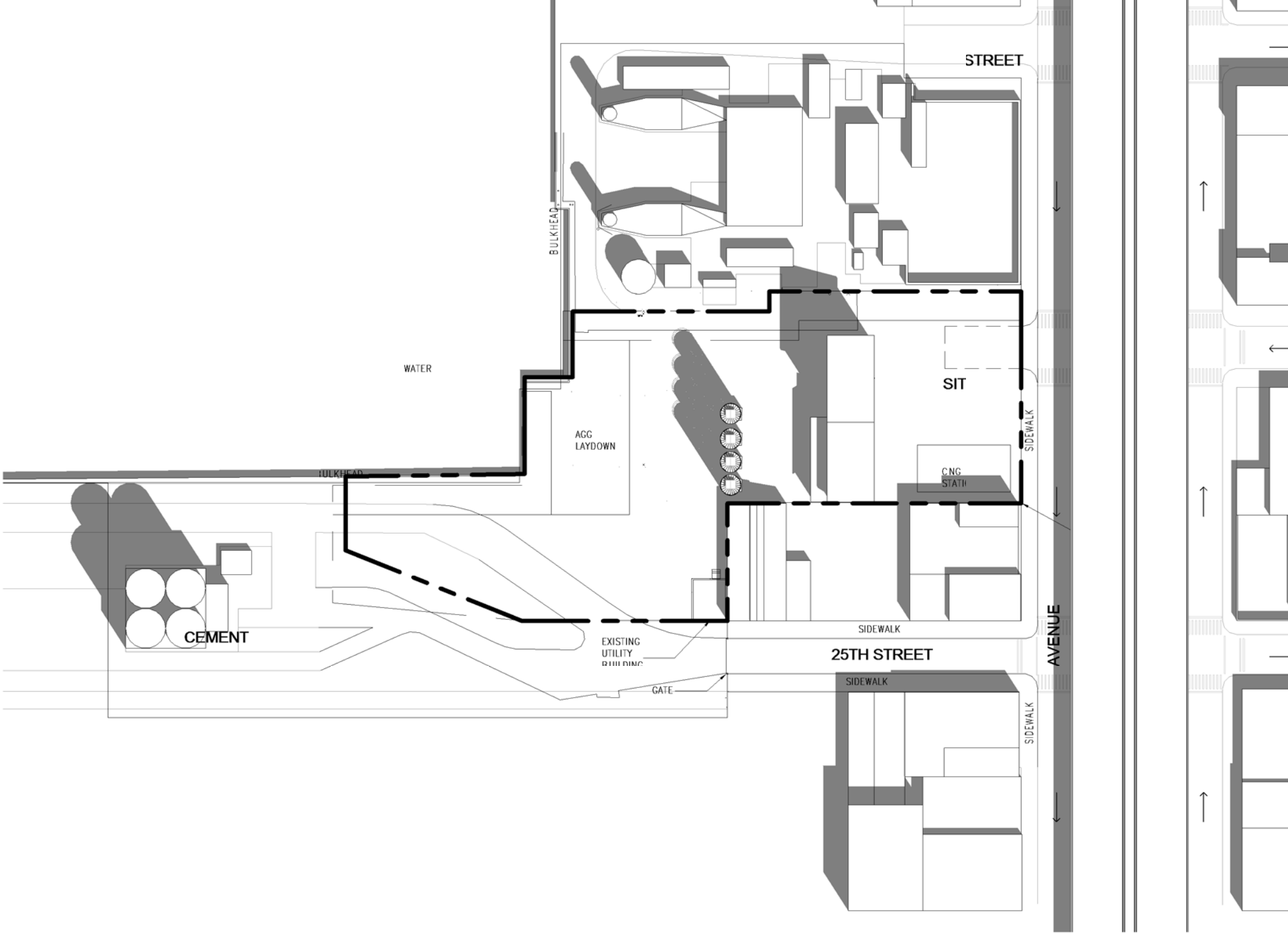

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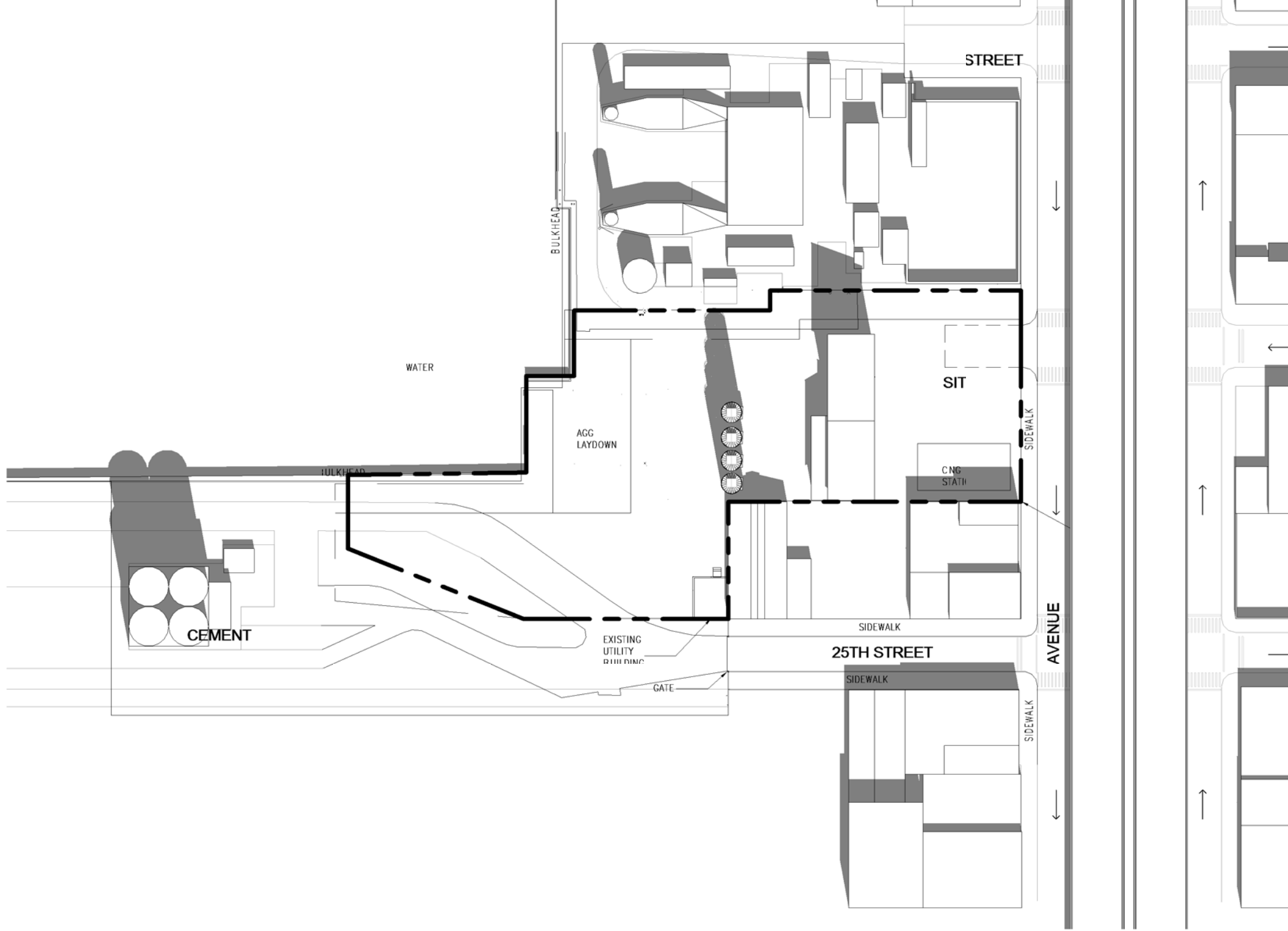

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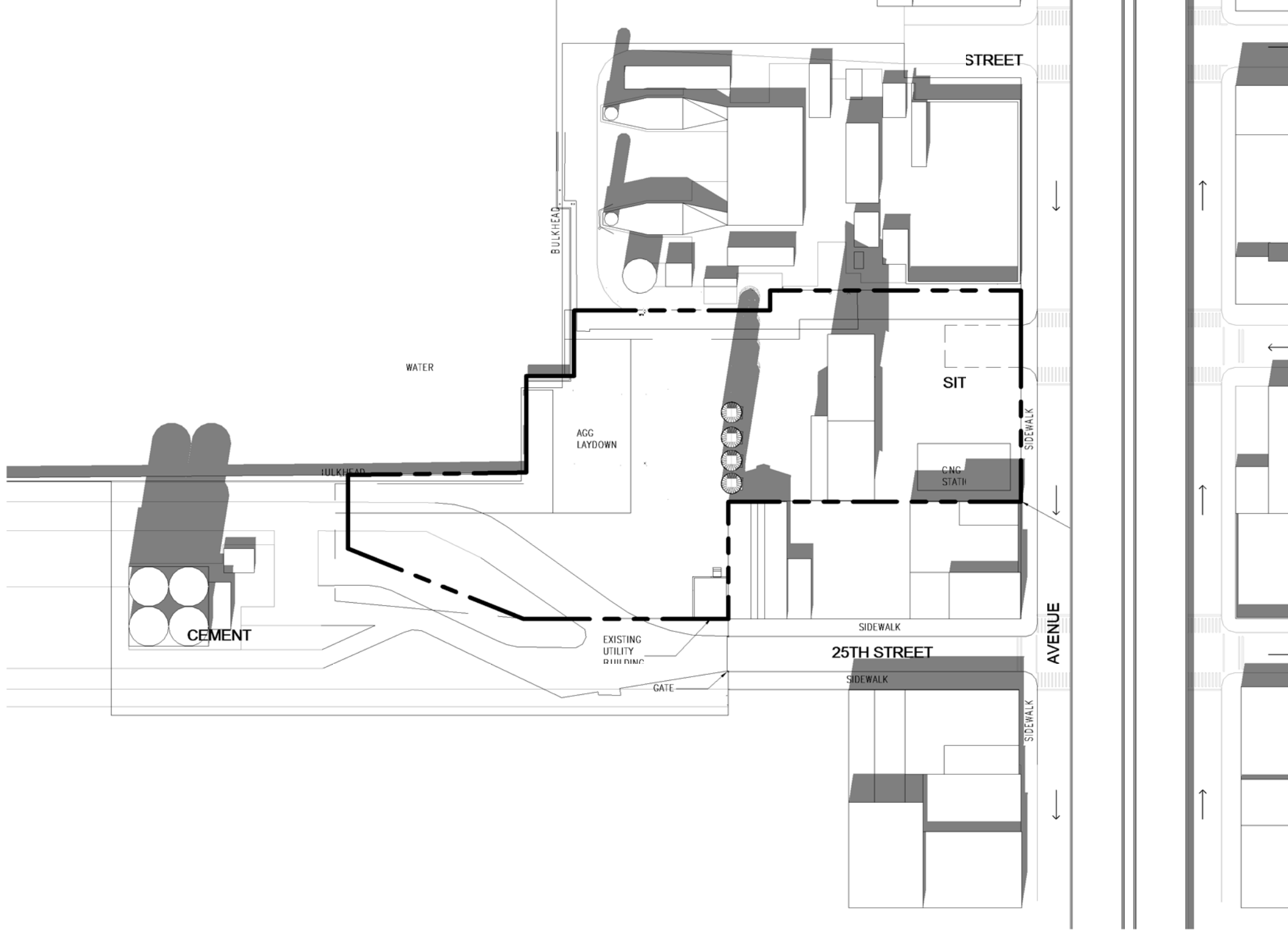

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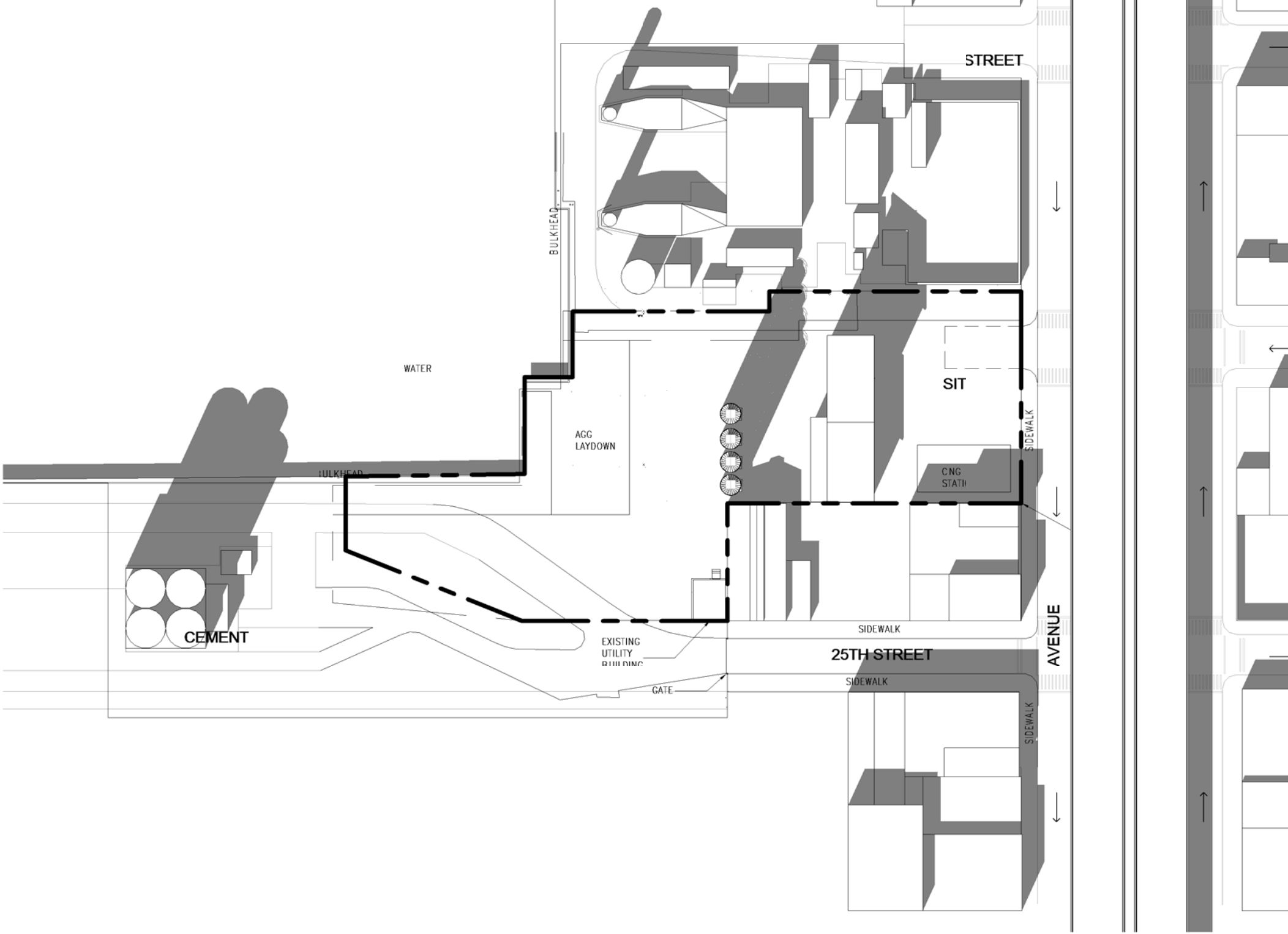

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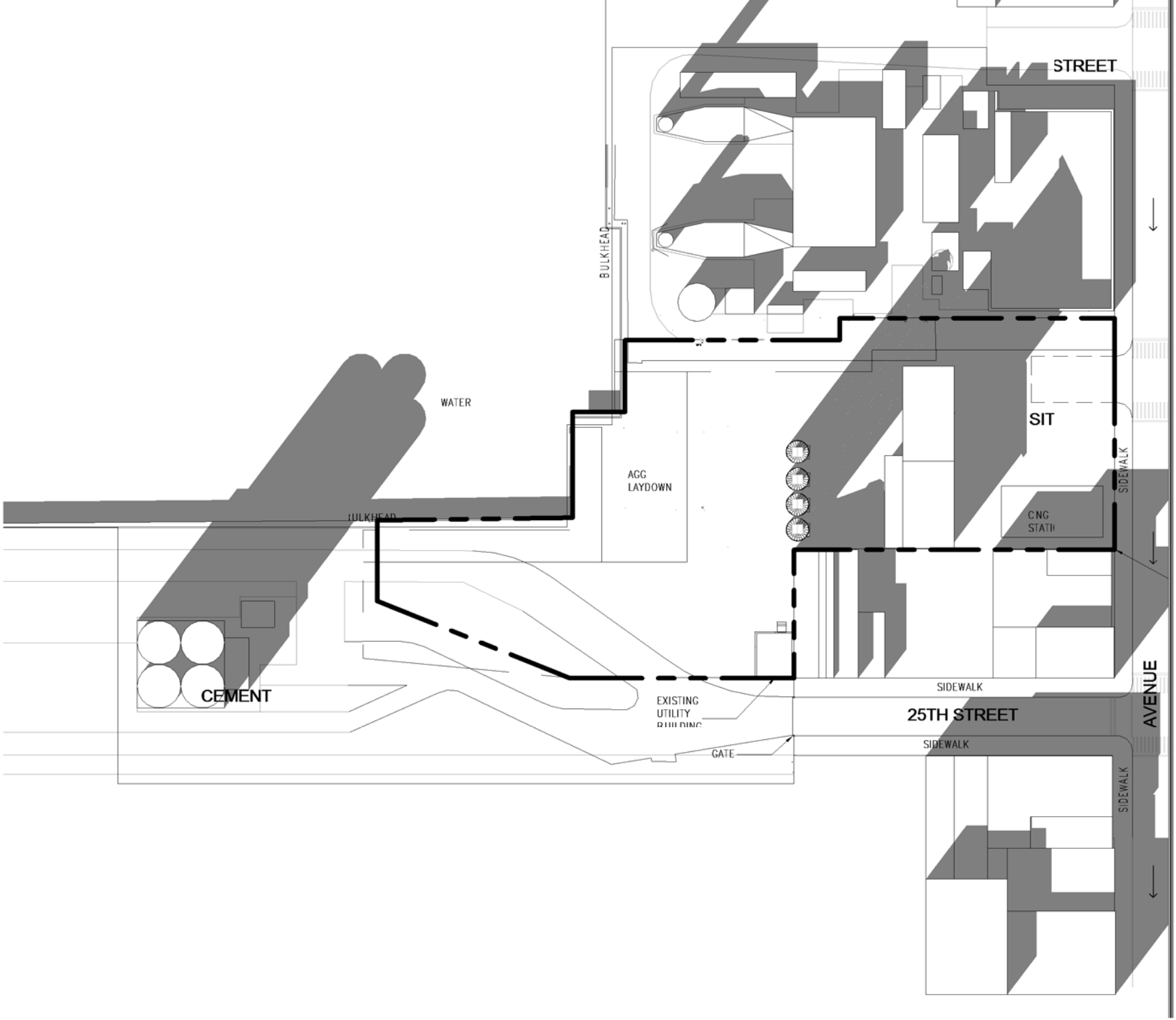

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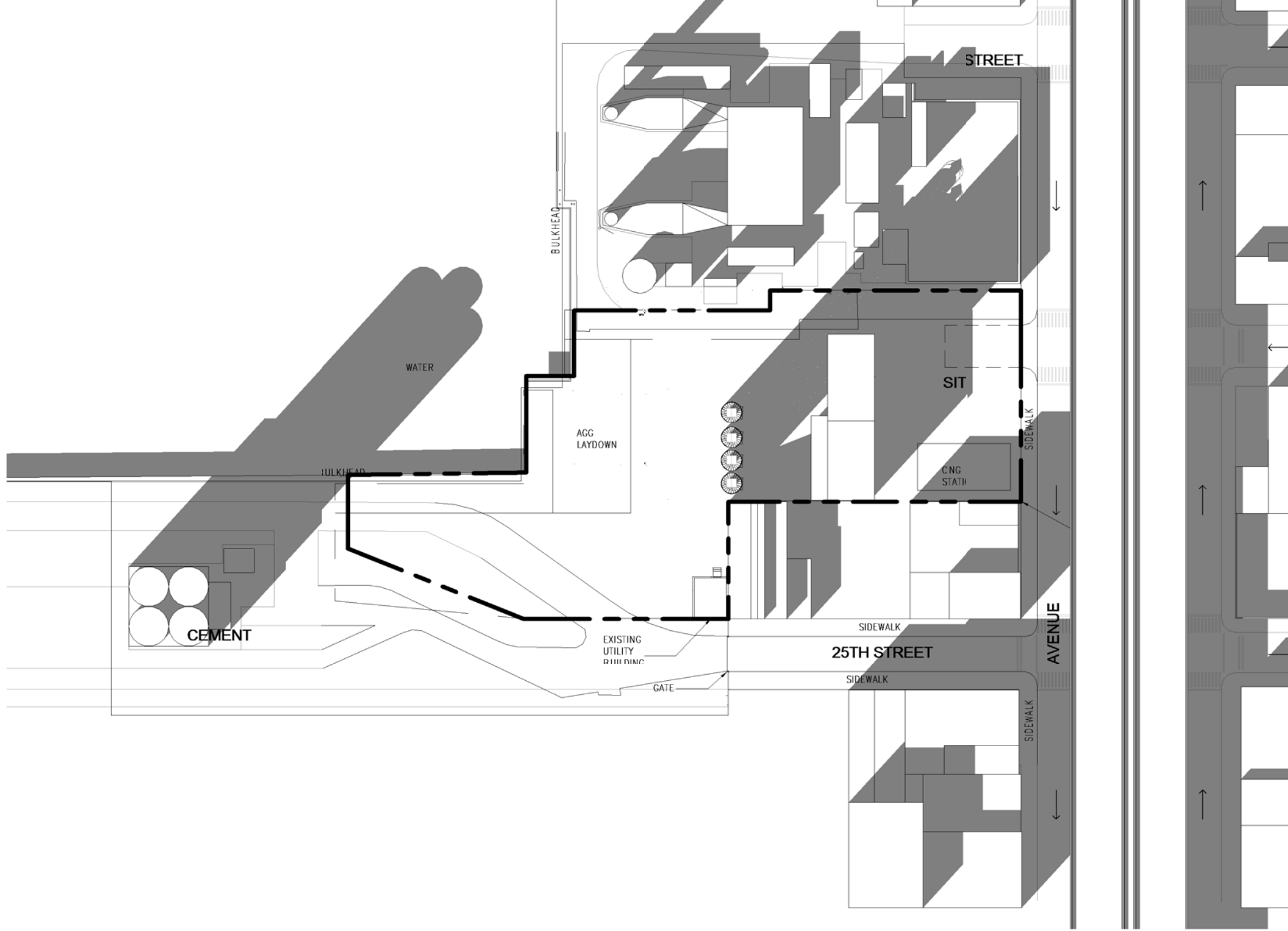

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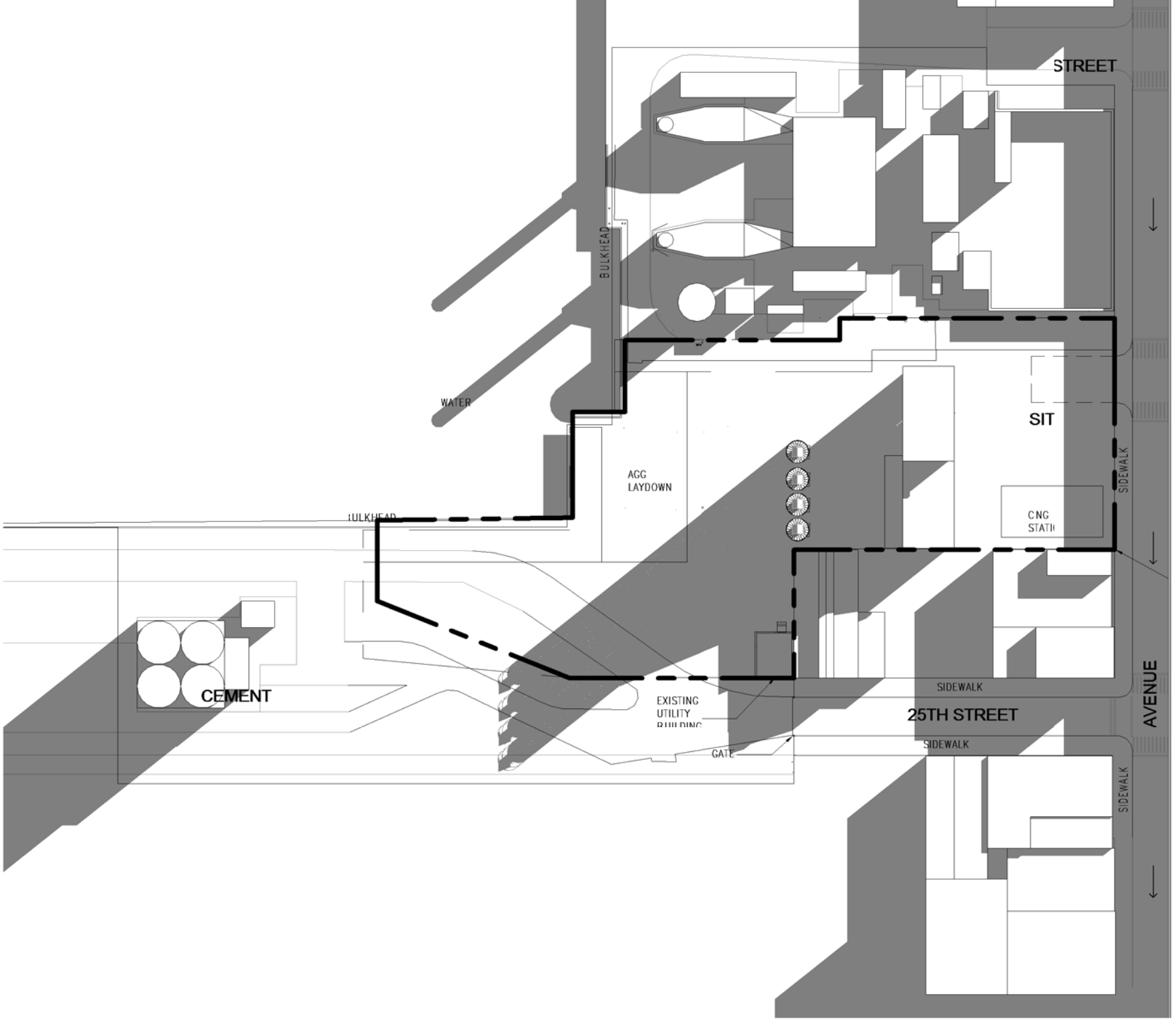

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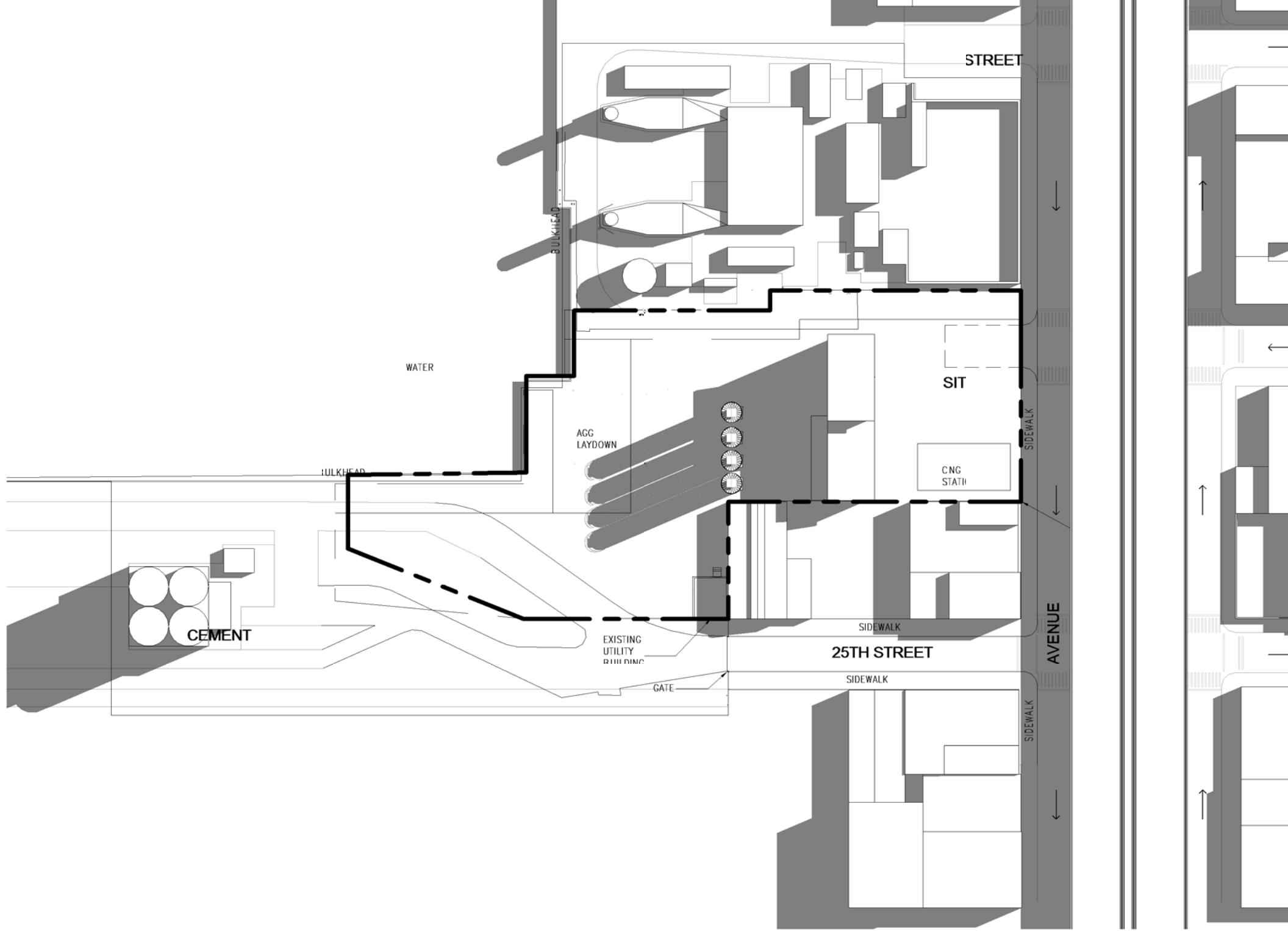

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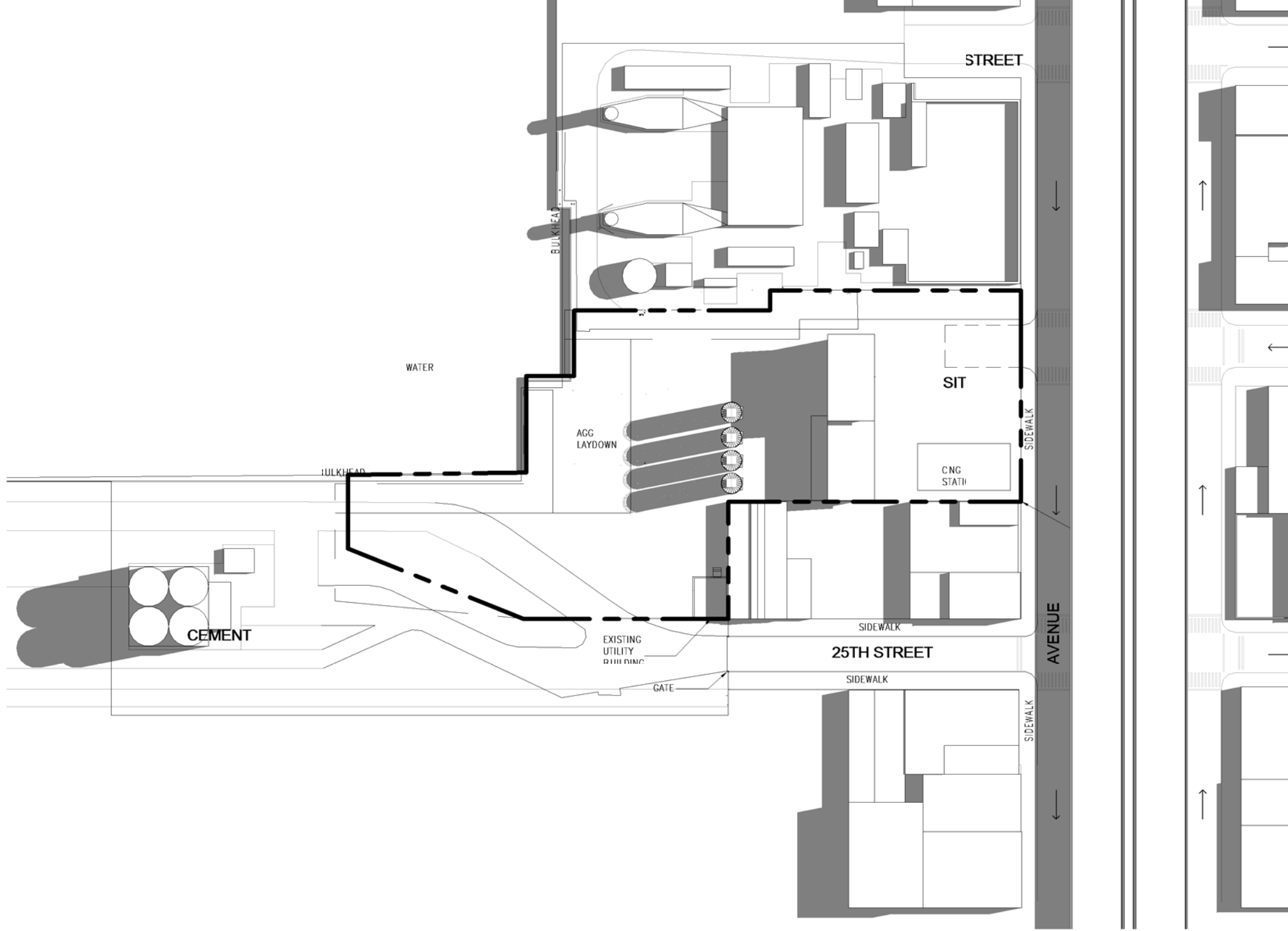

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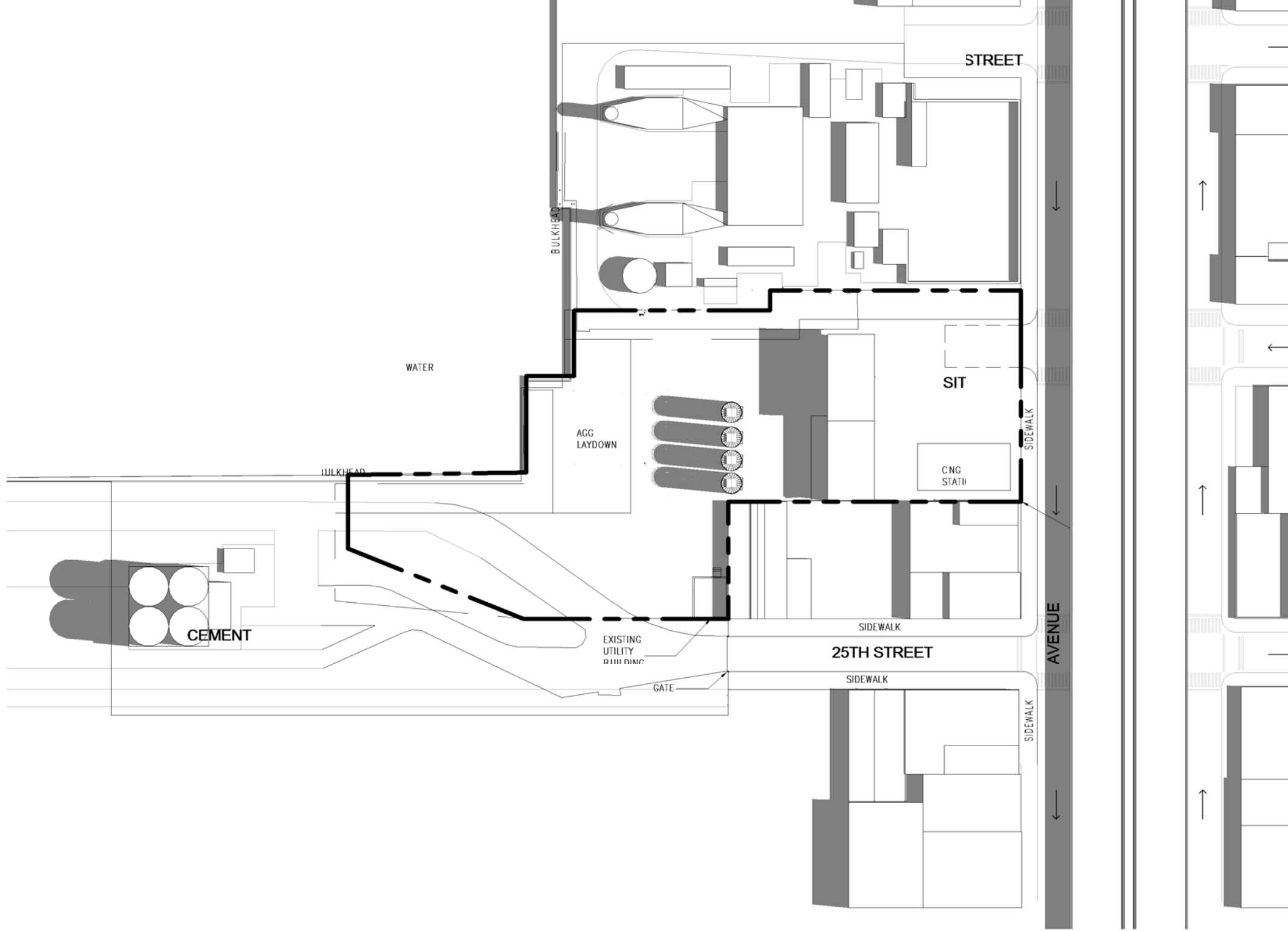

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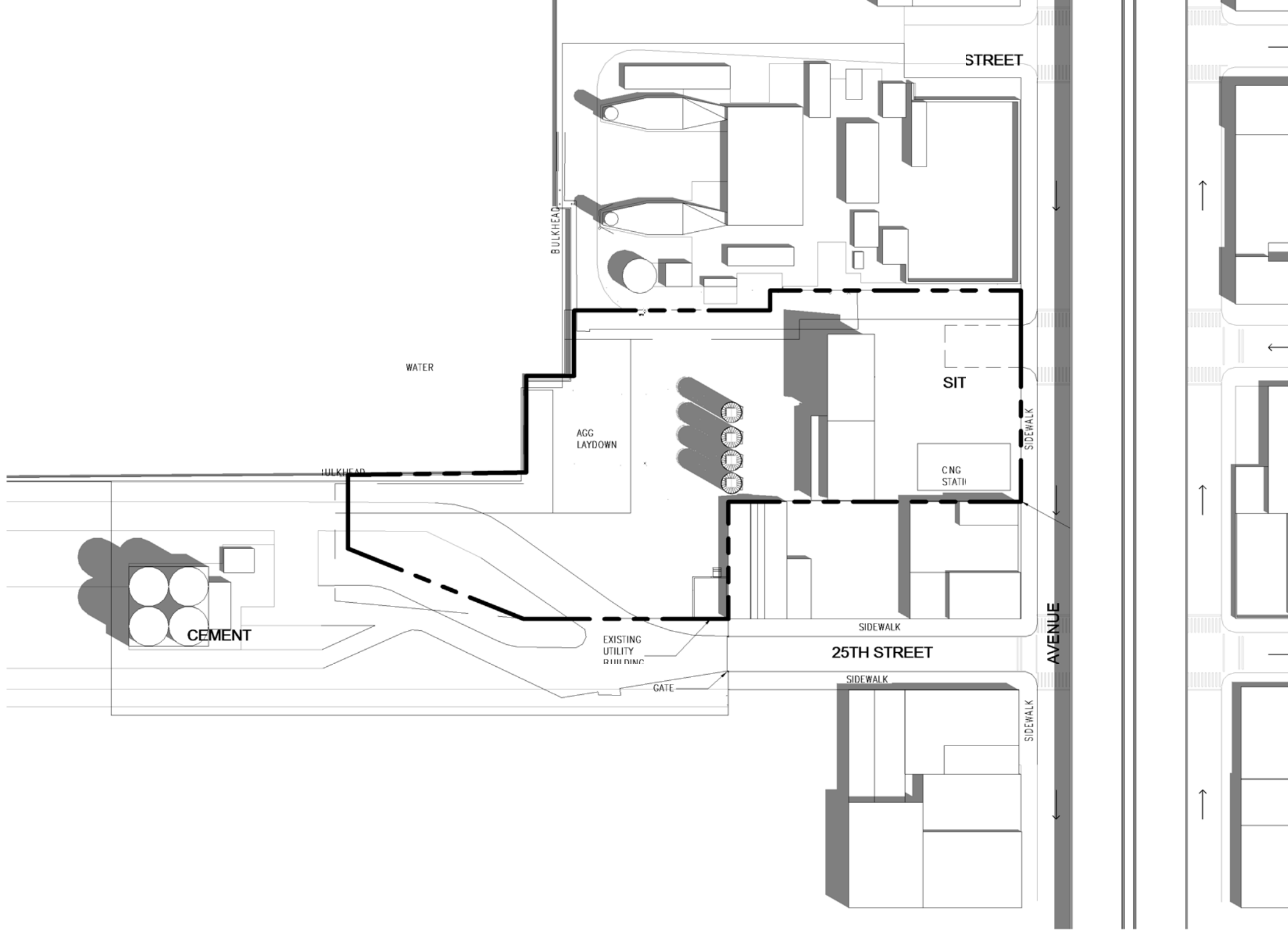

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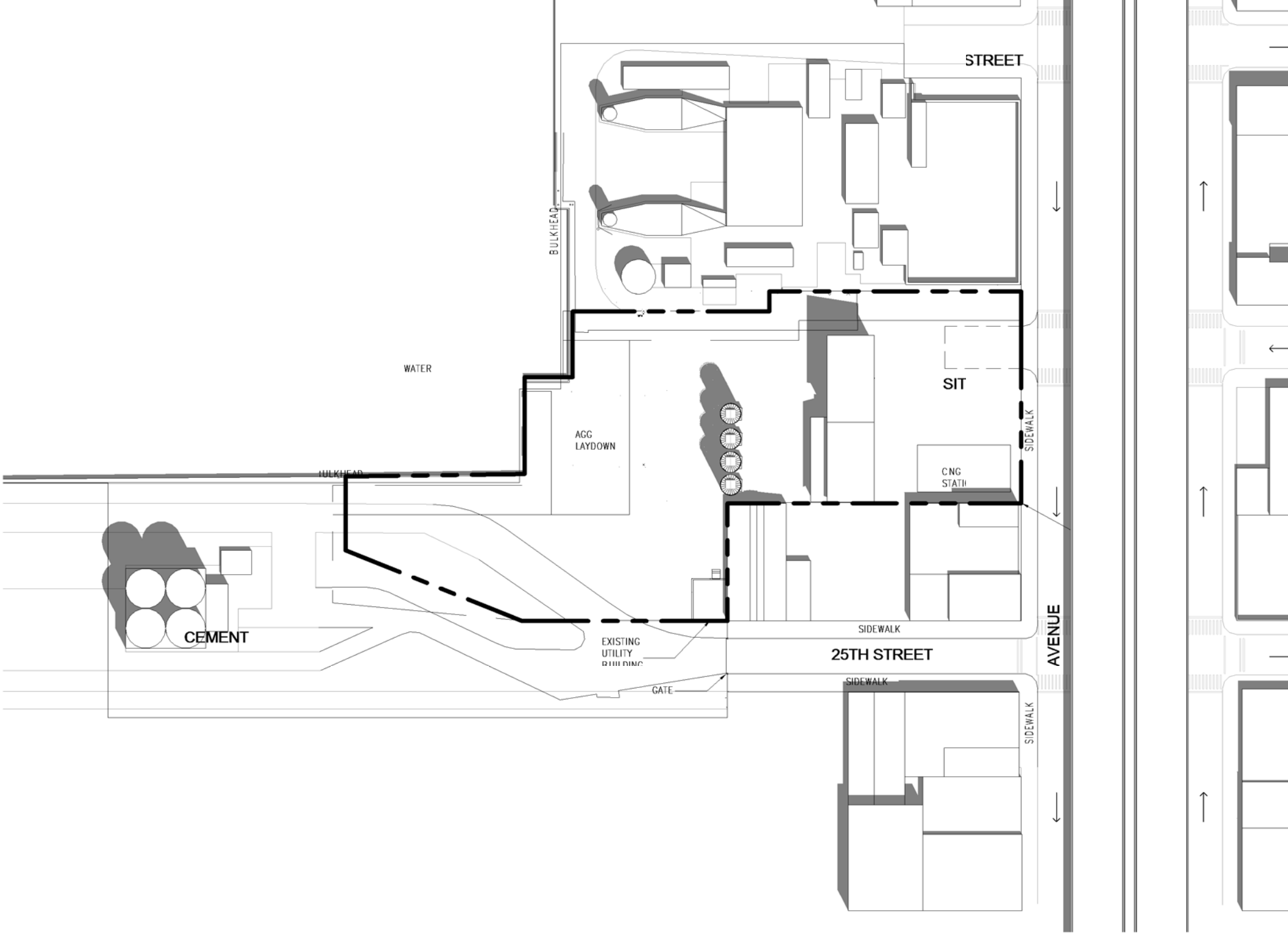

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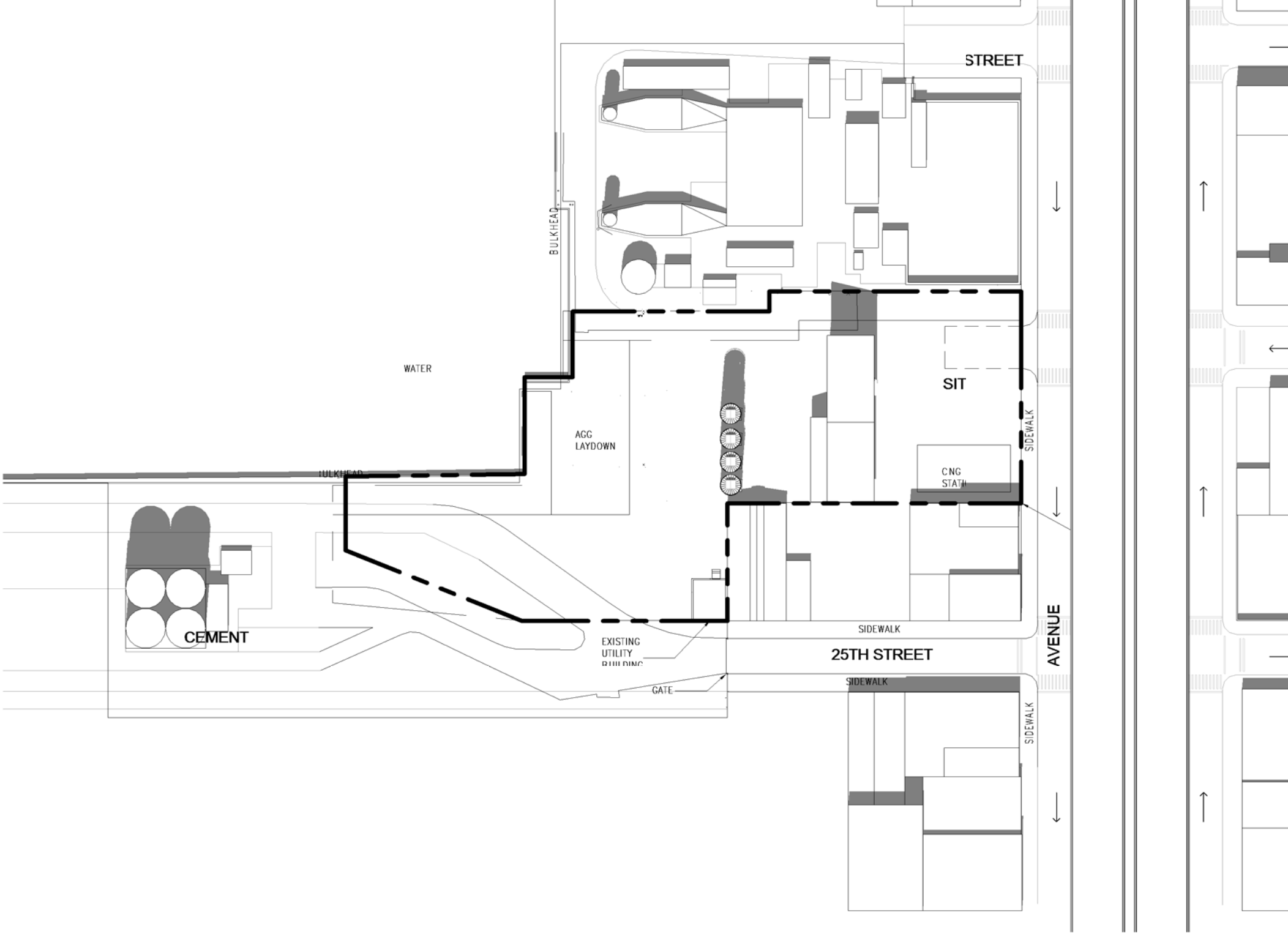

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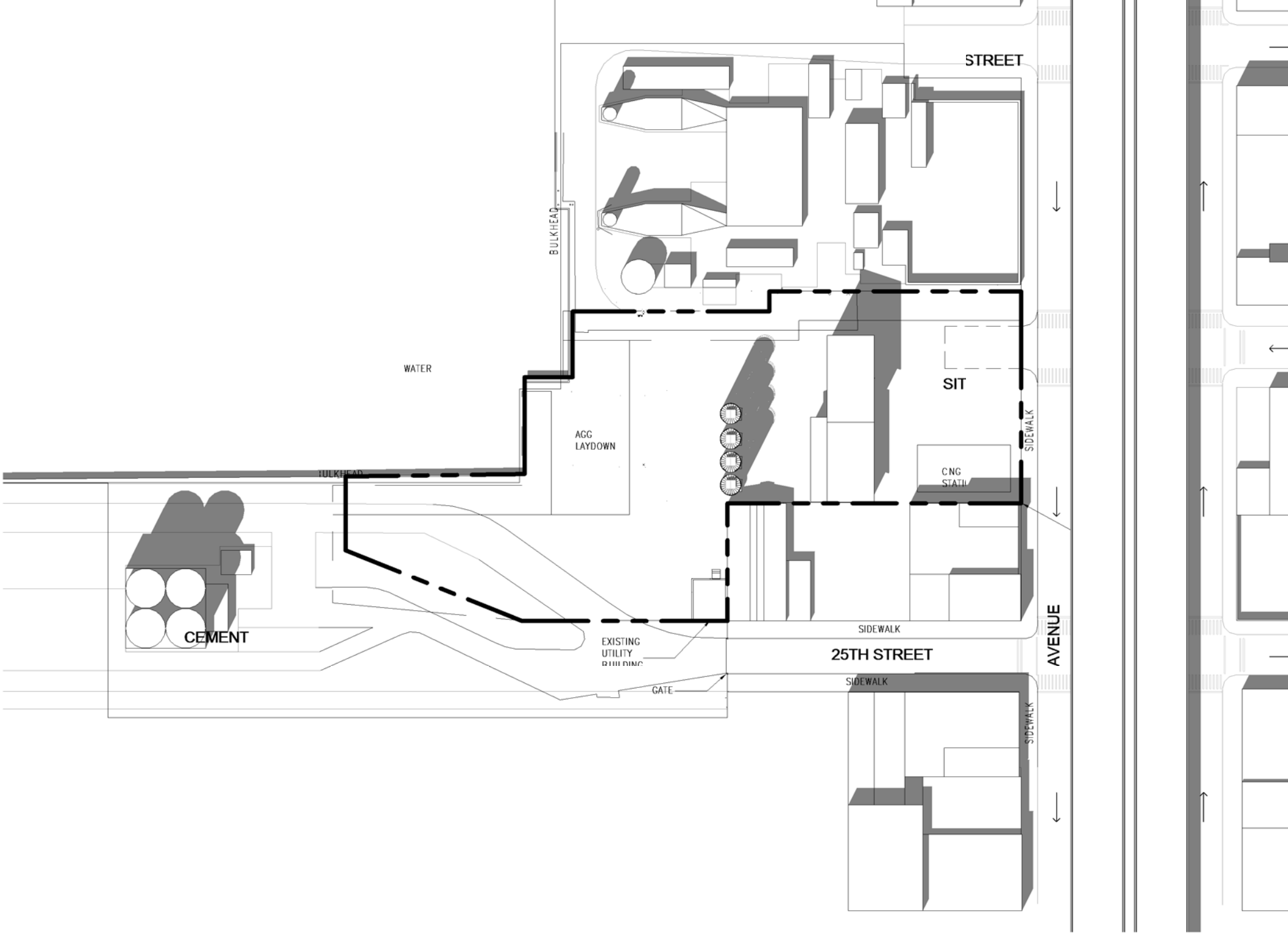

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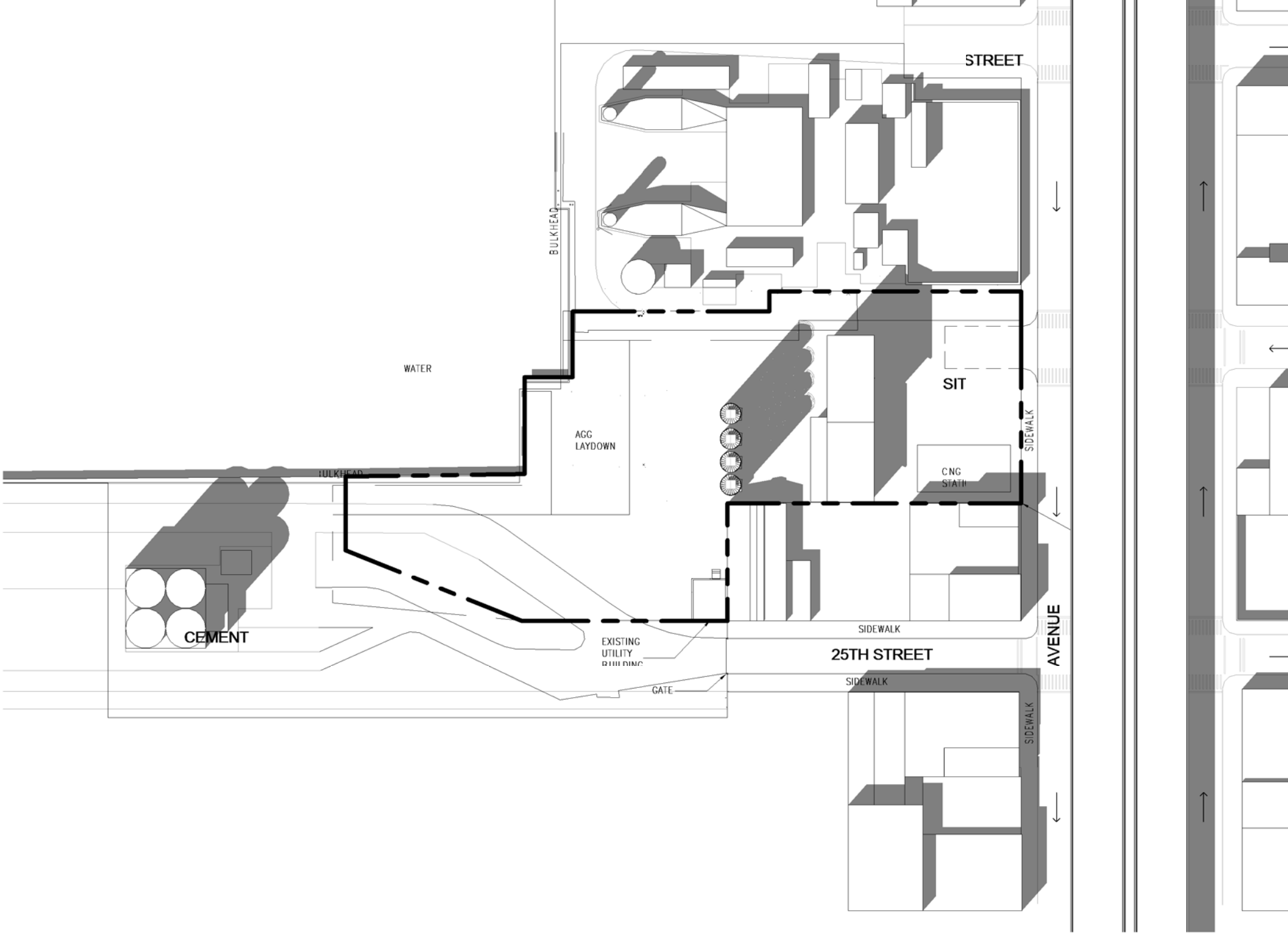

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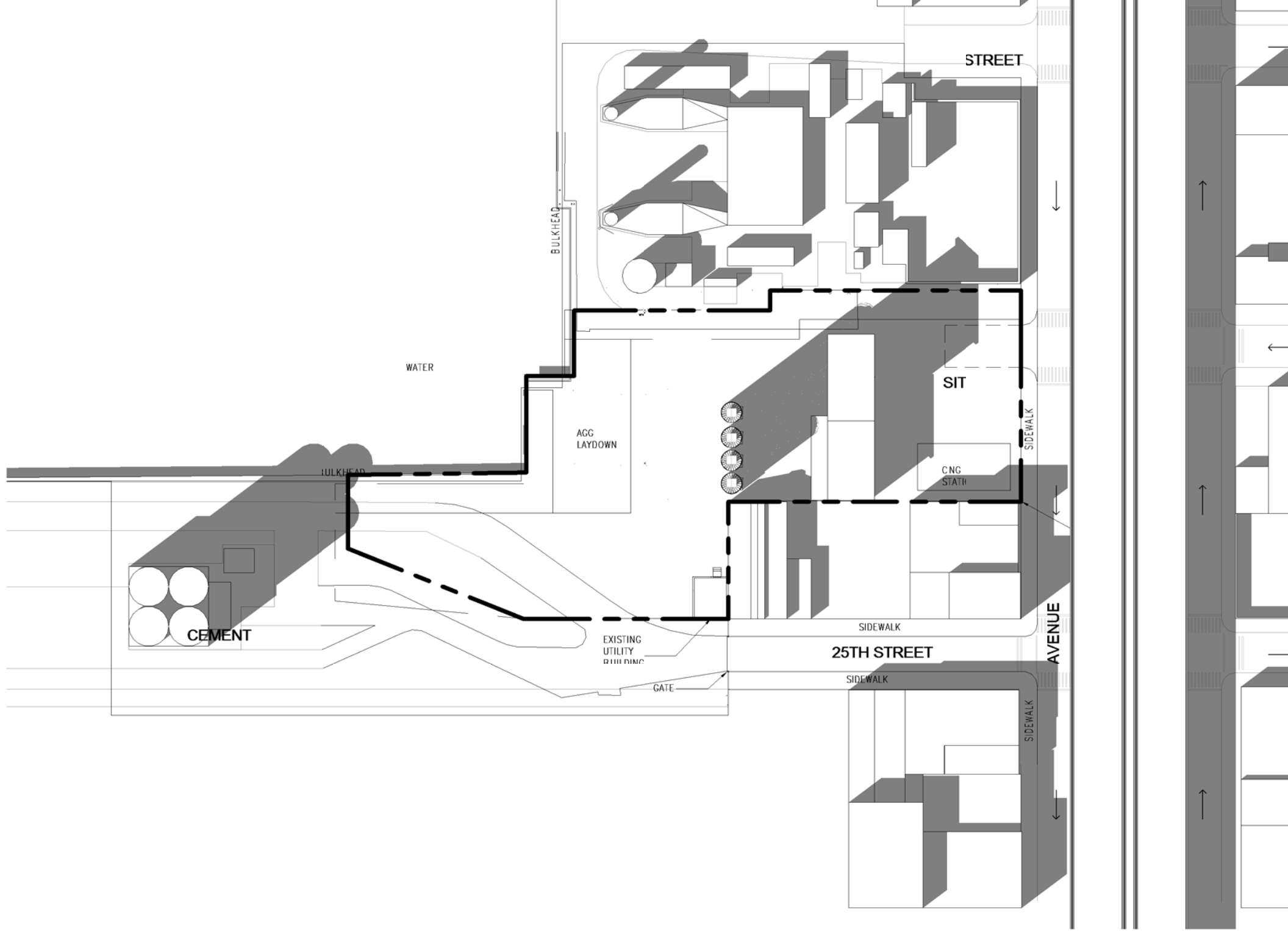

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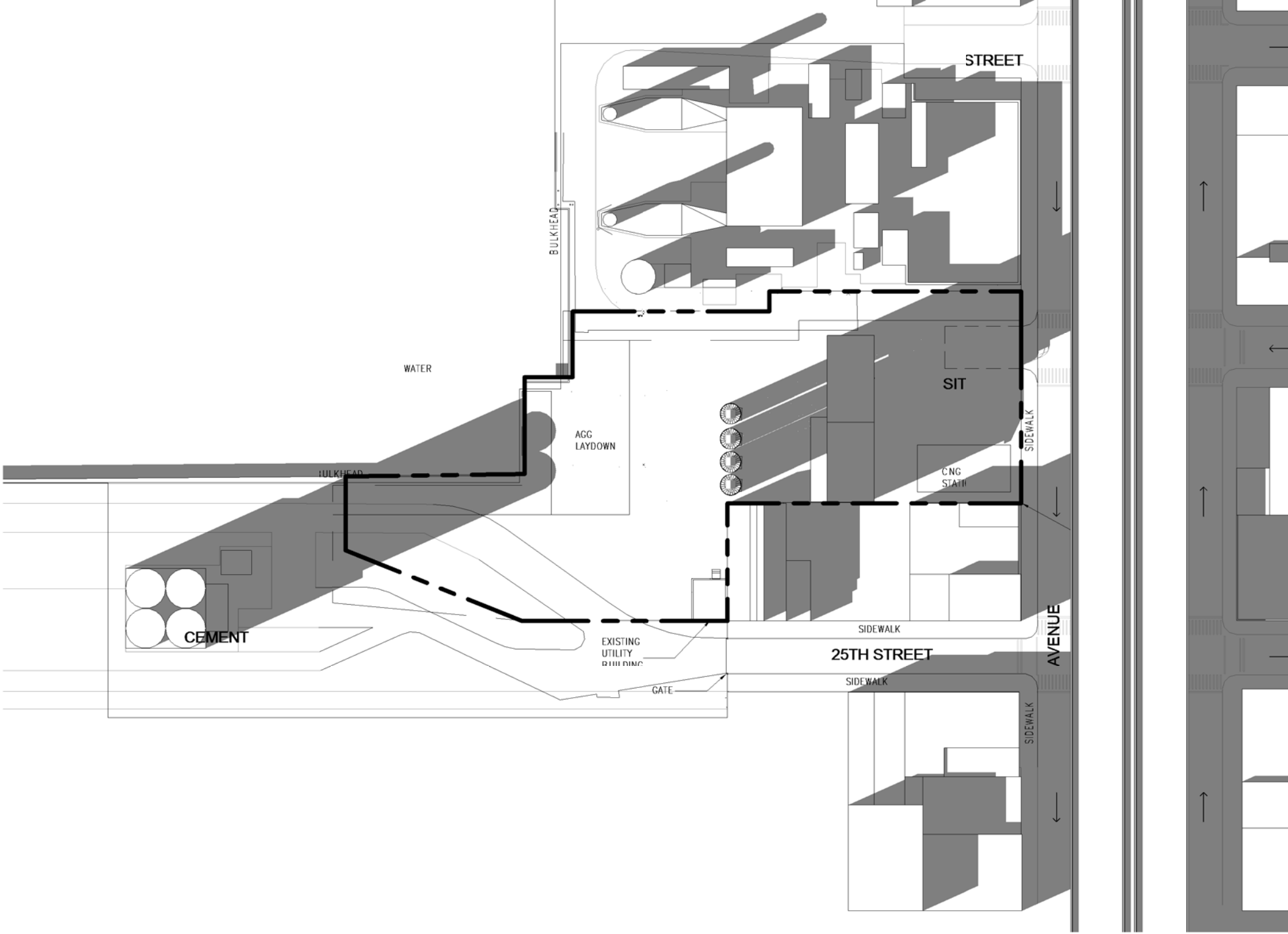

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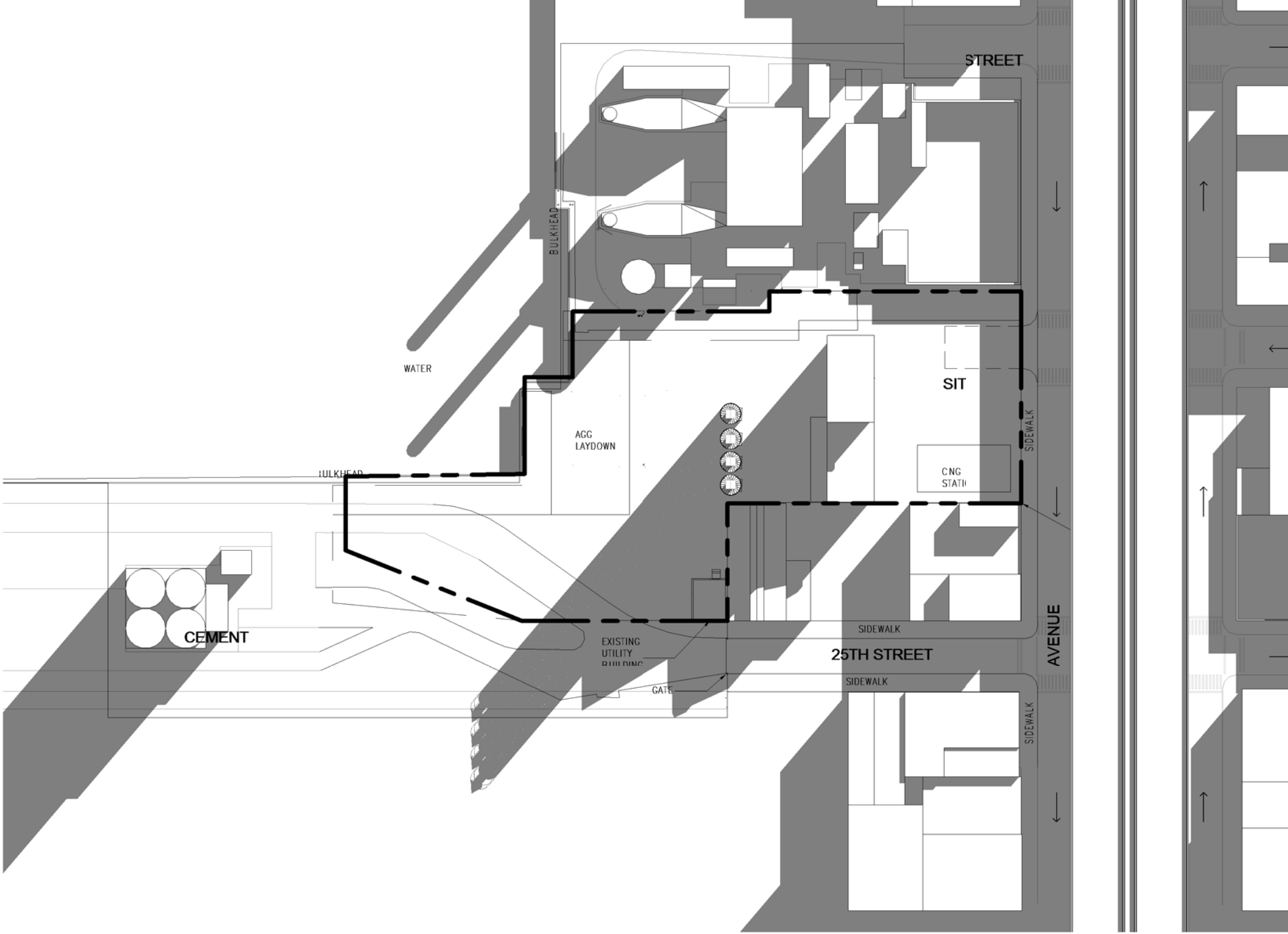

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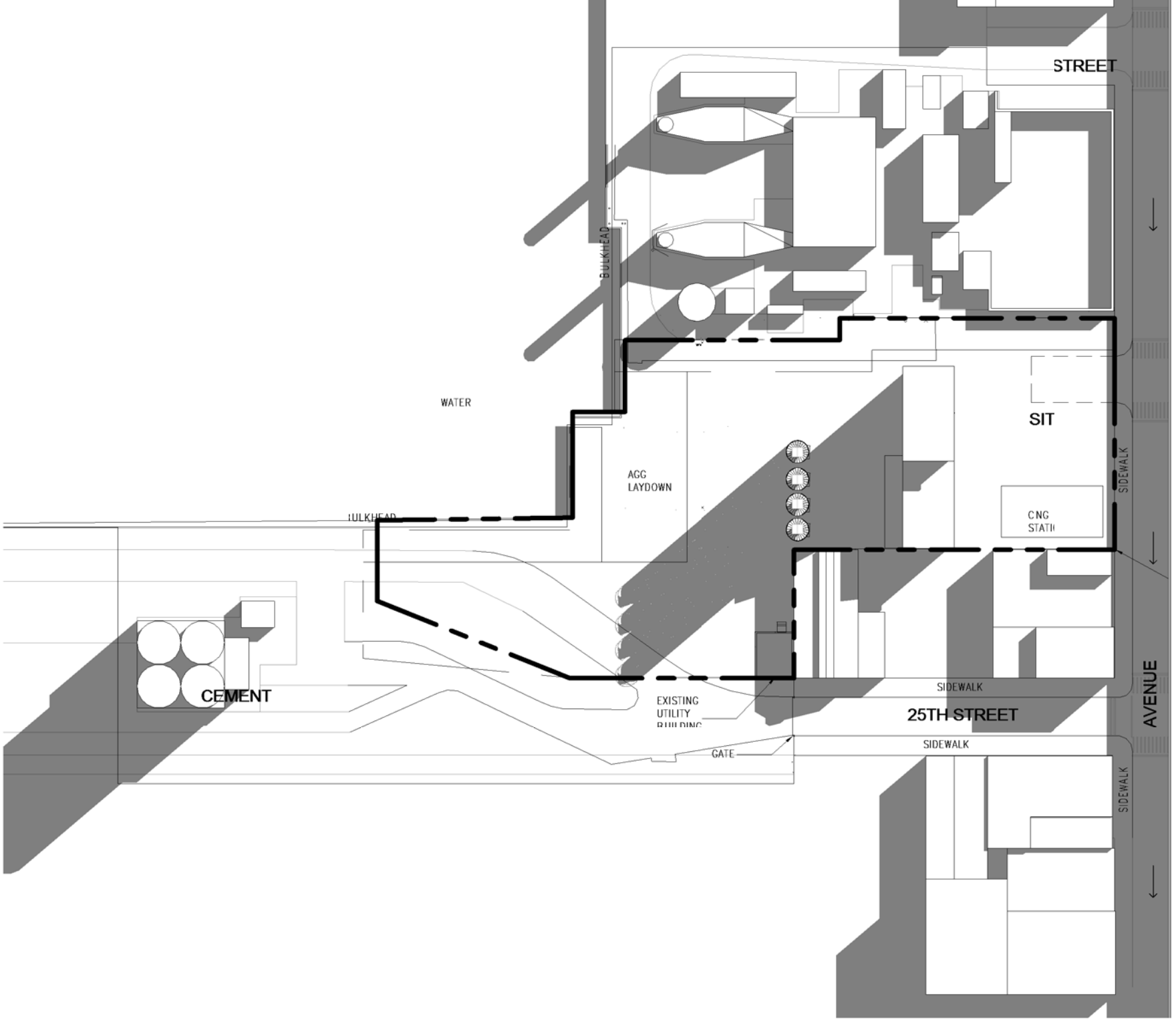

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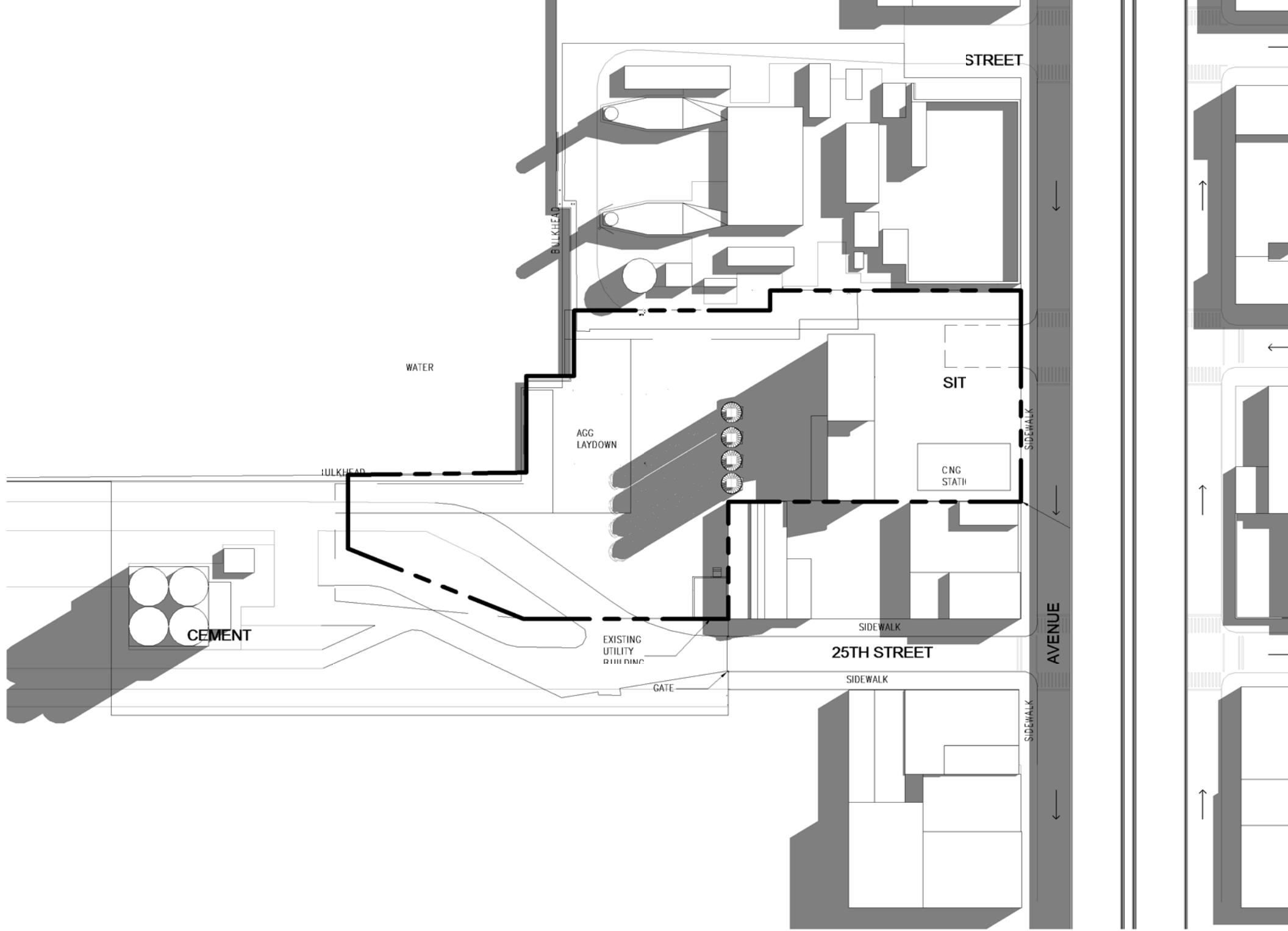

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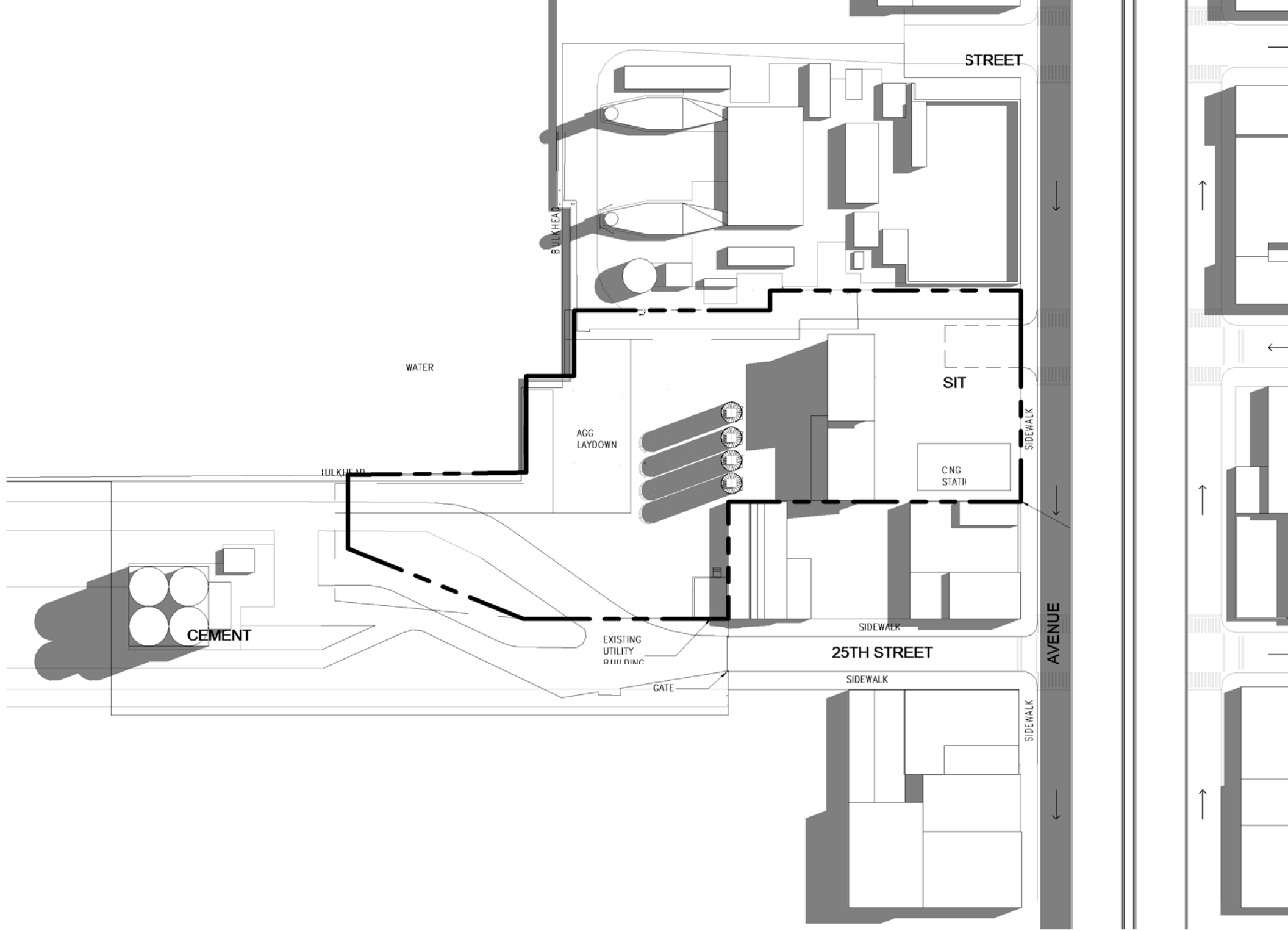

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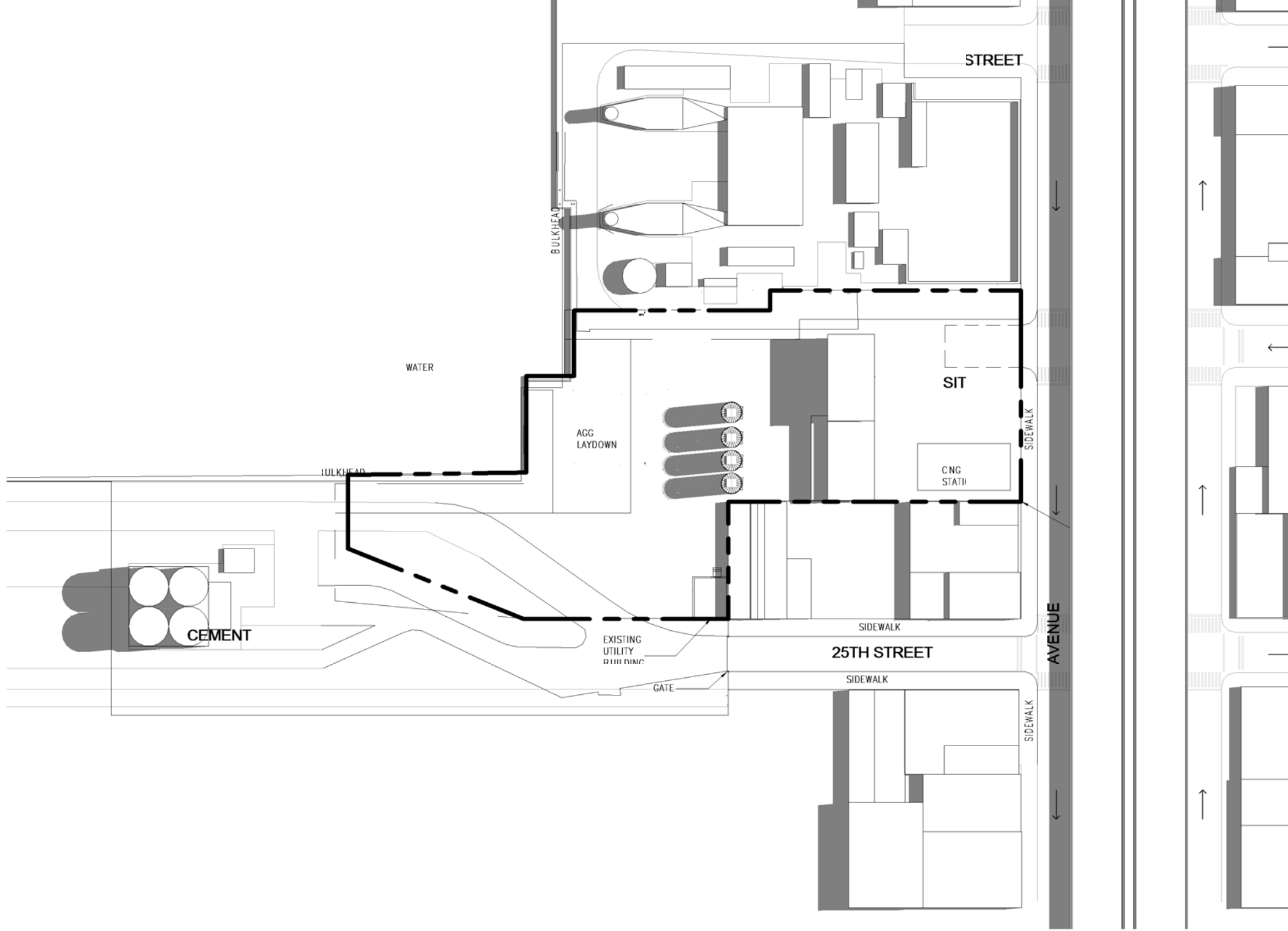

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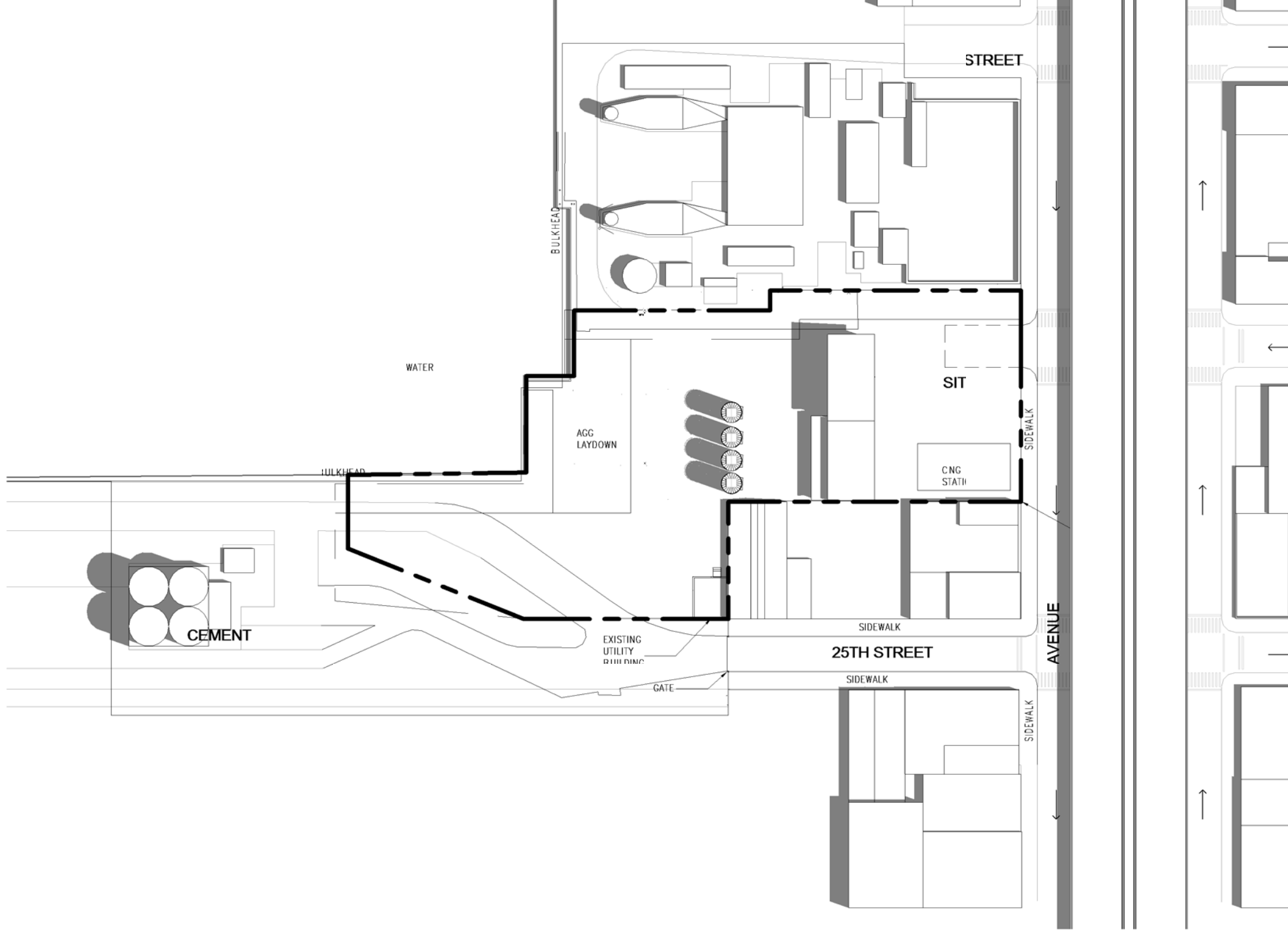

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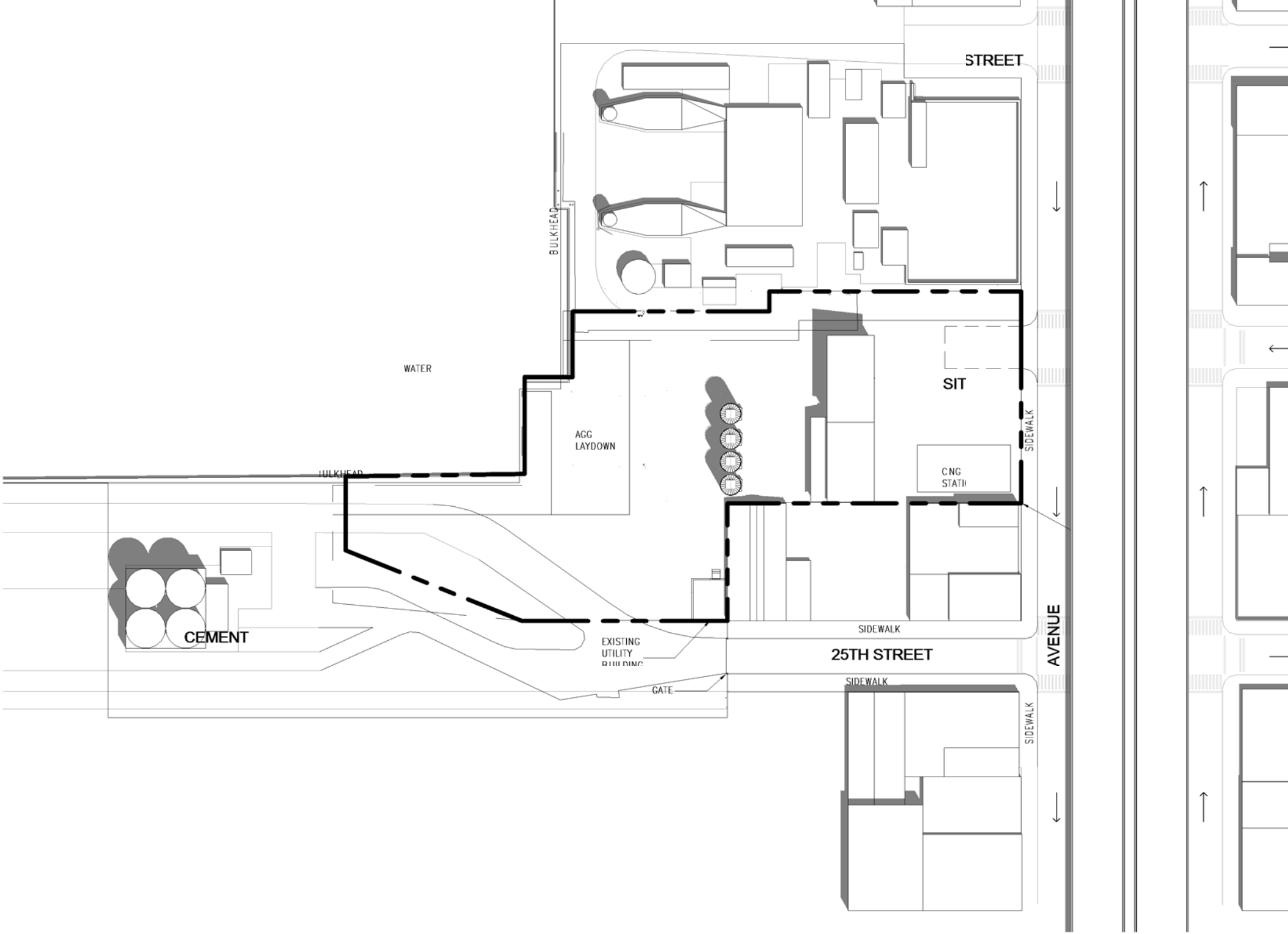

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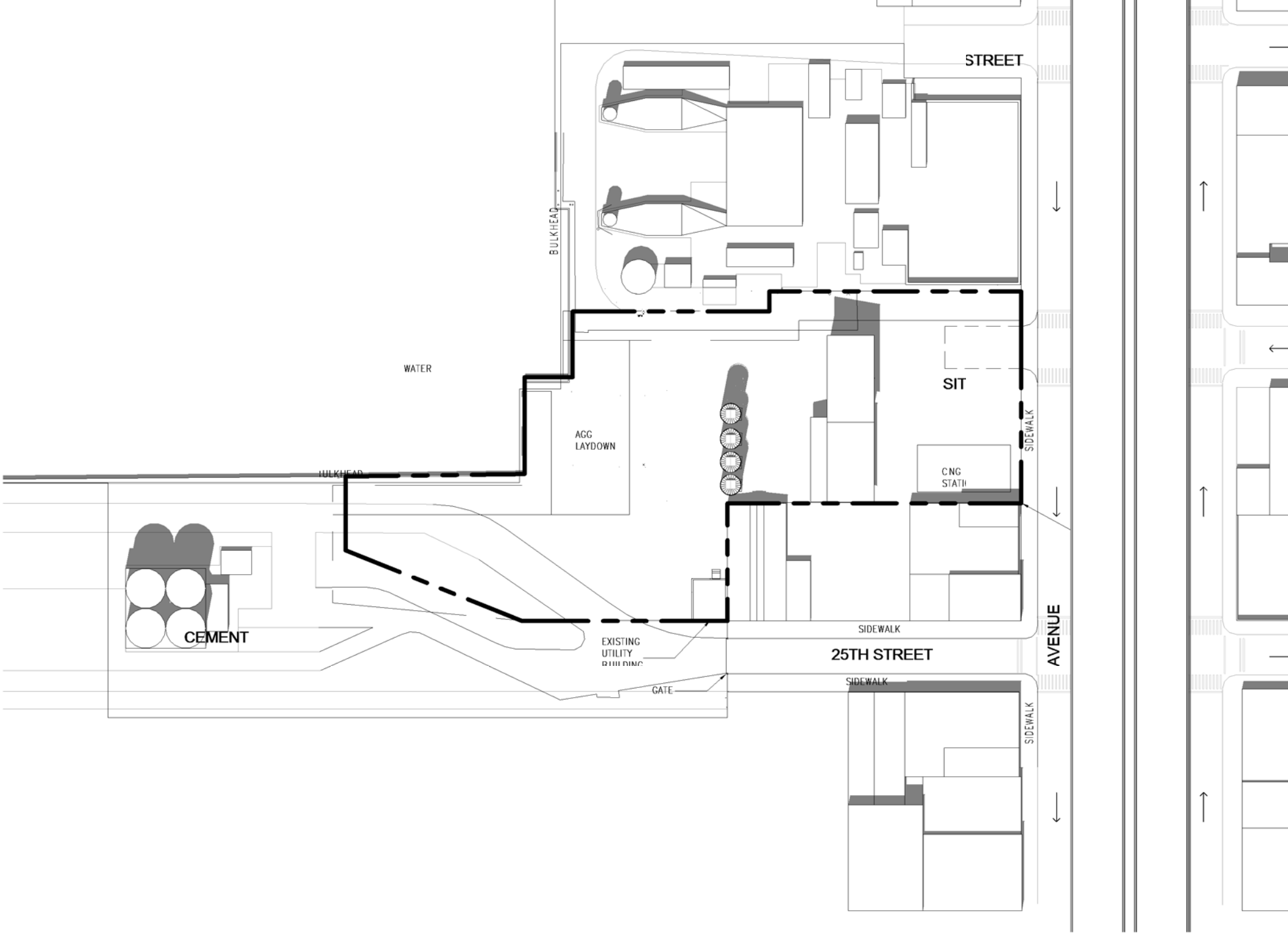

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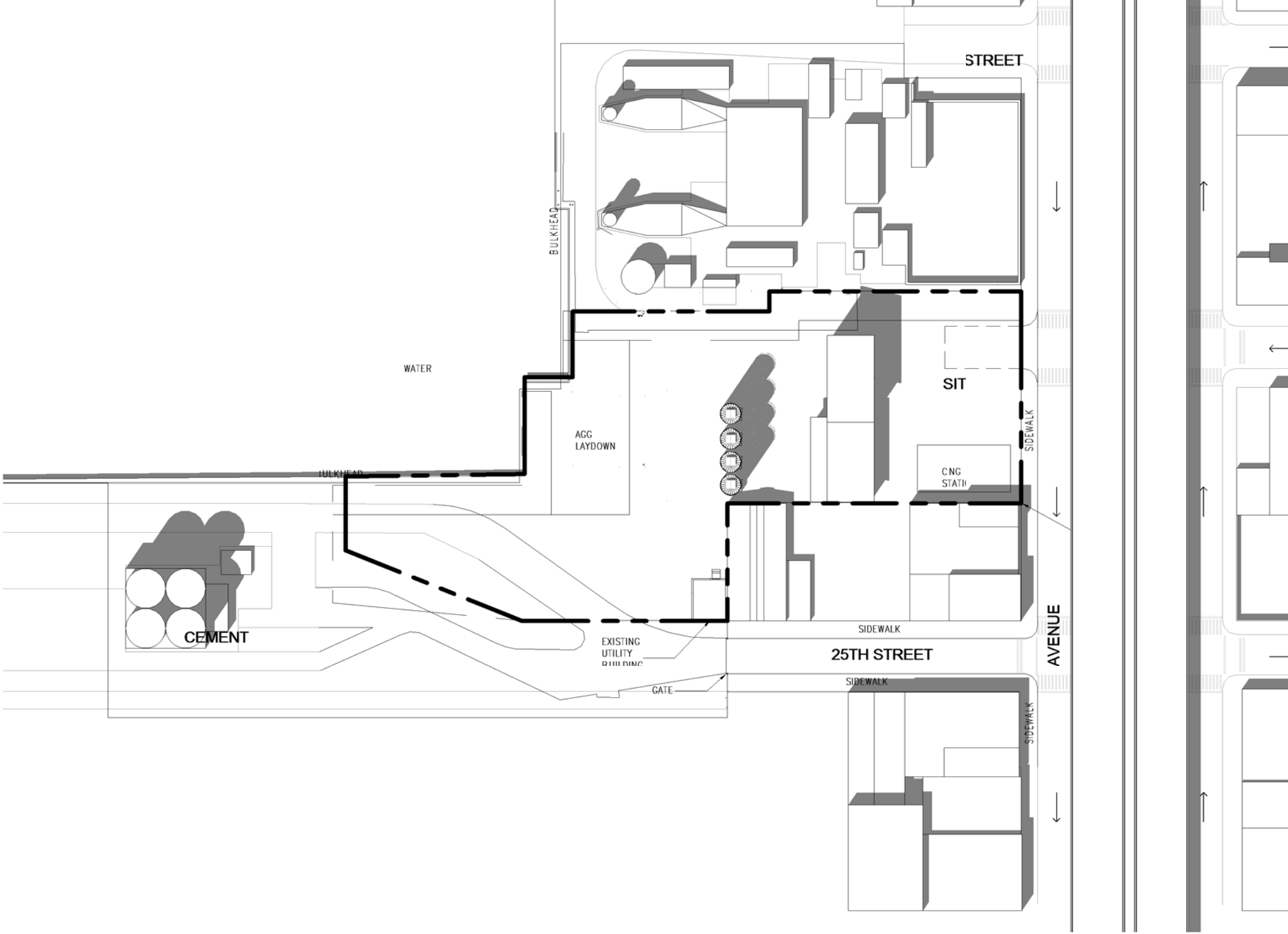

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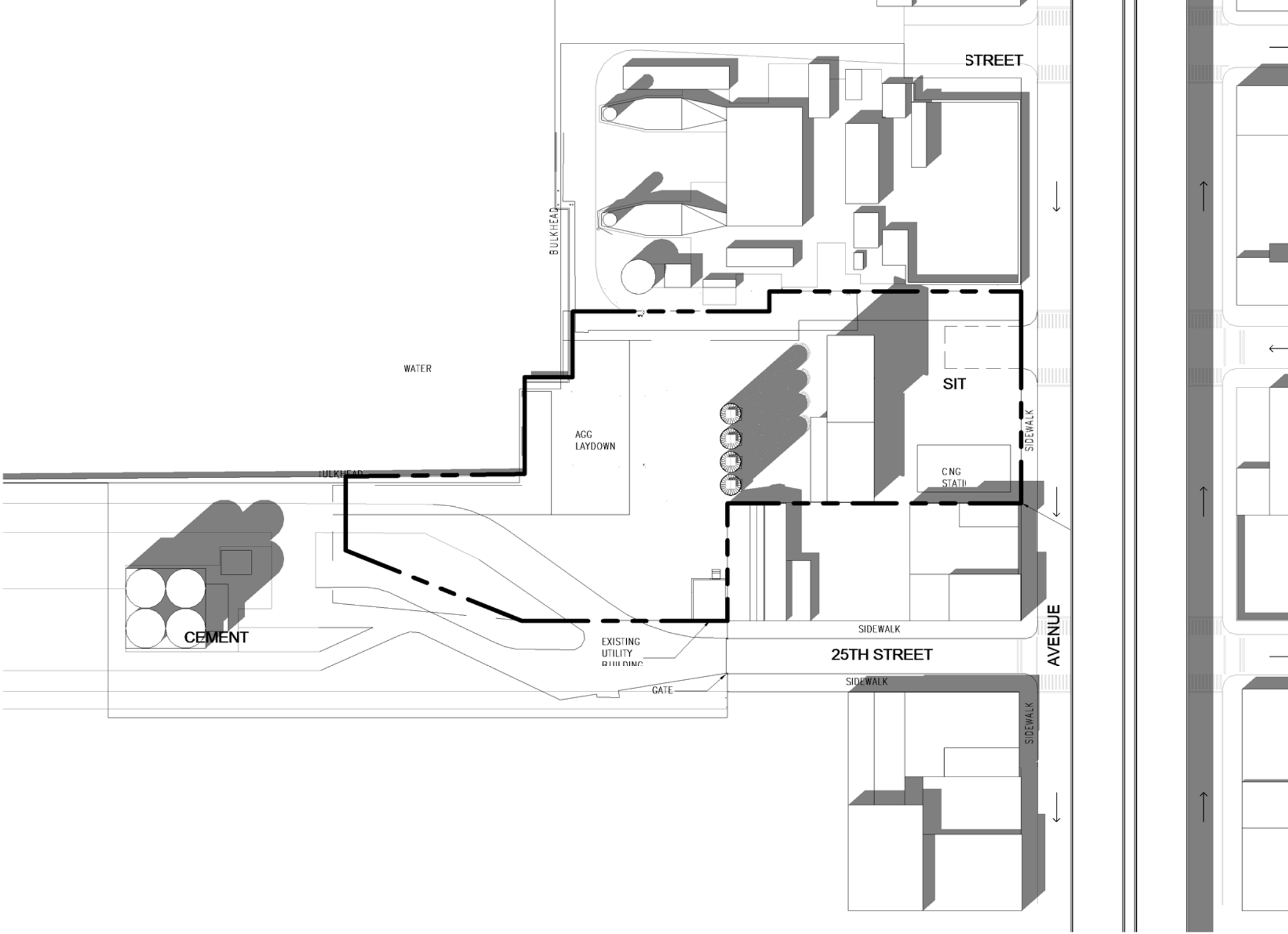

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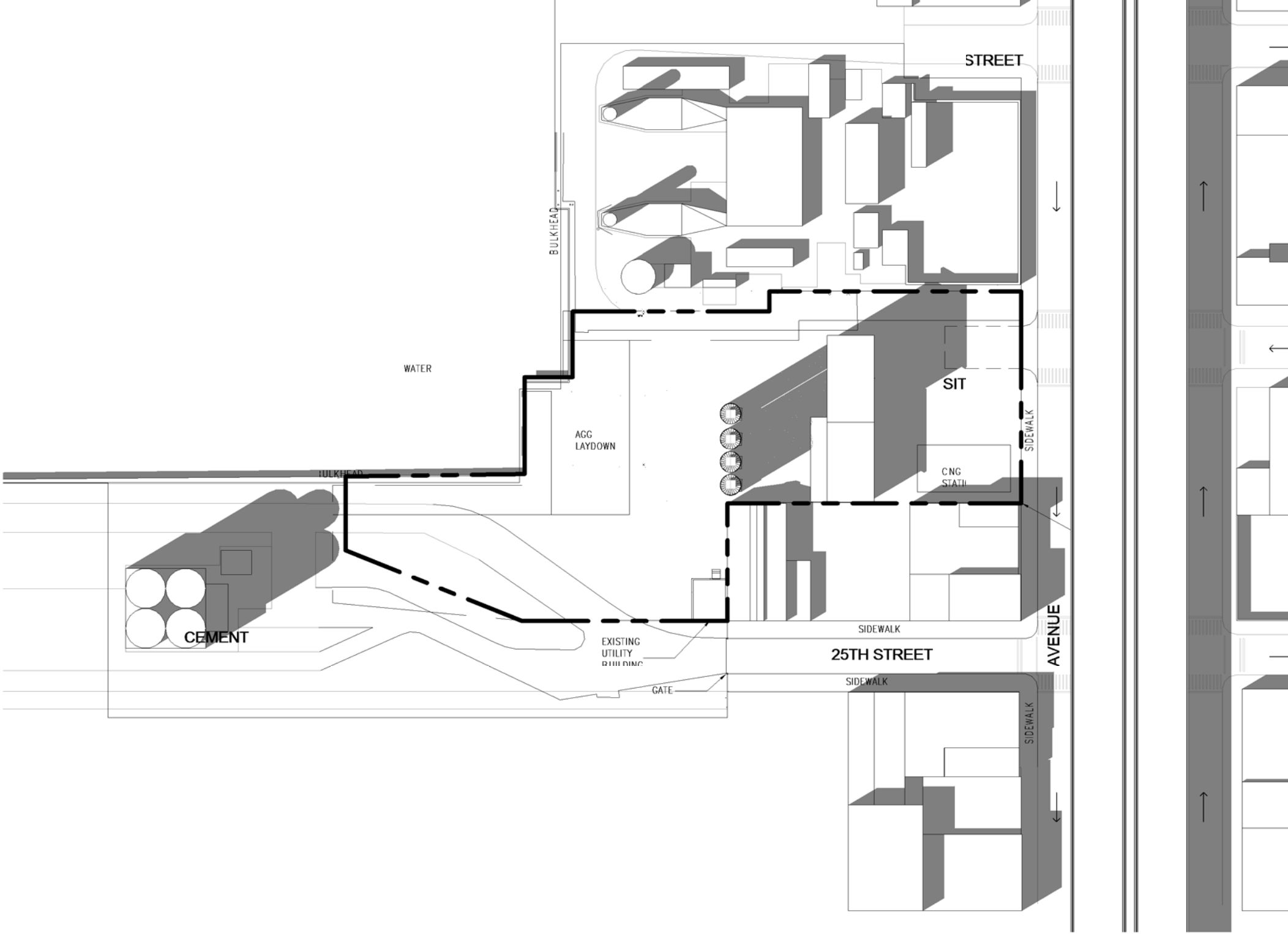

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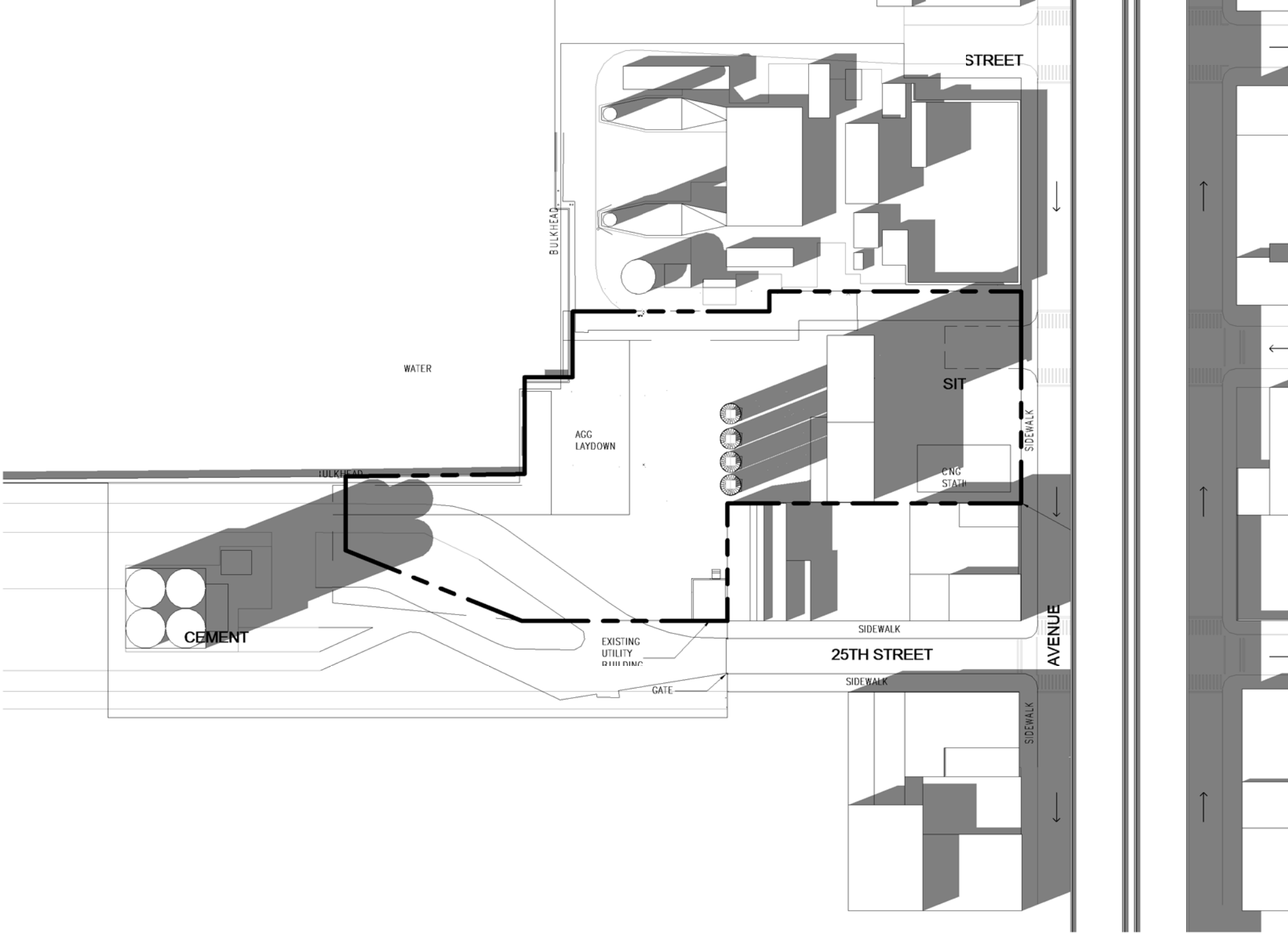

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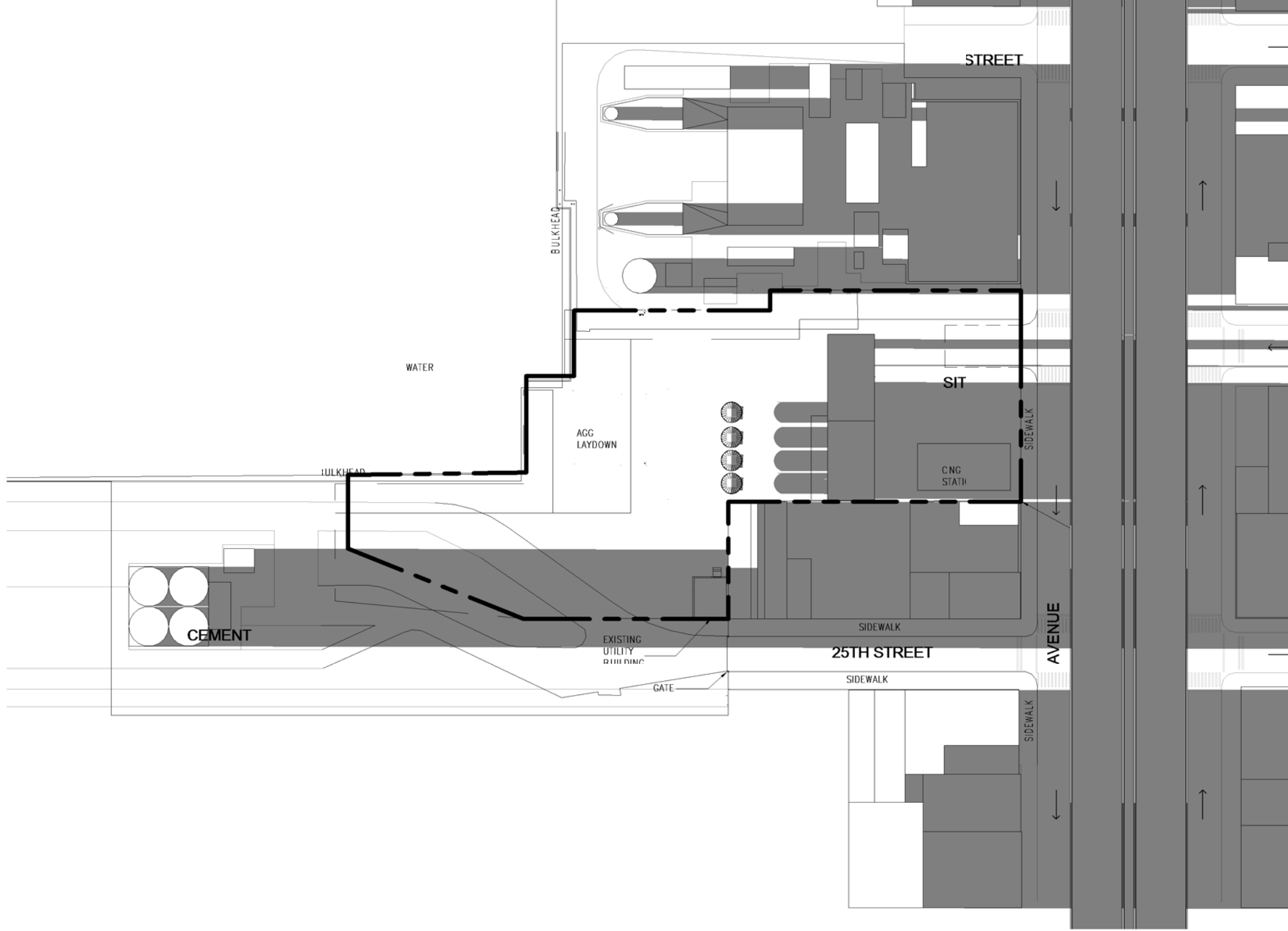

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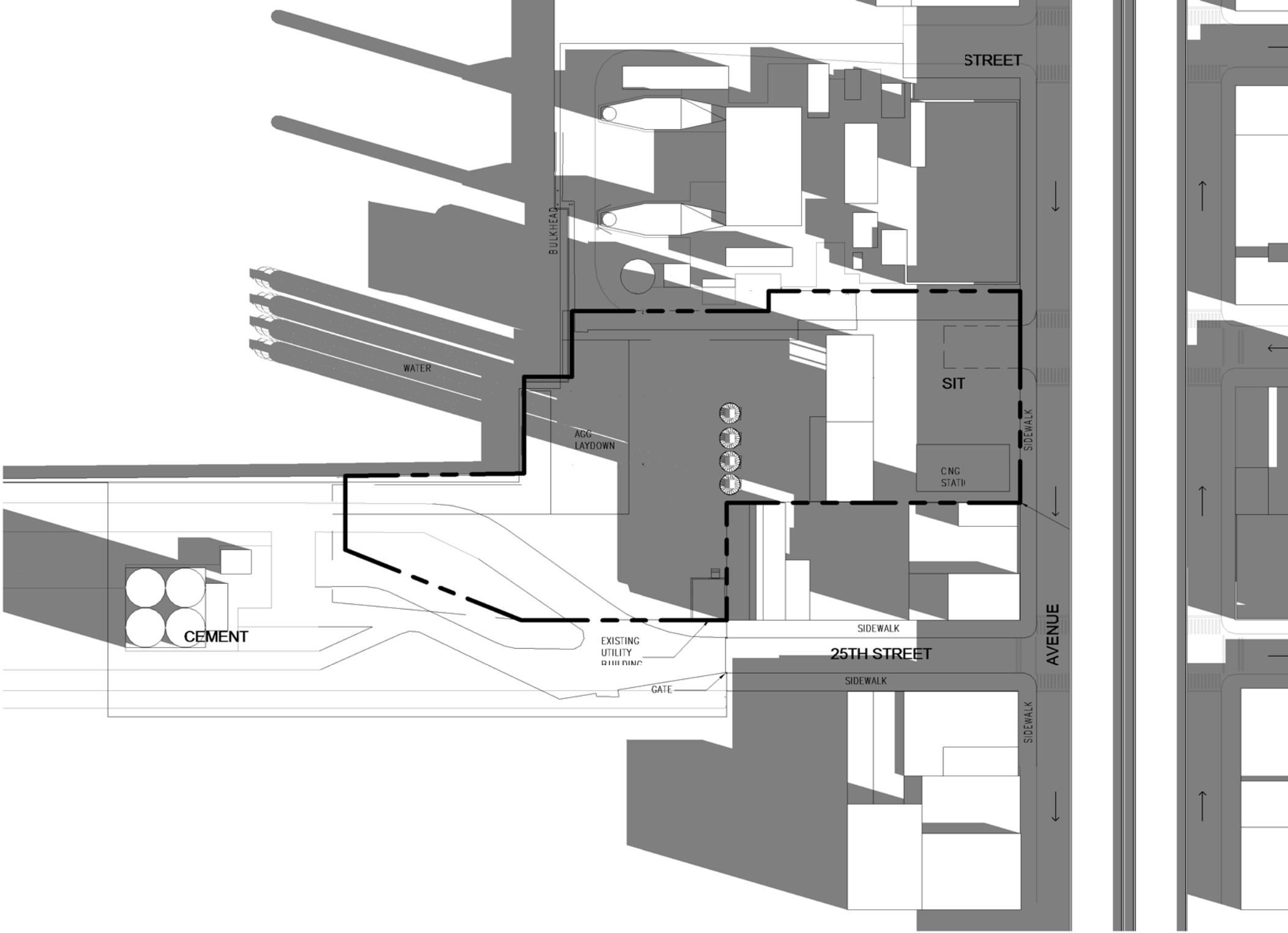

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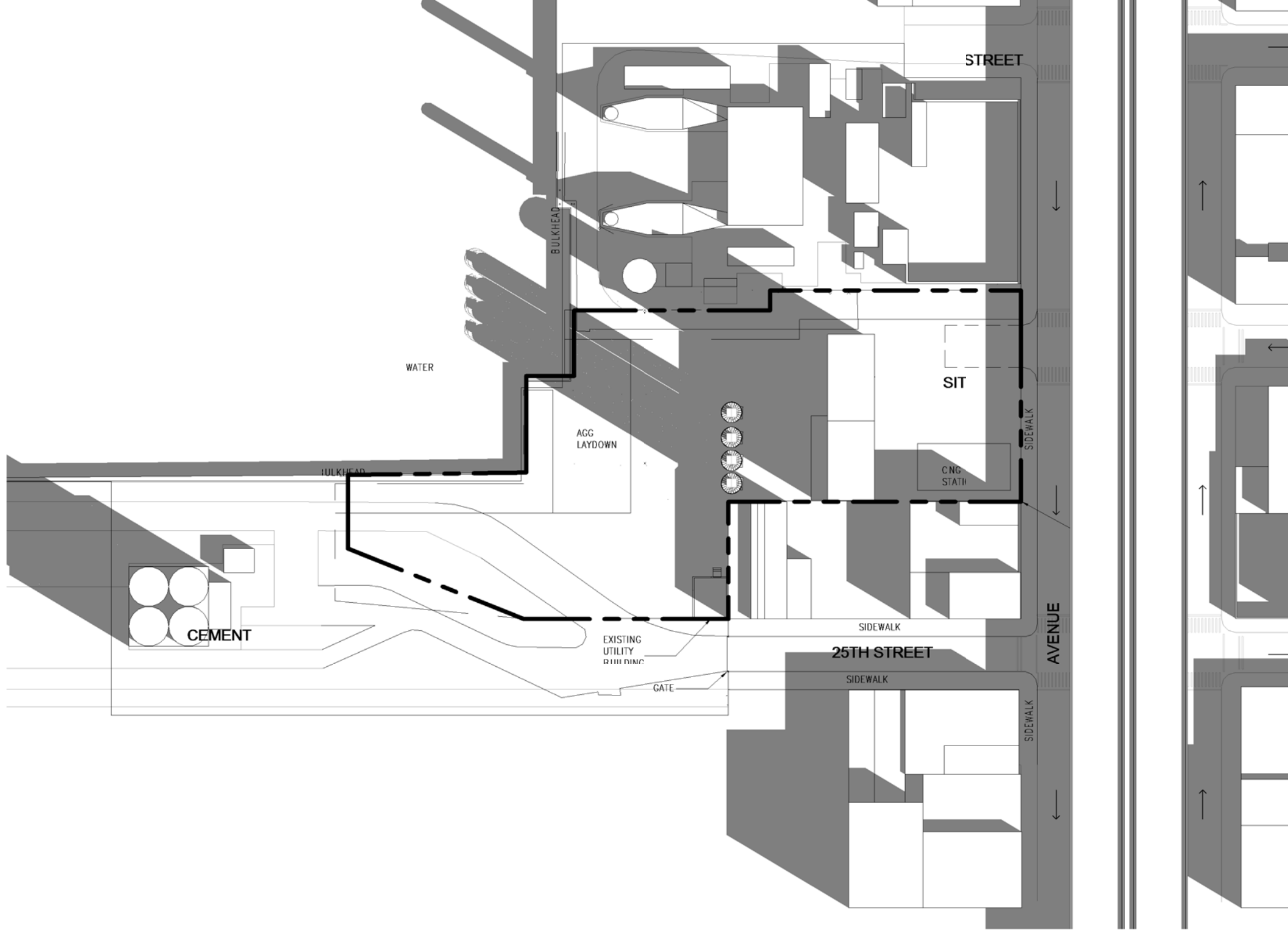

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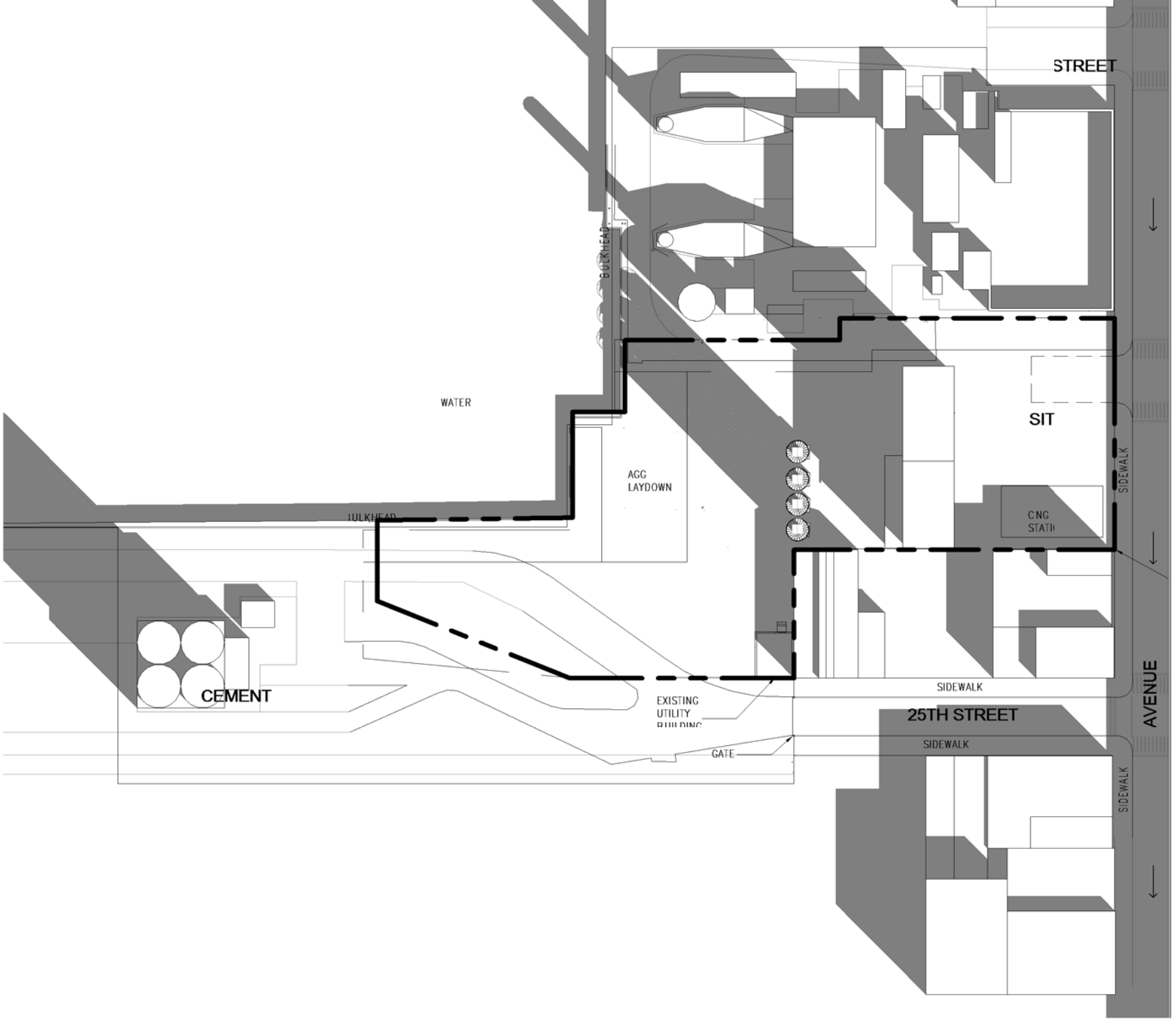

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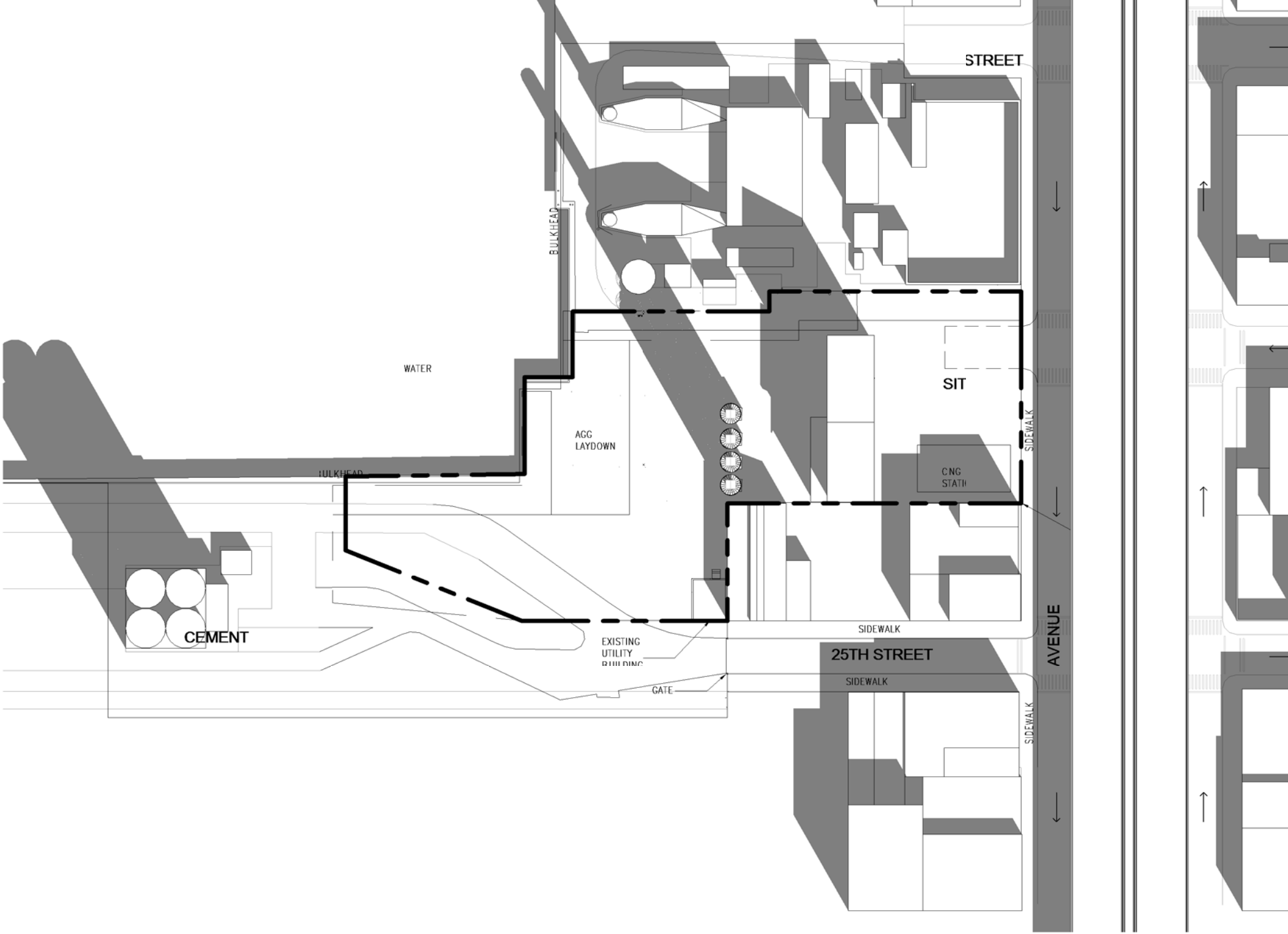

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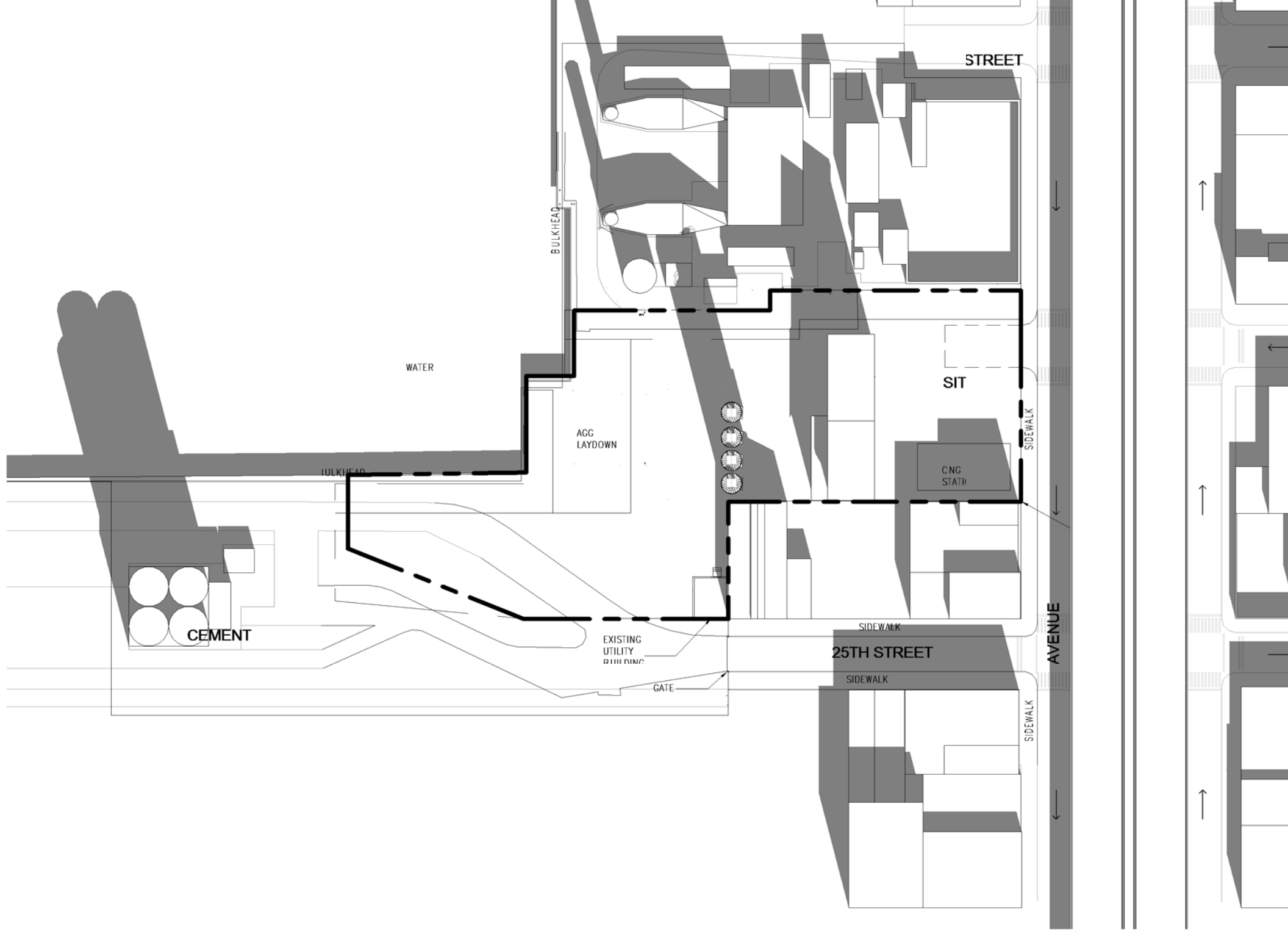

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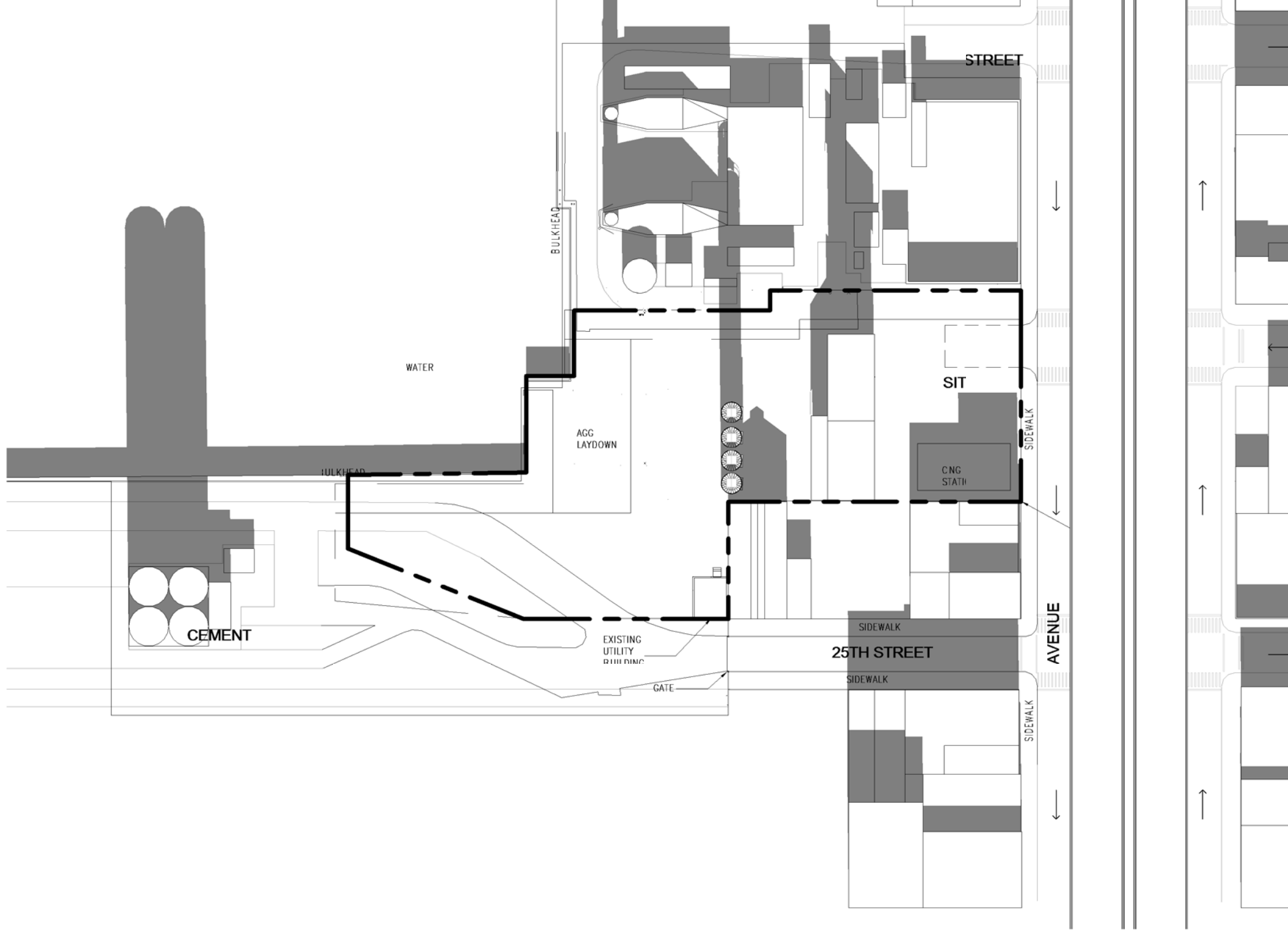

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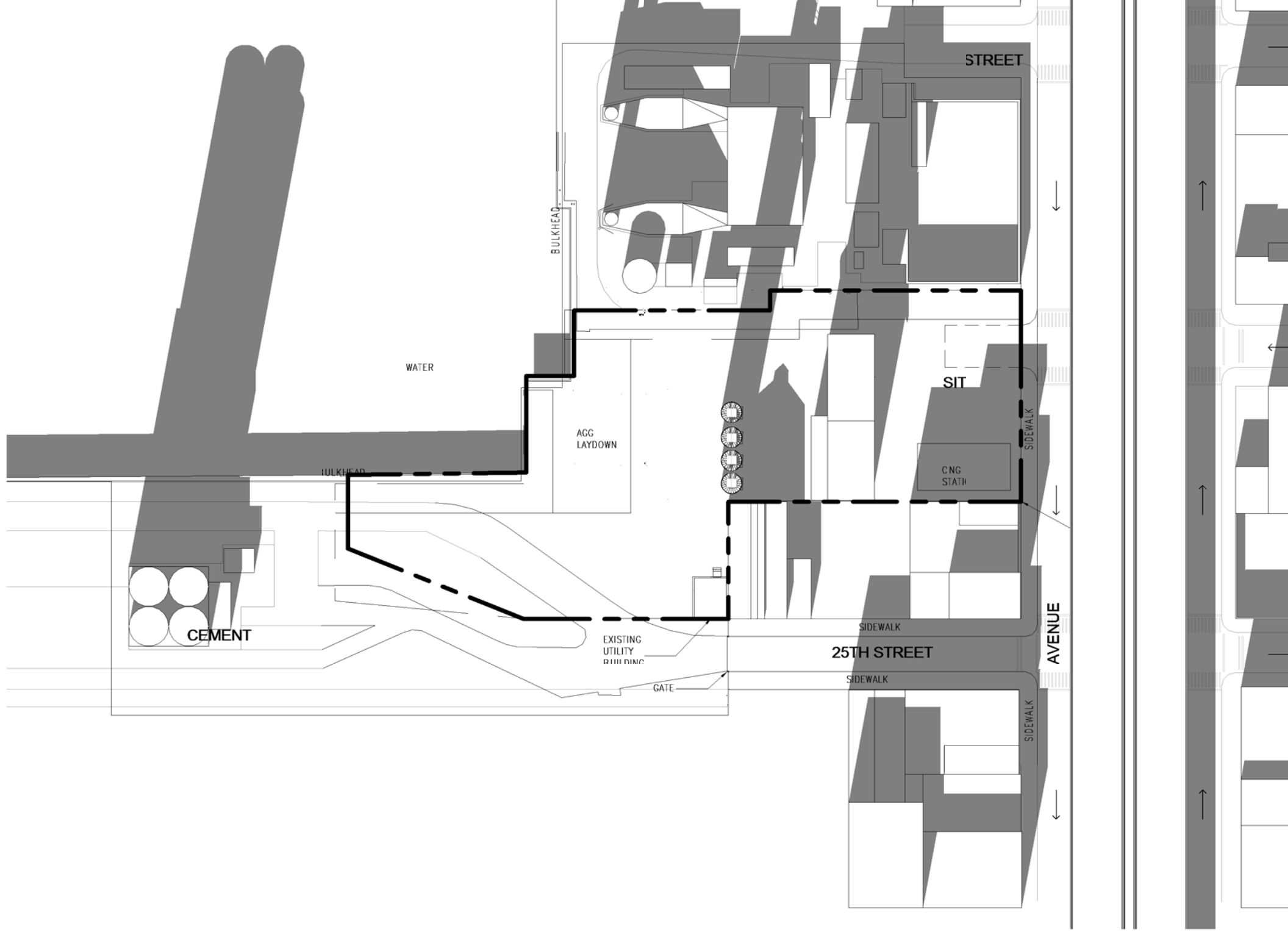

SHADOW STUDY
12/21 14:53

Appendix C:
Agency Correspondence

Environmental Protection

Emily Lloyd
Commissioner

Angela Licata
Deputy Commissioner of Sustainability

59-17 Junction Blvd.
Flushing, NY 11373

Tel. (718) 595-4398
Fax (718) 595-4479
alicata@dep.nyc.gov

October 27, 2014

Mr. Rob Holbrook
New York City Economic Development Corporation
110 William Street
New York, NY 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the Memorandum "Air Quality and Noise Proposed Assessment Methodologies and Assumptions" dated October 3, 2014 prepared by AECOM on behalf of Ferrara Bros. Materials Corp. (applicant) for the above referenced project. It is our understanding that the proposed project would lead to the relocation of the Ferrara Bros. Building Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier.

Per EDC request (15SBS003K-11-20102014121034) we have reviewed mentioned above Memorandum and have the following comments/recommendations:

Air Quality:

- The consultant should detailed in the Protocol the trip generation, the equipment list, emission factors, hours of operation, any emission controls and their credits for concrete batching plant and compressed NG station operations. Please document the trip generation, and state whether the data were approved by DOT or they are preliminary estimated.

- The consultant should provide description of the Protocol the No-Action and Action conditions.

Mobile Sources:

- The consultant assumed only the screening equivalent is needed for CO and PM2.5 assessment. These screening analyses should be included in the Protocol.

- The consultant should discuss in the Protocol concrete trucks queuing and idling and how their emissions are affected.

Stationary Sources:

- Please provide a table of equipment and process and clarify their associated emissions. The description in the Protocol too broad to identify all the emission sources that should be modeled. For example, it is not clear that barges unload operation and on-site wind erosion emissions are considered.

- The consultant should be note that permit conditions should be used to determine the short term and annual conditions for AQ modeling purposes.

- The consultant stated on p. 4 that base on low vehicles speed on site (less than 5 miles per hour), the PM2.5 component from paved surface dust emissions would be negligible. This approach would be appropriate for on-site truck movement. The loader(s) operations should include the PM2.5 component because it operation area should be considered as unpaved surface as result of loading material lost.

- The consultant should use Chapter 11.12 of the AP-42 for concrete plan processes emission calculations.

Noise:

Mobile sources:

- The consultant should include the passenger car equivalent (PCE) screening analysis to support the conclusion that the proposed project would not double the existing PCE values.

Stationary sources:

- The consultant should identify the closest noise sensitive receptors and show them on a map.
- The consultant should specify in the Protocol the height of monitor's placement above ground.
- The consultant should to follow the Chapter 331 CEQR TM for noise measurement procedures. In particular the following noise levels should be recorded from the noise meter: Lmax, Lmin, L1, L10, L50, L90, and Leq(1), not just Leq(1) as it proposed on p. 4 of the Protocol.
- The consultant should state in the Protocol that the traffic count results and noise measurement log will be provided.

If you have any questions, you may contact Mr. Alex Popov at (718) 595-4031.

Sincerely,

Chung Chan,
Director
Air Quality and Noise Review and Planning

NYC Environmental Protection

Emily Lloyd
Commissioner

Angela Licata
Deputy Commissioner of Sustainability

59-17 Junction Blvd.
Flushing, NY 11373

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alicata@dep.nyc.gov

January 16, 2015

Mr. Rob Holbrook
New York City Economic Development Corporation
110 William Street
New York, NY 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the "Air Quality Impact Analysis Protocol" dated December 2014. It is our understanding that the proposed project would lead to the relocation of the Ferrara Bros. Building Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier.

Per EDC request (15SBS003K-12-22122014121202) we have reviewed mentioned above Protocol. It seems that the consultant didn't fully addressed DEP October 27, 2014 comments on Air Quality section of Memorandum dated October 3, 2014. We have the following comments/recommendations:

Air Quality:

- On page 4 of the Memorandum dated October 3, 2014 was stated NO_2, SO_2 and air toxic pollutants will be considered. This is no longer the case with the AQ Impact Analysis Protocol dated December 2014. Please explain why these pollutants are removed.

- The consultant should detail the equipment used in the material handling process by in Table 1.

- As commented in the previous DEP Memorandum dated October 27, 2014, the consultant should document the trip generation and state whether the data were approved by DOT.

- As commented in the previous DEP Memorandum, the consultant should discuss in the Protocol concrete trucks queuing and idling and how their emissions are affected

- The consultant should provide description of the proposed project. Specifically, the description should include the flow of the on-site trucks and process materials. In addition, please specify if the project site would remain to be vacant in absence the proposed project. Figure 1 seems to provide some of the information, but it should be more legible.

Stationary Sources:

- Please provide a table detailing the on-site equipment and their associated process information (usage, engine load, emission controls, etc.), and associated emission factors. The description provided on p. 4 the Protocol is too general.

- The consultant should clarify the usage the project heat and hot water boiler(s) as well as process boiler(s) and emergency generator(s), if any. If they are the part of project, their emissions should consider in AQ analysis.

- As previously mentioned, the consultant should use the capacity of the proposed facility to determine the short term and annual conditions for AQ modeling purposes. If conditions are below the facility capacity, they should be listed as enforceable permit restrictions.

- In addition to the concrete plan processes emissions, all batch plant fugitive sources should be modeled (the emission factor are referenced in the Table 11.12-1of AP-42).

- The consultant stated on p. 5 and p. 6 that the loader and trucks will be moving on unpaved surface with speed less than 5 miles per hour. As such, the loader(s) and trucks operations should include the PM2.5 component because it operation area should be considered as unpaved surface as result of loading material lost.

- The consultant should use load bucket coefficient in loader emission calculations.

- Emission control strategies provided on p. 6 are very general. Please provide detailed fugitive dust control plan in the Protocol and document their control efficiencies if they are used to reduce the emissions in the AQ modeling.

- The consultant should provide the worksheet showing detailed emission estimates and assumptions and specific references as stated on p. 6.

Dispersion Modeling:

- The consultant should to follow the Chapter 322.2 CEQR TM (p. 17-36 to 17-40) for dispersion modeling procedures.
- The consultant should use the latest available five consecutive years of meteorological data.
- The consultant should identify sensitive receptors and show them on a scaled map.

If you have any questions, you may contact Mr. Alex Popov at (718) 595-4031.

Sincerely,

Chung Chan

Chung Chan,
Director
Air Quality and Noise Review and Planning

NYC Environmental Protection

Emily Lloyd
Commissioner

Angela Licata
Deputy Commissioner of Sustainability

59-17 Junction Blvd.
Flushing, NY 11373

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alicata@dep.nyc.gov

March 6, 2015

Mr. Robert Holbrook
Vice President
New York City Economic Development Corporation
110 William Street
New York, New York 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K
Brooklyn, New York

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the February 2015 Environmental Assessment Statement, the November 2014 Phase I Environmental Site Assessment Report (Phase I), the February 2015 Limited Phase II Environmental Site Assessment Work Plan (Phase II Work Plan), and the January 2015 Health and Safety Plan (HASP) prepared by AECOM for the above referenced project. It is our understanding that the proposed project involves the relocation of the Ferrara Bros. Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier (the "project site") in the Sunset Park neighborhood of Brooklyn Community District 7. As currently proposed, the New York City Economic Development Corporation (EDC) and the New York City Department of Small Business Services intend to enter into a long-term lease agreement with the Ferrara Bros. Materials Corp. to construct and operate a concrete batching plant and compressed natural gas (CNG) fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility. Three vacant buildings currently occupy the project site, containing a combined footprint of approximately 29,100 square feet. These buildings are highly deteriorated and are anticipated to be demolished as part of the proposed project. However, it is anticipated that the concrete slab of the existing buildings will be reused in the future design of the project site. The site is situated along the west side of Third Avenue, between 23rd and 25th Streets, and is located within the Southwest Brooklyn Industrial Business Zone, as well as the Sunset Park Significant Maritime Industrial Area.

The November 2014 Phase I report revealed that historical on-site and surrounding area land uses consisted of a variety of residential, commercial, and industrial uses including a trucking/shipping facility, an electrical generating station, apartments, automotive retail and repair shops, garages, a masonry supply yard, an adult video store, a kitchen and bath shop, a building supply

store, a pet supply store, commercial storefront operations, LaFarge Cement, Gowanus Bay, Hull and Haulbert Engineering Works, machine shops, an electric welding building, a storage building, the Todd Dry Dock Engineering and Repairing Corporation, Tebo Ship Yard, Yacht Basin Plant, Brooklyn Piers, Inc, Briggs Engineering Company, Gilroy Blacksmith Shop, a carpentry shop and boat storage building, a transformer house, a saw mill, ship building operations, a carriage factory, a hotel, a machine shop, lumber storage buildings, a filling station, wagon repair shops, wall paper storage and trimmings, a coal yard, a bag factory, storage for furniture and straw hats, manufacturers of upholstered furniture, electrical motor repairs, radio and telephone manufacturing, iron works, edible oil packaging, and a scrap metal yard. Various 5, 10, and 55 gallon drums were identify within the on-site maintenance garage with several containing some type of petroleum product and are a potential source of discharge to the environment. Many of these drums are exposed to the elements and are rusted. In addition, some of these drums are located on a structurally unstable mezzanine within the garage. Based on the age of the subject property, the potential exists for asbestos-containing materials (ACM), lead based paints (LBP), and polychlorinated biphenyls (PCBs) to be present on-site. The New York State Department of Environmental Conservation (NYSDEC) SPILLS database identified 27 spills within a 1/8-mile of the project site.

The February 2015 Work Plan proposes to conduct soil and groundwater sampling. Seven surface soil samples will be collected from seven locations (SB-1 to SB-7) within and around the former substation building. The proposed surface soil samples will be collected from 0-1 foot below ground surface (bgs). Fourteen subsurface soil samples will be collected from seven locations. The soil borings will be advanced to a maximum depth of 15 feet bgs, bedrock, or three feet into the water table, whichever is encountered first. Two soil samples will be collected from each boring. The sample depths will be biased based upon the presence of any visual impacts. If no impacts are encountered, samples will be collected at a depth of approximately 6 inches above the groundwater table and from the midpoint of the soil boring. Four grab groundwater samples will be collected from four (GW-1 to GW-4) of the seven soil borings. Soil samples will be analyzed for volatile organic compounds (VOCs) by United States Environmental Protection Agency (EPA) Method 5350A, semi-volatile organic compounds (SVOCs) by EPA Method 8270D, pesticides by EPA Method 8081A, PCBs as Aroclors by EPA Method 8082, and total metals by EPA Methods 6010B/7470A. Groundwater samples will be analyzed for VOCs by EPA Method 8260C, methyl tertiary butyl ether (MTBE) and tertiary butyl alcohol (TBA), SVOCs by EPA Method 8270D, pesticides by EPA Method 8081A, PCBs as Aroclors by EPA Method 8082, and metals (total and dissolved) by EPA Methods 6010B/7470A. In addition, up to three sets of composite samples (one from the 5 gallon drums, one from the 10 gallon drums, one from the 55 gallon drums) will be collected and analyzed for PCBs as Aroclors by EPA Method 8082, flashpoint by EPA Method1010, and fuel ID by EPA Method 8015 in order to classify the contents for proper disposal.

It is our understanding that the proposed project includes a concrete batching plant that is open to the air. No buildings or offices would be constructed on foundations that are exposed to soil vapor and any offices would be located in portable trailers that offer open air movement between the soil and any enclosed space. This work plan does not propose to conduct a soil vapor survey at this time. The lease agreement between Ferrara Bros. Materials Corp. and the property owner, the City of New York, will include provisions that if the design of the project is changed at any

time during the term of the lease to include enclosed buildings which have foundations that are exposed to the soil and could trap soil vapors, Ferrara Bros. Materials Corp will be required to submit additional testing to the DEP, as per a scope of work approved by DEP, to determine if the recommendations of this report should be revised and if necessary a supplemental Remedial Action Plan prepared.

Based upon our review of the submitted documentation, we have the following comments and recommendations to EDC:

Work Plan

- **At a minimum, all soil and groundwater samples** should be collected and analyzed for VOCs by EPA Method 8260, SVOCs by EPA Method 8270, PCBs by EPA Method 8082, pesticides by EPA Method 8081, and Target Analyte List metals (filtered and unfiltered for groundwater).

- Upon completion of the investigation activities, the consultant should submit a detailed Phase II report to DEP for review and approval. The report should include, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil and groundwater analytical results (i.e., NYSDEC 6NYCRR Part 375 and NYSDEC Water Quality Regulations), updated site plans depicting sample locations, boring logs, and remedial recommendations, if warranted.

- ACM, LBP, and suspected PCB containing materials may be present on the subject property. These materials should be properly removed and/or managed prior to the start of any construction activities and disposed of in accordance with all federal, state, and local regulations.

- All storage drums on the subject property should be properly disposed of in accordance with all applicable federal, state, and local regulations.

Health and Safety Plan

- The names and phone numbers of the Site Supervisor, Site Health and Safety Officer, and an Alternate Site Health and Safety Officer should be included in the HASP.

DEP finds the February 2015 Phase II Work Plan and January 2015 HASP for the proposed project acceptable as long as the aforementioned information is incorporated into the Work Plan and HASP. Future correspondence and submittals related to this project should include the following CEQR number **15SBS003K**. If you have any questions, you may contact Mr. Wei Yu at (718) 595-4358.

Sincerely,

Maurice S. Winter
Deputy Director, Site Assessment

c: E. Mahoney
M. Winter
W. Yu
T. Estesen
M. Wimbish
File

NYC Environmental Protection

Emily Lloyd
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March 12, 2015

Mr. Rob Holbrook
New York City Economic Development Corporation
110 William Street
New York, NY 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the consultant responses to the DEP Memorandum dated January 16, 2015 and back up materials. It is our understanding that the proposed project would lead to the relocation of the Ferrara Bros. Building Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier.

Per EDC request (15SBS003K-12-11022015110213) we have reviewed mentioned above materials and have the following comments/recommendations:

Air Quality:

- The consultant stated that Transportation Assumptions Memo was prepared for the project to NYCDEP. Please include it in the next submission.
- As it was commented previously, the consultant should discuss in the Protocol concrete trucks queuing, if any.
- The consultant should explain why some concrete batching plant operations as depicted in AP-42; Ch. 11.12; Fig. 11.12-1, such as sand transfer to elevated storage (SCC 3-05-011-05), uploading cement supplement to storage silo (SCC 3-05-011-17), and mixer loading (SCC 03-05-011-09) are not considered.
- The consultant stated that a compressed natural gas (CNG) fueling station would be constructed to fuel the facility's concrete trucks. Please explain why CNG operation emissions and related boiler(s)/generator emissions, if any, weren't discussed in the Protocol.
- Please confirm that the mixed product concrete trucks would have the same weight as delivery trucks (average 30 tons).
- Please provide the MOVES input/output data.
- Please explain why different truck travel distances were used to calculate emission rate (ER) for exhaust and fugitive dust. For example, the sand delivery trucks have travel distance of 0.076 miles for exhaust ER and 0.106 miles for fugitive dust ER.

- The consultant assumed that the barge is self-unloading. If such, please discuss the aggregate unloading potential emissions in the Protocol and include it in calculation, if necessary.

- The consultant should include the loading/unloading time in the Loader's operation time calculation. Currently, only material moving time (2.5 hours per day) is considered.

- The consultant should check the Process #6 ER calculation. It seems that SCC 3-05-011-07 factor mistakenly used instead of 3-05-011-04 factor.

- Further information and explanation needs to be provided on the 50% water spray control strategy, i.e. how done, who does it, how many times per day. A detailed fugitive dust control plan should be part of the AQ Protocol.

- For the Process #7 explanation, the consultant stated that aggregate and cement to be dumped directly to storage area. Please explain how sand will be transferred to the elevated storage.

- The consultant should explain the vehicle trip generation data provided in Table 1 (Memorandum dated October 3, 2014) compared with truck-per-day data used in worksheet. It seems that Table 1 data doesn't include sand and cement delivery truck trips. Also, per the provided site plan (AQ Protocol, Figure 1), all trucks enter at 25th Street entrance travel through the site and exit at 3rd Avenue. As such, please explain why the total truck trips are doubled in Table 1. Revise the Table 1 and mobile sources screening analysis, if necessary.

If you have any questions, you may contact Mr. Alex Popov at (718) 595-4031.

Sincerely,

Lorraine Farrell for

Chung Chan,
Director
Air Quality and Noise Review and Planning

NYC Environmental Protection

Emily Lloyd
Commissioner

Angela Licata
Deputy Commissioner of Sustainability

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July 21, 2015

Mr. Robert Holbrook
Vice President
New York City Economic Development Corporation
110 William Street
New York, New York 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K
Brooklyn, New York

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the June 2015 Phase II Environmental Site Investigation (Phase II) prepared by AECOM for the above referenced project. It is our understanding that the proposed project involves the relocation of the Ferrara Bros. Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier (the "project site") in the Sunset Park neighborhood of Brooklyn Community District 7. As currently proposed, the New York City Economic Development Corporation (EDC) and the New York City Department of Small Business Services intend to enter into a long-term lease agreement with the Ferrara Bros. Materials Corp. to construct and operate a concrete batching plant and compressed natural gas (CNG) fueling station on the project site. The CNG fueling station would only serve the concrete mixer trucks that would operate in conjunction with the proposed facility. Three vacant buildings currently occupy the project site, containing a combined footprint of approximately 29,100 square feet. These buildings are highly deteriorated and are anticipated to be demolished as part of the proposed project. However, it is anticipated that the concrete slab of the existing buildings will be reused in the future design of the project site. The site is situated along the west side of Third Avenue, between 23rd and 25th Streets, and is located within the Southwest Brooklyn Industrial Business Zone, as well as the Sunset Park Significant Maritime Industrial Area.

During the March 2015 fieldwork, Zebra Environmental of Lynbrook, New York advanced seven soil borings (SB-1 to SB-7) to a depth of 10 to 15 feet below grade surface (bgs). Seven surface soil samples were collected from 0-1 feet bgs and two subsurface soil samples were collected from each boring. The subsurface soil samples were collected at a depth of approximately 6 inches above the groundwater table and from the midpoint of the soil boring. Groundwater samples were collected from four of the soil borings (GW-1 to GW-4). Soil and groundwater samples were collected and analyzed for volatile

organic compounds (VOCs) by United States Environmental Protection Agency (EPA) Method 8260, semi-volatile organic compounds (SVOCs) by EPA Method 8270, pesticides by EPA Method 8081, polychlorinated biphenyls (PCBs) as Aroclors by EPA Method 8082, and total metals by EPA Methods 6010B/7470A (total and dissolved for groundwater). Groundwater samples were also analyzed for methyl tertiary butyl ether and tertiary butyl alcohol. Three soil vapor (SV-1 to SV-3) and two ambient air samples (Ambient 1 and Ambient 2) were collected and analyzed for VOCs by EPA Method TO-15. Composite samples were collected from the five gallon drums, 10 gallon drums, and 55 gallon drums and analyzed for PCBs as Aroclors by EPA Method 8082, Flashpoint by EPA Method 1010, and Fuel ID by EPA Method 8015.

The soil analytical results revealed PCBs and total cyanide concentrations were either non-detect (ND) or below their respective New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives (SCOs). Several VOCs (acetone, benzene, and total xylenes), several SVOCs (benzo(a)anthracene, benzo(a)pyrene, benzo(a)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene), several pesticides (4,4'-DDD, and 4,4'DDT), and several metals (arsenic, barium, cadmium, chromium, copper, lead, mercury, nickel, and zinc) were detected above their respective NYSDEC 375 Unrestricted Use SCOs and/or Commercial Use SCOs.

The groundwater analytical results revealed VOCs, SVOCs, pesticides, PCBs, and total cyanide concentrations were either ND or below their respective NYSDEC Technical and Operations Guidance Series 1.1.1 (TOGS) ambient water quality standards or guidance values (AWQSGVs). Several metals (chromium, iron, lead, magnesium, manganese, mercury, and sodium) were detected above their respective NYSDEC TOGS AWQSGVs.

The soil vapor analytical results revealed several VOCs (1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-butadiene, 1,3-dichlorobenzene, 2,2,4-trimethylpentane, 4-ethyltoluene, acetone, benzene, carbon disulfide, cyclohexane, dichlorodifluoromethane, ethylbenzene, freon 22, isopropyl alcohol, m,p-xylene, n-butane, n-heptane, n-hexane, tetrachloroethene, toluene, trans-1,3-dichloropropene, trichlorofluoromethane, o-xylene, and total xylenes) were detected.

The ambient air analytical results revealed several VOCs (1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-butadiene, 2,2,4-trimethylpentane, 4-ethyltoluene, acetone, benzene, carbon disulfide, carbon tetrachloride, chloromethane, cyclohexane, dichlorodifluoromethane, ethylbenzene, freon 22, freon TF, isopropyl alcohol, methylene chloride, m,p-xylene, n-butane, n-heptane, n-hexane, tetrachloroethene, toluene, trichlorofluoromethane, styrene, o-xylene, and total xylenes) were detected.

Twelve of these compounds (1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-dichlorobenzene, benzene, carbon disulfide, ethylbenzene, m,p-xylene, n-heptane, n-hexane, tetrachloroethene, toluene, and o-xylene) were detected above either the background outdoor air levels as published in the 2003 New York State Department of Health (NYSDOH) Study of Volatile Organic Chemicals in Air of Fuel Oil Heated Homes, indoor air levels as published in EPA's 2001 Building Assessment and Survey Evaluation database, and/or the target shallow soil gas concentrations (the background indoor air levels were divided by the attenuation factor of 0.1 to estimate soil vapor concentration target values).

The fingerprinting results indicate that product within the 10 and 55 gallon drums resemble hydraulic oil while the product within the 5 gallon drums resembles diesel fuel and/or No. 2 fuel oil.

Based upon our review of the submitted documentation, we have the following comments and recommendations to EDC:

- DEP concurs with AECOM's recommendation that a soil vapor barrier be constructed below the foundation and floor slab of any proposed building to be constructed at the subject property as a precaution.

- EDC should instruct the applicant to develop and submit a Remedial Action Plan (RAP) for the proposed project for review and approval. The RAP should delineate that contaminated soils should be properly disposed of in accordance with the applicable NYSDEC regulations. Additional testing of the soils may be required by the disposal and/or recycling facility.

- EDC should instruct the applicant to submit a site-specific Construction Health and Safety Plan (CHASP) on the basis of workers exposure to contaminants for the proposed for the proposed construction project. The CHASP should be submitted to DEP for review and approval. Construction activities should not occur without DEP's written approval of the CHASP.

- EDC should instruct the applicant that excavated soils, which are temporarily stockpiled on-site, must be covered with polyethylene sheeting while disposal options are determined. Additional testing may be required by the disposal/recycling facility. Excavated soil should not be reused for grading purposes.

- EDC should instruct the applicant that if any petroleum-impacted soils (which display petroleum odors and/or staining) are encountered during the excavation/grading activities, the impacted soils should be removed and properly disposed of in accordance with all NYSDEC regulations.

- EDC should instruct the applicant that dust suppression must be maintained by the contractor during the excavating and grading activities at the site.

- EDC should instruct the applicant that all known or found underground storage tanks and aboveground storage tanks (including dispensers, piping, and fill-ports) must be properly removed/closed in accordance with all applicable NYSDEC regulations.

- EDC should instruct the applicant that if de-watering into New York City storm/sewer drains will occur during the proposed construction, a New York City Department of Environmental Protection Sewer Discharge Permit must be obtained prior to the start of any de-watering activities at the site.

- EDC should instruct the applicant that for all areas, which will either be landscaped or covered with grass (not capped), a minimum of one (1) feet of clean fill/top soil must be

imported from an approved facility/source and graded across all landscaped/grass covered areas of the sites not capped with concrete/asphalt. The clean fill/top soil must be segregated at the source/facility, have qualified environmental personnel collect representative samples at a frequency of one (1) sample for every 250 cubic yards, analyze the samples for Target Compound List VOCs, SVOCs, pesticides, PCBs, and Target Analyte List metals by a NYSDOH Environmental Laboratory Approval Program certified laboratory, compared to NYSDEC Part 375 Environmental Remediation Programs. Upon completion of the investigation activities, the consultant should submit a detailed clean soil report to DEP for review and approval. The report should include, at a minimum, an executive summary, narrative of the field activities, laboratory data, and comparison of soil analytical results (i.e., NYSDEC Part 375 Environmental Remediation Programs).

- EDC should inform the applicant that all drums on the subject property should be properly recycled/disposed of in accordance with all applicable federal, state, and local regulations.

Future correspondence and submittals related to this project should include the following CEQR number **15SBS003K**. If you have any questions, you may contact Mr. Wei Yu at (718) 595-4358.

Sincerely,

Maurice S. Winter
Deputy Director, Site Assessment

c: E. Mahoney
M. Winter
W. Yu
T. Estesen
M. Wimbish
File

Environmental Protection

Emily Lloyd
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July 28, 2015

Mr. Rob Holbrook
New York City Economic Development Corporation
110 William Street
New York, NY 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the consultant responses to the DEP Memorandum dated March 12, 2015 and back up materials. It is our understanding that the proposed project would lead to the relocation of the Ferrara Bros. Building Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier.

Per EDC request (15SBS003K-11-30062015110650) we have reviewed mentioned above materials and have the following comments/recommendations:

Air Quality:

- Based on responses to comments 3 and 7, a new configuration is used for analysis. Please provide the revised AQ Protocol double underlining all revisions. The protocol should include the description of the plant operational process and a scaled site map showing the proposed truck and loader routes and locations of the material piles.

- The consultant should calculate the hourly emission rate for NAAQS pollutants based on predicted peak hour emission. Please note that these emission rates should not be averaged over the working hours when assessing hourly impact.

- The consultant should clarify the number of dry cement delivery trucks. In the calculation for "Area Source 1", two trucks per day were modeled. However, on page 3 of the "Travel Demand Factor" Memorandum dated May 14, 2015 it was stated that five trucks will be use daily to delivery cement. Please note that the "Batch Plant" emission calculations are based on 600 tons of daily cementitious usage; this seems to indicate significantly more than 5 truck trips would be required.

- In response to comment #9, the consultant stated that Loader estimated usage time is 5 hours per day. It should be note that 2.5 hour per day still use in calculation ("Area Source2, CAT 980 Loader"), and please explain why 5 hours is used.

- Please explain why all stone conveyor belt operations (process #4, 5, and 8) and process #6 and their associated emissions are removed from the Protocol.

- The consultant provided the MOVES input/output in SQL format. Please provide the MOVES input/output data in spreadsheet format.

- In response to comment #4 the consultant stated that CNG fueling station fugitive emissions are negligible. However, the consultant should indicate the number of vehicle using CNG station and include their exhaust and fugitive dust emissions in the AQ modeling protocol.

- The consultant used the controlled emission factors for cement and cement supplement uploading emission rates calculations ("Batch Plant"), and applied baghouse PM removal factor (99.8%) to get batch plant emissions after filter. Please be note that the baghouse PM control factor should be applied to the uncontrolled emission factors and provide the documentation for the control efficiency of the baghouse..

- Please provide further description and explanation to be justify the 80% fugitive dust reduction credit usage.

- The consultant should note that storage pile wind erosion emission factor should not be based on Equation 1 from AP-42 Chapter 13.2.4. This equation is using to calculate quantity of particulate emissions generated by various types of drop operation. Please refer to the Chapter 13.2.5 "Industrial Wind Erosion" of AP-42 instead.

If you have any questions, you may contact Mr. Alex Popov at (718) 595-4031.

Sincerely,

Chung Chan,
Director
Air Quality and Noise Review and Planning

Environmental Protection

Emily Lloyd
Commissioner

Angela Licata
Deputy Commissioner of Sustainability

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September 21, 2015

Mr. Rob Holbrook
New York City Economic Development Corporation
110 William Street
New York, NY 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the consultant responses to the DEP Memorandum dated September 3, 2015 and backup materials. It is our understanding that the proposed project would lead to the relocation of the Ferrara Bros. Building Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier.

Per EDC request (15SBS003K-12-03092015160943) we have reviewed mentioned above materials and have the following comments/recommendations:

Air Quality:

- The operational processes shown on page 2 of the AQ Protocol are not reflected the process emission points (Table 1) e.g. processes # 5, 6, 8, 13, and 14 are missing in Table 1. Please explain.

- The backup material showed that 1200 tons of sand, 360 tons of cement and 240 tons of cement supplements would be delivered to the proposed facility daily, excluding aggregates. This totals to 1800 tons of delivered materials daily. Since each truck would carry approximately 20 tons of materials, it seems there would be about 90 daily delivery trucks (1800/20) entering and leaving the facility, totaling 180 daily trips. It is 10 times more than the 18 in/out trips indicated in the Table 1 of the "Travel Demand Factors "Memorandum dated June 2, 2015. Please explain the discrepancy.

- The consultant provided the MOVES input/output in text format which didn't include the links parameters (link length, link speed, link traffic volume (peak and average), and road grade). Also, provided by output emission factors didn't match the factors using in the emission rates calculations. Please provide links description and its parameters and explain the output inconsistency.

- The consultant should explain the concrete truck idling emission rate calculation ("Area Source 1", cell C50).

- The consultant should confirm that the proposed project is committed to equip the on-site concrete trucks with 8.9 liter ISL G Natural Gas Engine.

- The consultant stated that the site will maintain a plant-wide sprinkler water suppression system. As such, please include the description of the sprinkler water suppression system, and provide the site map showing the locations of the sprinkler heads and their coverage areas in the AQ Protocol. Please note that since the emissions are reduced because of the suppression system, it is a commitment of the propose project.

If you have any questions, you may contact Mr. Alex Popov at (718) 595-4031.

Sincerely,

Chung Chan,
Director
Air Quality and Noise Review and Planning

Environmental Protection

Emily Lloyd
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March 7, 2016

Mr. Rob Holbrook
New York City Economic Development Corporation
110 William Street
New York, NY 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the Supplemental Studies to the Environmental Assessment Statement, Air Quality Chapter and Noise backup materials. It is our understanding that the proposed project would lead to the relocation of the Ferrara Bros. Building Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier.

Per EDC request (15SBS003K-12-23022016110222) we have reviewed mentioned above materials and found that the following comments are not addressed: DEP Noise comments and third comment from DEP Memorandum dated September 21, 2015.

1. In January 27, 2016 DEP asked the consultant to provide the backups for noise analysis:
    - the scaled map showing the distances between receptors and equipment location
    - the proposed location of wall(s) that would provide 5 dBA shielding
    - the monitors location
    - the usage factor reference material
    - explain why the cement trucks are not included in the stationary noise analysis
    - the spreadsheet showing the PCE values calculation
    - the microphone placement during the noise monitoring.

    In the latest submission dated February 2016, the consultant presented the noise monitoring data and the stationary noise impacts calculations, but these data didn't addressed the above comments.

2. Regarding the MOVES data which was send to DEP January 2016, while the response stated that the emission factor calculation are enclosed, neither the MOVES output files nor the link data files are in the CEQRView folders.

Please provide the requested materials to DEP in addition to the comments discussed during conference call on February 29, 2016.

If you have any questions, you may contact Mr. Alex Popov at (718) 595-4031.

Sincerely,

Chung Chan,
Director
Air Quality and Noise Review and Planning

NYC Environmental Protection

Vincent Sapienza, P.E.
Acting Commissioner

Angela Licata
Deputy Commissioner of Sustainability

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August 30, 2016

Mr. Rob Holbrook
New York City Economic Development Corporation
110 William Street
New York, NY 10038

Re: Moore McCormack Site Lease
Block 644, p/o Lot 1
CEQR # 15SBS003K

Dear Mr. Holbrook:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the Air Quality Memorandum dated August 4, 2016 and backup materials related to 1-hour No2 modeling which were submitted August 8, 2016, August 15, 2016 and August 23, 2016. It is our understanding that the proposed project would lead to the relocation of the Ferrara Bros. Building Materials Corp. concrete plant, currently located on the west side of the Gowanus Canal at 5th Street in Brooklyn, to a new waterfront location on the upland portion of the 25th Street Pier.

Per EDC request (15SBS003K-12-08082016120822) we have reviewed the mentioned above materials and agree with the conclusion that the proposed project would not have a significant air quality impacts. To complete the files, please provide the final version of the AQ Report tracking all the revisions, the emission rate worksheet with AERMOD emission rate and AERMOD input/output data incorporating all agreed revisions.

If you have any questions, you may contact Mr. Alex Popov at (718) 595-4031.

Sincerely,

Chung Chan,
Director
Air Quality and Noise Review and Planning

About AECOM
AECOM (NYSE: ACM) is a global provider of professional technical and management support services to a broad range of markets, including transportation, facilities, environmental and energy. With approximately 45,000 employees around the world, AECOM is a leader in all of the key markets that it serves. AECOM provides a blend of global reach, local knowledge, innovation, and technical excellence in delivering solutions that enhance and sustain the world's built, natural, and social environments.

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