UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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

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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 the City of Kalamazoo Brownfield Redevelopment Authority ("Purchaser") (collectively the "Parties"). This Settlement provides for the performance of response actions by Purchaser and the payment of certain response costs incurred by the United States at or in connection with a property commonly referred to as the Panelyte Property, located at 2403 South Burdick, Kalamazoo, Michigan (the "Property"). The Property is located adjacent to portions of Operable Unit 1 ("OU1") of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the "Site") and is in part contaminated with hazardous substances, pollutants or contaminants resulting from OU1.

2. This Settlement is issued under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 5 to the Director of the Region 5Superfund Division by Regional Delegation 14-14-C (May 2, 1996). This Settlement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

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

4. Purchaser represents that it is a bona fide prospective purchaser (BFPP) as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, 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 notwithstanding Section 107(r)(1) as a consequence of 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~~XVIII~~ (Reservations of Rights by United States), any potential liability of Purchaser under CERCLA for the Existing Contamination as defined by Paragraph 9 below.

5. EPA and Purchaser recognize that this Settlement has been negotiated in good faith and that the Work undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. Purchaser does not admit, and retains 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. Purchaser 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 Purchaser and its successors and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Settlement.

7. Each undersigned representative of 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 Purchaser to this Settlement.

8. 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 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. Purchaser or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Purchaser shall nonetheless 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:

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

"BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

"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 XXVIII~~XXIX~~.

"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.

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

"Existing Contamination" shall mean:

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

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

c. any hazardous substances, pollutants or contaminants presently at the OU1 that migrate onto or under or from the Property after the Acquisition Date.

~~"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 http://www.epa.gov/superfund/superfund-interest-rates.~~

Commented [CM1]: Term not used.

"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 and 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 Appendix 1.

Commented [A2]: Needs map and metes and bounds and map for inclusion in Exhibit 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.*

"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 will address contaminated property currently located on the Property as well as contaminated materials located on the other parts of OU1.

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

"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 XXVII~~XXVIII~~ (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 the Site.

"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.

"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 Purchaser is required to perform under this Settlement except those required by Section XIX (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 CERCLA Information System. However, the Property is not on the NPL.

12. In 1990 EPA conducted a removal response action at 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 PCBs resulting from papermaking operations, including the recycling of carbonless copy paper. 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 PCB contamination on parts of the Property as well as at other areas of OU1 or may otherwise involve parts of the Property for implementation of the remedy.

16. The Lyondell Environmental Custodial Trust (Trust) was created pursuant to the bankruptcy settlement in *In re: Lyondell Chemical Company, et al.*, Case No 09-10023 (REG) (Bankr. S.D. NY 2010). Under directive from EPA, the Trust is implementing the remedial

design for the remedial action selected in the ROD in accordance with a Statement of Work (SOW).

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

18. The City desires 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 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. Purchaser represents, and for the purposes of this Settlement Agreement EPA relies on those representations, that Purchaser's involvement with the Property and the Site 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. EPA issued to Purchaser Brownfield Assessment Grant BF00E03401-1. Pursuant to this grant, Purchaser conducted certain studies related to the Panelyte Property.

d. The City provided sewer services 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, include(s) [a] "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Purchaser is 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 removal 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 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, Purchaser shall designate a Project Coordinator who shall be responsible for administration of all actions by Purchaser required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. Notice or communication relating to this Settlement from EPA to Purchaser's Project Coordinator shall constitute notice or communication to Purchaser.

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

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

VIII. WORK TO BE PERFORMED

25. Purchaser shall perform, at a minimum, all actions necessary to implement the Work set forth in this Section. As necessary, 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 Purchaser receives notification from EPA of the modification, amendment, or replacement.

27. Cooperation with Periodic Reviews

a. As requested by EPA after completion of the remedial action for OU1, the Purchaser shall submit one or more~~the~~ Periodic Review Support Plan (PRSP) for EPA approval. Each ~~The~~ PRSP addresses the actions ~~studies and investigations~~ that 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 Purchaser shall develop each~~the~~ PRSP in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances. The Purchaser shall implement each approved PRSP.

Commented [CM3]: Sub para is from model SOW, except that I've revised it to reflect an as-needed deliverable rather than an upfront deliverable, as our actual support needs may vary from 5YR to 5YR.

b. ~~As requested by EPA, the Purchaser shall conduct, in accordance the approved PRSP, studies and investigations to support EPA's Five-year reviews of whether the remedial action under the ROD is protective of human health and the environment.~~ The actionsse ~~studies and investigations~~ which 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 the possession of the Purchaser.

Commented [CM4]: Subpara b not from our models. Struck language not really needed in light of addition at last line of sub a.

28. Institutional Controls Implementation and Assurance Plan (ICIAP)

a. The SOW for the remedial design requires, among other things, a Preliminary (50%) Remedial Design. At the same time that the Trust submits the Preliminary (50%) Remedial Design, the Purchaser shall, after coordination with the Trust, develop and submit the ICIAP described in this Paragraph to EPA for review and approval.

b. The ICIAP describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at OU1. 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. Beginning in the calendar year after completion of the remedial action under the ROD, the Purchaser shall submit an annual certification regarding the status and effectiveness of ICs to EPA. Purchaser shall submit such certification not later than December 31 of each calendar year. The Purchaser will cooperate with EPA in updating the ICs as necessary to ensure the long-term protectiveness of the OU1 remedial action.

d. Nothing in this Paragraph shall require the Purchaser to file restrictive covenants or other recordable instruments on property that it does not own.

29. Assistance with Community Involvement Activities

a. If requested by EPA, 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 (Purchaser's CI Coordinator).

b. If requested by EPA, the Purchaser shall participate in community involvement activities, including participation in (1) the preparation of information regarding the 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 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 Purchaser at EPA's request are subject to EPA's oversight.

c. If requested by EPA, the Purchaser shall, within 15 days, designate and notify EPA of the Purchaser's CI Coordinator. The Purchaser may hire a contractor for this purpose or may designate appropriate Purchaser personnel. The Purchaser's notice must include the name, title, and qualifications of the Purchaser's CI Coordinator. The Purchaser's 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 the OU1 and the Property.

30. Property Preparation Activities

a. Performance of the OU1 remedial design 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 Purchaser agrees to perform such clearing activities.

b. After consultation with EPA and the Trust, the Purchaser shall submit to EPA for review and approval a Ssite Cclearance Pplan, including a schedule, for performance of the minimum site clearing activities at the Property necessary for performance of the portions of the OU1 remedial design on the Property. The Purchaser shall submit this plan to EPA at the same time that the Trust submits to EPA the Predesign Investigation Work Plan required by the SOW, unless otherwise agreed to by EPA.

c. 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 Purchaser does 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 design or anticipated OU1 remedial action, or violates federal, state and/or local law. The Purchaser shall not manage the cleared materials in a manner inconsistent with the direction of EPA's RPM.

b.d. If the Purchaser believes that management of cleared materials represents an unreasonable cost, Purchaser shall immediately consult with EPA and the Trust prior to management of such materials.

c.e. Upon EPA approval of the Ssite Cclearance Pplan, the Purchaser shall implement the approved plan in accordance with the schedule therein.

31. Traffic Management Plan

a. The OU1 remedial action involves the off-site transportation of contaminated materials from OU1 and the Property, in part 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 agrees to serve as the lead entity for managing that off-site traffic related to the OU1 remedial action.

b. After consultation with EPA and the Trust, 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 3rd-party property.

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

d. The Purchaser shall ~~implement that~~ oversee the implementation of the approved Traffic Management Plan by the parties performing the OU1 remedial action~~as approved by EPA~~.

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

32. **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, Purchaser shall submit a revised draft deliverable within 10 days of receipt of EPA's notification of the required revisions. Purchaser shall implement the deliverable as approved in writing by EPA in accordance with the schedule approved by EPA.

b. Once approved, or approved with modifications, the deliverable, including any the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

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

33. **Submission of Deliverables**

a. 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, 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. 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, Purchaser shall also provide EPA with paper copies of such exhibits.

IX. PROPERTY REQUIREMENTS

34. **Access and Non-Interference.** 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 and OU1 to conduct any activity regarding the Settlement, including those activities listed in Paragraph 34~~34~~.a~~a~~. (Access Requirements); (2) and comply with restrictions on use of the Property or OU1 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 response actions, including the restrictions listed in Paragraph 34~~34~~.b~~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 EPAor 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 69~~69~~ (Work Takeover);

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

(9) Assessing 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, 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 wells or devices for short-term dewatering for construction purposes, provided the dewatering, including management and disposal of resulting groundwater, is conducted in a manner which does not interfere with the OU1 remedial action and is in accordance with applicable federal, state and local laws and regulations. ~~is prohibited~~;

(4) Construction of buildings or other structures on the Property shall be done in a manner which minimizes potential risk of inhalation of contaminants;

(5) Soil beneath buildings existing ~~on the Property~~ as of the Effective Date on the portions of the Property addressed by the ROD shall not be disturbed unless written consent of EPA is first obtained;

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

(7) 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

(8) Prohibiting activities that could result in exposure to contaminants in subsurface soils and groundwater.

35. Where any action under this Settlement is to be performed in areas owned by or in possession of someone other than Purchaser, Purchaser shall use best efforts to secure from such owners an agreement, enforceable by Purchaser and EPA, providing that such owner: (i) provide the EPA, the State, 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 34~~34~~.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 34~~34~~.b (Land, Water, or Other Resource Use Restrictions).

a. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Purchaser would use so as to achieve the goal in a timely manner.~~, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section~~. If Purchaser is 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 Purchaser, or take independent action, in obtaining such access and/or use restrictions.

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

37. In the event of any Transfer of the Property, unless EPA otherwise consents in writing, 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.

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

a. 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) Purchaser has entered into this Settlement; and (3) identify the name, docket number, and effective date of this Settlement. 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. 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 Purchaser has 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.

39. For so long as 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. 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.

40. 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

41. Subject to Paragraph 42~~42~~, 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 Purchaser's 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. 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.

42. **Privileged and Protected Claims**

a. 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 Purchaser complies with Paragraph 42.b~~42.b~~, and except as provided in Paragraph 42~~42~~.c.

b. If 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, Purchaser shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Purchaser shall retain all Records that it claims 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 Purchaser's favor.

c. 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 Purchaser is required to create or generate pursuant to this Settlement.

43. **Business Confidential Claims.** Purchaser may assert that all or part of a Record provided to EPA and the State under this Section or Section XI~~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). Purchaser shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Purchaser asserts business confidentiality claims. Records that 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 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 Purchaser.

44. 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

45. Until 10 years after EPA provides Purchaser with notice, pursuant to Section XXV~~XXVI~~ (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Purchaser shall preserve and retain all non-identical copies of 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 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. Purchaser 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 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 Purchaser (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 corporate retention policy to the contrary.

46. At the conclusion of the document retention period, 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 42~~42~~ (Privileged and Protected Claims), Purchaser shall deliver any such Records to EPA or the State.

47. Purchaser certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Property or the Site and that it has 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

49. Nothing in this Settlement limits 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.

50. 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, Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Purchaser may seek relief under the provisions of Section XV~~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

51. **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, Purchaser shall immediately take all reasonable steps to prevent, abate, or minimize such release or threat of release. Purchaser shall take these actions in accordance with all applicable provisions of this Settlement, including. 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.

52. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Purchaser is 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, 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.

53. For any event covered under this Section, 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

54. 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.

55. **Informal Dispute Resolution.** If Purchaser objects to any EPA action taken pursuant to this Settlement, it shall send EPA a written Notice of Dispute describing the objection(s) within 10 days after such action. EPA and Purchaser shall have 20 days from EPA's receipt of Purchaser' 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.

56. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, 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 Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. 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.

57. 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 Purchaser under this Settlement.

XV. FORCE MAJEURE

58. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of the Purchaser's contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser's best efforts to fulfill the obligation. The requirement that 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.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Purchaser intends or may intend to assert a claim of force majeure, 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 Purchaser first knew that the event might cause a delay. Within 10 days thereafter, 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; Purchaser's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Purchaser shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Purchaser shall be deemed to know of any circumstance of which Purchaser, any entity controlled by the Purchaser, or its contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude 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 58~~58~~ and whether Purchaser has exercised its best efforts under Paragraph 58~~58~~, EPA may, in its unreviewable discretion, excuse in writing Purchaser's failure to submit timely or complete notices under this Paragraph.

60. 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 Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure

61. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIV~~XIV~~ (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice under Paragraph 60~~60~~. In any such proceeding, 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 Purchaser complied with the requirements of Paragraphs 58~~58~~

and 59~~59~~. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement identified to EPA.

62. 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 Purchaser from meeting one or more deadlines under the Settlement, Purchaser may seek relief under this Section.

XVI. CERTIFICATION

63. By entering into this Settlement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its 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. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property. If the United States determines that information provided or representations made under Paragraph 4 by 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

64. Except as provided in Section XVIII~~X VIII~~ (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against 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 Purchaser of its obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Property and the certification made by Purchaser in Paragraph 63~~63~~. This covenant extends only to Purchaser and does not extend to any other person.

65. 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 Purchaser, if the information provided to EPA by Purchaser relating to Purchaser's involvement with the Property, or the certification provided in Paragraph 63~~63~~, is false or in any material respect inaccurate.

XVIII. RESERVATIONS OF RIGHTS BY UNITED STATES

66. 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.

67. The covenants set forth in Section XIX~~XIX~~ (Covenant by Purchaser) 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 Purchaser with respect to all other matters, including, but not limited to:

a. liability for failure by 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 Purchaser, its successors, assigns, lessees, or sublessees; and

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

68. With respect to any claim or cause of action asserted by the United States, 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).

69. **Work Takeover**

a. In the event EPA determines that Purchaser: (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 which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to 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 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 6969.a, Purchaser has 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 Purchaser in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 6969.bb.

c. Purchaser may invoke the procedures set forth in Section XIVXIV (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 6969.bb. However, notwithstanding 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 6969.bb until the earlier of (1) the date that Purchaser remedies, 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 XIVXIV (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 PURCHASER

70. Purchaser 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 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 New Jersey 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.

71. 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 XVIIIXVIII (Reservations of Rights by USEPA), other than in Paragraph 6767.a. (liability for failure to meet a requirement of the Settlement), 6767.b. (criminal liability), or 6767.c. (violations of federal or state law that occur during or after implementation of the Work), but only to the extent that Purchasers' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

72. 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).

73. Purchaser 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 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 Purchaser's deliverables or activities.

XX. OTHER CLAIMS

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

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

76. 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

77. Nothing in this Settlement precludes the United States or 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, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). 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).

78. If a suit or claim for contribution is brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has

lost its status as a BFPP as a result of response actions taken in compliance with this Settlement or at the direction of the RPM), the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser 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 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.

79. If Purchaser is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement or at the direction of the RPM, the Parties agree that this Settlement shall then constitute an administrative settlement pursuant to which Purchaser 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).

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

81. Purchaser shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, 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. RELEASE AND WAIVER OF LIEN(S)

82. Subject to the Reservation of Rights in Section XVIII~~XVIII~~ (Reservation of Rights by United States) of this Settlement, upon satisfactory completion of the Work specified in Section VIII~~VIII~~ (Work to be Performed), EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C.§ 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

XXIII. INDEMNIFICATION

83. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of 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). Purchaser shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, 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 Purchaser, its

officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Purchaser's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Purchaser agrees to pay the United States all costs it incurs, including but not limited to attorneys' 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 Purchaser, 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 Purchaser in carrying out activities pursuant to this Settlement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

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

85. Purchaser 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 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, Purchaser shall 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 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.

~~XXIV. INSURANCE~~

Commented [CM5]: Insurance provision not in 2015 PPA model.

~~86. No later than 30 days before commencing any on-site Work, Purchaser shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVI (Notice of Completion of Work), commercial general liability insurance with limits of $1 million per occurrence, and automobile liability 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 EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Purchaser pursuant to this Settlement. In addition, for the duration of the Settlement, Purchaser shall provide EPA with certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Purchaser shall satisfy, or shall ensure that their 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 Purchaser in furtherance of this Settlement. If Purchaser demonstrates by evidence satisfactory to EPA 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, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure~~

~~that all submittals to EPA under this Paragraph identify the Site name, City, State and the EPA docket number for this action.~~

~~XXV.~~XXIV. MODIFICATION

~~87.~~86. 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.~~87. If Purchaser seeks permission to deviate from any approved work plan or schedule, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 86~~87~~.

~~89.~~88. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Purchaser shall relieve Purchaser 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.

~~XXVI.~~XXV. NOTICE OF COMPLETION OF WORK

~~90.~~89. 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 Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser correct such deficiencies. Purchaser shall implement the modified and approved requirement. Failure by Purchaser to implement the approved modified requirement shall be a violation of this Settlement.

~~XXVII.~~XXVI. PUBLIC COMMENT

~~91.~~90. 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.

~~XXVIII.~~XXVII. INTEGRATION/APPENDICES

~~92.~~91. 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.

XXIX.XXVIII. EFFECTIVE DATE

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

XXX.XXIX. DISCLAIMER

94.93. 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.

XXXI.XXX. PAYMENT OF COSTS

95.94. If Purchaser fails to comply with the terms of this Settlement, it 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:

_____
Name (Purchaser) Date

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

_____
Regional Administrator Date
Region 5

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

_____
Assistant Attorney General Date
Environment and Natural Resources Division
U.S. Department of Justice