AGREEMENT
BETWEEN
NEW YORK STATE DEPARTMENT OF TRANSPORTATION,
THE INTREPID MUSEUM FOUNDATION AND
THE HUDSON RIVER PARK TRUST

This Agreement made this 29th day of October, 2002, by and among the New York State Department of Transportation (the "Department"), having its offices in Building 5, State Office Campus, 1220 Washington Avenue, Albany, New York 12232, the Intrepid Museum Foundation (the "Intrepid"), having its offices at One Intrepid Square, West 46th Street and 12th Avenue, New York, New York 10036-4103 and the Hudson River Park Trust ("HRPT"), having its offices at Pier 40, Second Floor, West Street, New York, New York 10014.

WHEREAS, as part of the Route 9A Reconstruction Project the Department is constructing a pedestrian bridge over Route 9A at 46th Street, together with an eastern terminus for such bridge and an east side drop-off and bus layover facility ("drop-off facility") between 45th - 46th Streets, New York, New York; and

WHEREAS, such drop-off facility is to replace the Intrepid's former west side bus layover which was acquired by the Department and demolished as part of the Route 9A reconstruction project. Until the Department's taking, such west side bus layover facility had been used by the Intrepid as a critical layover area for visitor buses to the Intrepid Sea-Air Space Museum (the "Museum"); and

WHEREAS, pursuant to that certain Lease and Security Agreement dated January 1, 1982, as same has been amended from time to time, between the City of New York and the

Intrepid, the Intrepid leases Pier 86 on the west side of Route 9A and has built on its leased premises a western terminus for the pedestrian bridge pursuant to previously approved plans; and

WHEREAS, the Intrepid has agreed to maintain such western terminus and the Department and HRPT have agreed to maintain the pedestrian bridge, eastern terminus and drop-off facility as hereinafter set forth; and

WHEREAS, Pier 86 and the properties surrounding the western terminus of the pedestrian bridge are within the boundaries of the Hudson River Park, as created and defined in Section 3(e) of the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (the "Act"); and

WHEREAS, HRPT has been duly created pursuant to Section 5 of the Act, as a body corporate and politic constituting a public benefit corporation, for the purpose of planning, designing, developing, constructing, operating and maintaining the Hudson River Park; and

WHEREAS, pursuant to Section 7.3(b) of the Act and a lease with the City of New York, HRPT has possessory interest and control over the City properties within the Park including Pier 86 and lands surrounding the western terminus; and

WHEREAS, the City has reviewed this Agreement and, as reflected by its execution of the acknowledgment herein, concurs with the statements and agreements set forth herein; and

WHEREAS, such construction, access and maintenance agreements are in furtherance of the agreements set forth in that certain Memorandum of Understanding attached hereto as Exhibit A by and between the Department, the Hudson River Park Conservancy (HRPT's predecessor-in-interest), the Intrepid and the Manhattan Community Board #4 and in response to the substantial

public interest in constructing a pedestrian bridge over Route 9A at 46th Street and in providing for a 24 hour public access to the Hudson River Park, including Pier 86 and the Park's bikeway/walkway areas.

NOW, THEREFORE, it is hereby mutually agreed by and between the parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth.

1. The Department, at its sole cost and expense, agrees to design and build the pedestrian bridge ("bridge"), eastern terminus and drop-off facility ("east side facilities") as part of its 9A reconstruction project, including undertaking any needed property acquisition to accomplish such construction. All such construction will be in compliance with applicable law. Plans for the bridge and east side facilities are annexed hereto as Exhibit B.

2. The Intrepid agrees to operate and maintain a west terminus and elevator therein for the bridge that will provide 24-hour public access to the Hudson River Park. Such facility shall fully comply with the Americans with Disabilities Act.

3. The Intrepid shall not install or affix or otherwise place any additional loading on the bridge structure or install or other affix any other feature, permanent or temporary, to the bridge structure without prior written approval from the Department, such approval not to be unreasonably withheld, conditioned or delayed. The parties acknowledge that the Intrepid is interested in having a sign affixed to the pedestrian bridge to provide direction and area information. The Intrepid will pursue and be responsible for obtaining the necessary permits and approvals in accordance with applicable statutory and regulatory requirements, and to the extent that any approvals are required from HRPT, HRPT shall not unreasonably withhold, condition or delay such approval.

4. In consideration of the loss of the west side bus layover facility formerly used by the Intrepid, the Department grants to the Intrepid use and occupancy of the bridge and east side facility, for parking of vehicles affiliated with school trips and other Intrepid tours and special events, not to exceed more than 14 bus size equivalent spaces at any one time, during each of the foregoing periods: (i) the regular hours of the Intrepid Museum operation from 8:00 AM to 7:00 PM daily ("Business Hours"); (ii) at all hours during the seven (7) days period which is currently referred to as "Fleet Week;" and (iii)at such additional hours as the Intrepid may reasonably deem necessary outside of Business Hours in connection with scheduled evening special programming and events at the Intrepid (hereinafter "Special Events"), not to exceed 150 evenings per year. The Intrepid shall not charge or collect any additional or specific parking charge for bus parking or other vehicle use of the east side facility. So as to avoid scheduling conflicts to the greatest extent possible amongst HRPT, the Intrepid and other Park events, the parties will use good faith efforts to meet on at least a quarterly basis to discuss the events each has planned with respect to the following quarter wherein use of the east side facility is contemplated in conjunction therewith. Further, with regard to the scheduling of any Special Events where use of the east side facility is contemplated in conjunction therewith, the Intrepid shall use good faith efforts to provide at least thirty (30) days, but in no event less than fourteen (14) days, prior written notice of such planned event to HRPT. The Intrepid's use of the east side facility in conjunction with its Special Events shall be permitted so long as (1) the Special Event is consistent with the operations authorized under the Intrepid's lease and (2) the Intrepid has provided HRPT with at least fourteen (14) days prior notice thereof as set forth in the preceding sentence. Notwithstanding clause "(2)" of the preceding sentence, for no more than seven (7) evenings per year, the Intrepid shall have the right, upon twenty-four (24) hour prior

written notice to HRPT (which may be by fax), to use the east side facility in conjunction with a Special Event (a "Short Notice Event") regardless of whether the east side facility is already scheduled by HRPT for use during such evening in connection with another Park event or program. If an event is scheduled by HRPT on the same day sought by the Intrepid for such Short Notice Event, HRPT and the Intrepid shall work together, in the first instance, to allow use of the east side facility by both events simultaneously. If after good faith efforts the parties are unable to accommodate use of the east side facility for both events on the evening in question, then the Intrepid's Short Notice Event shall have priority. All such use and occupancy by the Intrepid of the east side facility shall be subject to and in accordance with the terms of this Agreement.

5. The grant of use and occupancy provided for in paragraph 4 of this Agreement shall remain in force and effect for the duration of the Intrepid's current lease term for Pier 86 and any extension or renewal thereof, provided that the Intrepid fully complies with the terms of this Agreement.

6. a. HRPT will be responsible, at no cost to the Intrepid, for routine and ordinary cleaning and maintenance of the bridge and east side facilities in accordance with and subject to the terms of a separate property maintenance agreement to be executed between the Department and HRPT for cleaning and maintenance of certain Route 9A properties.

b. The following items are agreed to be the maintenance responsibility of and will be performed by the Department, at no cost to the Intrepid:

1. Routine and regular inspection of the structural elements and integrity of the Bridge, foundations, support towers, and east side facility.

2. All structural repairs required as a result of routine inspections or emergency situations including repairs to and stabilization of beams, columns, roofing, bridge and support towers.

3. Any required repair to electrical conduit, wiring and cables installed for the Department as part of the Department's construction contract.

4. Water lines (if installed)

7. Upon reasonable prior written notice (except in the case of an emergency), the Intrepid shall provide the Department and HRPT with 24 hour site access for construction and/or maintenance for the portion of the bridge structure that is situated within Pier 86; provided that, in performing any such construction or maintenance, the Department or HRPT, as the case may be, shall not, to the extent feasible, substantially impede pedestrian access to the Museum. In the course of undertaking such construction or maintenance work, the Department or HRPT, as the case may be, shall put in place appropriate safeguards to protect the public and property and shall use its best efforts to avoid substantially interfering with the Intrepid's business.

8. The Intrepid shall maintain its occupancy in compliance with any and all applicable local, State, and Federal laws, ordinances, codes, rules and regulations affecting the use of the property and shall not conduct or allow any use or activity that is inconsistent with the law and shall not conduct or allow any use or activity on the subject properties which may require a permit or other approval by a government agency, including HRPT or the Department, without having lawfully obtained such permit or approval, and to the extent any permit is required by HRPT or the Department, such entities shall not unreasonably withhold, condition or delay their respective consent to same.

9. The Intrepid shall not assign or transfer any of its rights or responsibilities under this Agreement to any other parties in part or in whole, except as may be agreed in writing by HRPT and the Department. Failure to comply with this provision may result in ten (10) days' written notice of termination of this Agreement by the Department. In the event of such termination, the Intrepid's rights shall terminate and HRPT shall immediately take possession and assume Intrepid's responsibilities under this Agreement.

10. The Intrepid, at its sole cost and expense, shall provide for and maintain in full force and effect throughout the term of this Agreement, insurance which extends coverage to its use of the pedestrian bridge and east and west termini thereof, and east side facilities in the amounts and for the coverages provided for in Articles 7 and 11 of its Lease and Security Agreement with the City of New York, dated January 1, 1982, as amended. The Intrepid shall provide Certificates of Insurance reflecting such coverages and shall name HRPT, the New York State Department of Transportation, the State of New York, the New York State Office of Parks, Recreation, and Historic Preservation, the New York City State Parks, Recreation and Historic Preservation Commission, the New York State Department of Environmental Conservation, the City of New York, the New York City Department of Parks and Recreation, and each of their respective directors, officers, agents, and employees as additional insureds thereunder.

11. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Intrepid will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, religion or marital status. Neither shall the Intrepid discriminate in the use of the subject properties or any access thereto.

12. If any of the provisions of this Agreement are held invalid, such invalidity shall not affect or impair other provisions herein that can be given effect without the invalid provisions, and to this end the provisions of this Agreement are severable.

13. In the event of termination of this Agreement in accordance with the terms hereof, the Intrepid may be required, at the direction of HRPT or the Department, as appropriate, to remove any/all improvements to the subject properties which have been placed there by the Intrepid, at its own expense, within thirty (30) days, and restore the area, if needed, to good repair and condition.

14. The Department specifically reserves all rights for the future development of the east side facility and any other areas owned by the State on the east side of the bridge as shown in Exhibit B, subject to the express right of use provided to the Intrepid in paragraph 4 of this Agreement. Nothing set forth in this Agreement shall be construed to provide the Intrepid with any further rights or claim, either express or implied, or in any way impede the Department's or the State's ability to modify, develop, assign, lease or transfer such properties; provided that stipulation and recognition will be made in any such development, assignment, lease or transfer agreement allowing for the continued use by the Intrepid of such areas as set forth in paragraph 4 of this Agreement, subject to and in accordance with the terms of this Agreement.

15a. The Department, in consultation with HRPT, may terminate this Agreement if the Intrepid fails to observe or perform one or more of the terms, conditions or agreements contained in this Agreement, provided that the failure to perform or observe such term remains unremedied for thirty (30) days after the Department sends written notice of such failure to the Intrepid. Notwithstanding the limited 30 day cure period set forth above, if the Intrepid indicates in writing within thirty (30) days that it needs an additional, specified period of time to cure any such

default and diligently works to cure such default within such specified period of time, the Department may, at its option and in its sole discretion, accept such written notice and extend the period of time to cure any such default, such approval shall not be unreasonably withheld.

b. Upon the expiration of the applicable cure period as set forth in the preceding paragraph, this Agreement, the term, and all rights of the Intrepid hereunder to cure default shall expire and terminate as if the date specified in the notice were the expiration date, and the Intrepid shall quit and surrender its use and occupancy of the 46th Street pedestrian bridge and drop-off facilities forthwith and it shall have no further rights with respect to or grant of use and occupancy for such facilities.

c. The Department shall have the right to terminate this Agreement without notice in the event of dissolution, or any act of bankruptcy or insolvency of, or by the Intrepid.

16. Any notice, demand, approval or request under the terms of this Agreement or under any statute, must or may be given or made by the parties hereto, must be in writing, and must be given or made by either personal delivery or by mail, in the case of the Department, to the Regional Director, Region 11, New York State Department of Transportation, 47-40 21st Street, Long Island City, New York 11101; in the case of HRPT, to the Hudson River Park Trust at Pier 40, Second Floor, West Street, New York, NY 10014 Attention: General Counsel's Office; in the case of the Intrepid, to the Intrepid Museum Foundation, One Intrepid Square, West 46th Street and 12th Avenue, New York, N.Y. 10036-4103 Attention: President, with a copy to Paul, Hastings, Janofsky & Walker, LLP, 75 East 55th Street, New York, N.Y. 10022 Attention: Martin Feldman, Esq. Any notice given hereunder shall be deemed delivered when deposited in a United States general or branch post office, enclosed in a registered or certified prepaid wrapper, addressed as provided in this paragraph.

17. This Agreement sets forth the entire Agreement between the Department, HRPT and the Intrepid with respect to the subject matter hereof and supersedes any prior agreements or understandings. This Agreement may not be amended, modified or otherwise changed except in a writing signed by all parties hereto.

18. This Agreement and disputes arising hereunder shall be governed by the laws of the State of New York.

19. The following documents by attachment are incorporated and made a part of this Agreement:

1. Appendix A - "Standard Clauses for all New York State Contracts";

2. Exhibit A - Memorandum of Understanding;

3. Exhibit B - 46th Street Pedestrian Bridge and East Side Facility Final Plan.

[End of Provisions - Signature Pages to follow]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date set forth above.

D017860

INTREPID SEA-AIR SPACE MUSEUM

By: _____
Signature

Tom Tyrrell
Name

COO
Title

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: _____
Signature

William J. MacPherson
Name

Chief Legal Services Div.
Title

HUDSON RIVER PARK TRUST

By: _____
Signature

Robert Balsekas
Name

President & CEO
Title

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract."

ACKNOWLEDGED:
THE CITY OF NEW YORK

By: _____
Signature

_____
Name

_____
Title

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
APR 15 2003
PETER FAIRETO
ASSOCIATE ATTORNEY

Approved: New York State Attorney General

By: _____

Date: _____

Approved: New York State Office of The State Comptroller

By: Patricia A. Woren

Date: 5/16/03

STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

On the 29th day of October, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Tom Tyrrell, personally known 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.

(Notary Public)

KAREN B. JENNINGS
Notary Public, State of New York
No. 01JE4650539
Qualified in Queens County
Certificate Filed in New York County
Term Expires MAY 31, 2003

STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

On the 29th day of October, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Balachandran personally known 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.

(Notary Public)

KAREN B. JENNINGS
Notary Public, State of New York
No. 01JE4650539
Qualified in Queens County
Certificate Filed in New York County
Term Expires MAY 31, 2003

STATE OF NEW YORK)
) ss.:
COUNTY OF Albany)

On the 25th day of March, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared William S Mattingly personally known 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.

(Notary Public)

DAVID S. NEALON
Notary Public, State of New York
No. 02NE6065184
Qualified in Albany County
Commission Expires Oct. 9, 2003

APPENDIX A

Standard clauses for all New York State Contracts.

MEMORANDUM OF UNDERSTANDING

Agreement Between New York State Department of Transportation, Hudson River Park Conservancy, Community Board#4, and Intrepid Sea-Air Space Museum

Purpose:

The purpose of this understanding is to commit the parties to develop and construct a pedestrian bridge, west bridge terminal-Intrepid access structure, and an east side drop-off facility, to improve access across Route 9A to the waterfront property and the Intrepid Museum. Provision of the bridge and auxiliary features will include elimination of the west side drop-off for the Intrepid Museum as shown in the current after construction plans for PIN X024.27 and reconfiguring this area.

Action Required by Signatories:

Intrepid Museum - To design, build and maintain a west terminal for the bridge, work with the Hudson River Park Conservancy to achieve a park - like setting east of the west terminal with public access from bridge to park.

NYSDOT - In accordance with the Route 9A Project FEIS and Record of Decision, to study the feasibility of pedestrian bridge; acquire property associated with the pedestrian bridge structure and eastern terminal; build the bridge and eastern terminal.

CB4- Support environmental review and work with elected officials to achieve objectives.

Agreed:

Intrepid Museum Foundation

To design, build and maintain a west terminal of the bridge which includes access to the Intrepid Museum above grade level and which provides public access to the west side properties including Pier Plaza, and bikeway/walkway.

We the Intrepid Museum agree to the current after construction 9A plan as shown in Pin X024.27 plans which eliminates the west side drop-off area unless another such plan is mutually acceptable.

Intrepid Museum will be included in all aspects of design and final approval of bridge plans.

Agrees to the NYSDOT's temporary construction plan. As part of this plan the Intrepid Museum will be provided with drop-off space at Pier 86 and additional drop off space at Pier 64 throughout Route 9A construction in accordance with PIN X024.27 plans, until the current after construction plan is set.

All agreements must have diagrams for approval purposes.

NYSDOT

To commit to including on the State's Transportation Program a project to build a pedestrian bridge at 46th Street. Upon commitment of the Intrepid Museum's west terminal structure, and subject to the successful completion of environmental and feasibility studies, NYSDOT will design and build the pedestrian bridge, including property acquisition, public access and east side drop - off facilities.

New York State will endeavor to allow the Intrepid Museum to use the Con Edison Property which will be condemned by the State for this use.

NYSDOT agrees to the concept of cultural resource designation signing for the Intrepid, subject to Federal, State and City regulations and as concurred by the Community Board. NYSDOT will work toward achieving appropriate signing.

HRPC

In cooperation with the Intrepid Museum, to design the public access space from the bridge to the park and to coordinate with all parties to achieve objectives within the framework of the HRPC's Design Guidelines, Mater Plan and EIS in progress, including maximizing park space west of the roadway.

CB4

To support the environmental review process and work with elected officials to achieve objectives.

Time Frame

The proposed after construction plan may not be the best achievable final plan. Parties resolve to achieve the objective of an improved access plan in a time frame parallel to 9A construction. NYSDOT began construction on or about July 1, 1997. The access plan during construction will be in place until approximately the end of 1999.

In the event that the parties agree the proposed after construction plan is not the best achievable plan, they will cooperate in developing a revised access plan. Whatever plan is ultimately agreed to, all parties will cooperate throughout the design and construction process to ensure the plan is achieved.

For the Intrepid Museum:

Donald R. Gardner
President and CEO

For NYSDOT:

Sonia Rivera
Director, Rte. 9A Reconstruction Project

For HRPC:

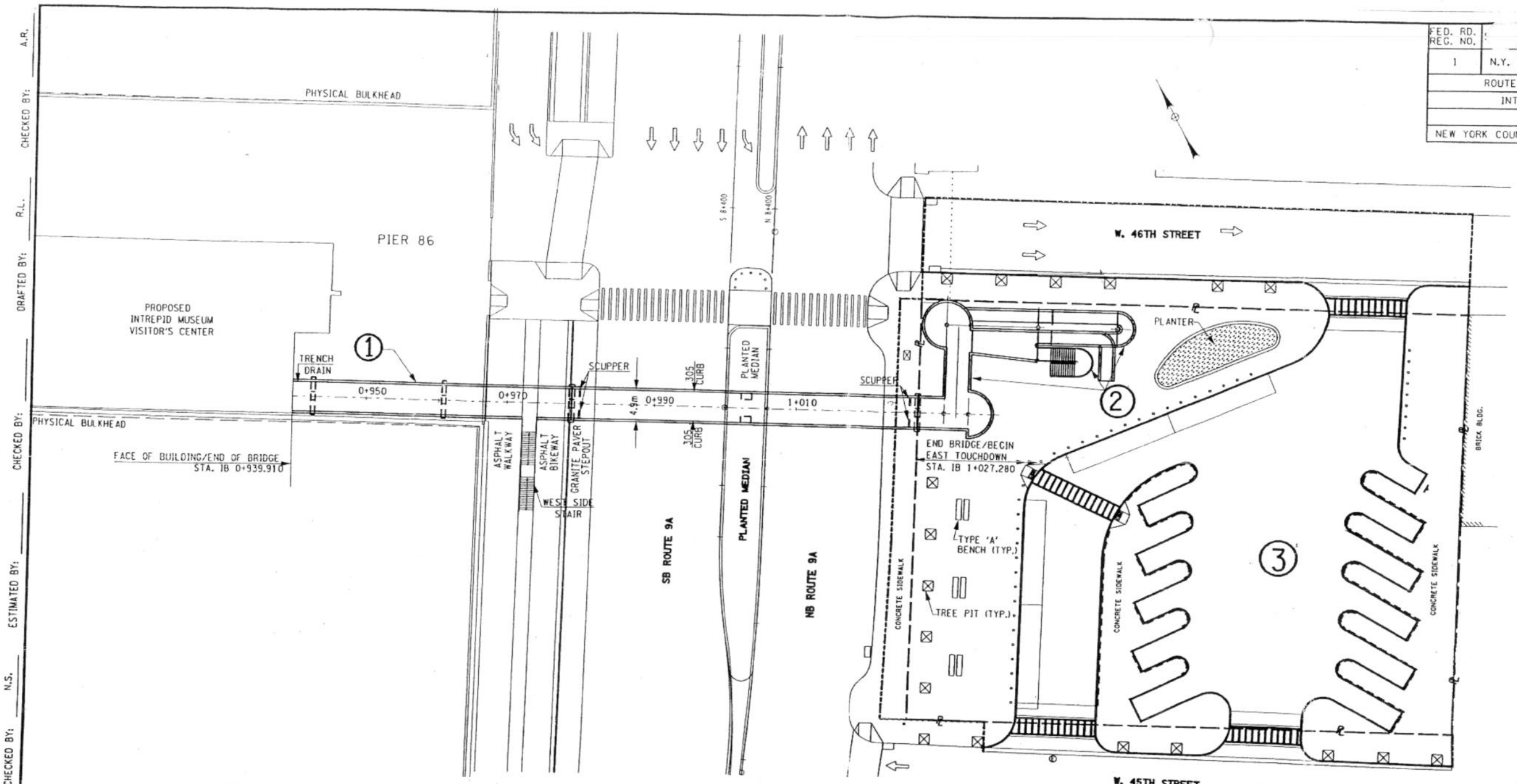
V. McGowen
Vice President, Management and Operations

For Community Board 4:

R. Gregory
First Vice Chairperson

FED. RD. REG. NO.		FEDERAL AID PROJECT NO.	SHEET NO.	TOTAL SHEET
1	N.Y.			
ROUTE 9A RECONSTRUCTION PROJECT				
INTREPID PEDESTRIAN BRIDGE				
			BIN: 1-07789-0	
NEW YORK COUNTY			PIN: X024.22	

A.R. CHECKED BY: R.L. DRAFTED BY: CHECKED BY: ESTIMATED BY:



PART NO.	DESCRIPTION	FEATURE(S) TO BE MAINTAINED	LIMITS	MAINTAINING AGENCY	AUTHORITY FOR MAINTENANCE JURISDICTION
1	PEDESTRIAN BRIDGE	ENTIRE STRUCTURE	IB 0+939.91 TO IB 1+027.28	NYSDOT BY CITY OF NY	ARTICLE 12B, SECTION 349C
		SNOW & ICE REMOVAL	IB 0+939.91 TO IB 1+027.28	NYSDOT	MAINTENANCE AGREEMENT
		CLEANING	IB 0+939.91 TO IB 1+027.28	NYSDOT	MAINTENANCE AGREEMENT
		LIGHTING (INCLUDING MEDIAN ACCENT LIGHTING)	IB 0+939.91 TO IB 1+027.28	NYSDOT	MAINTENANCE AGREEMENT
2	EAST TOUCHDOWN (RAMPS AND STAIRS)	ENTIRE STRUCTURE	-	NYSDOT BY CITY OF NY	ARTICLE 12B, SECTION 349C
		SNOW & ICE REMOVAL	-	NYSDOT	MAINTENANCE AGREEMENT
		CLEANING	-	NYSDOT	MAINTENANCE AGREEMENT
		LIGHTING	-	NYSDOT	MAINTENANCE AGREEMENT
3	BUS LAYOVER AREA AND PASSENGER WAITING AREA	PARKING LOT PAVEMENT, CURBS, FENCES DRAINAGE, SIDEWALKS, SIGNAGE, BENCHES PAVEMENT STRIPING, PLANTING AND MEDIAN/BUFFER REFUGE AREAS	-	NYSDOT	MAINTENANCE AGREEMENT
		CLEANING	-	NYSDOT	MAINTENANCE AGREEMENT
		LIGHTING	-	NYSDOT	MAINTENANCE AGREEMENT

AS-BUILT REVISIONS

SIGNATURE DATE

MAINTENANCE JURISDICTION PLAN AND TABLE

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

DWG. NO.	DATE	SCALE	
MJP-1	JAN. 2003	1:300	EARTH TECH

IN CHARGE OF: N.S. DESIGNED BY: A.R. CHECKED BY: N.S.

PLOTTED: 01/22/2003
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