UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: Operable Unit 2 of the General Motors – Inland Fisher Guide Subsite of the Onondaga Lake Superfund Site Revitalizing Auto Communities Environmental Response Trust, Respondent. Proceeding Under Sections 104, 107, and 122 of the Comprehensive, Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622	Index No. CERCLA-02-2021-2050

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS 1
II. PARTIES BOUND 2
III. DEFINITIONS 2
IV. FINDINGS OF FACT 6
V. CONCLUSIONS OF LAW AND DETERMINATIONS 8
VI. SETTLEMENT AGREEMENT AND ORDER 9
VII. PERFORMANCE OF THE WORK 9
VIII. PROPERTY REQUIREMENTS 11
IX. ACCESS TO INFORMATION 12
X. RECORD RETENTION 13
XI. COMPLIANCE WITH OTHER LAWS 14
XII. PAYMENT OF RESPONSE COSTS 14
XIII. DISPUTE RESOLUTION 16
XIV. FORCE MAJEURE 17
XV. COVENANTS BY EPA 18
XVI. RESERVATIONS OF RIGHTS BY EPA 18
XVII. COVENANTS BY RESPONDENT 20
XVIII. OTHER CLAIMS 21
XIX. EFFECT OF SETTLEMENT/CONTRIBUTION 22
XX. INDEMNIFICATION 23
XXI. INSURANCE 24
XXII. INTEGRATION/APPENDICES 25
XXIII. MODIFICATION 25
XXIV. EFFECTIVE DATE 25

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Revitalizing Auto Communities Environmental Response Trust ("RACER" or "Respondent"). This Settlement provides for the performance of a Remedial Design ("RD") by Respondent and the payment of certain response costs incurred by the United States at or in connection with Operable Unit 2 ("OU-2," also referred to as the Ley Creek Deferred Media ("LCDM") portion) of the General Motors – Inland Fisher Guide Subsite ("GM-IFG Subsite") of the Onondaga Lake Superfund Site ("Site"), as well as the Expanded Territory, as defined in Section III below, located in the Town of Salina, Onondaga County, New York.

2. This Settlement provides for the performance of RD activities and the agreement to pay certain response costs incurred by the United States at or in connection with what is described herein and defined as OU-2 as well as an area referred to and defined herein as the Expanded Territory. It is RACER's position that OU-2 does not include the Expanded Territory because it believes such area was not part of the remedy selected for OU-2 in the 2015 Record of Decision ("2015 ROD"). It is EPA's position that a post-ROD expansion of a Superfund site's geographic area is not uncommon, and that it is EPA, as the Lead Agency for OU-2, that determines the scope of operable units at such sites. EPA does not acknowledge the distinction between OU-2 and the Expanded Territory and maintains that the areas defined as part of the Expanded Territory comprise a portion of OU-2. For purposes of and in accordance with this Settlement only, RACER will conduct the RD activities that EPA desires to be performed, notwithstanding any disagreement among the Parties as to the extent of OU-2. The Parties further understand and agree that the use of the terms "OU-2", "LCDM", "Expanded Territory", or "Site" in this Settlement will have no precedential value in any requests that additional RACER funding (including requests for access to "Cushion Funding" as defined by the Trust Consent Decree) be allocated toward RACER's performance of response activities at OU-2 or the Expanded Territory or the Site.

3. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9604, 9607, and 9622. This authority was delegated to the EPA Administrator on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators. These authorities were further redelegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division in Region 2, which Division was renamed the Superfund and Emergency Management Division ("SEMD") in a Regional realignment, and delegation of the relevant authorities was confirmed accordingly on March 27, 2019.

4. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration and U.S. Department of the Interior on _____, 20__ of negotiations with Respondent regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustees to participate in the negotiation of this Settlement.

5. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement, and it retains the right to controvert these facts, conclusions, and determinations in any subsequent proceedings other than proceedings to implement or enforce this Settlement. By executing this Settlement, Respondent does not admit that hazardous substances emanating from the real property comprising the GM-IFG Facility migrated to any location discussed in this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

6. This Settlement is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

7. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.

8. Respondent agrees to provide a copy of this Settlement to each contractor already or subsequently hired to perform the Work required by this Settlement and to each person representing Respondent with respect to OU-2 or the Work, and to condition all contracts entered into under this Settlement on performance of the Work in conformity with the terms of this Settlement. Respondent agrees to ensure that written notice of this Settlement is provided to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent agrees to also be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

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

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"Effective Date" shall mean the effective date of this Settlement as provided in Section XXIV.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Expanded Territory" shall mean, for purposes of this Settlement, the following: (i) the majority of the area north of Ley Creek lying between Ley Creek and the New York State Thruway from Townline Road to LeMoyne Avenue; (ii) the area south of Ley Creek from approximately the Town of Salina Highway Department Garage at 601 Factory Avenue to State Route 11 (aka Brewerton Road) between the Creek and Cambridge Avenue, Brown Avenue and Factory Avenue; and (iii) the back yards of 19 residential properties on Brookline Road immediately north of the top of the northern bank of Ley Creek ("Brookline Road Properties").

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted or prepared pursuant to the terms of this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), ¶ 61 (Work Takeover), ¶ 31 (Emergencies and Releases), ¶ 32 (Community Involvement Plan) to the extent such costs pertain to OU-2 or the Expanded Territory, and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs.

"General Motors – Inland Fisher Guide Subsite" or "GM-IFG Subsite" shall mean the Onondaga Lake Superfund Site Subsite located in the Towns of Salina and DeWitt, Onondaga County, New York. The Subsite consists of Operable Unit 1 (or "OU-1"), which encompasses the former General Motors Corporation Inland Fisher Guide plant ("GM-IFG Facility"), located south of Ley Creek on General Motors Drive in the Towns of Salina and DeWitt, as well as OU-2, as defined below.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

"Operable Unit 2" or "OU-2" (also referred to as "Ley Creek Deferred Media" or "LCDM") shall mean the portion of the GM-IFG Subsite that includes the following: approximately 9,200 linear feet of Ley Creek channel sediments, surface water, and adjacent floodplain soils/sediments upstream of the eastern edge of the Route 11 Bridge and downstream of the western edge of the Townline Road bridge; a 10-acre wetland located on the northern portion of the National Grid property that is directly west of the GM-IFG Facility ("National Grid Wetland"); soil in the approximately 1.8-acre area located directly between the GM-IFG Facility's northern property boundary and Factory Avenue ("Factory Avenue Area"); soil in the area located along the northern shoulder of Factory Avenue in the vicinity of LeMoyne Avenue; and the National Grid/Teall Avenue Substation access road ("NG Access Road"). OU-2 shall not mean and does not include the Ley Creek PCB Dredgings Subsite, or any groundwater under the OU-2 area. For purposes of this Settlement, OU-2 shall not include the Expanded Territory.

"OU-2 Special Account" (also referred to as the "LCDM Special Account") shall mean the special account within the EPA Hazardous Substance Superfund, established for OU-2 by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"2015 Record of Decision" or "2015 ROD" shall mean the joint EPA-NYSDEC Record of Decision for OU-2, signed on March 31, 2015, by the Director of the EPA Region 2 Emergency and Remedial Response Division, recently renamed SEMD, with the concurrence of the NYSDEC Division of Environmental Remediation, and all attachments thereto. The 2015 ROD is attached as Appendix A.

"Paragraph" or "¶" shall mean a portion of this Settlement or the Statement of Work identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondent.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States had incurred through the day before the Effective Date in reviewing or developing deliverables submitted or prepared pursuant to the 2015 ROD, and otherwise in overseeing implementation of the Focused Feasibility Study for OU-2 and the Expanded Territory, including but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

"Property Requiring Access" shall mean all real property where EPA determines, at any time, that access is needed in the preparation of the RD.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Remedial Action" or "RA" shall mean the remedial action selected in the 2015 ROD.

"Remedial Design" or "RD" shall mean those remedial design activities to be undertaken by Respondent as stated in the SOW.

"Respondent" shall mean Revitalizing Auto Communities Environmental Response Trust, also known as RACER.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Onondaga Lake Superfund Site in Onondaga County, New York.

"State" shall mean the State of New York.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondent agrees to perform in the preparation of the RD, which is attached as Appendix B.

"Supervising Contractor" shall mean the principal contractor retained by Respondent to supervise and direct the implementation of the Work under this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Trust Consent Decree" shall mean the Environmental Response Trust Consent Decree and Settlement Agreement among Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, the United States, the State of New York and 13 other states, the St. Regis Mohawk Tribe, and EPLET, LLC (not individually but solely in its representative capacity as Administrative Trustee of the 'Environmental Response Trust' established thereby) that established Respondent, notice of which was published at 75 *Fed. Reg.* 66390 (Oct. 28, 2010) and a copy of which is available on Respondent's website at http://racertrust.org/About_RACER/Settlement_Agreement.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Respondent is required to perform under this Settlement, except those required by Section X (Record Retention), as such activities and obligations are set forth with more specificity in the SOW.

IV. FINDINGS OF FACT

10. Respondent is an independent environmental response trust with a principal place of business at 1505 Woodward Avenue, Suite 200, Detroit, Michigan 48226.

11. The Site, which includes Onondaga Lake itself, six major and minor tributaries including Ley Creek, and various upland sources of contamination, was placed on EPA's National Priorities List on December 16, 1994. EPA in conjunction with NYSDEC has to date organized response activities at the Site into multiple operable units, also referred to as "subsites," including the GM-IFG Subsite.

12. The GM-IFG Subsite was administratively subdivided by EPA and NYSDEC into two areas to be addressed—OU-1, which is the area encompassing the GM-IFG Facility, the groundwater on and emanating from that facility, and the groundwater under an adjacent subsite of the Site called the Ley Creek PCB Dredgings Subsite, and OU-2.

13. Multiple industrial entities have owned property or operated facilities on or near Ley Creek and its branches for more than 100 years. The industrial and intensively developed nature of this area influenced Ley Creek and contributed to its current condition. Contaminants of concern for OU-2 and the Expanded Territory include polychlorinated biphenyls ("PCBs"), which are the primary contaminant of concern to be addressed, as well as polycyclic aromatic hydrocarbons ("PAHs"), chromium, copper, lead, nickel, and zinc. PCBs are the primary risk driver for all pathways for OU-2 and the Expanded Territory and are collocated with other contaminants of concern.

14. The GM-IFG Facility is documented to have released PCBs into Ley Creek.

15. By the time of the 1970s, poor channel conditions and large impermeable areas in the watershed had led to regular and extensive flooding of Ley Creek , as well as to the creation of the Ley Creek Drainage District to help control such flooding. Beginning in 1970, the Onondaga County Department of Drainage and Sanitation widened and realigned the Creek through excavation and dredging. During those activities, excavated and dredged materials were spread and disposed along the Creek's newly formed banks and potentially in the former channel areas abandoned in the realignment, as well as in nearby areas beyond the banks.

16. The Ley Creek PCB Dredgings Subsite includes certain areas along the south bank of Ley Creek, upstream of the Route 11 Bridge, where PCB-contaminated dredge spoils were placed. NYSDEC selected a response for the Ley Creek PCB Dredgings Subsite in March 1997, and GM completed the response action there in 2001. That response action did not include an evaluation of the groundwater under the Ley Creek PCB Dredgings Subsite, which will be addressed as part of OU-1, and did not include the surface water or sediments of Ley Creek in and around the Ley Creek PCB Dredgings Subsite, which will be addressed as part of the OU-2 remedial action.

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17. GM entered into an order on consent with NYSDEC (#D-7-0001-97-06, effective September 25, 1997) and an addendum to that order (effective July 11, 1999), pursuant to which it agreed to perform a remedial investigation/feasibility study for the GM-IFG Subsite, including both OU-1 and OU-2.

18. On June 1, 2009, GM filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Respondent was created as an independent environmental response trust in March of 2011 through the Trust Consent Decree, which became effective by order of the U.S. Bankruptcy Court for the Southern District of New York. Respondent was created, in part, to conduct, manage, and/or fund environmental response activities relating to various properties nationwide that were formerly owned by GM, including the migration of hazardous substances emanating from certain of these properties, such as the real property comprising the former GM-IFG Facility. Respondent's obligations as an independent environmental response trust are memorialized in the Trust Consent Decree.

19. Pursuant to Paragraph 93 of the Trust Consent Decree, Respondent was required to be substituted for GM as the respondent to the above-referenced order on consent with NYSDEC and its addendum.

20. Respondent commenced pre-design investigation ("PDI") activities at OU-2 in 2013, and such activities are ongoing and nearly complete.

21. On March 31, 2015, EPA and NYSDEC issued the 2015 ROD, wherein a remedy was selected for OU-2 that includes the mechanical excavation of sediment in Ley Creek exceeding the level of one (1) milligram per kilogram (mg/kg) of PCBs, from bank-to-bank and to the depth of the unconsolidated bank material, where possible, as well as excavation of surface and subsurface floodplain soil to meet certain restricted New York State soil cleanup objectives ("SCOs") consistent with current and reasonably anticipated future land use of discrete areas of OU-2, among other remedial activities.

22. PDI soil sampling activities performed by Respondent identified expanded areas of contamination along Ley Creek. As a result, the volume of impacted soil that EPA has determined needs to be addressed has significantly increased. EPA has requested that additional remedial alternatives for the contaminated soil be evaluated and that such evaluation be documented in a Focused Feasibility Study report. This report may provide the basis for EPA to modify the OU-2 remedy through an Explanation of Significant Differences or ROD amendment.

23. In October of 2015, Respondent entered into an order on consent and administrative settlement with NYSDEC (#R7-0853-15-06) ("NYSDEC Order") to, inter alia, develop and implement, in accordance with the 2015 ROD, a remedial program for OU-2 to include the design, implementation, and operation and maintenance of the remedy selected in the 2015 ROD. Respondent initiated the RD for OU-2 in 2016 and submitted a draft preliminary RD report (50%) to NYSDEC on July 18, 2017.

24. From 2016 to 2018, Respondent completed response activities at the Brookline Road Properties under oversight of NYSDEC. From 2017 to 2020, Respondent completed

response activities at and nearby the National Grid Wetland, including removal of PCB-impacted soil to meet SCOs and the restoration of the impacted wetlands, as well as removal of PCB-impacted soil from the Factory Avenue Area, also under oversight of NYSDEC. Respondent continues to implement a five-year maintenance obligation on the restored wetlands, also under oversight of NYSDEC.

25. On December 12, 2019, in response to a request from NYSDEC, EPA assumed the role of lead agency (as such term is defined in the NCP and as designated in the Trust Consent Decree) for OU-2. The NYSDEC Order remains in effect; however, EPA, NYSDEC, and Respondent understand that this Settlement will be the instrument under which Respondent's remaining performance of the RD at OU-2 will be overseen until such time as the RD is completed. It is further anticipated that EPA will continue as lead agency for OU-2 and will continue to have lead enforcement responsibility with respect to all future remedial work to be performed at OU-2, whether performed by Respondent or by other parties, including implementation of any portion of the remedy selected for OU-2.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

26. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. OU-2 is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Expanded Territory is also a "facility" under Section 101(9).

b. The contamination found at OU-2 and the Expanded Territory, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

e. The RD required under this Settlement is necessary to protect the public health, welfare, or the environment and if carried out in compliance with the terms of this Settlement is deemed to be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan,40 CFR Part 300 ("NCP"), as provided in Section 300.700(c)(3)(ii) of the NCP.

27. In accordance with Section 126 of CERCLA, 42 U.S.C. § 9626, and pursuant to Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments, November 2000) and the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), EPA has determined that consultation with the Onondaga Nation related to the Work required under this Settlement is appropriate.

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VI. SETTLEMENT AGREEMENT AND ORDER

28. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby ordered and agreed that Respondent will comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. PERFORMANCE OF THE WORK

29. **Coordination and Supervision**

a. **Project Coordinators**.

(1) Respondent's Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondent's Project Coordinator may not be an attorney representing the Respondent in this matter and may not act as the Supervising Contractor. Respondent's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work. EPA has authorized Respondent to continue the Work with Brendan Mullen, P.E., Respondent's Cleanup Manager for New York (as already designated and approved by EPA and the State of New York in the Trust Consent Decree) as the designated Project Coordinator and Ramboll Americas Engineering Solutions, Inc. as Respondent's Supervising Contractor.

(2) EPA has designated Victoria Sacks of Region 2 SEMD as EPA's Project Coordinator for OU-2. EPA may designate other representatives, which may include its employees, contractors, and/or consultants, to oversee the Work. EPA's Project Coordinator shall have the same authority lawfully vested in a remedial project manager by the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when she determines that conditions at OU-2 or the Expanded Territory constitute an emergency or may present an immediate threat to public health or welfare or the environment as a result of a release or threatened release of Waste Material. EPA shall have the right to change its designated Project Coordinator.

(3) Respondent's Project Coordinator currently meets and will continue to meet with EPA's Project Coordinator at least monthly.

b. **Changing Respondent's Project Coordinator or Supervising Contractor.**

(1) If, consistent with Paragraph 45 of the Trust Consent Decree, Respondent elects to change its Project Coordinator and/or Supervising Contractor, Respondent agrees to notify EPA of the names, titles, contact information, and qualifications of Respondent's proposed Project Coordinator and/or Supervising Contractor, whose qualifications are subject to EPA's review for verification based on objective assessment criteria (*e.g.,* experience, capacity, technical expertise) and a confirmation that there are no conflicts of interest with

respect to the project. Respondent's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding any newly proposed Project Coordinator or Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondent agrees to, within thirty (30) days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondent may select any coordinator/contractor covered by an authorization to proceed and agrees to, within twenty-one (21) days, notify EPA of Respondent's selection.

30. **Performance of Work in Accordance with SOW.** Respondent agrees to develop the RD in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under this Settlement or SOW will be subject to approval by EPA in accordance with ¶ 5.6 (Approval of Deliverables) of the SOW. If Respondent has used best efforts to secure funding to complete the Work pursuant to the budget approval procedures set forth in Paragraphs 49 and 50 of the Trust Consent Decree, including developing proposed annual cleanup budgets and revising the budgets, as necessary, to complete those RD activities set forth in the SOW, but Respondent is unable to obtain adequate funding, Respondent will not therefore be in violation of this Settlement.

31. **Emergencies and Releases**. Respondent agrees to comply with the emergency and release response and reporting requirements under ¶ 3.7 (Emergency Response and Reporting) of the SOW. Subject to Section XV (Covenants by EPA), nothing in this Settlement, including ¶ 3.7 of the SOW, limits any authority of EPA with regard to the following: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from OU-2 and the Expanded Territory, or (b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from OU-2 and the Expanded Territory. If, because of Respondent's failure to take appropriate response action under ¶ 3.7 of the SOW, EPA takes such action instead, Respondent agrees to reimburse EPA under Section XII (Payment of Response Costs) for all costs of the response action in accordance with the budget approval procedures set forth in Paragraphs 49 and 50 of the Trust Consent Decree.

32. **Community Involvement**. If requested by EPA, Respondent agrees to conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator. Costs incurred by EPA under

this Section constitute Future Response Costs to be reimbursed under Section XII (Payments for Response Costs).

33. **Modification of SOW or Related Deliverables**

a. If EPA determines, unilaterally or in response to a request from Respondent, that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW to carry out the RD, then EPA may notify Respondent of such modification. If Respondent objects to the modification, it may, within thirty (30) days after EPA's notification, seek dispute resolution under Section XIII (Dispute Resolution).

b. The SOW and/or related work plans will be modified in accordance with the modification directed by EPA or, if Respondent invokes dispute resolution, in accordance with the final resolution of the dispute. The modification will be incorporated into and enforceable under this Settlement, and Respondent agrees to implement all work required by such modification. Respondent agrees to incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Settlement.

VIII. PROPERTY REQUIREMENTS

34. **Agreements Regarding Access and Non-Interference.** Respondent and EPA acknowledge that Respondent has obtained most of the sampling data needed for completion of the RD, and therefore very little additional access by Respondent to any Property Requiring Access owned by a third party will be needed under this Settlement. Respondent agrees to, with respect to any Property Requiring Access, continue to use best efforts to secure from the owner of the relevant Property Requiring Access an agreement, enforceable by Respondent and EPA, providing that such owner: (i) provide EPA and Respondent, and their representatives, contractors, and subcontractors, with access at all reasonable times to such Property Requiring Access to conduct any activity regarding this Settlement, including those activities listed in ¶ 34.a (Access Requirements); and (ii) refrain from using such Property Requiring Access in any manner that interferes with or adversely affects the preparation or integrity of the RD. Respondent agrees to provide a copy of such access agreement(s) to EPA.

a. **Access Requirements.** The following is a list of activities for which access is or may be required regarding the Property Requiring Access:

(1) monitoring the Work;

(2) verifying any data or information submitted to the United States;

(3) conducting investigations regarding contamination at or near OU-2 and the Expanded Territory;

(4) obtaining samples;

(5) assessing the need for, planning, implementing, or monitoring response actions;

(6) assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;

(7) implementing the Work pursuant to the conditions set forth in ¶ 61 (Work Takeover);

(8) assessing Respondent's compliance with this Settlement; and

(9) conducting other activities relating to this Settlement.

35. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use to obtain the required access in a timely manner, including the cost of employing outside legal counsel or other professionals and the payment of reasonable sums of money to secure access, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it agrees to notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XII (Payment of Response Costs) in accordance with the budget approval procedures set forth in Paragraphs 49 and 50 of the Trust Consent Decree.

36. Notwithstanding any provision of this Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

IX. ACCESS TO INFORMATION

37. Respondent agrees to provide to EPA, upon request, copies of all records, reports, documents and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at OU-2 and the Expanded Territory or to the implementation of the Work under this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent agrees to also make available to EPA upon advanced notice, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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38. **Privileged and Protected Claims**

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with ¶ 38.b, and except as provided in ¶ 38.c.

b. If Respondent asserts such a privilege or protection, it agrees to provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent agrees to provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent agrees to retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding the following: (1) any data regarding OU-2 and the Expanded Territory, including, but not limited to, all sampling, analytical, monitoring, hydrogeological, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or in connection with OU-2 and the Expanded Territory; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement. Respondent may, however, make a claim of privilege or protection regarding data or documents not required under this Settlement, specifically for the purposes of litigation.

39. **Business Confidential Claims**. Respondent may assert that all or part of a Record provided to EPA under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent agrees to segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Information covered by such claims will be disclosed by EPA only to the extent permitted by Section 104(e)(7) of CERCLA. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to Respondent. EPA provides no assurances that all information that is asserted as confidential business information by Respondent will not be publicly disclosed based on a review of relevant countervailing factors.

40. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. RECORD RETENTION

41. Until ten (10) years after EPA provides notice pursuant to ¶ 3.10 of the SOW (Notice of Work Completion), that all work has been fully performed in accordance with this Settlement, Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version

of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any retention policy to the contrary.

42. At the conclusion of the document retention period, Respondent agrees to notify EPA at least ninety (90) days prior to the destruction of any such Records and, upon request by EPA, and except as provided for in ¶ 38 (Privileged and Protected Claims), Respondent agrees to deliver any such Records to EPA.

43. Respondent certifies that to the best of its knowledge and belief, and after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to OU-2 since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding OU-2 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XI. COMPLIANCE WITH OTHER LAWS

44. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondent must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the 2015 ROD and the SOW. The activities conducted pursuant to this Settlement, if approved by EPA, shall be considered consistent with the NCP.

45. **Permits**. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely at OU-2 or the Expanded Territory (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not at OU-2 or the Expanded Territory requires a federal, state, or local permit or approval, Respondent agrees to submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

46. Respondent may seek relief under the provisions of Section XIV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 45 (Permits) and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XII. PAYMENT OF RESPONSE COSTS

47. **Payment of Response Costs**. Respondent agrees to pay to EPA all Future Response Costs that are not inconsistent with the NCP in accordance with the budget approval procedures set forth in Paragraphs 49 and 50 of the Trust Consent Decree. Respondent will not

be responsible for payment of Past Response Costs, which the Parties agree shall equal an amount of $160,000.

a. **Periodic Bills**. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIO$ report, which includes direct costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice, as well as EPA's indirect costs. Respondent agrees to make all payments within forty-five (45) days after the latter of Respondent's receipt of each bill requiring payment or an Annual Cleanup Budget or Budget Amendment signed by both RACER and EPA pursuant to Paragraphs 49 and 50 of the Trust Consent Decree in which the payment for each such bill is provided for, except as otherwise provided in ¶ 49 (Contesting Future Response Costs). Respondent agrees to pay EPA by Electronic Funds Transfer ("EFT") through the Pay.gov website using the following link: https://www.pay.gov/public/form/start/11751879. The following information must be included on the payment form:

i. Amount of payment
ii. Name of remitter
iii. Docket number (Index No. CERCLA-02-2021-2050)
iv. Site name (OU-2 / Ley Creek Deferred Media, GM-IFG Subsite, Onondaga Lake Superfund Site)
v. Site/spill identifier (024Q)

b. At the time of payment, Respondent agrees to send notice that payment has been made to Sacks.Victoria@epa.gov, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice will reference the docket number and site/spill identifier.

c. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondent pursuant to ¶ 47.a (Periodic Bills) shall be deposited by EPA in the OU-2 Special Account to be retained and used to conduct or finance response actions at or in connection with OU-2 and the Expanded Territory, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

48. **Interest**. In the event that any payment for Future Response Costs is not made by the date required (including an extended deadline under ¶ 56, in the case of a force majeure event), Respondent agrees to pay Interest on the unpaid balance. Future Response Costs will begin to accrue on the date of the bill. The Interest will accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph will be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

49. **Contesting Future Response Costs.** Respondent may initiate the procedures of Section XIII (Dispute Resolution) regarding payment of any Future Response Costs billed under

¶ 47 (Payments for Future Response Costs) if it determines that EPA has made an arithmetic error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent agrees to submit a Notice of Dispute in writing to the EPA Project Coordinator within thirty (30) days after receipt of the bill. Any such Notice of Dispute will specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent agrees to, within the 30-day period, also pay all uncontested Future Response Costs to EPA in the manner described in ¶ 47, and agrees to send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs. If EPA prevails in the dispute with respect to any portion of the contested costs, within five (5) days after the resolution of the dispute, Respondent agrees to pay the sums due (with accrued interest) to EPA in the manner described in ¶ 47. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution), to the extent such procedures are not inconsistent with the dispute resolution provisions of the Trust Consent Decree, shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XIII. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Settlement or inconsistent with the dispute resolution provisions of the Trust Consent Decree, the dispute resolution procedures of this Section, in conjunction with the dispute resolution procedures of the Trust Consent Decree, shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties will initially attempt to resolve any disagreements concerning this Settlement expeditiously, informally, and in good faith.

51. **Informal Dispute Resolution**. If Respondent objects to any EPA action taken or directed pursuant to this Settlement, including billings for Future Response Costs, it agrees to initially send EPA a written Notice of Dispute describing the objection(s) within fourteen (14) days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent will have thirty (30) days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

52. **Formal Dispute Resolution**. Notwithstanding Paragraph 50, above, if a dispute arises that relates solely to the approval of the Administrative Trustee's proposed Annual Cleanup Budget or any proposed amendment thereto, Respondent may petition the U.S. Bankruptcy Court for the Southern District of New York pursuant to Paragraph 50 of the Trust Consent Decree. In any other dispute, if the Parties are unable to reach an agreement within the Negotiation Period, Respondent agrees to, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to EPA. If Respondent submits a statement of position to EPA, EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, the Deputy Director of SEMD, Region 2, or, at the sole discretion of EPA, someone occupying a higher position, will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. If the subject or result of the dispute is inconsistent with the Trust Consent Decree, Respondent may

petition the Bankruptcy Court as set forth above and in the Trust Consent Decree. Following resolution of the dispute by EPA's written decision or the decision of the Bankruptcy Court, as applicable, Respondent agrees to fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's or the Bankruptcy Court's decision, whichever occurs.

53. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement, except as provided by ¶ 49 (Contesting Future Response Costs).

XIV. FORCE MAJEURE

54. "Force Majeure" for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure event such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. A "force majeure" event does not include financial inability to complete the Work or increased cost of performance.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent agrees to notify the EPA Project Coordinator orally or, in her absence, the Director of the SEMD, Region 2, within forty-eight (48) hours of when Respondent first knew that the event might cause a delay. Within fourteen (14) days thereafter, Respondent agrees to provide in writing the following to EPA: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or to the environment. Respondent agrees to include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Respondent will be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event will preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure event under ¶ 54 and whether Respondent has exercised its best efforts under ¶ 54, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

56. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Settlement that are affected by the

force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event will not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

57. If Respondent elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding an alleged force majeure event, it will do so no later than fourteen (14) days after receipt of EPA's notice related thereto. In any such proceeding, Respondent will have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of ¶¶ 54 and 55. If Respondent carries this burden, the delay at issue will be deemed not to be a violation by Respondent of the affected obligation under this Settlement identified to EPA.

The failure by EPA to timely complete any obligation under this Settlement is not a violation of this Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under this Settlement, Respondent may seek relief under this Section.

XV. COVENANTS BY EPA

58. Consistent with Section VII of the Trust Consent Decree, and except as provided in Section XVI (Reservation of Rights by EPA) and Section VIII of the Trust Consent Decree, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work within OU-2, Past Response Costs within OU-2, and Future Response Costs within OU-2. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person, and they do not apply or extend to the Expanded Territory.

XVI. RESERVATIONS OF RIGHTS BY EPA

59. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from OU-2 or the Expanded Territory to the extent such actions are not inconsistent with the Trust Consent Decree. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any

other applicable law to the extent such requirement by EPA is not inconsistent with the Trust Consent Decree.

60. The covenants set forth in Section XV (Covenants by EPA) above do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by Respondent to meet a requirement of this Settlement;

b. liability for costs not included within the definition of Past Response Costs and Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of OU-2; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to OU-2 not paid as Future Response Costs under this Settlement.

61. **Work Takeover**

a. In the event EPA determines that Respondent (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notices issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of ten (10) days within which to cure the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the ten (10)-day notice period specified in ¶ 61.a, Respondent has not cured to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 61.b.

c. Respondent may invoke the procedures set forth in ¶ 52 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 61.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 61.b until the earlier of (1) the date that Respondent cures, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 52 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XVII. COVENANTS BY RESPONDENT

62. In conformance with Section VII of the Trust Consent Decree, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work, Past Response Costs, Future Response Costs, and this Settlement; or

c. any claim arising out of response actions at or in connection with OU-2, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

63. Except as expressly provided in ¶ 66 (Waiver of Claims by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVI (Reservations of Rights by EPA), other than in ¶ 60.a (liability for failure to meet a requirement of this Settlement), 60.d (criminal liability), or 60.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

64. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

65. To the extent not inconsistent with the Trust Consent Decree, Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any

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statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

66. **Waiver of Claims by Respondent**

a. Other than for any claims that Respondent has brought in its litigation presently known as *RACER Trust, et al. v. National Grid, et al.*, Case No. 5:18-cv-01267 (N.D.N.Y. filed Oct. 26, 2018), as well as any additional claims that might be brought in such litigation against the named defendants in that action as of the Effective Date of this Settlement, Respondent agrees to waive and not to assert the following claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have with respect to OU-2 or the Expanded Territory as against the following parties:

(1) **De Micromis Waiver**. Claims or causes of action for all matters relating to OU-2 or the Expanded Territory against any person where that person's liability to Respondent with respect to OU-2 or the Expanded Territory is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at OU-2 or the Expanded Territory, or having accepted for transport for disposal or treatment of hazardous substances at OU-2 or the Expanded Territory, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to OU-2 or the Expanded Territory was less than 110 gallons of liquid materials or 200 pounds of solid materials.

(2) ***De Minimis*/Ability to Pay Waiver**. Claims or causes of action for response costs relating to OU-2 or the Expanded Territory against any person that has entered or in the future enters into a final Section 122(g) of CERCLA *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to OU-2 or the Expanded Territory.

b. **Exceptions to Waivers**

(1) The waivers under this ¶ 66 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the OU-2 against Respondent.

XVIII. OTHER CLAIMS

67. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any remedies or sanctions available and not inconsistent

with the Trust Consent Decree by virtue of Respondent's violation of a requirement of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3)

68. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States, including EPA, shall not be deemed a party to any contract entered into by Respondent or its Administrative Trustee, directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

69. Except as expressly provided in ¶ 66 (Waiver of Claims by Respondent) and Section XV (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

70. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIX. EFFECT OF SETTLEMENT/CONTRIBUTION

71. Except as provided in ¶ 66 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to OU-2 or the Expanded Territory against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

72. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work within OU-2, Past Response Costs within-OU-2, and Future Response Costs within OU-2, but do not include Work, Past Response Costs, or Future Response Costs within the Expanded Territory, which are specifically excluded from "matters addressed" in this administrative settlement.

73. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B) for Work, Past Response Costs, and Future Response Costs within OU-2, but not within the Expanded Territory, which is specifically excluded from such resolution of liability.

74. Respondent agrees to, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also agrees to, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Respondent agrees to notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement. EPA acknowledges that in October of 2018, RACER initiated a cost recovery and contribution action against various potentially responsible parties with respect to OU-2 and the Expanded Territory, that RACER subsequently added other potentially responsible parties as defendants in such action, and that such litigation is pending.

75. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to OU-2, Respondent agrees not to assert or maintain any defense or claim in any forum based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been resolved via this Settlement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XV (Covenants by EPA). Further, EPA shall timely provide Respondent, upon request, copies of any documents filed, served, or transmitted in any such subsequent administrative or judicial proceeding initiated by EPA regarding OU-2 or the Expanded Territory, including any notice letters to potentially responsible parties.

XX. INDEMNIFICATION

76. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representatives for access under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent agrees to indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, employees, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States, to the extent not inconsistent with the Trust Consent Decree, all costs the United States incurs, including, but not limited to attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into, by, or

on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States. In recognition of the funding limitations under the Trust Consent Decree, EPA acknowledges and agrees that Respondent's indemnity and legal defense cost reimbursement obligations under this Settlement are limited to the claims made against and paid pursuant to Respondent's insurance policies referenced in Section XXI (Insurance), below.

77. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

78. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to OU-2, including, but not limited to, claims on account of construction delays. In addition, Respondent agrees to indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of, any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to OU-2, including, but not limited to, claims on account of construction delays.

XXI. INSURANCE

79. Respondent agrees to secure no later than fourteen (14) days before commencing any on-site Work, and to maintain until the first anniversary after issuance of Notice of Work Completion pursuant to ¶ 3.10 of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming "U.S. Environmental Protection Agency" as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the performance of the Work under this Settlement, Respondent agrees to provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent agrees to resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of this Settlement, Respondent agrees to satisfy, or to ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA (i.e., by current certificates of insurance) that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent will ensure that all submittals to EPA under this Paragraph identify the OU-2, Town of Salina, New York, and the EPA docket number of this Settlement (Index No. CERCLA-02-2021-2050).

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XXII. INTEGRATION/APPENDICES

80. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

a. Appendix A is the 2015 ROD.

b. Appendix B is the SOW.

XXIII. MODIFICATION

81. The EPA Project Coordinator may modify any plan, schedule, or SOW in writing or by oral direction if it is based on new information, changed conditions, new technology, or a modification to overall project strategy. Any such modification made orally will be memorialized in writing by EPA promptly, but it shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

82. If Respondent seeks permission to modify any approved work plan, schedule, or SOW, Respondent's Project Coordinator will submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested modification until receiving oral or written approval from the EPA Project Coordinator pursuant to ¶ 81.

83. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding any deliverable submitted by Respondent will relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIV. EFFECTIVE DATE

84. This Settlement shall be effective upon receipt by counsel for Respondent of a fully executed copy.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____
Date

_____
Pat Evangelista
Director, Superfund and Emergency Management Division
Region 2

Signature Page for Settlement regarding
OU-2, GM-IFG Subsite, Onondaga Lake Superfund Site

REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE TRUST

_____
Date

By: EPLET, LLC, acting solely in its capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust

By: _____
ELLIOTT P. LAWS, not individually, but acting solely in his capacity as Managing Member of EPLET, LLC

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