AGREEMENT REGARDING PRESERVATION OF SAMPLES

This Agreement is made by and between the United States of America ("United States"); the Lower Passaic River Cooperating Parties Group ("CPG); and Tierra Solutions, Inc., Maxus, Inc., and Occidental Chemical Corporation (the latter three collectively referred to hereinafter as "Occidental") .

WHEREAS, the Parties hereto mutually seek to reduce the expense of maintaining Samples past their Sample Retention Date, and in so doing, better define the scope of their obligations with respect to such Samples;

WHEREAS, this Agreement establishes processes and procedures that will apply to a Party's disposal of a Sample past its Sample Retention Date as part of any potential litigation regarding the Subject Claims, without fear that another Party will seek the imposition of sanctions, fines, or penalties (in whatever form) based upon allegations of spoliation of evidence;

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WHEREAS, the Parties agree that Samples disposed of pursuant to this Agreement will not be subject to discovery in potential litigation regarding the Subject Claims;

NOW THEREFORE, in consideration of the mutual benefits described above and the mutual covenants contained herein, the Parties agree as follows:

1. Unless expressly provided herein, terms used in this Agreement that are defined in the Federal Rules of Civil Procedure shall have the meaning assigned to them in the

Federal Rules of Civil Procedure. For the purposes of this Agreement the following terms shall have the following meanings:

a. "Covered Agreements" shall mean the RI/FS AOC; the RM 10.9 AOC; the Occidental Removal AOC; the CSO/SWO Study AOC; and the Newark Bay AOC.

b. "CPG" shall mean the unincorporated association comprised of those companies identified in Appendix A, as amended from time to time.

c. "CSO/SWO Study AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Combined Sewer Overflow/Storm Water Outfall Investigation, CERCLA Docket No. 02-2011-2016, which became effective on October 4, 2011.

d. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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e. "Diamond Alkali Matter" shall mean the response actions and natural resource damages and assessment thereof, concerning the Diamond Alkali Superfund Site.

f. "Diamond Alkali Site" shall mean the former plant site located at 80 and 120 Lister Avenue in Newark, New Jersey; the Lower Passaic River Study Area; and Newark Bay, including but not limited to the Newark Bay Study Area as denoted in the Newark Bay AOC; and the aerial extent of contamination from such locations.

g. "Lower Passaic River Study Area" shall mean the 17-mile stretch of the Lower Passaic River and its tributaries from Dundee Dam to Newark Bay.

h. "Newark Bay AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, CERCLA Docket No. 02-2004-2010, which became effective on February 13, 2004.

i. "Party" or "Parties" shall mean the CPG and/or Occidental, including any consultants and/or potential expert witnesses, contractors, subcontractors or service providers who have Samples and who are within the control of the CPG and/or Occidental; and the United States on behalf of the United States Environmental Protection Agency ("EPA"), the United States Department of Commerce ("DOC") acting through the National Oceanic and Atmospheric Administration ("NOAA"), the United States Department of the Interior ("DOI"), the Army Corps of Engineers ("ACOE"), and the United States Department of Justice ("DOJ"), including any consultants and/or potential expert witnesses, contractors, subcontractors or service providers who have Samples and who are within the control of DOC/NOAA, DOI, ACOE or DOJ.

j. "RI/FS AOC" shall mean the Diamond Alkali Superfund Site – Lower Passaic River Study Area Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, CERCLA Docket No. 02-2007-2009, as amended, which became effective on May 8, 2007.

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k. "RM 10.9 AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA Docket No. 02-2012-2015, which became effective on June 18, 2012.

l. "Sample" shall mean any physical specimen isolated and gathered in an environmental study related to the Diamond Alkali Matter, including specimens of soil, sediment, water, tissue, air, flora, fauna, extracts of samples for analysis, and the container and media in which they are held. With respect to the CPG only, the definition of Sample excludes samples collected by CPG members outside the Covered Agreements.

m. "Sample Retention Date" shall mean, for a particular Sample, the latest date on which that Sample, if preserved or extracted in accordance with standard scientific or laboratory practices, can be subjected to scientific analysis and yield reliable results in accordance with the prescribed method. Each Sample Retention Date will be determined by the approved and applicable Quality Assurance Project Plan ("QAPP") pursuant to which the Sample was collected, stored, and/or analyzed, if any. If the Sample was not collected pursuant to an approved QAPP, or the QAPP does not specify a Sample Retention Date (or provide guidance to determine such date), then the Sample Retention Date shall be determined by an experienced data validator, consistent with USEPA Region 2 validation guidelines, at the time of receipt of the Sample. The Sample Retention Date shall be the date that provides the maximum allowable holding time for such Sample in the relevant QAPP, sampling plan or regulatory guide.

n. "Subject Claims" shall mean those claims brought, or to be brought, by the Parties relating to response actions, response costs, and/or natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, arising with respect to the Diamond Alkali Matter or Diamond Alkali Site, and all defenses thereto.

o. "Occidental Removal AOC" shall mean the Administrative Settlement and Order on Consent for Removal Action, Docket No. 02-2008-2020, which became effective on June 23, 2008.

2. Except as expressly set forth in this Agreement, each of the Parties shall take reasonable steps to appropriately preserve all Samples through the sample Retention Date relevant to the Subject Claims that are in its possession, custody or control on the date of this Agreement, or that come into its possession, custody or control after the date of this Agreement and during the period this Agreement remains in force and effect.

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a. Except as provided in Paragraph 3, but in accordance with Paragraphs 4 and 5 of this Agreement, the Parties which currently possess Samples relevant to the Subject Claims need not preserve them past their Sample Retention Date.

b. Except as provided in Paragraph 3, but in accordance with Paragraphs 4 and 5 of this Agreement, the Parties which may obtain Samples relevant to the Subject Claims after the date of this Agreement may, but need not preserve them past their Sample Retention Date.

3. Notwithstanding Paragraph 2, nothing precludes a Party from retaining Samples.

4. Prior to disposing of a Sample after the expiration of its Sample Retention Date, the Party intending to dispose of such Sample must: (i) provide the other Parties thirty (30) days advance written notice of intent to dispose, including a description of such sample and the date of its collection; and (ii) provide the other Parties with the opportunity to retrieve such Sample, and its chain of custody, from the Party intending to dispose of it. In the event another Party requests such Sample, the Party intending to dispose of it shall appropriately preserve it and its chain of custody until the Sample has been delivered (in accordance with terms to be decided between or among the Parties) to another Party. Unless the Parties agree otherwise, or in the event obtaining, transmitting and/or receiving a Sample will take longer than thirty (30) days, a Party wishing to retrieve or receive a Sample from another Party shall take possession of the Sample within thirty (30) days of making its request, failing which, the Party possessing the Sample may dispose of it.

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5. None of the Parties to this Agreement waives its right to argue in any forum that a Sample which exceeds its Sample Retention Date is or is not viable for purposes of analysis, or that the results of any analysis performed on such Sample are flawed and/or inadmissible in evidence.

6. In any potential litigation between or among the Parties relating to the Subject Claims, no Party shall seek sanctions pursuant to the Federal Rules of Civil Procedure,

the contempt powers of the Court, or any other authority, against another Party for the failure to preserve a Sample as long as the Party complies with the terms of this Agreement.

7. In any potential litigation between or among the Parties relating to the Subject Claims, no Party shall seek sanctions for spoliation of a Sample prior to the date of this Agreement, absent a showing of willful misconduct.

8. A Party may terminate its participation in this Agreement by notifying the other Parties in writing of its intention to do so at least thirty (30) days in advance of such termination; provided, however, that the protections under this Agreement shall remain in full force and effect, without regard to whether a Party has terminated its participation in this Agreement, with respect to all Samples not preserved or disposed of prior to the date of termination.

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9. By entering into this Agreement, the Parties do not take on greater obligations to preserve, search for, collect, or ultimately produce Samples than those imposed by the Federal Rules of Civil Procedure.

10. In the event a problem is encountered under this Agreement, the Parties will promptly endeavor to resolve the problem cooperatively.

11. This Agreement contains the entire agreement among the Parties regarding the preservation of Samples relating to potential litigation between and among the Parties on the Subject Claims. No statements, promises, or inducements made by any Party that are not contained herein shall be valid or binding.

12. This Agreement may not be enlarged, modified, or altered except by written amendment signed by the Parties.

13. Notwithstanding any other provision in this Agreement, this Agreement shall be admissible in any future administrative or judicial proceeding to prove its terms and conditions.

14. The undersigned representative of each Party certifies that he or she is authorized to enter into this Agreement and to execute for and bind the Party(ies) whom he or she represents.

15. The Effective Date of this Agreement shall be the date on which the Agreement is executed by all Parties.

16. This Agreement may be executed in counterparts.

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17. Before filing any motion with any court regarding the terms of this Agreement or compliance with this Agreement, the Parties will meet and confer in a good faith attempt to resolve such dispute.

18. Nothing in this Agreement shall affect any other obligations, if any, of the Parties to preserve Sample information, such as information related to the collection, analysis, and preservation of Samples.

FOR THE UNITED STATES OF AMERICA,
ON BEHALF OF DOI, DOC/NOAA, and the ACOE:

_____ _____

BRIAN G. DONOHUE DATE
Senior Attorney
Environmental Enforcement Section
US Department of Justice
PO Box 7611
Washington, DC 20044-7611

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FOR THE LOWER PASSAIC RIVER COOPERATING PARTIES GROUP:

_____ _____

DATE

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FOR TIERRA, INC., MAXUS, INC., and
OCCIDENTAL CHEMICAL ORPORATION:

_____ _____
DATE

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