RECEIVED
MAR 13 2002
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
REGION 7

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a
Remedial Response Program
for 907 Upper Front Street
Town of Dickinson, New York
by:

Broome County,

"Volunteer".

VOLUNTARY CLEANUP AGREEMENT

Index # A7-0396-9909

WHEREAS, the Department is responsible for enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Agreement;

WHEREAS, the Department has established a Voluntary Cleanup Program to address the environmental, legal and financial barriers that hinder the redevelopment and reuse of contaminated properties;

WHEREAS, Volunteer represents, and the Department relied upon such representations in entering into this Agreement, that Volunteer's involvement with the Site is limited to the following: Volunteer owned and operated the site from the 1950's through 1993 as a firing range for the Broome County Sheriff's Department, and as a result the soils on site are contaminated with high levels of lead.

WHEREAS, the parties are entering into this Agreement in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and

WHEREAS, the Department has determined that it is in the public interest to enter into this Agreement as a means to address environmental issues at the Site with private funds while ensuring the protection of human health and the environment;

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Site Specific Definitions

For purposes of this Agreement, the terms set forth in the Glossary attached to, and made a part of, this Agreement shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Agreement, the following terms shall have the following meanings:

A. "Contemplated Use": commercial/industrial uses excluding day care, child care and medical care uses.

B. "Existing Contamination": concentrations of Lead ranging up to 35,000 ppm were detected in the soils on Site. Complete sampling results appear in the additional Site Investigation performed by O'Brien & Gere dated September 2, 1998. The term also includes contamination encountered during the course of this Agreement's implementation, the nature and extent of which were unknown or inadequately characterized as of the effective date of this Agreement, but which shall have been fully characterized to the Department's satisfaction.

C. "Site": that real property known as 907 Upper Front Street, Town of Dickinson New York, and identified as Tax Map Parcel # 128.18-1-1 in the real property tax records of the Broome County Clerk. Exhibit "A" of this Agreement is a map of the Site showing its general location..

D. "Volunteer": Broome County, a municipal corporation formed and existing under the laws of the State of New York, maintaining offices at the Edwin L. Crawford County Office Building, P.O. Box 1776, Binghamton, NY 13902.

II. Development, Performance and Reporting of Work Plans

A. Work Plan Labels

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be captioned as follows:

1. "Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at the Site;

2. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;

3. "Remediation Work Plan" if the Work Plan provides for the Site's remediation to cleanup levels sufficient to allow the Contemplated Use of the Site to proceed; or

4. "O&M Work Plan" if the Work Plan provides for post-remedial construction, operation and maintenance.

B. Submission/Implementation of Work Plans

1. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. A Professional Engineer must prepare, sign, and seal all Work Plans other than an Investigation Work Plan. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Agreement and shall be implemented in accordance with the schedule contained therein. If a proposed Work Plan is rejected by the Department, Volunteer shall elect in writing within 10 days

to: (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke the dispute resolution provisions of this Agreement pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to the provisions set forth in Subparagraph XII.

2. During all field activities, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken and who may be an outside consultant retained by Volunteer to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then either party may terminate this Agreement pursuant to Paragraph XII.

D. Submission of Final Reports

In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report containing on the cover page the caption of that Work Plan as set forth in Subparagraph II.A of this Agreement. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report relative to the Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan and all other final reports must contain such certification made by a professional engineer with primary responsibility for the day to day performance of the activities under this Agreement.

An OM&M Plan, if necessary, shall be submitted with the final report relative to an IRM Work Plan or the Remediation Work Plan.

E. Review of Submittals

1. The Department shall timely notify Volunteer in writing of its approval or disapproval of each submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal that corrects the stated deficiencies. If the Department disapproves the revised submittal, the Department and Volunteer may pursue whatever remedies may be available, including dispute resolution pursuant to Paragraph XIII.

3. Within 30 days of the Department's approval of a final report, such report must be submitted to the Department in an electronic format acceptable to the Department.

F. Department's Determination of Need for Remediation

In addition to the Department's approval of the final report, the Department will determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed to allow the Site to be used for the Contemplated Use.

1. If the Department determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use, the Department shall provide Volunteer with the Release described in Subparagraph II.H.

2. If the Department determines that remediation, or additional remediation, is needed to allow the Site to be used for the Contemplated Use, Volunteer may, at its sole discretion, submit for review and approval a proposed Work Plan (or a revision to an existing Remediation Work Plan for the Site) which addresses the remediation of Existing Contamination. Such proposed Work Plan shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.10(c). At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health or environment and must be protective for the safe implementation of the Site's Contemplated Use. The Department will notice a proposed Work Plan addressing the Site's remediation for public comment in accordance with Subparagraph II.G of this Agreement. If Volunteer elects not to develop a Work Plan under this Subparagraph or either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Paragraph XII.

G. Notice of Proposed Work Plan for the Site's Remediation

Whenever a Work Plan for the Site's remediation (other than an IRM Work Plan) is proposed, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the opportunity to submit comments on the proposed Work Plan within 30 days after the date of the issue in which the notice appears. The Department shall mail an equivalent notice to the Broome County Clerk. The Department will notify Volunteer following the close of the public comment period whether the proposed Work Plan needs to be revised. If the Department determines that revisions are necessary to protect human health or the environment for the Contemplated Use, Volunteer agrees to negotiate revisions to the proposed Work Plan in accordance with Paragraph II.C. If the Department determines that no revisions are required, then the Work Plan shall be attached hereto as Exhibit "B."

H. Release and Covenant Not To Sue

Upon the Department's determination that i) it is satisfied with the implementation of the Agreement; ii) no remedial activities other than those previously conducted at the Site, if any, are necessary for the Contemplated Use to proceed with protection of human health and the environment

and iii)Volunteer has complied, if required, with Paragraph X; the Department shall provide Volunteer with a Release and Covenant Not to Sue which is substantially similar to the one attached hereto as Exhibit "C," subject to the terms and conditions stated therein.

III. Progress Reports

Volunteer shall submit written monthly progress reports to the parties identified in Subparagraph XI.A.1 by the 10th day of each month until the Termination Date. Such reports shall, at a minimum, include: all actions taken pursuant to this Agreement during the previous month and those anticipated for the next month; all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays.

IV. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Volunteer shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within 10 business days of when it obtains knowledge of any such event. Volunteer shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event qualifies as a defense to compliance pursuant to this Paragraph.

V. Entry upon Site

Volunteer hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the matters addressed in a Department-approved Work Plan, and any agent, consultant, contractor or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site. Upon request, Volunteer shall permit the Department full access to all non-privileged records relating to matters addressed by this Agreement and to job meetings. Raw data is not considered privileged and that portion of any privileged document containing raw data must still be provided to the Department.

VI. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses for work performed at or in connection with the Site prior to the effective date of this Agreement, as well as for negotiating this Agreement and all costs associated with this Agreement, but not including any expenses incurred by the State after the Termination Date. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be

sent to: Bureau of Program Management, Division of Environmental Remediation, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. 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. Reservation of Rights

A. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to, the right to recover natural resources damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any party, including Volunteer.

B. This Agreement may be terminated by the Department or Volunteer if either fails to comply substantially with its terms and conditions provided that the terminating party first notifies the other party of its intent to exercise this right and provides the other party with the opportunity to cure any failure not due to fraud.

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

D. Except as provided in Subparagraph XIV.M, Volunteer reserves such rights as it may have to seek and obtain contribution and/or indemnification from its insurers and from other potentially responsible parties or their insurers for past or future response costs under applicable State and federal law.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement prior to the Termination Date except for liability arising from willful, wanton or malicious acts or acts constituting gross negligence by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement.

IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall cause to be filed the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Broome County Clerk and provide evidence of such filing to the Department. Volunteer may terminate such Notice on or after the Termination Date.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer 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. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, security agreement, lease or any other right accruing to a person to secure the repayment of money or the performance of a duty or obligation by a person not affiliated with Volunteer.

X. Deed Restriction

Within 60 days of the Department's approval of the Remediation Work Plan which relies upon institutional controls, Volunteer shall cause to be recorded a Department-approved instrument to run with the land with the Broome County Clerk which is substantially similar to Exhibit "E" attached to this Agreement, and shall provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy. The Volunteer may petition the Department to terminate the deed restriction filed pursuant to this Paragraph when the Site is protective of human health and the environment for residential uses without the reliance upon the restrictions set forth in such instrument. The Department will not unreasonably withhold its approval of such petition.

XI. Communications

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

1. Communication from Volunteer shall be sent to:

Larry Cutting, P.E.
NYS Department of Environmental Conservation
1679 NY Route 1
Kirkwood, NY 13795-9772
Note: four copies (one unbound) of work plans are required.

Andrew English, P.E.
NYS Department of Environmental Conservation
Bureau of Western Remedial Action
625 Broadway
Albany, NY 12233-7010

Gary Litwin
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
Note: two copies of work plans are required to be sent, and

Anthony Quartararo, Esq.
NYS Department of Envirnmental Conservation
Division of Environmental Enforcement
625 Broadway
Albany, NY 12233-5500

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

William L. Gibson, Jr., Esq.
Broome County Attorney
Edwin Crawford County Office Building
PO Box 1766
Binghamton, NY 13902-1766

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other.

XII. Termination of Agreement

Either party may elect to terminate this Agreement, in which event this Agreement shall terminate effective the 5th day after the written notification terminating this Agreement, except that such termination shall not affect the provisions contained in Paragraphs IV, VI and VIII and in Subparagraph XIV.M, nor Volunteer's obligation to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any remedial activities were commenced, which provisions and obligation shall survive the termination of this Agreement.

XIII. Dispute Resolution

Volunteer may commence dispute resolution within 20 days of Volunteer's receipt of the Department's notice of disapproval of a submittal or proposed Work Plan. Volunteer shall serve upon the Department a request for the appointment of an ALJ and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation upon which Volunteer relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position no later than 20 days after receipt of Volunteer's Statement of Position. Volunteer shall have the burden of proving by a preponderance of the evidence that the Department's position should not prevail. The ALJ may take testimony if he or she believes it will promote a resolution of the issues. Upon review

of the Administrative Record the ALJ shall issue a final decision and order resolving the dispute. The ALJ's decision and order shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR if Volunteer commences such proceeding no later than 30 days after receipt of a copy of the decision. The invocation of dispute resolution shall not extend, postpone or modify Volunteer's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a court determines otherwise. The Department shall keep an administrative record which shall be available consistent with the New York State Freedom of Information Law.

XIV. Miscellaneous

A. 1. Volunteer hereby certifies that all information known to Volunteer and all information in the possession or control of Volunteer and its agents which relates in any way to the contamination existing at the Site on the effective date of this Agreement, and to any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site, and to its application for this Agreement has been fully and accurately disclosed to the Department.

2. If the information provided and certifications made by Volunteer are not materially accurate and complete, this Agreement, except with respect to the provisions of Paragraphs IV, VI and VIII and Subparagraph XIV.M, at the sole discretion of the Department, and shall be null and void *ab initio* 15 days after the Department's notification of such inaccuracy or incompleteness and the Department shall reserve all rights that it may have, unless, however, Volunteer submits information within that 15 day time period indicating that the information provided and the certifications made were materially accurate and complete.

C. Each party shall have the right to take samples and to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party.

D. Volunteer shall allow the Department to attend and shall notify the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Agreement as well as any prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

E. Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement, except that the Department may exempt Volunteer from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

G. Volunteer shall provide a copy of this Agreement to each contractor and subcontractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out

the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement.

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 provisions of this Agreement.

I. 1. The terms of this Agreement shall constitute the complete and entire Agreement between the Department and Volunteer concerning the implementation of the work plan(s) attached to this Agreement. No term, condition, understanding or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "B". Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A and the Commissioner shall timely respond. This provision shall not extend to revisions to any Work Plan.

J. The activities to be undertaken under the terms of this Agreement are not subject to review under the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations.

K. If there are multiple parties, the term "Volunteer" shall be read in the plural where required to give meaning to this Agreement. Further, the obligations of the Volunteers under this Agreement are joint and several and the "bankruptcy" or inability to continue by any Volunteer shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Agreement.

L. Except as provided in Subparagraph XIV.M and to the extent authorized under 42 U.S.C. Section 9613 and any other applicable law, Volunteers shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the alleged contamination which is the subject matter of this Agreement. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, the provisions of 42 U.S.C. Section 9613(f)(3) shall apply.

M. Volunteer and its employees, servants, agents, lessees, sublessees, successors, and assigns hereby waive any right to pursue reimbursement of monies expended by Volunteer prior to the Termination Date as against the State or the Spill Fund, and agree to indemnify and hold

harmless the Spill Fund from, any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site.

N. Volunteer, Volunteer's lessees, sublessees, successors and assigns shall be bound by this Agreement. Any change in ownership of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's 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.

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

DATED: Albany, New York
March 8, 2002

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____
Susan I. Taluto
Deputy Commissioner
Water Quality and Environmental
Remediation

CONSENT BY VOLUNTEER

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

BROOME COUNTY

By: T. M. Cave

Title: Deputy County Exec.

Date: 1-25-02

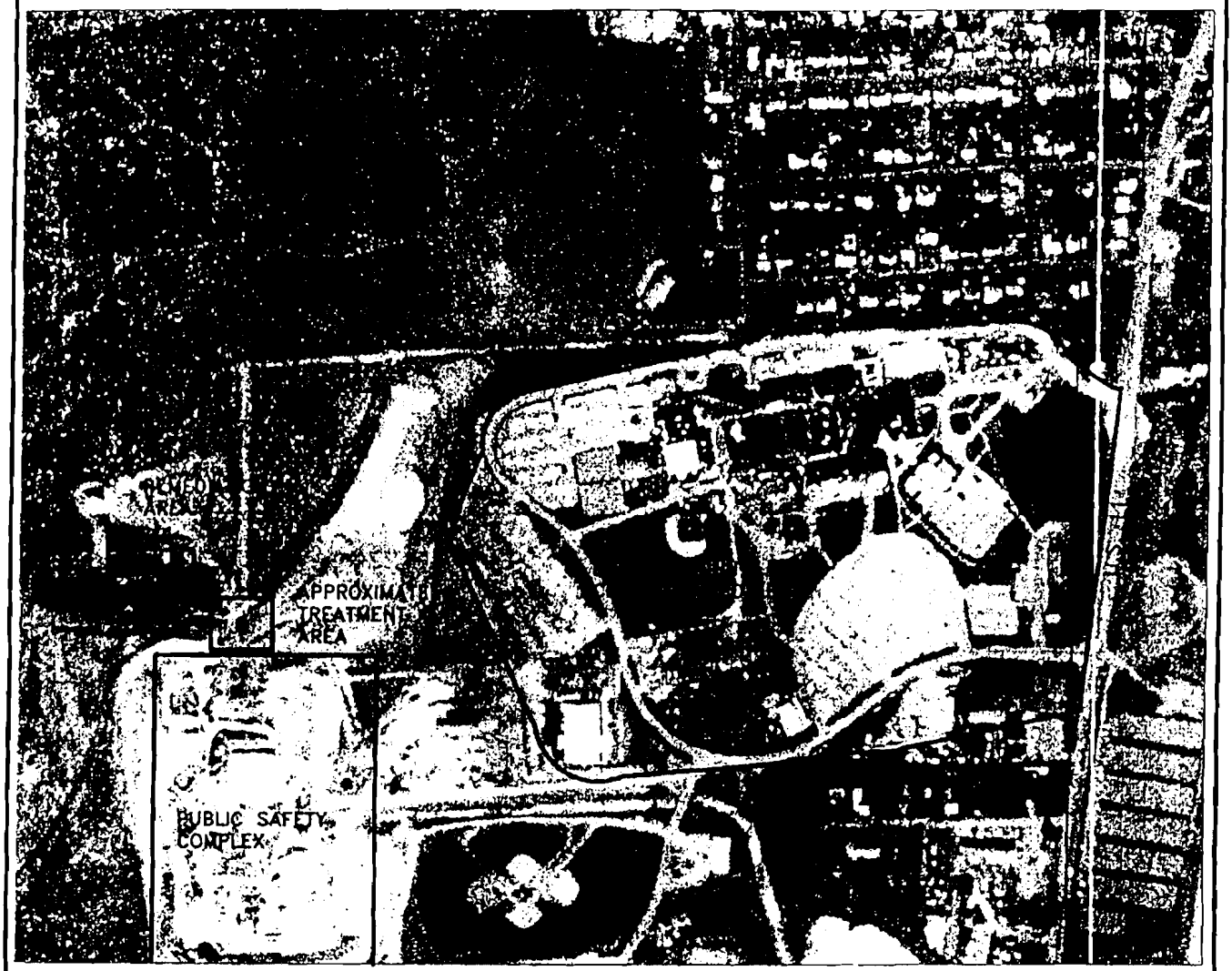
STATE OF NEW YORK)
) s.s.:
COUNTY OF BROOME)

On the 25th day of January, in the year 2002, before me, the undersigned, personally appeared Terrence Kane, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as Deputy County Exec. 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.

Signature and Office of individual
taking acknowledgment

EXHIBIT "A"

Map of Site



SOURCE: NYS DEPARTMENT OF THE STATE, DIVISION OF COASTAL RESOURCES, GIS UNIT, NYS 2000 DIGITALLY ENHANCED ORTHOIMAGERY 1998.

NOTE: NOT TO SCALE

FORMER BROOME COUNTY FIRING RANGE
DICKENSON, NEW YORK

REMEDIAL ACTION PLAN

SITE LOCATION MAP

BBL BLASLAND, BOUCK & LEE, INC. *engineers & scientists*

FIGURE 1A

L: (LAYER)
P: STD-PCP/AP
3/26/01 ROC-SA-SLM
74750001/74750801.DWG

EXHIBIT "B"

Department-Approved Work Plan(s)

EXHIBIT "C"

Release and Covenant Not to Sue

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Broome County ("Volunteer"), Index No. A7-0396-9909 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan, covering the remediation of the Site, located at 907 Upper Front Street, Binghamton, New York, has been successfully implemented.

The Department therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate deed restrictions remain recorded in accordance with Paragraph X of the Agreement, and (c) Volunteer and/or its' lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages or to any further investigation or remedial action the Department deems necessary:

- due to migration off-Site of contaminants resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum;

- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;

- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or

- due to fraud committed by Volunteer in entering into or implementing this Agreement.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term

is defined in Navigation Law § 172[15]), other than Covered Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteer's lessees, sublessees, successors, or assigns who 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 the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

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

- except as provided in this letter and in Agreement, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.

- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.

- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:_____

Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the _____ day of _____, 2001 by Broome County regarding a parcel of real property located at 907 Upper Front Street, Binghamton, New York, bearing Tax Map Number_____ (the "Property"); and

WHEREAS, Broome County ("Volunteer"), entered into an agreement with the Department, Index # A7-0396-9909 (the "Agreement"), concerning the remediation of contamination present on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sublessees, successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Volunteer agreed to give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Broome County Clerk,

NOW, THEREFORE, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property; and

2. This Notice shall terminate upon the filing by Volunteer or its successors and assigns, of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Agreement pursuant to its Paragraph XII.

IN WITNESS WHEREOF, Volunteer has executed this Notice of Agreement by its duly authorized representative.

Dated: By: _____

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 2001, 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 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.

_____
Signature and Office of individual
taking acknowledgment

Exhibit "E"

DEED RESTRICTION

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

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

shall require Volunteer and Volunteer's successors and assigns to continue in full force and effect any institutional and engineering controls the Department requires Volunteer to put into place and maintain; and

shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

Glossary of Terms

The following terms shall have the following meanings:

"**ALJ**": Administrative Law Judge

"**Covered Contamination**":the concentrations of Existing Contamination remaining on the Site on the date that the Department issues the Release set forth in Exhibit "C".

"**ECL**": the Environmental Conservation Law.

"**Force Majeure Event**": an event which is brought on as a result 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 Volunteer's reasonable control.

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

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

"**IRM**": an interim remedial measure which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

"**NL**": the Navigation Law

"**OM&M Plan**": the Department-approved work plan detailing post-remedial operation, maintenance, and monitoring at the Site that Volunteer shall implement.

"**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.

"**Spill Fund**": the New York State Environmental Protection and Spill Compensation Fund

"**State Costs**": all the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Agreement. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date upon which (i) the Release (Exhibit "C") is issued or the Department's approves the final report relative to the OM&M at the Site, whichever is later; or (ii) the Agreement terminates pursuant to Subparagraph XIII or XV.A.2.

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

"Work Plan": a Department-approved work plan pertaining to the Site that Volunteer shall implement and that is attached to this Agreement as may be modified.

Intro. No. 237
Date 7/22/99
Reviewed by RGS
Co. Atty.
Date 7/22/99

RESOLUTION

BROOME COUNTY LEGISLATURE

BINGHAMTON, NEW YORK

Permanent No 99-347
Date Adopted 7/22/99
Effective Date 7/27/99

Introduced by FINANCE and PUBLIC WORKS COMMITTEES

Seconded by HON. ARTHUR J. SHAFER

RESOLUTION AUTHORIZING A VOLUNTARY CLEANUP PROGRAM AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR PROPERTY KNOWN AS THE FORMER SHERIFF'S FIRING RANGE

WHEREAS, the Broome County Sheriff's Office operated a firing range from the mid 1950s to 1993 on property adjacent to the former site of the Broome County jail, and

WHEREAS, during that period of time, the range was used by the Sheriff's Office, local police departments, the FBI, and the secret service as a practice shooting range, and

WHEREAS, the site of the firing range was transferred to Broome Community College in a land swap involving the construction of the new Broome County Public Safety Facility, and

WHEREAS, the Sheriff's Firing Range may be considered a "Brownfield" defined as an industrial or commercial site with actual or perceived contamination, which prevents the site from being fully utilized, and

WHEREAS, the site is eligible for a "voluntary cleanup program" (VCP) whereby once the contaminants have been fully identified and contained on site and/or remediated, the site may be used for specified purposes and the owner released from further liability within defined parameters, and

WHEREAS, the County, as the owner of the site, has potential environmental liability, and

WHEREAS, a VCP agreement with the New York State Department of Environmental Conservation will allow for investigation of the contamination at the site and the development of a remediation plan which, upon completion, will permit the use of the site with the consequent limitation of County liability, now, therefore, be it

RESOLVED, that this County Legislature hereby authorizes a Voluntary Cleanup Agreement with the New York State Department of Environmental Conservation in connection with the Sheriff's Firing Range to provide for site investigation and remediation plans, and be it

FURTHER RESOLVED, that this resolution shall constitute the approval of this County Legislature for remediation of the environmental hazards present at the Sheriff's Firing Range pursuant to the remediation plan approved by NYSDEC, and be it

FURTHER RESOLVED, that the County is hereby authorized to pay the New York State Department of Environmental Conservation an amount not to exceed $5,000 for their administration costs associated with this "Voluntary Cleanup Program", and be it

FURTHER RESOLVED, that the payments hereinabove authorized, shall be made from budget line 035121.4746.501234 (Engineering and Architectural Services), and be it

FURTHER RESOLVED, that the County Executive or his duly authorized representative is hereby empowered to execute any such agreements, documents, or papers, approved as to form by the Department of Law, as may be necessary to implement the intent and purpose of this Resolution.

COUNTY OF BROOME) ss.
STATE OF NEW YORK)

I the undersigned, Clerk of the Legislature of the County of Broome, DO HEREBY CERTIFY that the above is an original resolution of such Legislature, duly adopted on the 22nd day of July, 1999 by a majority of the members elected to the Legislature of said County at a regular meeting of said Legislature

I FURTHER CERTIFY that at the time said resolution was adopted said Legislature was comprised of nineteen members.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Legislature this 23rd day of July, 1999.

Date sent to County Executive July 26, 1999

Approved

County Executive

Date 7/27, 1999

Clerk, County Legislature
County of Broome

Intro No. 35

Date 1/17/02

Reviewed by Co. Attorney [signature]

Date 1/4/02

RESOLUTION

BROOME COUNTY LEGISLATURE

BINGHAMTON, NEW YORK

Permanent No 02-36

Date Adopted 1/17/02

Effective Date 1/18/02

Introduced by PUBLIC WORKS and FINANCE COMMITTEES

Seconded by HON. PATRICK F. O'DAY

RESOLUTION AUTHORIZING AN AMENDMENT TO RESOLUTION 347 OF 1999.

WHEREAS, this County Legislature, by Resolution 347 of 1999, authorized a Voluntary Cleanup Agreement (VCA) with The New York State Department of Environmental Conservation (NYSDEC) for environmental cleanup of the former Sheriff's Firing Range, and

WHEREAS, said resolution authorized the County to pay NYSDEC administrative costs in connection with site investigation and administration of the VCA not to exceed $5,000.00, and

WHEREAS, the Commissioner of Public Works has received information that the estimated NYSDEC administrative charges will be in excess of $6,800 and now requests authorization to amend Resolution 347 of 1999 to provide for the payment of the NYSDEC administrative fees in an amount not to exceed $10,000, now, therefore, be it

RESOLVED, that this County Legislature hereby amends Resolution 347 of 1999 to provide for the payment by the County to the New York State Department of Environmental Conservation for administrative fees not to exceed $10,000 in connection with the Voluntary Cleanup Agreement authorized by Resolution 347 of 1999, and be it

FURTHER RESOLVED, that the payments hereinabove authorized shall be made from budget line 035-21.47-8.50123 (Engineering and Architectural Services), and be it

FURTHER RESOLVED, that Resolution 347 of 1999, to the extent consistent herewith, shall remain in full force and effect, and be it

FURTHER RESOLVED, that the County Executive or his duly authorized representative is hereby empowered to execute any such agreements, documents, or papers, approved as to form by the Department of Law, as may be necessary to implement the intent and purpose of this Resolution.

COUNTY OF BROOME
STATE OF NEW YORK } ss.:

I, the undersigned, Clerk of the Legislature of the County of Broome, DO HEREBY CERTIFY that the above is an original resolution of such Legislature, duly adopted on the 17th day of January, 20 02, by a majority of the members elected to the Legislature of said County at a regular meeting of said Legislature.

I FURTHER CERTIFY that at the time said resolution was adopted said Legislature was comprised of nineteen members.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Legislature this 18th day of January, 20 02.

Date sent to County Executive January 18, 2002

Approved [signature]
County Executive

Date 1/18, 2002

[signature]
Clerk, County Legislature
County of Broome