UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5
AND
UNITED STATES DEPARTMENT OF JUSTICE

IN THE MATTER OF:	CERCLA Docket No. _____
Allied Paper/Portage Creek/ Kalamazoo River Superfund Site Operable Unit 1 Panelyte Property	
City of Kalamazoo, Michigan; City of Kalamazoo Brownfield Redevelopment Authority	
Respondents	
Proceeding Under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601–9675	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT**

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS 1
II. PARTIES BOUND 1
III. DEFINITIONS 2
IV. STATEMENT OF FACTS 4
V. DETERMINATIONS 6
VI. SETTLEMENT AGREEMENT AND ORDER 6
VII. DESIGNATION OF PROJECT COORDINATOR AND REMEDIAL PROJECT MANAGER 6
VIII. WORK TO BE PERFORMED 7
IX. PROPERTY REQUIREMENTS 11
X. ACCESS TO INFORMATION 14
XI. RECORD RETENTION 16
XII. COMPLIANCE WITH OTHER LAWS 16
XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES 17
XIV. DISPUTE RESOLUTION 17
XV. FORCE MAJEURE 18
XVI. CERTIFICATION 19
XVII. COVENANTS BY UNITED STATES 20
XVIII. RESERVATIONS OF RIGHTS BY UNITED STATES 20
XIX. COVENANTS BY CITY AND PURCHASER 22
XX. OTHER CLAIMS 23
XXI. EFFECT OF SETTLEMENT/CONTRIBUTION 23
XXII. INDEMNIFICATION 24
XXIII. MODIFICATION 25
XXIV. NOTICE OF COMPLETION OF WORK 25
XXV. PUBLIC COMMENT 25
XXVI. INTEGRATION/APPENDICES 25
XXVII. EFFECTIVE DATE 26
XXVIII. DISCLAIMER 26
XXIX. PAYMENT OF COSTS 26

I. JURISDICTION AND GENERAL PROVISIONS

1. This Settlement is entered into voluntarily by Parties and it provides for the performance of response actions at or in connection with the Property, which is located adjacent to portions of OU1 of the Site and is in part contaminated with hazardous substances, pollutants or contaminants resulting from OU1.

2. This Settlement is entered into pursuant to CERCLA and the authority of the Attorney General to compromise and settle claims of the United States.

3. EPA has notified the State of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Purchaser represents that it has met, and Purchaser and City represent that they will continue to meet, the provisions of Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), and Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), during the Purchaser's ownership of the Property. In view of the nature and extent of the Work to be performed under this Settlement, and the risk of claims under CERCLA being asserted against Purchaser and the City as a consequence of the City's or the Purchaser's activities pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XVIII (Reservations of Rights by United States), any potential liability of Purchaser and the City under CERCLA for the Existing Contamination as defined by Paragraph 9 below.

5. EPA, the City and the Purchaser recognize that this Settlement has been negotiated in good faith and that the Work undertaken by the City and the Purchaser in accordance with this Settlement does not constitute an admission of any liability. The City and the Purchaser do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations) of this Settlement. The City and the Purchaser agree to comply with and be bound by the terms of this Settlement and further agree that they 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 the City and the Purchaser and their successors and assigns. Any change in ownership or corporate status of the City or the Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter their responsibilities under this Settlement.

7. Each undersigned representative of the City and the Purchaser certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind the City and the Purchaser to this Settlement.

8. The City and the Purchaser shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing the City and the Purchaser with respect to the Property, the Site or the Work, and shall condition

all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. The City, the Purchaser or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. The City and the Purchaser shall nonetheless be responsible for ensuring that their 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:

"Acquisition Date" shall mean the date upon which the Purchaser acquires the Property located at 2403 S. Burdick, Kalamazoo, Michigan.

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

"City" shall mean the City of Kalamazoo, Michigan, its departments, agencies and instrumentalities.

"Day" or "day" shall mean a calendar day. In computing any period of time 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.

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

"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.

"Existing Contamination" shall mean:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date;

c. any hazardous substances, pollutants or contaminants presently at OU1 that migrate onto or under the Property, or that are brought from OU1 to the Property as part of implementation of the ROD, on or after the Effective Date; and

d. any hazardous substances, pollutants or contaminants presently at the Property that migrate from the Property on or after the Effective Date.

"MDEQ" shall mean the Michigan Department of Environmental Quality and any successor departments or agencies of the State.

"National Contingency Plan" or "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.

"National Priorities List" or "NPL" shall mean that list of contaminated properties established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

"Operable Unit 1" or "OU1" shall mean that portion of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, including or adjacent to Portage Creek, used to dispose of papermaking wastes, including hazardous substances, from paper mills referred to as the Bryant Mill and/or Monarch Mill, and certain nearby areas to which hazardous substances and/or pollutants or contaminants from those paper mills have come to be located. Appendix 2 depicts OU1.

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

"Parties" shall mean EPA, the City and the Purchaser.

"Property" shall mean the property to be acquired by the Purchaser commonly referred to as the Panelyte Property, a property encompassing approximately 22 acres located at 2403 South Burdick in Kalamazoo, Kalamazoo County, Michigan, and more fully described in Appendix 1.

"Purchaser" shall mean the City of Kalamazoo Brownfield Redevelopment Authority, formed under the authority of the Michigan Brownfield Redevelopment Financing Act (Act 381 of 1986), MCL 125.2651 *et seq.*

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

"Record of Decision" or "ROD" shall mean the Record of Decision signed by EPA on September 21, 2016 for OU1. The ROD requires, among other things, the excavation, consolidation and capping of materials contaminated with hazardous substances, pollutants or contaminants, maintenance of the capped area, control of groundwater and surface water, and imposition and monitoring of institutional controls. The ROD addresses contaminated property currently located on the Property as well as contaminated materials located on the other parts of OU1.

"RPM" shall mean the Remedial Project Manager assigned by EPA to the Property and OU1.

"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 XXVI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, which is included on the NPL. The Site includes several former paper mills, areas used to dispose of wastes from papermaking operations from those mills and all areas to which hazardous substances and/or pollutants or contaminants from those mills have come to be located. OU1 is managed by EPA as part of the Site.

"SOW" shall mean the Statement of Work which was approved by EPA for the Trust's implementation of the remedial design regarding the remedy selected in the ROD.

"State" shall mean the State of Michigan.

"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" shall mean the Lyondell Environmental Custodial Trust, created pursuant to the bankruptcy settlement in *In re: Lyondell Chemical Company, et al.*, Case No 09-10023 (REG) (Bankr. S.D. NY 2010).

"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 (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations the Purchaser and the City are required to perform under this Settlement except those required by Section I (Record Retention).

IV. STATEMENT OF FACTS

10. The Property is located at 2403 South Burdick in Kalamazoo, Kalamazoo County, Michigan. Currently, the Property is unoccupied but is owned by the State of Michigan Land Bank Fast Track Authority.

11. Various industrial operations occurred in the past on the Property, including but not limited to the production of laminated paper products and laminated surfacing materials. As a result of those activities, the Property became contaminated with hazardous substances, as that term is defined by 42 U.S.C. § 9601(14). The Property is currently included on EPA's list of contaminated properties contained in the Superfund Enterprise Management System. However, the Property is not on the NPL.

12. In 1990 EPA conducted a removal response action at a portion of the Property. EPA conducted this removal in order to respond to the release or threatened release of polychlorinated biphenyls (PCBs) resulting from transformer leaks in a building in the northern portion of the Property.

13. The Property is bordered on three sides by OU1. OU1 is contaminated with hazardous substances, including PCBs, resulting from papermaking operations. Some of the PCB contamination from those papermaking operations has come to be located on the Property. Road access to large parts of OU1 is currently primarily through the Property.

14. The Property and OU1 are located adjacent to Portage Creek, which is a tributary of the Kalamazoo River. The Bryant Mill Pond was an impoundment on Portage Creek located adjacent to and on the Property and OU1. Beginning in 1998, EPA conducted a removal response action, commonly referred to as the Bryant Mill Pond removal, to respond to certain threats posed by the release or threatened release of PCBs at or from certain portions of OU1 and the Property. In this removal, EPA excavated some of the papermaking wastes, contaminated soils, and sediments at and from certain areas of OU1, including such materials located on the Property, and placed these materials on other areas of OU1 pending a final remedy for OU1.

15. The final remedy for OU1 was set forth in the ROD. The remedial action selected in the ROD addresses contamination on parts of the Property as well as at other areas of OU1 and involves parts of the Property for implementation of the remedy.

16. The Trust is implementing the remedial design for the remedial action selected in the ROD in accordance with the SOW.

17. In performing the Work, the City and the Purchaser will coordinate with the Trust and be involved with actions required to implement the ROD.

18. The City and the Purchaser desire that the Property and OU1 be redeveloped for recreational and/or commercial purposes as part of broader redevelopment efforts for the surrounding area, which is commonly referred to as the Portage Creek Corridor. The City described this redevelopment effort in the May 2009 *Portage Creek Corridor Reuse Plan*. The Purchaser is an instrumentality of the City responsible for implementing the City's redevelopment goals. With respect to the Property and OU1, the City's goals for the redevelopment are to ensure environmental protectiveness at the parcels, to encourage productive reuse, and to incorporate accessibility and economic connectivity with the community. At appropriate times, the City, through the Purchaser, accumulates properties in this area for the Portage Creek Corridor redevelopment, and at this time desires to obtain the Property in order to further its redevelopment effort.

19. The City and the Purchaser represent, and for the purposes of this Settlement EPA relies on those representations, that their involvement with the Property and OU1 has been limited to the following:

a. In 1978, and between 1988 and 1993, the City initiated tax foreclosure proceedings against the Property. The City neither concluded the tax foreclosure process nor took title to the Property.

b. In 1992, the City demolished structures on the Panelyte property under its police powers in order to abate a public nuisance.

c. The City provided sewer services to the Panelyte Property.

d. In 2009 and 2010, under an EPA Brownfield Assessment Grant (BF00E03401-1), Purchaser conducted certain studies related to the Panelyte Property.

V. DETERMINATIONS

20. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

a. OU1 and the Property are each a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at OU1 and the Property, as identified in the Statement of Facts above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The City and the Purchaser are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Statement of Facts above constitute an actual or threatened "release" of a hazardous substance from the Property and OU1 as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The response actions required by this Settlement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

21. Based upon the Statements of Fact and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that the City and the Purchaser shall 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. DESIGNATION OF PROJECT COORDINATOR AND REMEDIAL PROJECT MANAGER

22. Within 10 days after the Effective Date, the City and the Purchaser shall designate a Project Coordinator (City Project Coordinator) who shall be responsible for administration of all actions by the City and the Purchaser required by this Settlement and shall submit to EPA the designated City Project Coordinator's name, title, address, telephone number, email address, and

qualifications. Notice or communication relating to this Settlement from EPA to the City Project Coordinator shall constitute notice or communication to the City and the Purchaser.

23. EPA has designated Michael Berkoff of the Region 5 Superfund Division as its RPM. EPA, the City and the Purchaser shall have the right to change their respective designated RPM or Project Coordinator. The City and the Purchaser shall notify EPA 10 days before such a change is made. The initial notification by the City and the Purchaser may be made orally, but shall be promptly followed by a written notice. EPA may also designate an Alternate RPM. Notice or communication relating to this Settlement from the Purchaser and the City to EPA's RPM shall constitute notice or communication to EPA.

24. The RPM shall be responsible for overseeing the City's and the Purchaser's implementation of this Settlement.

VIII. WORK TO BE PERFORMED

25. The City and the Purchaser shall perform, at a minimum, all actions necessary to implement the Work set forth in this Section. As necessary, the City and the Purchaser will consult with the Trust in performing the Work.

26. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after the City and the Purchaser receive notification from EPA of the modification, amendment, or replacement.

27. **Cooperation with Periodic Reviews**

a. As requested by EPA after initiation of the remedial action for OU1, the City and Purchaser shall submit one or more Periodic Review Support Plan (PRSP(s)) for EPA approval. Each PRSP addresses the actions that the City and the Purchaser shall conduct to support EPA's reviews of whether the remedial action under the ROD is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations (also known as "Five-year Reviews"). The City and the Purchaser shall develop each PRSP in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidance. The City and the Purchaser shall implement each approved PRSP.

b. The actions which the City and the Purchaser shall be required to perform under each PRSP shall be limited to the compilation, reporting, review and analysis of data, reports and other information in their possession.

28. **Institutional Controls Implementation and Assurance Plan (ICIAP)**

a. At the same time that the Trust submits the Preliminary (50%) Remedial Design required by the SOW, the City and the Purchaser shall submit the ICIAP described in this Paragraph to EPA for review and approval. The City and the Purchaser shall coordinate with the Trust in the development and submittal of the ICIAP.

b. The ICIAP describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at OU1. The City and the Purchaser shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:

(1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights); and

(2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

c. The approved ICIAP shall be incorporated into and enforceable under this Settlement.

d. Beginning in the calendar year after completion of the remedial action under the ROD, the ICIAP shall require the City and the Purchaser to submit an annual certification regarding the status and effectiveness of ICs to EPA. The City and the Purchaser shall submit such certification not later than December 31 of each calendar year. The City and the Purchaser will cooperate with EPA in updating the ICs as necessary to ensure the long-term protectiveness of the OU1 remedial action.

29. **Assistance with Community Involvement Activities**

a. If requested by EPA, the City and the Purchaser shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, this Paragraph. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator (City CI Coordinator).

b. If requested by EPA, the City and the Purchaser shall participate in community involvement activities, including participation in (1) the preparation of information regarding OU1 and the Property for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to OU1 or the Property. The City's and the Purchaser's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by the City and the Purchaser at EPA's request are subject to EPA's oversight.

c. If requested by EPA, the City and the Purchaser shall, within 15 days, designate and notify EPA of the City CI Coordinator. The City and the Purchaser may hire a

contractor for this purpose or may designate appropriate City and/or Purchaser personnel. The City's and the Purchaser's notice must include the name, title, and qualifications of the City CI Coordinator. The City CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's community involvement coordinator regarding responses to the public's inquiries about OU1 and the Property.

30. **Property Preparation Activities**

a. Performance of the OU1 remedial action will require the clearing of trees, brush and undergrowth so as to allow safe and unimpeded access to necessary areas of the Property. In accordance with this Paragraph, the City and the Purchaser agree to perform such clearing activities.

b. After consultation with EPA and the Trust, the City and the Purchaser shall submit to EPA for review and approval a Site Clearance Plan, including a schedule, for performance of the minimum site clearing activities at the Property necessary for performance of the portions of the OU1 remedial action on the Property. The City and the Purchaser shall submit the Site Clearance Plan to EPA at the same time that the OU1 remedial action work plan is submitted to EPA, unless otherwise agreed to by EPA.

c. The City and the Purchaser shall have discretion to manage materials cleared under the Site Clearance Plan either on the Property or off the Property, provided that the City and the Purchaser do not manage such materials in a manner which exacerbates contamination at OU1, increases the risk of exposure to Waste Materials, interferes with the OU1 remedial action, or violates federal, state and/or local law. The City and the Purchaser shall not manage the cleared materials in a manner inconsistent with the direction of the RPM.

d. If the City and the Purchaser believe that either EPA's decision concerning the amount of land requiring clearing or the management of cleared materials as required by EPA or the Trust represents an unreasonable cost or an unreasonable impairment on the use of the Property, the City and the Purchaser may consult with EPA pursuant to the informal dispute resolution provisions of Paragraph 58 and with the Trust prior to finalization of the Site Clearance Plan or management of such materials.

e. Upon EPA approval of the Site Clearance Plan, the City and the Purchaser shall implement the approved plan in accordance with the schedule therein.

31. **Traffic Management Plan**

a. The OU1 remedial action may involve the off-site transportation of some contaminated materials from OU1 and the Property on the public roads in Kalamazoo surrounding OU1 and the Property. Proper management of that traffic is an important part of ensuring the protectiveness of the OU1 remedial action. In accordance with this Paragraph, the City and the Purchaser agree to oversee that off-site traffic related to the OU1 remedial action.

b. After consultation with EPA and the Trust, the City and the Purchaser shall submit to EPA for review and approval a Traffic Management Plan. The purpose of the

Traffic Management Plan is to prevent injuries to workers, passengers and pedestrians, damage to vehicles and/or other equipment, and damage to third-party property.

c. The City and the Purchaser shall submit the Traffic Management Plan to EPA at the same time that the Trust submits to EPA the Preliminary (50%) remedial design required by the SOW, unless otherwise agreed to by EPA.

d. The City and the Purchaser shall oversee the implementation of the approved Traffic Management Plan by the parties performing the OU1 remedial action.

e. As necessary during the OU1 remedial design and remedial action, after consultation with EPA and the Trust, the City and the Purchaser shall submit revisions to the Traffic Management Plan to EPA for review and approval, and shall oversee implementation of approved revisions.

Other Activities related to Implementation of OU1 ROD

32. If EPA determines through the OU1 remedial design process that a component(s) of the OU1 remedy should be placed on the Property, then such placement shall only occur on the portion of the Property designated for that purpose, as depicted on Figure 1 in Appendix 1, unless otherwise agreed to by the Parties, and the City and the Purchaser agree to cooperate with that decision and to allow placement of the OU1 remedy component(s) on the Property. If the City and the Purchaser believe that such a decision by EPA represents an unreasonable cost or an unreasonable impairment on the use of the Property, the City and the Purchaser may consult with EPA pursuant to the informal dispute resolution provisions of Paragraph 58.

33. The City and the Purchaser acknowledge their intent to be involved, to the extent appropriate, with aspects of the long-term operation and maintenance (O&M) of OU1 remedy components (if any) that are placed on the Property. In furtherance of that goal, the City and the Purchaser agree, if requested by EPA, to conduct physical inspections of the OU1 remedy components on the Property in accordance with an approved O&M Plan for OU1. If the City and the Purchaser believe that such a request by EPA represents an unreasonable cost, the City and the Purchaser may consult with EPA pursuant to the informal dispute resolution provisions of Paragraph 58.

34. **Deliverable Review and Implementation**

a. EPA may approve, disapprove, require revisions to, or modify the draft of any deliverable required by this Settlement in whole or in part. If EPA requires revisions, the City and the Purchaser shall, subject to Section XIV (Dispute Resolution), submit a revised draft deliverable within 10 days of receipt of EPA's notification of the required revisions. The City and the Purchaser shall implement the deliverable as approved in writing by EPA in accordance with the schedule approved by EPA.

b. Subject to Section XIV (Dispute Resolution), once approved, or approved with modifications, the deliverable, including any schedule, and any subsequent modifications, shall be incorporated into and become fully enforceable under this Settlement.

c. Except as otherwise authorized by EPA, the City and the Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement.

35. **Submission of Deliverables**

a. The City and the Purchaser shall submit all deliverables required by this Settlement or any approved plan to EPA in accordance with the schedule set forth in such. Except as otherwise provided in this Settlement, the City and the Purchaser shall direct all submissions required by this Settlement to:

Michael Berkoff, SR-6J
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-8983
Berkoff.michael@epa.gov

b. The City and the Purchaser shall submit all deliverables in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, the City and the Purchaser shall also provide EPA with paper copies of such exhibits.

IX. PROPERTY REQUIREMENTS

36. **Access and Non-Interference.** The City and the Purchaser shall, commencing on the Acquisition Date and until response actions at OU1 are completed: (i) provide EPA, the State, and their representatives, including contractors and subcontractors, with access at all reasonable times to the Property to conduct those activities listed in Paragraph 36.a. (Access Requirements); (2) and comply with restrictions on use of the Property listed in Paragraph 36.b. (Land, Water, or Other Resource Use Restrictions).

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

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA or the State;

(3) Conducting investigations regarding contamination at or near the Property or OU1;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions, including but not limited to response actions required by the ROD;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan submitted as part of the OU1 remedial design or remedial action;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 72 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the City and the Purchaser or its agents consistent with Section X (Access to Information);

(9) Assessing the City and the Purchaser's compliance with the Settlement;

(10) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement;

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Property.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Property:

(1) The Property shall not be used in a manner that causes Existing Contamination to migrate beyond the boundaries of the Property, increases the cost of response actions, or otherwise exacerbates the Existing Contamination at the Property. The term "exacerbation" is more specifically defined in Section 20101(1)(q) of Michigan's Natural Resources and Environmental Protection Act (NREPA), MCL 324.20101(1)(q);

(2) The Property shall not be used in a manner that may interfere with response actions at the Property or OU1, including any measures necessary to assure the effectiveness and integrity of the OU1 remedial design or OU1 remedial action;

(3) The construction of, and use of, wells or other devices on the Property to extract groundwater for consumption, irrigation or any other use is prohibited, except for wells and devices that are necessary for response actions at the Property in accordance with plans approved by EPA, and except for wells or devices for short-term dewatering for construction purposes, provided the dewatering, including management and disposal of groundwater, is conducted in accordance with applicable federal, state and local laws and regulations;

(4) Construction of buildings or other structures on the portions of the Property addressed by the ROD shall commence only after Purchaser has submitted to EPA and received approval from EPA of a Construction Work Plan, which will describe the conditions of surface and subsurface soils within the footprint of the buildings or other structures and steps to be taken during construction of the buildings or structures to minimize potential risk of exposure to contaminants above applicable regulatory limits;

(5) Wetlands on portions of the Property addressed by the ROD shall not be disturbed following the OU1 remedial action;

(6) The portions of the Property addressed by the ROD upon which PCBs remain in concentrations greater than one part per million following the OU1 remedial action shall not be used for residential purposes; and

(7) Activities that do not comply with due care requirements applicable to the Property under Part 201 of the Michigan Natural Resources and Environmental Protection Act shall be prohibited.

37. To the extent the ROD or approved remedial design or remedial action deliverables require the filing of restrictive covenants or other recordable instruments, the City and Purchaser agree to file such instruments on real property that they own. Nothing in this Paragraph shall require the City or the Purchaser to file restrictive covenants or other recordable instruments on property that they do not own.

38. Where any action under this Settlement is to be performed in areas owned by or in possession of someone other than the City or the Purchaser, the City and the Purchaser shall use best efforts to secure from such owners an agreement, enforceable by the City, Purchaser and EPA, providing that such owner: (i) provide the EPA, the State, the City, Purchaser, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 36.a (Access Requirements); and (ii) refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the OU1 remedial action, including the restrictions listed in Paragraph 36.b (Land, Water, or Other Resource Use Restrictions).

39. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of the City and the Purchaser would use so as to achieve the goal in a timely manner, but exclude: (i) exercising the power of eminent domain over property owned by or in possession of persons or entities other than the City or the Purchaser; and (ii) providing financial compensation to such persons or entities. If the City and the Purchaser are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist the City and the Purchaser, or take independent action, in obtaining such access and/or use restrictions.

40. The City and the Purchaser shall cooperate with EPA's and the State's efforts to secure and ensure compliance with institutional controls required by the ROD.

41. In the event of any Transfer of the Property, unless EPA otherwise consents in writing, the City and the Purchaser shall continue to comply with its obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Property.

42. **Notice to Successors-in-Title**

a. The City and the Purchaser shall within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Property in the appropriate land records office. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title that: (i) the Property is part of, or related to, OU1 and the Site, (ii) EPA has selected in the ROD a remedial action for OU1 that will impact the Property, and (iii) the City and the Purchaser have entered into this Settlement; and (3) identify the name, docket number, and effective date of this Settlement. The City and the Purchaser shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within ten 10 days thereafter, a certified copy of the recorded notice.

b. The City and the Purchaser shall, prior to entering into a contract to Transfer any portion of the Property, or 60 days prior to Transferring any portion of the Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedial action for OU1 that may impact the Property and that the City and the Purchaser have entered into this Settlement, and identify the name, docket number, and the Effective Date of this Settlement; and

(2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

43. For so long as the City or the Purchaser is an owner or operator of the Property, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. The City and the Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with the ROD, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

44. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their 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.

X. ACCESS TO INFORMATION

45. Subject to Paragraph 46, the City and the Purchaser shall provide to EPA and the State, 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 their possession or control or that of their contractors or agents relating to activities at the Property, OU1, or to the implementation of 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 regarding the Work. The City and the Purchaser shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

46. **Privileged and Protected Claims**

a. The City and the Purchaser may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided the City and the Purchaser comply with Paragraph 46.b, and except as provided in Paragraph 46.c.

b. If the City or the Purchaser asserts such a privilege or protection, it shall provide EPA and the State 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, the City or the Purchaser shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. The City and the Purchaser shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the City's or Purchaser's favor.

c. The City and the Purchaser may make no claim of privilege or protection regarding: (1) any data regarding the Property or OU1, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Property or OU1; or (2) the portion of any Record that the City and the Purchaser is required to create or generate pursuant to this Settlement.

47. **Business Confidential Claims.** The City and the Purchaser may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (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). The City and the Purchaser shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which the City or Purchaser asserts business confidentiality claims. Records that the City or the Purchaser claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified the City or the Purchaser that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to the City or the Purchaser.

48. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

49. Until 10 years after EPA provides the City and the Purchaser with notice, pursuant to Section XXIV (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, the City and the Purchaser shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Property or the Site, and all Records that relate to the liability of any other person under CERCLA with respect to the Property or the Site. The City and the Purchaser must also retain, and instruct their 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 their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that the City and the Purchaser (and their 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 corporate retention policy to the contrary.

50. At the conclusion of the document retention period, the City and the Purchaser shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 46 (Privileged and Protected Claims), the City and the Purchaser shall deliver any such Records to EPA or the State.

51. The City and the Purchaser certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to their potential liability regarding the Property or the Site and that they have fully complied with any and all EPA and State requests for information regarding the Property or the Site 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.

XII. COMPLIANCE WITH OTHER LAWS

52. Nothing in this Settlement limits the City's or the Purchaser's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

53. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close

proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, the City and the Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. The City and the Purchaser may seek relief under the provisions of Section XV (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have 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.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

54. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Property that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, the City and the Purchaser shall immediately take all reasonable steps to prevent, abate, or minimize such release or threat of release. The City and the Purchaser shall take these actions in accordance with all applicable provisions of this Settlement. The City and the Purchaser shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 312-353-2318 of the incident or Property conditions.

55. **Release Reporting**. Upon the occurrence of any event during performance of the Work that the City and the Purchaser are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, the City and the Purchaser shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 312-353-2318, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

56. For any event covered under this Section, the City and the Purchaser shall submit a written report to EPA within seven days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. DISPUTE RESOLUTION

57. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

58. **Informal Dispute Resolution.** If the City and the Purchaser object to any EPA action taken pursuant to this Settlement, they shall send EPA a written Notice of Dispute describing the objection(s) within 10 days after such action. EPA, the City and the Purchaser shall have 20 days from EPA's receipt of their 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. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

59. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, the City and the Purchaser shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to the City and the Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. The City and the Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

60. Except as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of the City and the Purchaser under this Settlement.

XV. FORCE MAJEURE

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

62. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which the City and the Purchaser intend or may intend to assert a claim of force majeure, the City and the Purchaser shall notify the RPM orally or, in his or her absence, the alternate RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within five days of when the City and the Purchaser first knew that the event might cause a delay. Within 10 days thereafter, the City and the Purchaser shall provide in writing 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; their rationale for attributing such delay

to a force majeure; and a statement as to whether, in their opinion, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The City and the Purchaser shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. The City and the Purchaser shall be deemed to know of any circumstance of which they, any entity controlled by them, or their contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude the City and the Purchaser 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 under Paragraph 61 and whether the City and the Purchaser have exercised their best efforts under Paragraph 61, EPA may, in its unreviewable discretion, excuse in writing the City's and the Purchaser's failure to submit timely or complete notices under this Paragraph.

63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure 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 shall 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, EPA will notify the City and the Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify the City and the Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure

64. If the City and the Purchaser elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice under Paragraph 63. In any such proceeding, the City and the Purchaser shall 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, 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 the City and the Purchaser complied with the requirements of Paragraphs 61 and 62. If the City and the Purchaser carry this burden, the delay at issue shall be deemed not to be a violation by the City and the Purchaser of the affected obligation of this Settlement identified to EPA.

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

XVI. CERTIFICATION

66. By entering into this Settlement, the City and the Purchaser certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to them and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or

any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and to its qualification for this Settlement. The City and the Purchaser also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property or OU1. If the United States determines that information provided or representations made under Paragraph 4 by the City and the Purchaser are not materially accurate and complete, the Settlement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

XVII. COVENANTS BY UNITED STATES

67. Except as provided in Section XVIII (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against the City and the Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination and the Work. This covenant shall take effect upon the Effective Date. This covenant is conditioned upon the complete and satisfactory performance by the City and the Purchaser of their obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to EPA by the City and the Purchaser relating to their involvement with the Property and the certification made by the City and the Purchaser in Section XVI (Certification). This covenant extends only to the City and the Purchaser and does not extend to any other person.

68. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the City and the Purchaser, if the information provided to EPA by the City and the Purchaser relating to the City's and the Purchaser's involvement with the Property, or the certification provided in Section XVI (Certification), is false or in any material respect inaccurate.

XVIII. RESERVATIONS OF RIGHTS BY UNITED STATES

69. 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 the Property or Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent EPA or the United States 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.

70. The covenants set forth in Section XVII (Covenants by United States) do not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement is without prejudice to, all rights against the City and the Purchaser with respect to all other matters, including, but not limited to:

a. liability for failure by the City and the Purchaser to meet a requirement of this Settlement;

b. criminal liability;

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

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

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Property or the Site after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination by the City, the Purchaser, their successors, assigns, lessees, or sublessees;

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Property or OU1; and

h. any and all claims or causes of action against the United States arising from, or on account of, negligent or other wrongful acts or omissions of the City and the Purchaser, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on the City's or the Purchaser's behalf or under their control, in carrying out activities pursuant to this Settlement.

71. With respect to any claim or cause of action asserted by the United States, the City and the Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

72. **Work Takeover**

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

b. If, after expiration of the three-day notice period specified in Paragraph 72.a, the City and the Purchaser have not remedied 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 the City and the Purchaser in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 72.b.

c. The City and the Purchaser may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 72.b. However, notwithstanding the City's and the Purchaser'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 Paragraph 72.b until the earlier of (1) the date that the City and the Purchaser remedy, 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 Section XIV (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.

XIX. COVENANTS BY CITY AND PURCHASER

73. The City and the Purchaser covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, the Work, 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 arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Michigan Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding Existing Contamination, the Work, and this Settlement.

74. 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 XVIII (Reservations of Rights by United States), other than in Paragraph 70.a. (liability for failure to meet a requirement of the Settlement), 70.b. (criminal liability), or 70.c. (violations of federal or state law that occur during or after implementation of the Work), but only to the extent that the City's and the Purchaser's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. 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).

76. The City and the Purchaser reserve, 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 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 the City's or the Purchaser's deliverables or activities.

XX. OTHER CLAIMS

77. 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 the City and the Purchaser. The United States or EPA shall not be deemed a party to any contract entered into by the City and the Purchaser or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

78. Except as expressly provided in Section XVII (Covenants by United States), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against the City and the Purchaser 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.

79. 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).

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

80. Nothing in this Settlement precludes the United States, the City or the Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

81. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which the City and the Purchaser have, 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 are 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 all response actions taken or to be taken and all oversight costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

82. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which the City and the Purchaser have, 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).

83. The City and the Purchaser shall, with respect to any suit or claim brought by them for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim.

84. The City and the Purchaser shall, with respect to any suit or claim brought against them for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon them. In addition, the City and the Purchaser shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XXII. INDEMNIFICATION

85. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of the City and the Purchaser as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). The United States shall not be held out as a party to any contract entered into by or on behalf of the City or the Purchaser in carrying out activities pursuant to this Settlement. Neither the City, the Purchaser nor any such contractor shall be considered an agent of the United States.

86. The City and the Purchaser covenant not to sue and agree 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 the City and the Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the City and the Purchaser shall agree to pay on behalf of the United States any claims for damages or reimbursement arising from or on account of any contract or agreement for performance of Work on or at the Site between the City and either (a) the Purchaser or (b) any other person, including, but not limited to, claims on account of construction delays that are not caused my manmade or natural events or conditions which are beyond the control of the City or its contractors.

XXIII. MODIFICATION

87. The RPM may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

88. If the City and the Purchaser seek permission to deviate from any approved work plan or schedule, the City Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. The City and the Purchaser may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 87.

89. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by the City and the Purchaser shall relieve the City and the Purchaser of their 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. NOTICE OF COMPLETION OF WORK

90. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, EPA will provide written notice to the City and the Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify the City and the Purchaser, provide a list of the deficiencies, and require that the City and the Purchaser correct such deficiencies. Subject to Section XIV (Dispute Resolution), the City and the Purchaser shall implement the modified and approved requirement. Subject to Section XIV (Dispute Resolution), failure by the City and the Purchaser to implement the approved modified requirement shall be a violation of this Settlement.

XXV. PUBLIC COMMENT

91. This Settlement shall be subject to a 30-day public comment period, after which EPA may modify or withdraw its consent to this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXVI. INTEGRATION/APPENDICES

92. 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 1 is a description of the Property.

b. Appendix 2 is a map of OU1.

XXVII. EFFECTIVE DATE

93. The effective date of this Settlement shall be the date upon which EPA issues written notice to the City and the Purchaser that EPA has fully executed the Settlement after review of and response to any public comments received.

XXVIII. DISCLAIMER

94. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XXIX. PAYMENT OF COSTS

95. If the City and the Purchaser fail to comply with the terms of this Settlement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement or otherwise obtain compliance.

IT IS SO AGREED:
BY:

11.15.18

Name (Purchaser) Date

11/14/18

Name (City) Date

IT IS SO AGREED:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

Cathy Stepp, Regional Administrator Date
Region 5

IT IS SO AGREED:
UNITED STATES DEPARTMENT OF JUSTICE
BY:

_____

Karen Dworkin
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date

APPENDIX 1

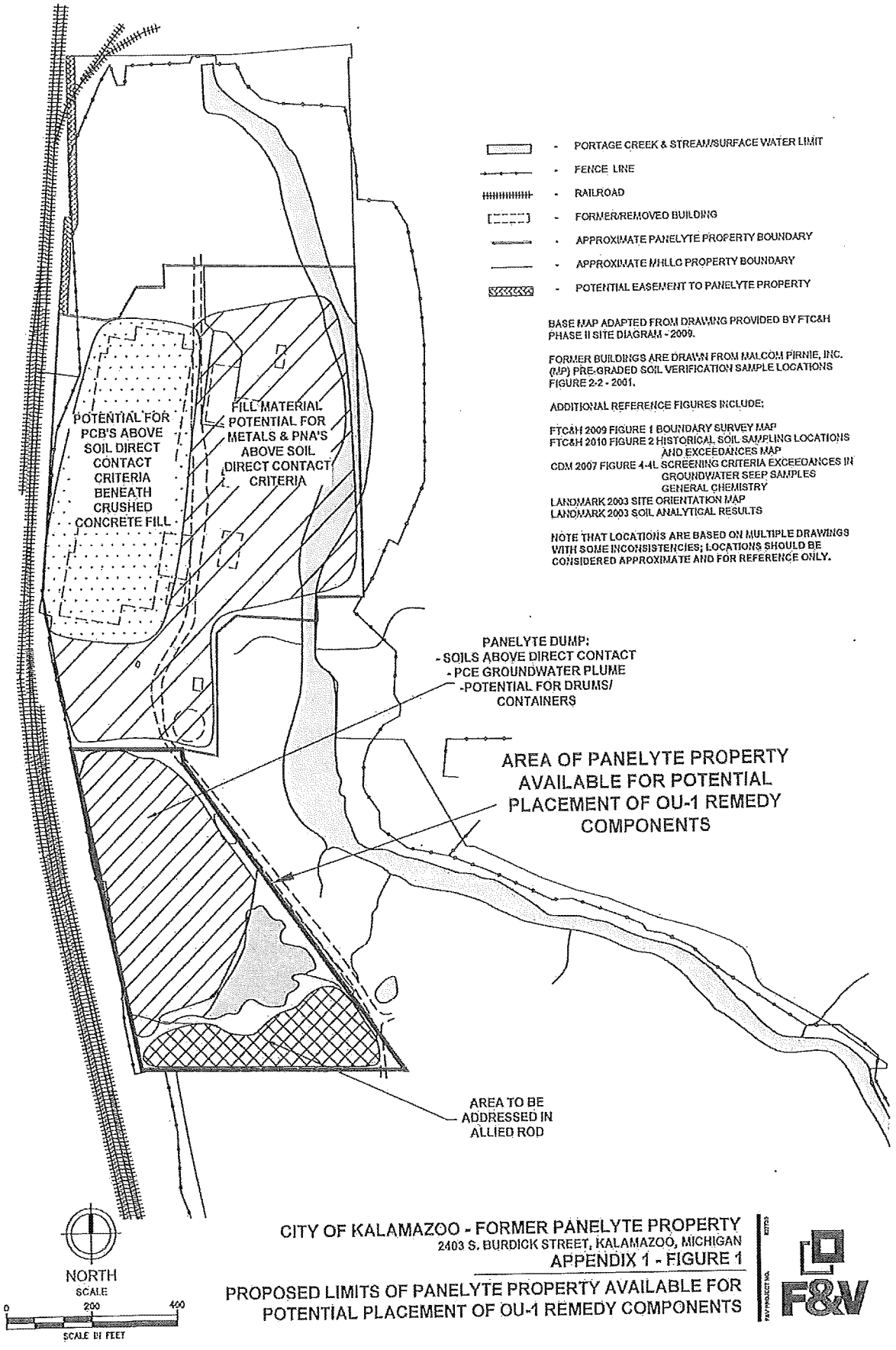
DESCRIPTION OF PROPERTY

Panelyte Property

Legal Description

2403 South Burdick Street, Kalamazoo, Michigan

Section 27-2-11 Commencing at the center 1/4 post of Section 27; thence South 89 degrees 52 minutes East along the East & West 1/4 line said Section 99.1ft to a point on easterly line New York Central Railroad right of way for the point of beginning; thence South 10 degrees 37 minutes East along easterly line New York Central Railroad right of way 619.05 feet; thence South 13 degrees 29 minutes East along easterly line said right of way 475.02ft to a jog in said right of way; thence South 89 degrees 24 minutes East along said jog & in continuation thereof 617.89 feet; thence North 36 degrees 37 minutes West 867.63 feet; thence North 05 degrees 57 minutes West 34.86 feet; thence South 79 degrees 31 minutes East 83.84 feet; thence North 00 degrees 11 minutes West 277.05 feet; thence North 48 degrees 39 minutes East 60.49 feet; thence South 85 degrees 59 minutes East 187.72 feet; thence North 06 degrees 18 minutes West 54.96ft to the East & West 1/4 line said Section; thence South 89 degrees 52 minutes East along the East & West 1/4 line said Section 112.63 feet; thence North 01 degrees 37 minutes West 745.17 feet; thence North 89 degrees 52 minutes West 440.87 feet; thence South 00 degrees 05 minutes East 47.5 feet; thence North 89 degrees 52 minutes West par with the East & West 1/4 line said Section 65.4 feet; thence South 31 degrees 53 minutes West 77.85 feet; thence South 76 degrees 21 minutes West 26.9 feet; thence North 83 degrees 31 minutes West 113.4ft to easterly line of the Railroad right of way; thence South 03 degrees 23 minutes West along easterly line of the New York Central Railroad right of way 638.5ft to the point of beginning. Excluding, Commencing 99.1 feet East of the center 1/4 post of said Section 27; running thence North along easterly right of way line New York Central Railroad 638.5 feet; thence South 83 degrees 31 minutes East 113.4 feet; thence North 76 degrees 21 minutes East 26.9 feet; thence North 31 degrees 53 minutes East 77.85 feet; thence South 89 degrees 52 minutes East 65.4 feet; thence North 00 degrees 05 minutes West 47.5 feet; thence South 89 degrees 52 minutes East 91.45 feet; thence South 01 degrees 16 minutes East 130.3 feet; thence South 54 degrees 48 minutes East 23.77ft for the point of beginning for this exclusion; thence South 81 degrees 45 minutes East 31.7 feet; thence South 38 degrees 37 minutes East 58.53 feet; thence South 08 degrees 20 minutes West 171.23 feet; thence North 81 degrees 45 minutes West 74.29 feet; thence North 08 degrees 18 minutes East 211.21ft to the point of beginning of this exclusion.



CITY OF KALAMAZOO - FORMER PANELYTE PROPERTY
2403 S. BURDICK STREET, KALAMAZOO, MICHIGAN
APPENDIX 1 - FIGURE 1

PROPOSED LIMITS OF PANELYTE PROPERTY AVAILABLE FOR POTENTIAL PLACEMENT OF OU-1 REMEDY COMPONENTS

F&V

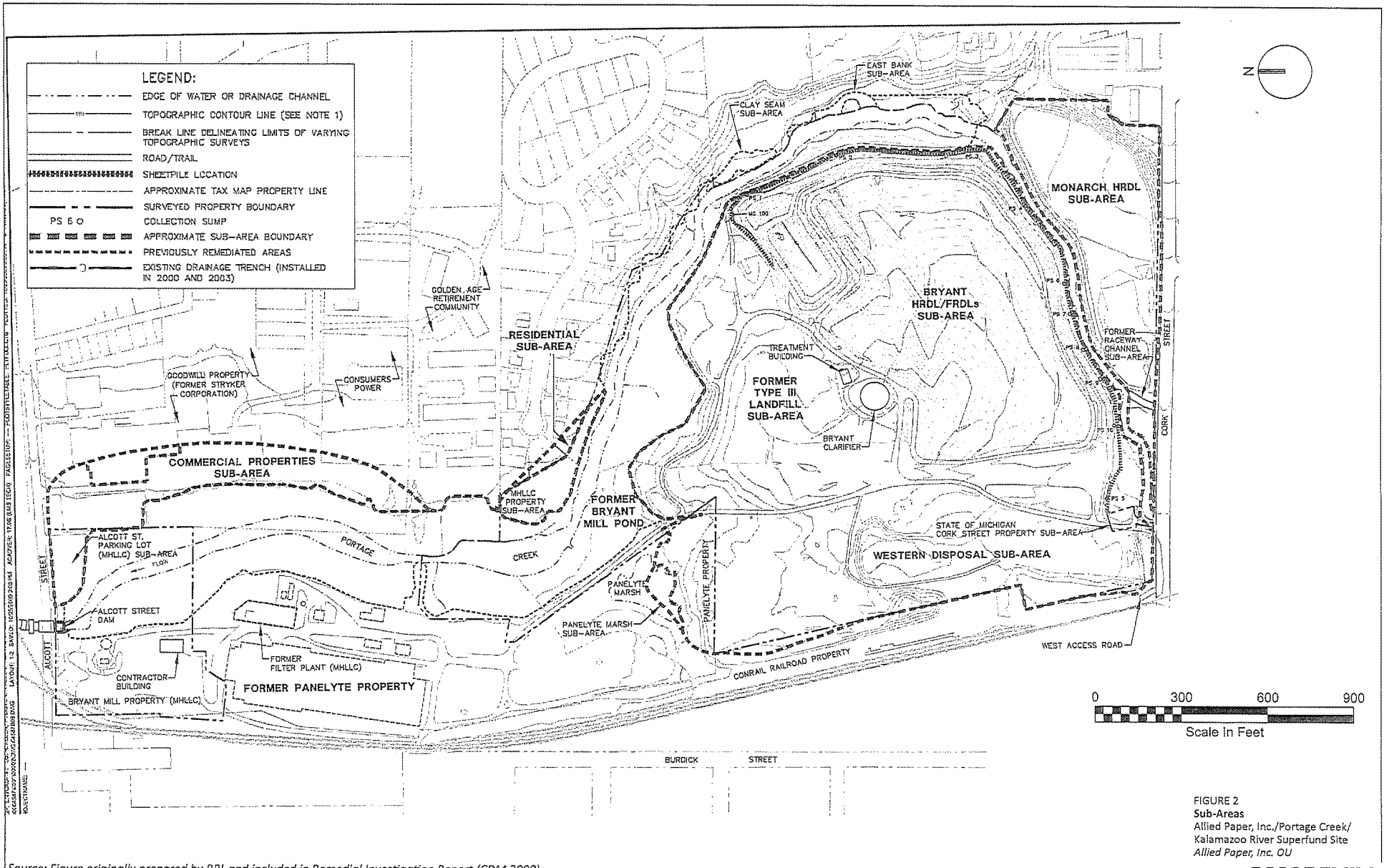


FIGURE 2
Sub-Areas
Allied Paper, Inc./Portage Creek/
Kalamazoo River Superfund Site
Allied Paper, Inc. OU

Source: Figure originally prepared by BBL and included in Remedial Investigation Report (CDM 2008)

CH2MHILL

EPA-R5-2019-004886_0004011