

7/31/00

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an
Investigation and, if required,
a Remedial Program at
13 and 17 ½ Broad Street
Binghamton, New York by

AGREEMENT

Index # A7-0410-0002

Progress Parkway Enterprises, Inc.,

Volunteer.

DEFINITIONS

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

- A. "Contemplated Use": Volunteer will use the site for industrial purposes.
- B. The Site's "Covered Contamination": the concentrations of Existing Contamination to which the Existing Contamination shall have been remediated in accordance with the requirements of the Work Plan.
- C. The Site's "Existing Contamination": the contamination existing at the Site as of the effective date of the Agreement, which may include methylene chloride or heavy metal wastes possibly associated with the Volunteer's previous manufacturing operations at the site. The term also includes contamination encountered during the course of either Work Plan's implementation, the nature and extent of which were unknown or inadequately characterized at the time either Work Plan was submitted to the Department for approval but shall have been fully characterized to the Department's satisfaction.
- D. "Day": a calendar day unless otherwise specified.
- E. "Department": the New York State Department of Environmental Conservation.
- F. "ECL": the Environmental Conservation Law.
- G. "Investigation Work Plan": the Department-approved Investigation Work Plan pertaining to the Site that Volunteer shall implement and that will be attached to this Agreement as Exhibit "B", as may be modified under the terms of this Agreement and is an enforceable part of this Agreement. The purpose of the investigation shall be to gather additional data to enable the Department to characterize Existing Contamination which is or may be present at the Site, and to enable the Department to determine whether it is necessary to develop and implement a Remediation Work Plan.

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

I. "Remediation Work Plan": the Department-approved Remediation Work Plan pertaining to the Site that Volunteer shall implement, if necessary, and that will be attached to this Agreement as Exhibit "C", as may be modified under the terms of this Agreement and which is an enforceable part of this Agreement.

J. "Site": those parcels of real property known as 13 and 17 ½ Broad Street, Binghamton, New York, and identified as Tax Map Numbers 1318051 and 1318050, respectively, in the real property tax records for Broome County, New York. Exhibit "A" of this Agreement is a map of the Site showing its general location.

K. "Volunteer": Progress Parkway Enterprises, Inc., a New York Corporation, doing business at P.O. Box 199, Chenango Bridge, NY.

CONSIDERING

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

2. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: Volunteer operated the 13 Broad Street property from 1952 through 1996 for the manufacturing of painted and finished metal cabinetry and storage equipment for the data processing industry. Volunteer operated the 17½ Broad Street property from 1993 until 1998. The Volunteer currently owns, but does not conduct any manufacturing operations at these properties.

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

4. A. Volunteer enters into this Agreement to ensure and the Department hereby determines that this Agreement constitutes a demonstration that any remedial action taken under this Agreement will be in compliance with the ECL and will not prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or expose the public health or the environment to a significantly increased threat of harm or damage.

B. Volunteer also enters this Agreement to resolve its potential liability as a party responsible for the investigation and remediation of the Site's Existing Contamination under ECL Article 27, Title 13 based upon Volunteer's investigation, and if necessary, remediation of

the Site's Existing Contamination. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

C. Volunteer, desirous of implementing an investigation and, if necessary, remedial program acceptable to the Department, consents to the terms and conditions of this Agreement.

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

A. for Volunteer to (1) develop and implement a Department-approved Investigation Work Plan and, if necessary, develop and implement the Remediation Work Plan for the Site and (2) reimburse the State's administrative costs as provided in this Agreement, and,

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

6. Volunteer agrees to be bound by the terms of this Agreement; agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Agreement; and agrees not to contest the validity or terms of this Agreement.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING:

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

A. Within 30 days of receipt by Volunteer of the Department's written approval of the Investigation Work Plan, Volunteer shall commence implementation of the Investigation Work Plan and implement it in accordance with its terms.

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

C. In accordance with the schedule contained in the Investigation Work Plan, Volunteer shall submit to the Department a final investigation report. The final investigation report shall (i) include all data generated and all other information obtained during the investigation, (ii) provide all of the assessments and evaluations identified in the Investigation Work Plan, (iii) identify any additional data that must be collected, and (iv) include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the Investigation Work Plan or any Department-approved modification to it.

D. 1. After its acceptance of the final investigation report submitted under Subparagraph I.C of this Agreement, the Department shall determine whether it has sufficient information respecting the nature and extent of the Site's Existing Contamination.

i. If the Department determines that it does not have sufficient information respecting the nature and extent of the Site's Existing Contamination, it will so notify Volunteer in writing. Volunteer shall collect such additional data under a Department-approved revision to the Investigation Work Plan, which shall be attached to this Agreement as Exhibit "B-1" and made a part of this Agreement. However, if within 10 days after receipt of the Department's written notification, Volunteer elects in writing not to collect such additional data or if within that period the Department and Volunteer cannot agree upon revisions to the Investigation Work Plan, then, except with respect to

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

b. Volunteer's obligation, here incurred, to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than which prevailed before any investigative activities were commenced; and

c. the Department's right to enforce the obligations described in Subparagraphs I.D.1.i.a and I.D.1.i.b of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the 10th day after Volunteer's receipt of the Department's notification set forth in subparagraph I.D.1.i, and both parties retain whatever rights they may have had respecting each other as they had prior to this Agreement.

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

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

3. If the Department determines that remediation of the Site's Existing Contamination is needed at either parcel to allow either parcel to be used for the Contemplated Use, it shall so state in writing; and Volunteer shall attempt in good faith to develop a proposed Remediation Work Plan that shall be noticed for public comment in accordance with Subparagraph I.D.4 of this Agreement. The proposed Remediation 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, each proposed remedial plan must eliminate or mitigate all significant threats to the environment or public health determined to result from Existing Contamination and must be sufficient to provide for safe implementation of the Contemplated Use of such Site. If within 10 days after receipt of the Department's written determination, Volunteer elects not to develop a Remediation Work Plan; or, in the event that the Department concludes that a mutually acceptable Remediation Work Plan cannot be successfully negotiated, then, except with respect to

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

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

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

this Agreement shall terminate effective the 10th day after Volunteer's receipt of the Department's notification set forth in subparagraph I.D.1.i, and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

The proposed Remediation Work Plan shall provide, *inter alia*, that if during the Remediation Work Plan's implementation, contamination within the definition of Existing Contamination is discovered that was not discussed in the final investigation report, Volunteer shall investigate the nature and extent of such newly discovered contamination, and, if necessary, the Remediation Work Plan will be revised to have Volunteer remediate such newly discovered contamination in the event that this remediation is needed to allow the Contemplated Use to proceed.

4. Upon development of a proposed Remediation Work Plan, the Department shall publish a notice in the Environmental Notice Bulletin to inform the public of its opportunity to submit to the Department, within 30 days, comments on the proposed Remediation Work Plan and shall mail an equivalent notice to the County of Broome and the City of Binghamton. If, as a result of its review of the comments received, the Department determines that the proposed Remediation Work Plan must be revised:

i. due to environmental conditions related to the Site's Existing Contamination that were not known to the Department at the time of its approval of the proposed Remediation Work Plan; or

ii. due to information received, in whole or in part, after the Department's approval of the proposed Remediation Work Plan, which indicates that the

activities carried out in accordance with it are not sufficiently protective of human health and the environment for the Contemplated Use,

then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the proposed Remediation Work Plan. If the Department and Volunteer agree upon revisions to the proposed Remediation Work Plan, the revised proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement. However, if Volunteer and the Department cannot agree upon revisions to the proposed Remediation Work Plan, then this Agreement shall terminate effective the 10th day after receipt of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable Remediation Work Plan, except with respect to the following obligations:

(a) Volunteer's obligations under Paragraphs VI and VIII herein;

(b) Volunteer's obligation, here incurred, not to leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any remedial activities were commenced; and

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

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

5. Volunteer shall implement the final Remediation Work Plan contained in Exhibit "C" in accordance with its terms. However, in the event that contamination within the scope of Existing Contamination previously unknown or inadequately characterized is encountered during implementation of the final Remediation Work Plan, the parties agree that the final Remediation Work Plan will be modified unless Volunteer and the Department cannot agree to modifications. In such event, this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the final Remediation Work Plan, except with respect to the following obligations:

i. Volunteer's obligations under Paragraphs VI and VIII herein;

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

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

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

2. Volunteer shall submit a detailed post-remedial operation, maintenance, and monitoring plan (O&M Plan"), if needed, in accordance with the schedule set-forth in the Remediation Work Plan.

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

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

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

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan for the 13 Broad Street, Binghamton parcel have been reached, the Department shall notify Volunteer in writing of its satisfaction that all necessary work for this parcel has been completed, other than any necessary O&M as set forth herein at Subparagraph I.F, and, except for the reservations identified below, the Department releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the 13 Broad Street, Binghamton parcel based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or Volunteer's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, 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 nor to any further investigation or remedial action related to Existing Contamination the Department deems necessary:

i. due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are

not inconsequential and due to the off-Site presence of petroleum that may have migrated off-Site from a source on the 13 Broad Street, Binghamton parcel, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Remediation Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Existing Contamination at the 13 Broad Street, Binghamton parcel that were unknown to the Department at the time of its approval of the Remediation Work Plan which indicate that the conditions at the 13 Broad Street, Binghamton parcel are not sufficiently protective of human health and the environment for the Contemplated Use;

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

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

v. due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels for the 13 Broad Street, Binghamton parcel identified in, or to be identified in accordance with, the Remediation Work Plan were reached.

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 if Volunteer causes or suffers the release or threat of release at the 13 Broad Street, Binghamton parcel 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 if Volunteer causes or suffers the use of the 13 Broad Street, Binghamton parcel 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, successors, or assigns who causes or suffers the release or threat of release, at the 13 Broad Street, Binghamton parcel 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, after the effective date of this Agreement; who causes or suffers the 13 Broad Street, Binghamton parcel to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from this Agreement's execution.

3. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan for the 17 ½ Broad Street, Binghamton parcel have been reached, the Department shall notify Volunteer in writing of its

satisfaction that all necessary work for this parcel has been completed, other than any necessary O&M as set forth herein at Subparagraph I.F, and, except for the reservations identified below, the Department releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against, Volunteer for the further investigation and remediation of the 17 ½ Broad Street, Binghamton parcel based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or Volunteer's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, 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 nor to any further investigation or remedial action related to Existing Contamination the Department deems necessary:

i. due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and due to the off-Site presence of petroleum that may have migrated off-Site from a source on the 17 ½ Broad Street, Binghamton parcel, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Remediation Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Existing Contamination at the 17 ½ Broad Street, Binghamton parcel that were unknown to the Department at the time of its approval of the Remediation Work Plan which indicate that the conditions at the 17 ½ Broad Street, Binghamton parcel are not sufficiently protective of human health and the environment for the Contemplated Use;

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

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

v. due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels for the 17 ½ Broad Street, Binghamton parcel identified in, or to be identified in accordance with, the Remediation Work Plan were reached.

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 if Volunteer causes or suffers the release or threat of release at the 17 ½ Broad Street, Binghamton parcel 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 if Volunteer causes or suffers the use of the 17 ½ Broad Street, Binghamton parcel 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, successors, or assigns who causes or suffers the release or threat of release, at the 17 ½ Broad Street, Binghamton parcel 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, after the effective date of this Agreement; who causes or suffers the 17 ½ Broad Street, Binghamton parcel to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from this Agreement's execution.

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

H. With respect to either parcel, if the Department is satisfied with the implementation of the Remediation Work Plan, any approved modifications to the Remediation Work Plan, and Department-approved details, documents, and specifications prepared by or on behalf of Volunteer pursuant thereto, the Department shall provide Volunteer with a written "no further action" letter substantially similar to the model letter attached as Exhibit "D" and incorporated into this Agreement.

I. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the party seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.G or in a "no further action" letter issued under Subparagraph I.H of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

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

J. During implementation of all activities conducted on the Site under the Remediation Work Plan, Volunteer shall

1. have on-site a full-time representative who is qualified to supervise the activities undertaken; and
2. notify the Department of any significant difficulties that may be encountered in implementing the Remediation Work Plan, any Department-approved modification, or any Department-approved detailed document or specification prepared by or on behalf of Volunteer, and shall not modify any obligation unless first approved by the Department, which approval shall not be unreasonably withheld.

II. Progress Reports

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

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;
2. include 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, whether conducted pursuant to this Agreement or conducted independently by Volunteer;
3. identify all reports and other deliverables required by this Agreement that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of the Investigation Work Plan or the Remediation Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to the Investigation Work Plan or the Remediation Work Plan that Volunteer has proposed to the Department and any that the Department has approved.

B. Volunteer shall submit the progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of both written notifications identified in Subparagraphs I.G.2 and I.G.3 of this Agreement. However, Volunteer shall

continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteer shall allow the Department to attend, and shall provide at least 5 days notice to the Department of any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however, that if circumstances are such as to prevent Volunteer from providing the Department with such advance notice, Volunteer will provide as much notice as possible under the circumstances.

III. Review of Submittals

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

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

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

B. Within 30 days after the Department's approval of the final engineering report, Volunteer shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals, however, the Volunteer shall not be required to submit a microfilm copy of any report, drawing or submittal which the Department agrees in writing does not need to be submitted in such form. Such submission shall be made to:

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

IV. Enforcement

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

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within five working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. The failure to so notify the Department shall result in the waiver of this Subparagraph IV.B. Volunteer shall include in such notice the measures taken and to be taken by Volunteer 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 is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry upon Site

Volunteer hereby consents upon reasonable notice under the circumstances presented to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the matters addressed in the Remediation Work Plan for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department access to suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

Within thirty 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 including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs reasonably incurred by New York State for work performed at the Site to the effective date of this Agreement, as well as for negotiating this Agreement, reviewing and revising submittals, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification of its approval of the final engineering report pertaining to the Remediation Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each payment shall be made by check payable to the Department of Environmental Conservation and sent to:

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

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

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.G.2 and I.G.3 of this Agreement and in any "no further action" letter issued under Subparagraph I.H of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to, the right to recover natural resources damages with respect to any party, including Volunteer.

B. Nothing contained in this Agreement shall prejudice any rights of the Department to take any investigatory or remedial action deems necessary.

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

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

E. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Departmental assertion of remedial liability against Volunteer; and reserves all rights Volunteer may have respecting the enforcement of this Agreement. The existence of this Agreement or Volunteer's compliance with this Agreement shall not be construed as an admission of liability or fault 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.

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 and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns, except as to those claims, suits, actions, damages and costs relating to or arising from any unlawful, willful, grossly negligent or malicious acts or omissions on the part of the Department, the State of New York, or their representatives or employees.

IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall (1) file the Notice of Agreement, which is attached to this Agreement as Exhibit "E," with the Broome County Clerk, and (2) provide the Department with evidence of such filing. Volunteer may terminate the Notice when the Department notifies Volunteer pursuant to Subparagraph I.G.2 and I.G.3 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified or to be identified in accordance with the Remedial Work Plan have been met and that the O&M Plan, if necessary, has been successfully implemented

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.

X. Deed Restriction

A. Volunteer shall, no later than 60 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.G.2 or I.G.3 of this Agreement, whichever is earlier, approving Volunteer's final engineering report concerning the Remediation Work Plan, record an instrument with the Broome County Clerk for each parcel, to run with the land, that:

1. 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;

2. 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 agency or other entity replacing the Department;

3. shall provide that Volunteer, on behalf of itself and its successors and assigns, consents to the enforcement by the Department or by any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 60 days of Volunteer's receipt of notification pursuant to Subparagraph I.G.2 or I.G.3 of this Agreement, whichever is earlier, approving Volunteer's final engineering report concerning the Remediation Work Plan, Volunteer shall provide the Department a copy of such deed restriction certified by and recorded with the Broome County Clerk.

C. Volunteer may petition the Department to modify or waive the requirement for a deed restriction within 30 days of its receipt of the notification given pursuant to Subparagraph I.G.2 or I.G.3.

XI. Communications

A. All written communications under 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:

Charles Branagh, P.E.
New York State Department of Environmental Conservation
Erie Boulevard West
Syracuse, NY 13204-2400

with copies to:

G. Anders Carlson, Ph.D.
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

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

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

- Four copies (one unbound) to Mr. Branagh
- Two copies to Dr. Carlson

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

Christopher J. Evans
Progress Parkway Enterprises, Inc.
P.O. Box 199
Chenango Bridge, NY 13745-0199

M. Cathy Geraci
Blasland, Bouck & Lee, Inc.
6723 Towpath Road
P.O. Box 66
Syracuse, NY 13214-0066

B. The Department and Volunteer reserve the right to alter addressees for communication on written notice given in accordance with this Paragraph XI.

XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that Volunteer has, to the best of its knowledge, fully and accurately disclosed to the Department all information known to Volunteer, and in the Volunteer's possession or control which relates in any way to the contamination existing on the effective date of this Agreement or to any past or potential future release of hazardous substances or contaminants, at or from the Site in their application for this Agreement.

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

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

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

D. Volunteer shall notify the Department at least 5 working days in advance of any field activities to be conducted pursuant to this Agreement. Where such notice is not possible, in that case, Volunteer will provide the Department with as much advance notice as possible.

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

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

F. Volunteer, its agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, successors, and assigns shall be bound by this Agreement and shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the work required by this Agreement, 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. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

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

I. 1. No term, condition, understanding, or agreement purporting to modify any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, 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.

2. If Volunteer desires any provision of this Agreement be changed, Volunteer shall make timely written application, signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Branagh and to Mr. Quartararo.

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

K. Except as provided in Subparagraph XII L, the provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to

seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC 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 Existing Contamination. In any future action brought by Volunteer against a potentially responsible party under the CERCLA, as amended, the provision of 42 USC 9613(f)(3) shall apply.

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

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

DATED: Albany, New York
August , 2000

JOHN P. CAHILL, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

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.

Progress Parkway Enterprises, Inc.

By: Edward F. Maguire
Vice President/Secretary

Date: 7/31/00

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

On the 31st day of JULY, in the year 2000, before me, the undersigned, personally appeared EDWARD F. MAGUIRE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Signature and Office of individual taking acknowledgment

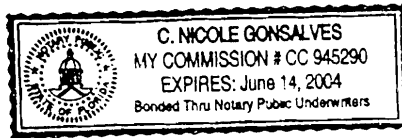
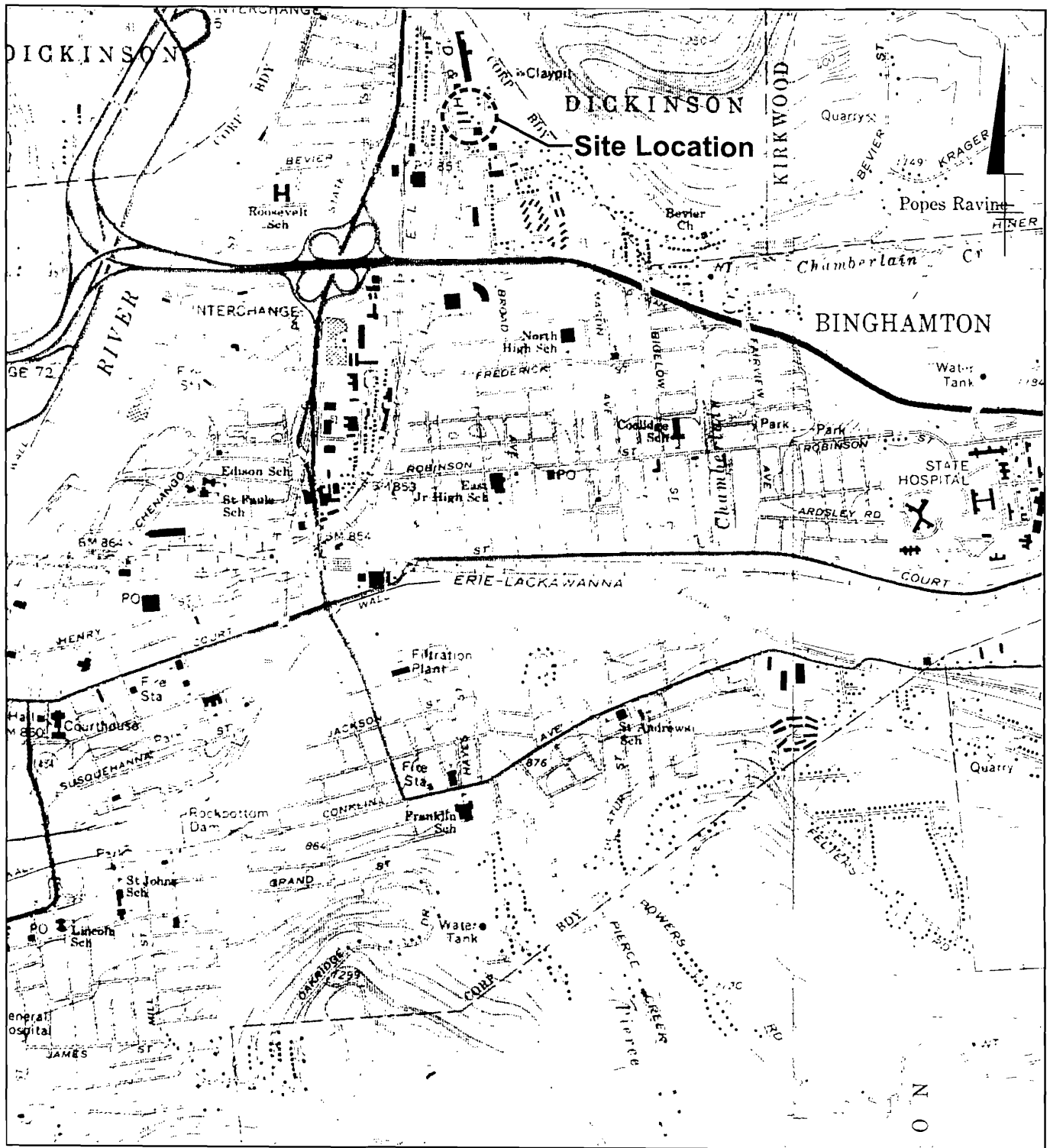
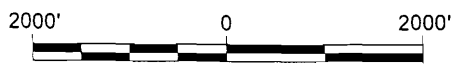


EXHIBIT "A"

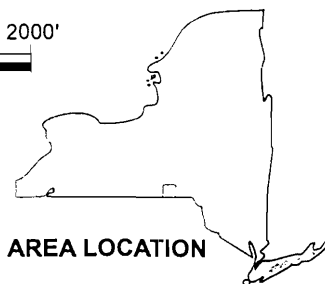
Map of Site



REFERENCE: Base Map Source USGS 7.5 Minute Quads. Series Binghamton East, New York, 1968, photoinspected 1976.



Approximate Scale: 1" = 2000'



AREA LOCATION

PROGRESS PARKWAY ENTERPRISES, INC.
13 AND 17 1/2 BROAD STREET FACILITIES

SITE LOCATION MAP

BBL

BLASLAND, BOUCK & LEE, INC.
engineers & scientists

FIGURE

1

EXHIBIT "B"

Department-Approved Investigation Work Plan

EXHIBIT "C"

Department-Approved Remediation Work Plan

EXHIBIT "D"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Date]

Dear Sirs:

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 Progress Parkway Enterprises, Inc. ("Volunteer"), Index No. A7-0410-0002 (the "Agreement").

The Department is pleased to report that it is satisfied that the Agreement's Work Plan, covering the remediation of the Existing Contamination as defined by the Agreement at the Site located at 13 and 17½ Broad Street in the City of Binghamton, Tax Map Numbers 1318051 and 1318050, respectively, has been successfully implemented, and except as otherwise provided below, no further remedial action by Volunteer is required.

The Department, therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteers and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of the Site based upon the 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 notices and deed restrictions, if any, have been recorded in accordance with Paragraphs IX and X of the Agreement, and (c) Volunteers and/or Volunteer's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, 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 nor to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and due to the off-Site presence of petroleum that may have migrated off-Site from an on-Site source, irrespective of whether the information available to Volunteers and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site presence;
- due to environmental conditions related to the Site's Existing Contamination that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

- due to information received, in whole or in part, after the Department's approval of the final engineering report, which indicates that the activities carried out in accordance with the Work Plan relating to the Existing Contamination are not sufficiently protective of human health and the environment for the Contemplated Use ; or
- due to Volunteer failure to implement the Agreement to the satisfaction of the Department; or
- due to fraud committed, or mistake made, by Volunteers in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

- Volunteers, if Volunteers causes or suffers the release or threat of release, at the Site of any hazardous substance (as defined at 42 USC 9601[14]) or petroleum (as defined in Navigation Law § 172[15]), other than Covered Contamination; or if Volunteers causes or suffers the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to
- any of Volunteer's lessees, successors, or assigns who cause or suffer the release or threat of release, at the Site of any hazardous substance (as defined at 42 USC 9601[14]) or petroleum (as defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of the Agreement; who cause or suffer the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established 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 release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

- except as provided in Subparagraph I.G of the Agreement and in this letter, 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 Volunteers.
- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination or Covered 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 upon notice to Volunteer any time during its implementation if Volunteers fail 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: _____

Its: _____

Exhibit "E"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 2000 by Progress Parkway Enterprises, Inc., (the "Volunteers") the fee owners of a parcel of real property located at 13 and 17½ Broad Street, Binghamton, New York, further described as Tax Map Numbers 1318051 and 1318050, respectively (the "Property"); and

WHEREAS, Progress Parkway Enterprises, Inc., by authorized signature, entered into an agreement with the Department, Index # A7-0410-0002 (the "Agreement"), concerning the remediation of Existing 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 Volunteer's lessees and sublessees and Volunteer's 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, Progress Parkway Enterprises, Inc. agreed that they would 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, Progress Parkway Enterprises, Inc., for themselves and for their successors and assigns, declare that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property; and that
2. This Notice shall terminate upon the filing by Progress Parkway Enterprises, Inc., 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.

