

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an
Investigation and, if needed,
Remediation of the Bulova
Corporate Center by

AGREEMENT

INDEX NUMBER: W2-0854-9906

Bulova Corporation and
LaGuardia Corporate Center Associates, LLC

Volunteers.

DEFINITIONS

For purposes of this Agreement, the following terms have the following definitions:

A. "Contemplated Use": commercial use, but excluding daycare, childcare, and medical facilities. Volunteers may petition the Department to modify the use as set forth in this definition for all or a portion of the Site to the extent that the residual contamination at the Site or a portion thereof justifies such proposed modification.

B. The Site's "Covered Contamination": the concentrations of Existing Contamination to which the Existing Contamination shall have been remediated, if necessary, or otherwise addressed in accordance with the requirements of the Work Plan.

C. "ECL": the Environmental Conservation Law.

D. "Day": a calendar day unless otherwise specified.

E. "Department": the New York State Department of Environmental Conservation.

F. The Site's "Existing Contamination": As a result of leaks from underground storage tanks at 75-20 Astoria Boulevard, and their supply/connection lines (NYSDEC Spill No.89-10100) soil at the site is contaminated with, among other chemicals, 1,1-dichloroethane, benzo(a)anthracene, chrysene, and benzo(a)pyrene, and groundwater at the Site is contaminated with, among other chemicals, 1,1-dichloroethane, and 1,1,1-trichloroethane as described in the following reports: (i) Site Investigation and Remediation Work Plan, Bulova Corporate Center, 75-20 Astoria Boulevard, Jackson Heights, New York (December 31, 1996); (ii) Appendix B, Health and Safety Plan (July 30, 1996); (iii) Available Analytical Results (Transmittal letter dated June 25, 1997); (iv) Laboratory Reports (Transmittal letter dated August 20, 1997); (v) Voluntary Cleanup Site Assessment Report and Additional Investigation and Remediation Work Plan, Bulova Corporate Center, 75-20 Astoria Boulevard, Jackson Heights, New York (March

24, 1997); (vi) Voluntary Cleanup Supplemental Site Assessment Work Plan (April 6, 1998); and (vii) Underground Storage Tank Investigation at the Bulova Corporate Center, Jackson Heights, New York (July 14, 1998). The term also includes contamination encountered during the course of the Work Plan's implementation, the nature and extent of which were unknown or inadequately characterized at the time the Work Plan was submitted to the Department for approval but shall have been fully characterized to the Department's satisfaction.

G. "Investigation Work Plan": the Department-approved Investigation Work Plan pertaining to the Site that Volunteers shall implement and that is attached to this Agreement as Exhibit "B", as may be modified under the terms of this Agreement and is an enforceable part of this Agreement.

H. "Professional engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. "Remediation Work Plan": the Department-approved Remediation Work Plan pertaining to the Site that Volunteers shall implement and that may be attached to this Agreement as Exhibit "C" in accordance with paragraph I.D, as may be modified under the terms of this Agreement and, as a result, may appear in such other identified exhibit in this Agreement as this Agreement may provide, and is an enforceable part of this Agreement.

J. "Site": that property located at 75-20 Astoria Boulevard, Jackson Heights, Queens County, New York, also referred to as Tax Block 1027, Lot 50. Exhibit "A" of this Agreement is a map of the Site showing its general location.

K. "Trustee": the Trustee of New York State's natural resources.

L. "Volunteers": Volunteer Bulova Corporation is a New York corporation with offices at One Bulova Avenue, Woodside, New York. Volunteer LaGuardia Corporate Center Associates, LLC is a New York Limited Liability Company with its main office at 6800 Jericho Turnpike, Syosset, Nassau County, New York, with a branch office which is located at the Site and operates as a management office. Volunteer Bulova Corporation is referred to in this Agreement as "Volunteer Bulova." Volunteer LaGuardia Corporate Center Associates, LLC is referred to in this Agreement as "Volunteer LaGuardia." Volunteer Bulova and Volunteer LaGuardia are collectively referred to as "Volunteers" in this Agreement.

CONSIDERING

1. The Department is responsible for enforcement of the ECL. This Agreement is entered into pursuant to the Department's authority under that law and constitutes an administrative settlement for purposes of 42 USC 9613(f).

2. Volunteers represent, and for the purposes of this Agreement, the Department relies on those representations, that Volunteers' involvement with the Site and with the facility on that Site

is limited to the following: Volunteer Bulova is the former owner and operator of the Site and the facility on the Site, and has agreed to remediate the Existing Contamination at the Site as of the effective date of this Agreement. Volunteer LaGuardia is the current Site owner and operates a management office at the Site.

3. The Department has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

4. A. Volunteers wish to enter into this Agreement to ensure and the Department hereby determines that this Agreement constitutes a demonstration that any remedial action undertaken under this Agreement will be in compliance with the ECL and will not:

1. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

2. expose the public health or the environment to a significantly increased threat of harm or damage.

B. Volunteers also wish to enter into this Agreement to resolve their potential liability as parties responsible for the investigation and remediation of the Site under ECL Article 27, Title 13 based upon Volunteers' investigation and, if necessary, remediation of the Site. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

C. Volunteers, desirous of implementing an investigation program acceptable to the Department, consent to the terms and conditions of this Agreement.

5. The Department and Volunteers agree that the goals of this Agreement are

A. for Volunteers to

1. implement the Investigation Work Plan and, if necessary, subject to Subparagraph I.D.3 of this Agreement, develop and implement a Department-approved Remediation Work Plan for the Site, and

2. reimburse the State's administrative costs as provided in this Agreement, and,

B. in accordance with the terms of this Agreement, for the Department (and the Trustee for Volunteer LaGuardia) to release, covenant not to sue, and forbear from bringing any action, proceeding, or suit against Volunteers for the Site's further investigation or remediation.

6. Volunteers agree to be bound by the terms of this Agreement. Volunteers consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Agreement, and agree not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE (AND THE TRUSTEE'S RELEASE FOR VOLUNTEER LAGUARDIA) AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, VOLUNTEERS AGREE TO THE FOLLOWING:

I. Performance and Reporting of the Investigation Work Plan and Development and Implementation of the Remediation Work Plan, if Necessary

A. Within 30 days after the effective date of this Agreement, Volunteers shall commence implementation of the Investigation Work Plan and implement it in accordance with its terms.

B. Volunteers shall notify the Department of any significant difficulties that may be encountered in implementing the Investigation Work Plan or any Department-approved modification to it and shall not modify any obligation unless first approved by the Department, which approval shall not be unreasonably withheld.

C. In accordance with the schedule contained in the Investigation Work Plan, Volunteers shall submit to the Department a final investigation report. The final investigation report shall:

1. include all data generated and all other information obtained during the investigation;
2. provide all of the assessments and evaluations identified in the Investigation Work Plan;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the Investigation Work Plan.

D. 1. After its acceptance of the final investigative report submitted under Subparagraph I.C of this Agreement, the Department shall determine whether it has sufficient information respecting the nature and extent of the contamination on the Site.

i. If the Department determines that it does not have sufficient information respecting the nature and extent of the Site's contamination, it will so notify Volunteers in writing. Volunteers shall collect such additional data under a Department-approved revision to the Investigation Work Plan, which shall be attached to this Agreement as Exhibit "B-1" and made a part of this Agreement. However, if within 30 days after receipt of the Department's written notification, Volunteers elect in writing not to collect such additional data or if within that period the Department and Volunteers cannot agree upon revisions to the Investigation Work Plan, then, except with respect to

a. Volunteers' obligations under Paragraphs VI and VIII of this Agreement; and

b. Volunteers' obligation to ensure that they do not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any investigative activities were commenced; and

c. the Department's right to enforce the obligations in Subparagraphs I.D.1.i.a and I.D.1.i.b under Paragraph IV of this Agreement, this Agreement shall terminate effective the thirtieth (30th) day after Volunteers' receipt of the Department's written notification; and all parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

ii. If the Department determines that it has sufficient information respecting the nature and extent of the Site's contamination, it will so inform Volunteers in writing, and the Department will inform them in that communication whether the Department believes that remediation of contamination on the Site is needed to allow the Site to be used for the Contemplated Use.

2. If the Department determines that no remediation is needed to allow the Site to be used for the Contemplated Use, it shall so state in writing and shall provide Volunteers with the forbearance, release, and covenant not to sue described in Subparagraph I.G of this Agreement and with the notification letter described in Subparagraph I.H of this Agreement.

3. If the Department determines that remediation is needed to allow the Site to be used for the Contemplated Use, it shall so state in writing; and the Volunteers shall develop a proposed Remediation Work Plan that shall be noticed for public comment in accordance with Subparagraph I.D.4 of this Agreement. The Department shall advise Volunteers whether the proposed Remediation Work Plan would require deed restrictions in accordance with Paragraph X of this Agreement, and if so, the Department will discuss alternative remedial approaches with Volunteers that would avoid deed restrictions. If within 75 days after receipt of the Department's written determination, Volunteers elect not to develop a Remediation Work Plan; or, in the event that the Department concludes that a mutually acceptable Remediation Work Plan cannot be successfully negotiated, then, except with respect to

i. Volunteers' obligations under Paragraphs VI and VIII of this Agreement; and

ii. Volunteers' obligation to ensure that they do not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any remedial activities were commenced; and

iii. the Department's right to enforce the obligations set forth in Subparagraphs I.D.3.i and I.D.3.ii under Paragraph IV of this Agreement,

this Agreement shall terminate effective on the thirtieth (30th) day after Volunteers' receipt of the Department's written determination; and all parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

The proposed Remediation Work Plan shall provide, *inter alia*, that if during the Remediation Work Plan's implementation, contamination is discovered that was not discussed in the final investigative report, Volunteers shall investigate the nature and extent of such newly discovered contamination, and the Remediation Work Plan will be revised to have Volunteers remediate such newly discovered contamination in the event that this remediation is needed to allow the Contemplated Use to proceed, subject to Volunteers' election not to proceed with said investigation or remediation in accordance with Subparagraphs I.D.1 and I.D.3 of this Agreement.

4. Upon approval, subject to public comment, of a proposed Remediation Work Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the public's opportunity to submit to the Department by no later than 30 days after the date of the issue of the Environmental Notice Bulletin in which the notice shall appear, comments on the proposed Remediation Work Plan and shall mail an equivalent notice to the Queens Borough President's Office and Community Board #3. If, as a result of its review of the comments received, the Department determines that the proposed Remediation Work Plan to implement the Department-approved remedial activities for the Site must be revised:

i. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the proposed Remediation Work Plan; or

ii. due to information received, in whole or in part, after the Department's approval of the proposed Remediation Work Plan, which indicates that the activities to be carried out in accordance with it are not sufficiently protective of human health and the environment for the Contemplated Use,

then the Department will so notify Volunteers and will immediately commence negotiations with Volunteers to revise the proposed Remediation Work Plan accordingly. If the Department and Volunteers agree upon revisions to the proposed Remediation Work Plan, the revised proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement. However, if after good faith negotiations, Volunteers and the Department cannot agree upon revisions to the proposed Remediation Work Plan, then, except with respect to

a. Volunteers' obligations under Paragraphs VI and VIII of this Agreement; and

b. Volunteers' obligation to ensure that they do not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any remedial activities were commenced; and

c. the Department's right to enforce the obligations in Sub-paragraphs I.D.4.ii(a) and I.D.4.ii(b) under Paragraph IV of this Agreement,

this Agreement shall terminate effective thirty (30) days after Volunteers' receipt of the Department's written notification to Volunteers that negotiations have failed to develop an acceptable Remediation Work Plan; and all parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

iii. If, following the thirty (30) day comment period, the Department determines that the proposed Remediation Work Plan to implement the Department-approved remedial activities for the Site does not need to be revised then the proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement.

5. Volunteers shall commence implementation of, and implement, the final Remediation Work Plan contained in Exhibit "C" in accordance with its terms. However, the parties agree that the final Remediation Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during implementation of the final Remediation Work Plan unless after good faith negotiations, Volunteers and the Department cannot agree upon modifications to the final Remediation Work Plan. In such event, except with respect to

i. Volunteers' obligations under Paragraphs VI and VIII of this Agreement; and

ii. Volunteers' obligation to ensure that they do not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any remedial activities were commenced; and

iii. the Department's right to enforce the obligations in Subparagraphs I.D.5.i and I.D.5.ii under Paragraph IV of this Agreement,

this Agreement shall terminate effective thirty (30) days after Volunteers' receipt of the Department's written notification to Volunteers that negotiations have failed to develop an acceptable modification to the final Remediation Work Plan; and all parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

E. 1. In accordance with the schedule contained in Exhibit "C," as may be modified by agreement between the parties and which modifications shall appear in Exhibit "C-1" of this Agreement, Volunteers shall submit to the Department a final engineering report that shall include "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all activities were completed in full accordance with the Remediation Work Plan, any Department-approved modification to the Remediation Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteers pursuant thereto, and this Agreement.

2. Volunteers shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("O&M Plan"), if needed, along with the final engineering report.

3. A professional engineer must prepare, sign, and seal the O&M Plan, "as built" drawings, final engineering report, and certification.

F. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteers shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

G. 1. After receipt of the final engineering report, the Department shall timely notify Volunteers in writing whether the Department is satisfied that the Remediation Work Plan was satisfactorily implemented in compliance with Exhibit "C" (and, as appropriate, "C-1") and the Department-approved design, which notification shall not be unreasonably withheld.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan have been reached, the Department shall notify Volunteers in writing of its satisfaction and, except for the reservations identified below, the Department (and the Trustee for Volunteer LaGuardia) shall release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteers for the further investigation and remediation of the Site, (and against Volunteer LaGuardia for natural resources damages), based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteers and/or Volunteers' successors or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department (and the Trustee for Volunteer LaGuardia) hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action (nor to natural resource damages for Volunteer Bulova) the Department deems necessary:

i. For Volunteer Bulova only, due to the off-Site presence of contaminants, other than petroleum, that may have migrated off-Site from an on-Site source resulting in impacts that are not inconsequential to environmental resources, to human health, or to other biota, and for both Volunteers Bulova and LaGuardia, due to the off-Site presence of petroleum that may have migrated off-Site from an on-Site source, irrespective of whether the information available to Volunteers and the Department at the time of the development of the Remediation Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Remediation Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report, which indicates that the activities carried out in accordance with the Remediation Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

iv. due to Volunteers' failure to implement this Agreement to the Department's satisfaction; or

v. due to fraud committed, or mistake made, by Volunteers in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan were reached.

Additionally, the Department (and the Trustee for Volunteer LaGuardia) hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteers if Volunteers cause a, or suffer the, release or threat of release, at the Site of any hazardous substance (as defined at 42 USC 9601[14]) or petroleum (as defined in Navigation Law § 172[15]), other than Covered Contamination; or if Volunteers cause a, or suffer the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteers' successors, or assigns who causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as defined at 42 USC 9601[14]) or petroleum (as defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of this Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from this Agreement's execution.

3. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

H. If the Department is satisfied with the implementation of the Remediation Work Plan, any Department-approved modification to the Remediation Work Plan, and Department-approved details, documents, and specifications prepared by or on behalf of Volunteers pursuant thereto, the Department shall provide Volunteers with a written "no further action" letter in the form of the Assignable Release and Covenant Not To Sue attached to this Agreement and incorporated in this Agreement as Exhibit "D" for Volunteer Bulova, and Exhibit "D-1" for Volunteer LaGuardia.

I. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department (or the Trustee for Volunteer LaGuardia), the one seeking the benefit of the forbearance, covenant not to sue, or release set

forth in Subparagraph I.G or in a “no further action” letter issued under Subparagraph I.H of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

2. Except as above provided in Subparagraph I.G of this Agreement and in the “no further action” letter issued under Subparagraph I.H of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, (the Trustee for Volunteer LaGuardia), or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.G and in the “no further action” letter issued under Subparagraph I.H of this Agreement shall not extend to parties (other than the Volunteers) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

J. During implementation of all activities conducted on the Site under either the Investigation Work Plan or the Remediation Work Plan, Volunteers shall

1. have on-site a full-time representative who is qualified to supervise the activities undertaken; and

2. notify the Department of any significant difficulties that may be encountered in implementing the Investigative Work Plan, the Remediation Work Plan, any Department-approved modification to either of them, or any Department-approved detail document or specification prepared by or on behalf of Volunteers pursuant to either, and shall not modify any obligation unless first approved by the Department, which approval shall not be unreasonably withheld.

K. In the event that the implementation of either the Investigative Work Plan or the Remediation Work Plan results in a Department determination that a consequential amount of hazardous waste was disposed at the Site, the Site will be listed in the Annual Report described in ECL 27-1305 as a Voluntary Cleanup Site unless the hazardous waste disposed at the Site constitutes a significant threat to the environment, in which event the Site will be classified in the Registry of Inactive Hazardous Waste Disposal Sites as a Class 2 inactive hazardous waste disposal site. However, the Department will not so classify the Site as a Class “2” if the implementation of the Remediation Work Plan developed under this Agreement will result in a Department determination that the hazardous waste disposed at the Site no longer constitutes a significant threat to the environment.

II. Progress Reports

A. Volunteers shall submit to the parties identified in Subparagraph XI.A.1 in the numbers specified therein copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement;

2. include all results of sampling and tests and all other data received or generated by Volunteers or Volunteers' contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteers;

3. identify all reports and other deliverables required by this Agreement that were completed and submitted during the previous month;

4. describe all actions, including, but not limited to, data collection and implementation of the Investigation Work Plan or the Remediation Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;

5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteers' obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays; and

6. include any modifications to the Investigation Work Plan or the Remediation Work Plan that Volunteers have proposed to the Department and any that the Department has approved.

B. Volunteers shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Volunteers' obligation to submit the progress reports shall terminate upon their receipt of the written satisfaction notification identified in Subparagraph I.G.2 of this Agreement approving Volunteers' final engineering report concerning the Remediation Work Plan's implementation. However, Volunteers shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteers also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

III. Review of Submittals

A. 1. The Department shall review each submittal Volunteers make pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and generally accepted technical and scientific principles. The Department shall notify Volunteers in writing of its approval or disapproval of the submittal. All Department- approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Volunteers in writing and shall specify the reasons for its disapproval and may request Volunteers to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteers' submittal has been disapproved, Volunteers shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. If the Department disapproves the revised submittal, the Department and Volunteers may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

B. Within thirty (30) days after the Department's approval of the final engineering report, Volunteers shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

IV. Enforcement

A This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. Volunteers shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteers' reasonable control ("*force majeure* event"). Volunteers shall, within 15 working days of when they obtain knowledge of any such *force majeure* event, notify the Department in writing. The failure to so notify the Department shall result in the waiver of this Subparagraph IV.B. Volunteers shall include in such notice the measures taken and to be taken by Volunteers to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteers shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry upon Site

Volunteers hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteers by any duly designated employee, consultant,

contractor, or agent of the Department or any State agency having jurisdiction with respect to the matters addressed in the Work Plan for purposes of inspection, sampling, and testing and to ensure Volunteers' compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, and reasonable notice, Volunteers shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access, during normal business hours, to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

A. Within thirty days after receipt of an itemized invoice from the Department, Volunteers shall pay to the Department a sum of money not to exceed \$15,000.00 in the aggregate, which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to the effective date of this Agreement, as well as for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.G.2 of this Agreement of its approval of the final engineering report pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.G.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.H of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (or Trustee's rights for Volunteer LaGuardia, including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteers.

B. Nothing contained in this Agreement shall prejudice any rights of the Department (or Trustee for Volunteer LaGuardia) to take any investigatory or remedial action it may deem necessary.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteers fail to comply substantially with this Agreement's terms and conditions. However, the Department shall provide notice to Volunteers prior to terminating this Agreement and Volunteers shall have 30 days from receipt of such notice to cure or resolve the substantial noncompliance cited by the Department.

E. Except as otherwise provided in this Agreement, Volunteers specifically reserve all defenses Volunteers may have under applicable law respecting any Departmental assertion of remedial liability against Volunteers; and reserve all rights Volunteers may have respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteers' compliance with this Agreement do not constitute and shall not be construed as an admission of liability, fault, or wrongdoing by Volunteers, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

VIII. Indemnification

Volunteers shall indemnify and hold the Department, (and Volunteer LaGuardia shall also indemnify and hold the Trustee), the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteers and/or any of Volunteers' directors, officers, employees, servants, agents, successors, and assigns.

IX. Notice of Sale or Conveyance

A. Within 30 days of the effective date of this Agreement, Volunteer LaGuardia shall

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit "E," with the Office of the Registrar of the City of New York, County of Queens, to give all parties who may acquire any interest in the Site notice of this Agreement and

2. provide the Department with evidence of such filing.

Volunteer LaGuardia may terminate the Notice when the Department notifies Volunteers in writing pursuant to Subparagraph I.G.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan have been reached and that the O&M Plan has been successfully implemented.

B. If Volunteer LaGuardia proposes to convey the whole or any part of its ownership interest in the Site prior to issuance of the notice under Subparagraph I.G.2. of this Agreement, Volunteer LaGuardia shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement. This requirement shall terminate when the Department notifies Volunteers in writing pursuant to Subparagraph I.G.2. of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with the Remediation Work Plan have been reached and that the O&M Plan has been successfully implemented.

X. Deed Restriction

A. If the Department determines that deed restrictions are necessary for all or a portion of the Site based upon the remedial program implemented by Volunteers under this Agreement, Volunteer LaGuardia shall, within 30 days of Volunteers' receipt of the Department's notification pursuant to Subparagraph I.G.2 of this Agreement approving Volunteers' final engineering report concerning the Remediation Work Plan, record an instrument with the Office of the Registrar of the City of New York, County of Queens, to run with the land for the Site or that portion of the Site upon which the Department has determined Deed Restrictions are necessary, that:

1. shall prohibit the Site, or portion thereof, from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

2. shall prohibit the use of the groundwater, as appropriate, underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

3. shall require Volunteers and Volunteers' successors and assigns to continue in full force and effect such institutional and engineering controls as the Department determines are necessary; and

4. shall provide that Volunteer LaGuardia, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity

replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 30 days after Volunteers' receipt of the Department's notification pursuant to Subparagraph I.G.2 of this Agreement approving Volunteers's final engineering report concerning the Remediation Work Plan, Volunteer LaGuardia shall provide the Department with a copy of such instrument certified by the Office of the Registrar of the City of New York, County of Queens, to be a true and faithful copy of the instrument as recorded in the Office of the Office of the Registrar of the City of New York, County of Queens.

C. Volunteer LaGuardia may apply to the Department to modify or remove any required deed restrictions or institutional or engineering controls based on, and subject to the approval of, Volunteer LaGuardia's proposal to perform further remediation at the premises.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteers shall be sent to:

Thomas Lang, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
1 Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407

with copies to:

G. Anders Carlson, Ph.D.
New York State Department of Health
Flanigan Square
River Street
Troy, NY 12180

Anthony Quartararo, Esq.
New York State Department of Environmental Conservation
50 Wolf Road, Room 627
Albany, NY 12233-5500

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

- Four copies (one unbound) to Thomas Lang, P.E
- Two copies to Dr. Carlson

2. Communication from the Department to Volunteers shall be sent to:

Richard Hixon
IT Corporation
13 British American Blvd.
Latham, NY 12110-1405

LaGuardia Corporate Center Associates, LLC
c/o BDG
6800 Jericho Turnpike
Syosset, NY 11791

James P. Rigano, Esq.
McMillan, Rather, Bennett & Rigano, P.C.
48 South Service Road
Melville, NY 11747

Robert A. Weber
Bulova Watch Company
One Bulova Avenue
Woodside, NY 11377

Mitchell H. Bernstein, Esq.
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, N.W.
Washington, D.C. 20007-3877

B. The Department and Volunteers reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XI.

XII. Dispute Resolution

If a dispute arises under this Agreement, Volunteers may, together or individually, serve on the Department a request for the appointment of an Administrative Law Judge (“ALJ”) who shall establish procedures to review the matter in dispute and issue a decision. The ALJ’s decision shall constitute a final agency action for purposes of judicial review pursuant to Article 78 of the CPLR. In the event that either Volunteer disagrees with the ALJ’s decision, either Volunteer shall have the right to seek judicial review of the ALJ’s decision under Article 78 of the CPLR if either Volunteer commences such a proceeding no later than 30 days after receipt of a copy of the ALJ’s decision.

XIII. Miscellaneous

A. 1. By entering into this Agreement, Volunteers certify that Volunteers have fully and accurately disclosed to the Department all information known to Volunteers and all information in the possession or control of Volunteers’ members, partners (for Volunteer LaGuardia) officers, directors, (for Volunteer Bulova) and employees, contractors, and agents for

both Volunteers, which relates in any way to the contamination existing on the effective date of this Agreement, and to any past or reasonably foreseeable future release of hazardous substances, pollutants, or contaminants, at or from the Site and to their application for this Agreement. Volunteer LaGuardia also certifies that, to its actual knowledge, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at, or from, the Site, except as described in the report entitled *Underground Storage Tank Investigation at the Bulova Corporate Center*, as cited in Subparagraph F(vii) of the definitions section of this Agreement.

2. If the Department determines that information Volunteers provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void *ab initio* except with respect to the provisions of Paragraphs VI and VIII and except with respect to the Department's right to enforce those obligations under this Agreement, and the Department shall reserve all rights that it may have.

B. Volunteers shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteers shall rest solely with Volunteers.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteers, and the Department also shall have the right to take its own samples. Volunteers shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteers with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteers shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement.

E. 1. Subject to Subparagraph XIII.E.2 of this Agreement, Volunteers shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteers' obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteers from the requirement to obtain any Department permit for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteers, Volunteers' successors, and assigns shall be bound by this Agreement. Any change in ownership of either Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteers' responsibilities under this Agreement. Volunteers' successors and assigns shall provide to the Department a

certification that they agree to be bound by this Agreement within 30 days of becoming a successor or assign.

G. Volunteers shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteers with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteers or Volunteers' contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteers shall nonetheless be responsible for ensuring that Volunteers' contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

I. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteers of Volunteers' obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteers desire that any provision of this Agreement be changed, Volunteers shall make timely written application, signed by the Volunteers, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Lang and to Mr. Quartararo at the above stated addresses.

J. That portion of this Agreement concerning the Site's investigation is not subject to review under the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations, 6 NYCRR Part 617. That portion of this Agreement concerning the Site's remediation constitutes an exercise of the Department's prosecutorial discretion and accordingly, is not subject to review under the State Environmental Quality Review Act and its implementing regulations. ECL 8-0105.5(i), 6 NYCRR 617.5(c)(29).

K. In undertaking the work required under this Agreement, Volunteer LaGuardia and its members, partners, employees, representatives, agents, contractors and subcontractors are deemed for the purpose of ECL 27-1321.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work which is conducted pursuant to a contract with the Department.

L. Except as provided in Subparagraph XIII.M, the provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteers otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteers' insurers, for payments made previously or in the future for response costs.

M. Volunteers, Volunteer LaGuardia's members and partners, Volunteer Bulova's officers, directors and both Volunteers' agents, servants, and employees, and both Volunteers' lessees, sublessees, successors and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteers' entering into or fulfilling the terms of this Agreement with respect to the Site.

N. Except as otherwise provided in this agreement, the obligations of Volunteers to finance and perform obligations under this Agreement are joint and several. In the event of insolvency or failure of either Volunteer to implement any obligations of this Agreement, the remaining Volunteer shall complete all such requirements. The Department shall pursue Bulova in the first instance in the event that Volunteers fail to perform an obligation under this Agreement, except for the filing of the deed restriction or the Notice of Agreement.

O. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED: Albany, New York
November , 2000

DEC 11 2000

JOHN P. CAHILL, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
AND TRUSTEE OF THE STATE'S
NATURAL RESOURCES

A handwritten signature in cursive script, appearing to read "John P. Cahill", is written over a horizontal line.

CONSENT BY VOLUNTEER

BULOVA CORPORATION

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

By: [Signature]
Title: VP Operations
Date: 10/30/00

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

On the 30th day of October, in the year 2000, before me, the undersigned, personally appeared Robert A. Weber, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as Vice President, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Signature and Office of individual taking acknowledgment

G. STEPHEN HAMILTON
Notary Public, State of New York
No. 02HA5043844
Qualified in Albany County
Commission Expires May 15, 2001

CONSENT BY VOLUNTEER

LAGUARDIA CORPORATE CENTER ASSOCIATES, LLC

Volunteer hereby consents to the issuing and entering of this Agreement, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

By: [Signature]

Title: President of Laguardia Corporate Center Associates, LLC

Date: Oct 30, 2000

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

On the 30th day of October, in the year 2000, before me, the undersigned, personally appeared BRAD BLUMFELD, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as President, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Signature and Office of individual taking acknowledgment

G. STEPHEN HAMILTON
Notary Public, State of New York
No. 02HA5043844
Qualified in Albany County
Commission Expires May 15, 2001