00-17-1 (4/93)—29a

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

TRANSMITTAL SLIP

TO	~~Nancy Gamy~~ Tara King
DATE	10/17/03
FROM	Denise D'Ambrosio
RE:	LIRR - Massapequa, Manhasset + Island Park

Attached is proof of filing of Notice of Agreement in respect to the above-referenced sites.

RECEIVED
OCT 21 2003
BUREAU OF EASTERN REMEDIAL ACTION

FOR ACTION AS INDICATED:

- ☐ Please Handle
- ☐ For Your Information
- ☐ Comments
- ☐ Approval/Signature
- ☐ File
- ☐ Return to me by _____
- ☐ Prepare Reply for _____ Signature
- ☐ _____

347 Madison Avenue
New York, NY 10017-3739
212 878-7000 Tel

Metropolitan Transportation Authority

State of New York

September 30, 2003

Denise J. D'Ambrosio
Assistant Counsel
New York State Department
of Environmental Conservation
200 White Plains Road, 5th Floor
Tarrytown, NY 10591-5805

Re: Voluntary Clean-Up Agreements

Dear Ms. D'Ambrosio:

Enclosed please find the Notice of Agreements for the following sites:

1. Massapequa (V00397-1);
2. Manhasset(V00396-1);
3. Island Park (V00392-1)

along with proof of filing.

If you would like to discuss the above issues please contact me at (212) 878-1035.

Sincerely,

Colleen J. Channer
Assistant Environmental Counsel

Encls.

NASSAU COUNTY CLERK'S OFFICE
ENDORSEMENT COVER PAGE

Recorded Date: 09-11-2002
Recorded Time: 2:59:32 p

Liber Book: D 11526
Pages From: 240
To: 267

Control Number: 2011
Ref #:
Doc Type: D04 AGREEMENT-DEED

Record and Return To:
ENTERPRISE PROCESS SVC
474 MAIN ST
ISLIP, NY 11751

Location:	Section	Block	Lot	Unit
TOWN HOLDS	0099	0MSTR-00	0MSTR	

Sheet 167
Parcel 3-201

STATE OF NEW YORK
COUNTY OF NASSAU } SS:
COUNTY CLERK'S OFFICE

I, **KAREN V. MURPHY,** County Clerk of the County of Nassau and the Supreme and County Courts, Courts of Record thereof,

DO HEREBY CERTIFY, that I have compared the annexed with the original.

~~RECORD OF~~ Deed ~~AGREEMENT~~

FILED AND RECORDED in my office September 11 2002 in Liber 11526 Page 240 and that the same is a true transcript thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said County at Mineola, N.Y. this 17th day of October, 2002

Karen V. Murphy
County Clerk

CL-192. 2/96. Rev. 2/00

NOTICE OF AGREEMENT

This Notice is made as of the 28th day of June, 2002 by Metropolitan Transportation Authority/Long Island Rail Road regarding a parcel of real property located in Manhasset, New York, Long Island Railroad Atlas Sheet 167 Parcel 3-201 (the "Property'); and

WHEREAS, Metropolitan Transportation Authority/Long Island Rail Road ("Volunteer") 93-59 183rd Street, Dept. 3147, Hollis, NY 11423, entered into an agreement with the NYS Department of Environmental Conservation 50 Wolf Road, Albany, NY 12233-1010, Index # W1-0909-02-02 (the "Agreement"), concerning contamination which is or may be present on the Property, which Agreement was executed on behalf of the Department on May 30, 2002; 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, grantees, 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 cause the filing of a notice of the Agreement with the Nassau 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 of a Notice of Termination of this 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.

By: José R. Fernandez
JOSE R. FERNANDEZ
AUTHORIZED SIGNATORY

Dated:

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

On the 28th day of June, in the year 2002, before me, the undersigned, personally appeared Jose R Fernandez, 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.

Ann Jane Nicholls
Signature and Office of individual taking acknowledgement

LEGIBILITY POOR FOR MICROFILM

Please File & Return to:
Colleen J. Channer, Esq.
Metropolitan Transportation Authority
347 Madison Avenue, 9th Floor
New York, NY 10017

PROPERTY DETAIL

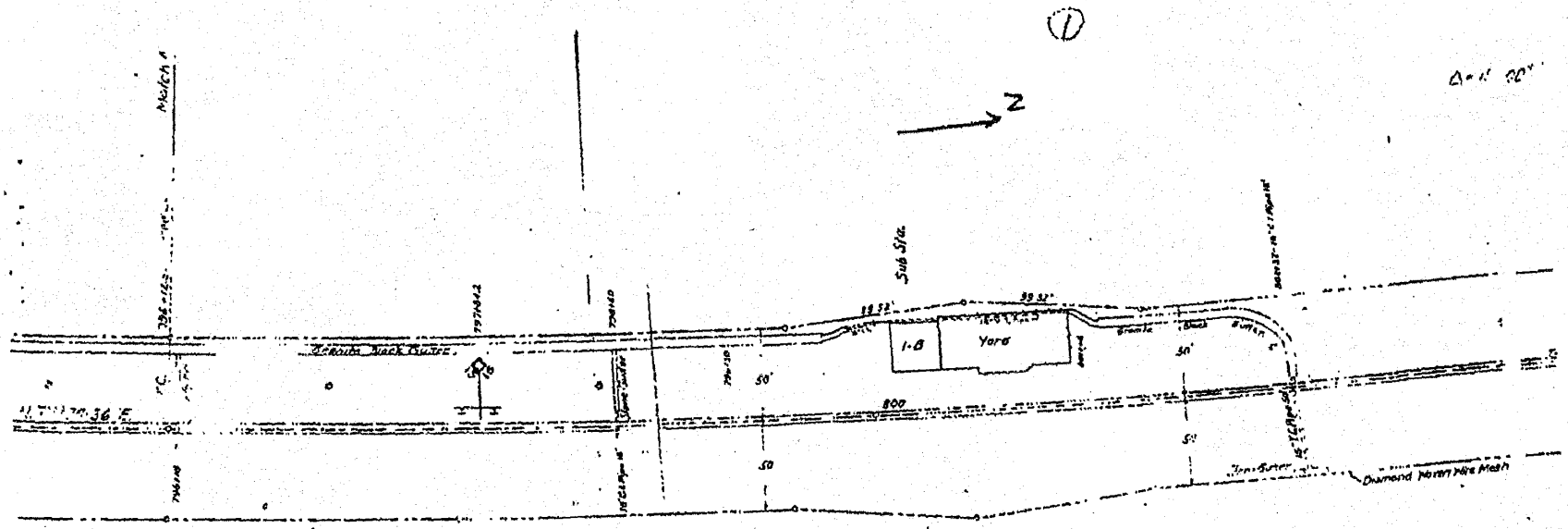
Property Code lpw14651
Property Name Substation b GT Neck-Manhasset
Property Address Sta-Mon#800

City/State/Zip North Hempstead, NY 11030

Agency:	LIR	**County:**	Nassau	**Municipality:**	
Map:					
Sheet:	167	**Plate:**		**District:**	747
Section:	3				
Block:	167	**Lot:**	201	**Easement:**	
Bet. Sta.:	Gt Neck/Manhasset				
Milepost #:		**StaMon#:**	800	**Val Map#:**	V2B-156
Prop Type:	Substation			**Line Name:**	Port Washington
Stat Num:		**Division:**		**Line Number:**	
Stat Name:				**Pass. Count:**	
Cross St:	Shore Rd			**Imp. Year:**	
Flag:		**Volume:**	Nassau Tax RR Atlas	**City Acct:**	N
Sq. Ft.:	13.73	**Dimensions:**			

Notes:

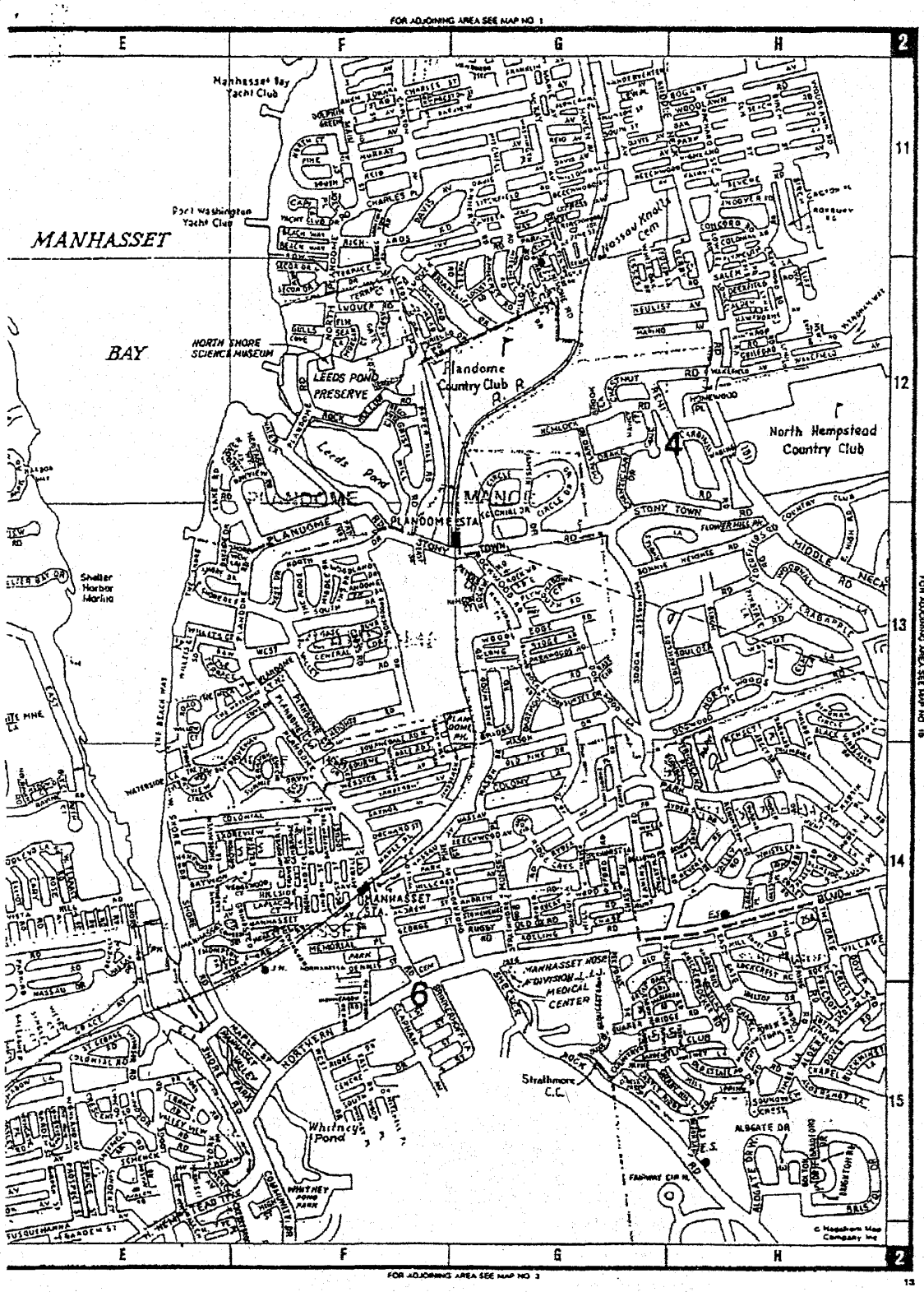
REUC#:		**Block2:**		**Lot2:**	
IPIS Agency:				**IPIS Juris:**	
OOF Exemp:				**BC:**	
ORE O Name:					
ORE RENA:					
MTA O Name:					
MTA RENA 1:					
MTA RENA 2:					
Acq/Rec. Info:					
Instructions to Finance:				**Date Action Taken:**	
Action Taken:					
City Update Status:					



SECT 3
BLK 167
LOT 201
DIST 747
TOWN Oyster Bay
E/o Shore Rd
STA MOW 800
Mile Post .15

Val map V2B-156

(1)


FOR ADJOINING AREA SEE MAP NO 1
E
F
G
H
2
11
12
13
14
15
Manhasset Bay Yacht Club
Port Washington Yacht Club
MANHASSET
BAY
NORTH SHORE SCIENCE MUSEUM
LEEDS POND PRESERVE
Leeds Pond
Plandome Country Club
Nassau Knolls Cem
North Hempstead Country Club
PLANDOME MANOR
PLANDOME STA
STONY TOWN RD
Shelter Harbor Marina
MANHASSET STA
MANHASSET NOSE
DIVISION L.I.J. MEDICAL CENTER
Strathmore C.C.
Whitney's Pond
WHITNEY POND PARK
ALBGATE DR
FAIRWAY CIR N
FOR ADJOINING AREA SEE MAP NO 3
13

(1)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a
Voluntary Cleanup Agreement

for: (1) **Long Island Rail Road Substation - Island Park**
Site #: V-00392-1 Index #: W1-0908-02-02
(2) **Long Island Rail Road Substation- Manhasset**
Site #: V-00396-1 Index #: W1-0909-02-02
(3) **Long Island Rail Road Substation - Massapequa**
Site #: V-00397-1 Index #: W1-0910-02-02

by: **Metropolitan Transportation Authority/Long Island Rail Road**

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 as follows: The Sites are electric substations owned and operated by the Long Island Rail Road (LIRR) that once utilized mercury rectifiers to power the locomotive and electric passenger rail road. In or about the1980's, the mercury rectifiers were taken out of service and replaced with equipmentthat did not utilize mercury;

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 to ensure 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": Restricted Industrial.

B. "Existing Contamination":

(1) Long Island Rail Road Substation - Island Park
Mercury contamination of soil inside the substation, particularly within the interior pits which surrounded the mercury rectifiers, and immediately surrounding the substation building, entrance and exit areas, loading docks and water meter pits outside the building.

(2) Long Island Rail Road Substation - Manhasset
Mercury contamination of the soil in the dry well, interior sump pump pits, drainage trench that extends along the length of the substation, discharge point for the slop sink and the head wall of Manhasset Bay which is down gradient of the substation as well as mercury contamination of groundwater.

(3) Long Island Rail Road Substation - Massapequa
Mercury contamination of soil inside the substation, particularly within the interior pits which surrounded the mercury rectifiers, and immediately surrounding the substation building, entrance and exit areas, loading docks, water meter pits, dry wells, communications pit, positive breaker, and cable pit.

These and additional details of the site contamination is contained in the Site Assessment of 20 Substations for Mercury Contamination: Interim Remedial Measures Oversight Report dated January 2001 and the Site Assessment of 20 Substations for Mercury Contamination dated December 2000, both of which were prepared by Dvirka and Bartilucci Consulting Engineers, Woodbury, New York for Metropolitan Transportation Authority/Long Island Railroad. The term also includes contamination identified during the implementation of this Agreement, the nature and extent of which was unknown or insufficiently characterized as of the effective date of this Agreement, but which shall have been fully characterized and addressed to the Department's satisfaction.

C. "Site":

(1) Long Island Rail Road Substation - Island Park a portion of the LIRR Right of Way located 120' north of California Place North and Austin Boulevard, along the Town of Hempstead and Village of Island Park borders at Island Park Station, and on the north side and north of the Long Beach Line Right of Way in the Town of Hempstead, County of Nassau, New York 11588 with Tax Map Identifiers Section 43 Block 159 Lot 37, Station Monument 1190;

(2) Long Island Rail Road Substation - Manhasset a portion of the LIRR Right of Way located on the north side of the Port Washington Right of Way and the south side of Virginia Drive about 1200' west of Manhasset Avenue in the Town of North Hempstead, County of Nassau, New York 11030 with Tax Map Identifiers Section 3 Block 167 Lot 201, Station Monument 800, Mile Post 15;

(3) Long Island Rail Road Substation - Massapequa a portion of the LIRR Right of Way located on the south side of the Babylon Right of Way and Parkside Boulevard, 100' east of

3. During all field activities, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a 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 which shall be enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes dispute resolution pursuant to Paragraph XIII, either party may terminate this Agreement pursuant to Subparagraph XII.A.

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report which includes the caption of that Work Plan on the cover page. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated relative to the Site 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; and "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report for an 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.

2. An OM&M Work Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Action Work Plan.

E. Review of Submittals other than Work Plans

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

2. If the Department disapproves a submittal covered by this subparagraph, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within 20 Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall elect in writing to either (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Subparagraph XII.A. If Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Agreement or under law.

3. Within 60 Days of the Department's approval of a final report, Volunteer shall submit such additional Work Plans as it proposes to implement. Failure to submit any

additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Volunteer, result in the termination of this Agreement pursuant to Subparagraph XII.B.

4. All approved final reports shall be submitted to the Department in an electronic format acceptable to the Department within 30 Days of approval of such final report.

F. Department's Determination of Need for Remediation

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. The Department shall timely notify Volunteer if it determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Volunteer shall cause to be filed a Declaration of Covenants and Restrictions in accordance with Paragraph X within 60 Days of receipt of the Department's determination. Upon receipt of a copy of such instrument, the Department will 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 elect to submit for review and approval a proposed Work Plan (or a revision to an existing Remedial Action 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)(1) through (c)(6), excluding consideration of cost-effectiveness. At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health and/or the environment and must result in the Site being protective of public health and the environment for the Contemplated Use. The Department will notice a proposed Work Plan addressing the Site's remediat on 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 Subparagraph XII.A

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 Village of Island Park and Town of Hempstead for the Long Island Rail Road - Island Park Site; to the Hamlet of Manhasset and Town of North Hempstead for the Long Island Rail Road - Manhasset Site; and to the Hamlet of Massapequa and Town of Oyster Bay for the Long Island Rail Road - Massapequa Site. 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 for Site conditions to be protective of the public health or the environment based upon 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) Volunteer is in compliance with the Agreement; (ii) no requirements other than those remedial actions, exclusive of OM&M activities, already conducted at the Site, if any, are necessary to assure that Site conditions are protective of the public health and the environment based upon the Contemplated Use; and (iii) Volunteer has complied, if required, with Paragraph X, the Department shall provide Volunteer with the Release and Covenant Not to Sue attached hereto as Exhibit "C," subject to the terms and conditions stated therein.

I. Submission of Annual Reports, if required

If institutional or engineering controls are relied upon as part of the remedy implemented under this Agreement, Volunteer shall cause the filing of an annual report by January 15th until the Department notifies Volunteer in writing that the remedial process is concluded. Such annual report shall be signed by a Professional Engineer and shall contain a certification that the institutional and engineering controls put in place pursuant to this Agreement are still in place, have not been altered and are still effective.

III. Progress Reports

Volunteer shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XI.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Volunteer in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

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 Working 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

A. 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 by 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, for (i) inspecting, sampling, and copying records related to the contamination at the Site; (ii) implementing the activities under this Agreement; and (iii) testing and any other activities necessary to ensure Volunteer's compliance with this Agreement. Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, to the extent same are available. Upon request, Volunteer shall permit the Department full access to all non-privileged records relating to matters addressed by this Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Volunteer shall have the right to obtain samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of all sampling and scientific measurements taken under this Subparagraph available to Volunteer.

VI. Payment of State Costs

A. Within 45 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 State Costs 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, through and including the Termination Date.

B. 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. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Such invoice shall be sent to Volunteer at the following address:

Lewis D. Wunderlich
Environmental Engineer

Long Island Rail Road
Hillside Support Facility, Department 3147
93-59 183rd Street
Hollis, New York 11423

D. Each such payment shall be made 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.

E. Each party shall provide written notification to the other within 90 Days of any change in the foregoing addresses.

F. Volunteer may contest, in writing, invoiced costs under Subparagraph VI.A if it believes (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities reimbursable under this Agreement; or (iii) the Department is not otherwise legally entitled to such costs. If Volunteer objects to an invoiced cost, Volunteer shall pay all costs not objected to within the time frame set forth in Subparagraph VI.A and shall, within 30 Days of receipt of an invoice, identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the Division of Environmental Remediation's Director of the Bureau of Program Management. The Director or the Director's designee shall have the authority to relieve Volunteer of the obligation to pay invalid costs. Within 45 Days of the Department's determination of the objection, Volunteer shall pay to the Department the amount which the Director or the Director's designee determines Volunteer is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

G. In the event any instrument for the payment of any money due under this Agreement fails of collection, such failure of collection shall constitute a violation of this Agreement, provided (i) the Department gives Respondent written notice of such failure of collection, and (ii) the Department does not receive from Volunteer a certified check or bank check within 14 Days after the date of the department's written notification.

VII. Reservation of Rights

A. 1. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance and except as provided in Subparagraph VII.A.2, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to recover natural resource 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.

2. Except for the Department's right to take any investigatory or remedial action deemed necessary as a result of a significant threat resulting from the Existing Contamination or to exercise summary abatement powers, the Department shall not take any enforcement action under ECL Article 27, Title 13, under CERCLA, under the NL, or under comparable statutory or common law theories of remedial liability with respect to the Existing Contamination, to the extent that such contamination is being addressed under the Agreement,

against Volunteer or Volunteer's grantees, successors or assigns during the implementation of this Agreement, provided such party is in compliance with the terms and provisions of this Agreement, including, without limitation, the requirements of all Work Plans and amendments thereto.

B. Except as otherwise provided in this Agreement, Volunteer specifically reserves all rights and defenses under applicable law to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions, determination or order of the Department, including any assertion of remedial liability by the Department against Volunteer, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Volunteer's compliance with it shall not be construed as an admission of liability, fault, wrongdoing or violation of law 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.

C. Except as provided in Subparagraph XIV.O, Volunteer reserves such rights as it may have to seek and obtain contribution, indemnification and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers, for past or future response and/or cleanup costs or such other costs or damages arising from contamination at the Site as provided under applicable 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 by Volunteer prior to the Termination Date except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) from willful, wanton or malicious acts or acts constituting gross negligence or criminal behavior 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. The Department shall provide Volunteer with written notice no less than 30 Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Public Notice

A. Within 30 Days after the effective date of this Agreement, Volunteer shall cause to be filed a Department-approved Notice of Agreement, which Notice shall be substantially similar to the Notice of Agreement attached to this Agreement as Exhibit "D," with the County Clerk in the county in which the Site is located (or the City Register if the Site is located in Manhattan, Bronx, Kings or Queens County) to give all parties who may acquire any interest in the Site notice of this Agreement. Within 30 Days of such filing (or such longer period of time as may be required to obtain a certified copy provided Volunteer advises the Department of the status of its efforts to obtain same within 30 Days), Volunteer shall provide the Department with a copy of such instrument certified by such County Clerk (or the City Register) to be a true and faithful copy. Volunteer may terminate such Notice on or after the Termination Date of this Agreement.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, or becomes aware of such conveyance, Volunteer shall, not fewer than 45 Days before the date of conveyance or within 45 Days after becoming aware of such 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, pledge, security agreement, lease or any other right accruing to a person not affiliated with Volunteer to secure the repayment of money or the performance of a duty or obligation.

X. Declaration of Covenants and Restrictions

A. Within 30 Days after the Department's approval of a Remedial Action Work Plan which relies upon one or more institutional controls, or within 30 Days after the Department's determination pursuant to Subparagraph II.F.1 that additional remediation is not needed based upon use restrictions, Volunteer shall submit to the Department for approval a Declaration of Covenants and Restrictions to run with the land which provides for covenants and restrictions consistent with the Work Plan. The submittal shall be substantially similar to Exhibit "E." Volunteer shall cause such instrument to be recorded with the County Clerk (or the City Register) in the county in which the Site is located within 30 Days of the Department's approval of such instrument. Volunteer shall provide the Department with a copy of such instrument certified by the County Clerk (or the City Register) to be a true and faithful copy within 30 Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Volunteer advises the Department of the status of its efforts to obtain same within such 30 Day period).

B. Volunteer or the owner of the Site may petition the Department to modify or terminate the Declaration of Covenants and Restrictions filed pursuant to this Paragraph at such time as it can certify that the Site is protective of human health and the environment for residential uses without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer. The Department will not unreasonably withhold its consent.

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 Volunteer shall be sent to:

Champanine Saviengvong
Project Manager (Island Park & Massapequa)
Division of Environmental Remediation
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7015

Nancy Garry
Project Manager (Manhasset)
Division of Environmental Remediation
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7015

Note: four copies (one unbound) of work plans are required to be sent.

Kevin Carpenter, P.E.
Central Office VCP Coordinator
New York State Departmental of Environmental Conservation
Division of Environmental Remediation
625 Broadway, 11th Floor
Albany, New York 12233-7015

Gary A. Litwin
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

Denise J. D'Ambrosio
Project Attorney
Division of Environmental Enforcement
New York State Department of Environmental Conservation
200 White Plains Road - 5th Floor
Tarrytown, New York 10591-5805

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

Lewis D. Wunderlich
Environmental Engineer
Long Island Rail Road
Hillside Support Facility, Department 3147
93-59 183rd Street
Hollis, New York 11423

Colleen J. Channer
Associate Environmental Counsel
Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017-3739

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

C. Each party shall notify the other within 90 Days after any change in the addresses listed in this Paragraph XI or in Paragraph VI.

XII. Termination of Agreement

A. 1. Volunteer may elect in writing to terminate this Agreement without cause while the Department may only elect to terminate this Agreement for cause, which shall be established so long as the Department's stated reason is not arbitrary and capricious. The Department shall include in its notice of termination the basis for its election to terminate this Agreement.

2. In the event of either party's election to terminate this Agreement, this Agreement shall terminate effective the 5th Day after the non-terminating party's receipt of 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.L, 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 activities were commenced under this Agreement, which provisions and obligation shall survive the termination of this Agreement.

B. Notwithstanding Subparagraph XII.A, this Agreement shall terminate without notice in the event that Volunteer fails to submit additional Work Plans in accordance with Subparagraph II.E, unless other Work Plans are under review by the Department or being implemented by Volunteer.

XIII. Dispute Resolution

A. If Volunteer disagrees with the Department's notice of disapproval of a submittal or a proposed Work Plan, disapproval of a final report, nullification of this Agreement pursuant to Subparagraph XIV.A.2, or rejection of Volunteer's assertion of a Force Majeure Event, Volunteer shall, within 30 Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Volunteer to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Volunteer shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIII.B. The period for informal negotiations shall not exceed 30 Days from Volunteer's request for informal

negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Volunteer notifies the Department in writing within 30 Days after the conclusion of the 30 Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIII.B.

B. 1. Volunteer shall serve upon the ADD a request for formal dispute resolution 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"). A copy of such request and written statement shall be provided to the parties listed under Subparagraph XI.A.

2. The Department shall serve its Statement of Position no later than 20 Days after receipt of Volunteer's Statement of Position.

3. Volunteer shall have the burden of proving by a preponderance of the evidence that the Department's position is not in accordance with law or otherwise should not prevail. The ADD can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The ADD will issue a final decision resolving the dispute in a timely manner. The final decision 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 provided that Volunteer commences such proceeding within 45 Days after receipt of a copy of the decision. Volunteer shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within 45 Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the 45 Day period provided. In the event that Volunteer seeks judicial review, Volunteer shall be in violation of this Agreement if it fails to comply with the final order or settlement within 30 Days after its effective date, unless otherwise directed by the Court. For purposes of this Subparagraph, a determination shall not be final until the time to perfect an appeal of that determination has expired.

5. 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.

6. The Department shall keep an administrative record which shall be available consistent with Article 6 of the Public Officers 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 in conjunction with the Volunteer's application for the Voluntary Cleanup Program.

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.O, at the sole discretion of the Department, 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.

B. Volunteer shall allow the Department to attend, and shall notify the Department at least 7 Working Days in advance of, any field activities to be conducted pursuant to this Agreement, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

C. Volunteer shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, 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. If, despite Volunteer's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained within 45 Days after the effective date of this Agreement or within 45 Days after the date the Department notifies Volunteer in writing that additional access beyond that previously secured is necessary, Volunteer shall promptly notify the Department, and shall include in that notification a summary of the steps Volunteer has taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Volunteer in obtaining access. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require that Volunteer modify the Work Plan pursuant to Subparagraph II.C of this Agreement.

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

E. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and shall condition all contracts entered into to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or its contractor(s) shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

F. 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.

G. 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 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. i. Except as set forth herein, if Volunteer desires that any provision of this Agreement be changed, other than a provision of a Work Plan or a time frame, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement.

iii. Changes to a time frame set forth in this Agreement shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing. The Department's decision relative to a request for a time frame change shall be subject to dispute resolution pursuant to Paragraph XII.

H. 1. If there are multiple parties signing this Agreement, 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 failure by any Volunteer to implement the obligations under this Agreement shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Agreement.

2. If Volunteer is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Agreement and to pay amounts owed the Department under this Order are joint and several. In the event of the insolvency or other failure of any one or more of the general partners to implement the requirements of this Agreement, the remaining general partners shall complete all such requirements.

3. Notwithstanding the foregoing Subparagraphs XIV.H. 1 and 2, if multiple parties sign this Agreement as Volunteers but not all of the signing parties elect, pursuant to Subparagraph II.F.2, to implement a Work Plan, then all Volunteers are jointly and severally

liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Volunteers electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Volunteers electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue as provided under Subparagraph II.H.

I. Except as provided in Subparagraph XIV.O., and to the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law Section 15-108, and any other applicable law, Volunteer shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2) for "matters addressed" pursuant to and in accordance with this Agreement. "Matters addressed" in this Agreement shall mean all response actions taken to implement this Agreement for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Agreement, including reimbursement of the State's costs pursuant to this Agreement.

J. Volunteer, Volunteer's grantees, 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.

K. All activities undertaken by Volunteer pursuant to this Agreement shall be performed in accordance with the requirements of all applicable Federal and State laws and regulations.

L. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Agreement or in the attached Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

M. Volunteer's obligations under this Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

N. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

O. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, grantees, 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 that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

P. The effective date of this Agreement is the 10th Day after the date it is signed by the Commissioner or the Commissioner's designee.

DATED: MAY 30 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.

Metropolitan Transportation Authority/Long Island Rail Road

By: Jose R. Fernandez

Title: Vice President-System Safety

Date: April 29, 2002

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

On the 29th day of April, in the year 2002, before me, the undersigned, personally appeared Jose R. Fernandez 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.

Ann Marie Nicoletti

Signature and Office of individual taking acknowledgment

ANN MARIE NICOLETTI
NOTARY PUBLIC, State of New York
No. 01SLE5013948
Qualified in Suffolk County
Commission Expires July 15, 2003

LEGIBILITY POOR FOR MICROFILM

EXHIBIT "A"

Map of Site

NEW YORK STATE METROPOLITAN TRANSPORTATION AUTHORITY

In the Matter of the Implementation of a

VOLUNTARY CLEANUP AGREEMENT

NOTICE OF AGREEMENT

for. Long Island Rail Road Substation – Manhasset
Site #: V-00796-1 Index #: W1-0909-02-02

RETURN TO: ENTERPRISE PROCESS SVC
474 MAIN ST
ISLIP NY 11751

LEGIBILITY POOR
FOR MICROFILM