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Agreement.VCP.V00444.2001-12-21.Voluntary-Cleanup-Agreement

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V00444-3
12/21/01

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a
Voluntary Cleanup Agreement
for: **Beacon Salvage Property**, "Site" by: **Scenic Hudson Land Trust, Inc.**,"Volunteer"
Site #: V-00444-3 Index #: W3-0883-01-04

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 purchased the Site on October 31, 2000. Volunteer has had no relationship with the previous owner(s) of the Site and is not otherwise a Potentially Responsible Party for the Site's contamination;

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": Restricted residential use.

B. "Existing Contamination": Elevated arsenic, lead and selenium concentrations above Department action levels were found throughout the Site in both surface and subsurface

soils. Surface soils on the eastern portion of the Site are known to contain concentration of PCBs above Department action levels. Additional on-site soils (including subsurface soils) contain concentrations of PCBs which are below Department action levels. These conditions are more fully described in the Combined Phase I - Phase II Environmental Site Assessment prepared by Ecosystems Strategies, Inc., dated July 31, 2000, for Scenic Hudson Land Trust, Inc. and Summary Report of Subsurface Investigation dated September 27, 2000. "The term also includes contamination identified during the implementation of this Agreement, the nature and extent of which were 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": An approximately 4.2-acre parcel of real property located at the western end of Red Flynn Drive, City of Beacon, County of Dutchess, New York 12508, at latitude 41° 30" and longitude 73° 59", and identified on the City of Beacon Tax Map as 30-5954-32-488835. The Site is an irregularly shaped lot which is believed to have been used as a junk yard for a period of years and possibly for car/boat storage. The property has approximately 170 feet of frontage and extends approximately 1,100 feet westwards from Red Flynn Drive. The western property line extends approximately150 feet into the Hudson River. For the purposes of this Agreement, the Site does not include those portions of the property extending beyond the mean low water mark of the river. Exhibit "A" of this Agreement is a map of the Site showing its general location.

A detailed metes and bounds description of the Site must be provided by the Volunteer to the Department prior to issuance of the Release and Covenant Not to Sue provided for in Subparagraph II.G. and no later than the submission of the final report for the Remedial Action Work Plan;

D. "Volunteer": Scenic Hudson Land Trust, Inc., 9 Vassar Street, Poughkeepsie, New York 12601, a not for profit corporation. For the sole purposes of the Voluntary Cleanup Program, the Volunteer is considered an Innocent Owner/Non-PRP Volunteer. As a result of this status, the Volunteer need not address off-site contamination other than an off-site exposure assessment in relevant work plans.

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

4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, monitoring and/or maintenance.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted within 40 days of the effective date of this Agreement. Thereafter, the Volunteer can submit such other and additional work plans it deems appropriate.

2. A 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. Within 20 Days after receiving written notice that Volunteer's Work Plan has been disapproved, Volunteer shall elect in writing 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.A.

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

D. Submission of Final Reports

In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report with a cover page containing 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 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.

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 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.A. If the 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, the Volunteer shall submit such additional Work Plans that 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 the 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. 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 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's Contemplated Use being protective of public health and the environment for 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 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 City of Beacon and County of Dutchess. 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 the Site conditions to be protective of 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 already conducted at the Site, if any, are necessary to assure that Site conditions are protective of 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.

III. Progress Reports

Volunteer shall submit a written progress reports 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 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, whether under this Agreement or otherwise, 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. 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

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 the State's expenses for negotiating this Agreement and all costs associated with this Agreement, but not including any expenses incurred by the State after 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. 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.

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

Steven Rosenberg
Land Preservation Director
Scenic Hudson Land Trust, Inc.
9 Vassar Street
Poughkeepsie, New York 12601

D. 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.

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

F. The Volunteer may contest, in writing, invoiced costs if it believes (1) the cost documentation contains clerical, mathematical or accounting errors, or (2) the costs are not related to the State's activities reimbursable under this Agreement. If Volunteer objects to an invoiced cost, Volunteer shall pay all costs not objected to. Within ten (10) days of its receipt of an invoice, Volunteer shall 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 Director's designee shall have the authority to relieve Volunteer of the obligation to pay invalid costs. Within thirty (30) days of the Department's determination of the objection, Volunteer shall pay to the Department the amount for which the Director or Director's designee determines Volunteer is obligated to pay.

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 Subparagraphs 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 or the Trustee's rights 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, the Department shall not take any enforcement action under ECL Article 27, Title 13, under CERCLA, under the Navigation Law, 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, successor or assign 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 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.

C. Except as provided in Subparagraph XIV.L, 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/cleanup costs or such other costs or damages arising from the contamination at the Site as provided under applicable State and Federal law.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement 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. The Department shall send the Volunteer a written notice pursuant to Paragraph XI of its intention to exercise its rights prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Notice of Sale or Conveyance

A. Within 30 Days of 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 interest in the Site notice of this Agreement. Within such 30 Days, Volunteer shall also provide the Department with a copy of such instrument certified by such County Clerk (or 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, 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, 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 by a person.

X. Declaration of Covenants & Restrictions

Within 60 Days of the Department's approval of a Remedial Action Work Plan which relies upon institutional controls, Volunteer shall, unless otherwise authorized by the Department in writing, cause to be recorded a Department-approved instrument to run with the land with the County Clerk in the county in which the Site is located (or the Office of the Registrar in the City of New York if the property is located in New York City) 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 (or Registrar) to be a true and faithful copy. The Volunteer or the owner of the Site may petition the Department to terminate the Declaration of Covenants and Restrictions filed pursuant to this Paragraph when the Site is protective of human health and the environment for residential uses without 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, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

Joseph Moloughney
Technical Project Manager
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
Central Office VCP Coordinator
New York State Departmental of Environmental Conservation
Division of Environmental Remediation
625 Broadway
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
Assistant Counsel
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:

Steven Rosenberg
Land Preservation Director
Scenic Hudson Land Trust, Inc.
9 Vassar Street
Poughkeepsie, New York 12601

Veronica A. McMillan, Esq.
Lewis & Greer, P.C.
11 Raymond Avenue
Poughkeepsie, New York 12603

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

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 the 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 the Volunteer.

XIII. Dispute Resolution

Volunteer may commence dispute resolution in writing within 20 Days of Volunteer's receipt of the Department's notice of disapproval of a submittal or proposed Work Plan, disapproval of a final report, or termination of this Agreement pursuant to Subparagraph XIV.A.2. Disputes regarding Work Plan development and revision shall be heard by the Director of the Bureau of Remedial Action, Division of Environmental Remediation, for the region within which the Site is located. All other disputes subject to dispute resolution shall be heard by the Assistant Division Director of the Division of Environmental Remediation. Volunteer shall serve upon the Department a request for 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"). 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 that the Department's position should not prevail. A meeting or telephone conference can be scheduled if it will promote a resolution of the issues. A final decision resolving the dispute will be issued 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 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 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.L, 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. 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. The Department shall make the results of all sampling under this Subparagraph available to Volunteer and Volunteer shall make the results available pursuant to its reporting obligations.

C. Volunteer shall allow the Department to attend and shall notify the Department at least 5 business 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.

D. 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. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest can not be obtained, then the Department may require that the Volunteer modify the Work Plan pursuant to Subparagraph II.C of this Agreement.

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

F. 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. Further, Volunteer shall require all contracts entered into in order to carry out the obligations identified in this Agreement to be in compliance with the terms of this Agreement.

G. 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.

H. 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. Except as set forth herein, 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 or the Commissioner's designee shall timely respond. This Subparagraph shall not extend to revisions to any Work Plan or to a change in any time frame contained in this Agreement. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement. 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.

I. 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.

J. Except as provided in Subparagraph XIV.L., and to the extent authorized under 42 U.S.C. Section 9613 and any other applicable law, Volunteer 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 addressed under 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.

K. 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.

L 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.

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

DATED:

DEC 21 2001

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
AND TRUSTEE OF THE STATE'S
NATURAL RESOURCES

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.

Scenic Hudson Land Trust, Inc.

By: _____

Title: Executive Director

Date: 11/30/01

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

On the 30th day of November in the year 2001, before me, the undersigned, personally appeared Steve Rosenberg, 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.

Mindy J. Bell
Signature and Office of individual taking acknowledgment

MINDY J. BELL
NOTARY PUBLIC, State of New York
Reg. No. 01BE6038960
Qualified in Dutchess County
Commission Expires March 20, 20 02