UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	Docket Number:
	)	
Saginaw Malleable Industrial Land	)	
77 West Center Street	)	SETTLEMENT AGREEMENT
Saginaw, Michigan	)	AND COVENANT NOT TO SUE
	)	UNDER THE AUTHORITY OF THE
	)	COMPREHENSIVE ENVIRONMENTAL
Michigan Department of	)	RESPONSE, COMPENSATION, AND
Natural Resources	)	LIABILITY ACT OF 1980,
PURCHASER	)	
AND	)	
County of Saginaw	)	
LESSEE	)	
	)	42 U.S.C. § 9601 *et seq.*, AS AMENDED, AND
	)	THE SOLID WASTE DISPOSAL ACT,
	)	42 U.S.C § 6901, *et seq.*, AS AMENDED
	)	

I. INTRODUCTION

1. This Settlement Agreement and Covenant Not to Sue ("Settlement Agreement") is made and entered into by and between the Purchaser, Michigan Department of Natural Resources ("MDNR"), the Lessee, County of Saginaw ("Saginaw County") (collectively "the Settling Parties"), and the United States Environmental Protection Agency ("EPA"). The Settling Parties and EPA are collectively referred to as "the Parties". This Settlement Agreement relates to the Saginaw Malleable Industrial Land Site, a property located in Saginaw, Michigan (the "Site").

2. This Settlement Agreement is entered into pursuant to (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"),

42 U.S.C. § 9601, *et seq*. and (2) the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6901, *et seq*. The authority of the Administrator of EPA has been delegated to the Regional Administrators of EPA, and further delegated to the Director, Superfund Division, Region 5 and the Director, Land and Chemicals Division, Region 5. The Settling Parties consent to and will not object to the United States' jurisdiction to enter into this Settlement Agreement or implement its provisions.

3. The Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, approves this Settlement Agreement pursuant to the authority of the Attorney General to settle claims of the United States, which, in the circumstances of this settlement, has been delegated to the Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division.

4. The Settlement Agreement is also subject to the terms of the Environmental Response Trust Consent Decree and Settlement Agreement entered by the United States Bankruptcy Court for the Southern District of New York in *In re: Motors Liquidation Company, et al., f/k/a General Motors Corp., et al.*, Case No. 09-50026 (REG) ("the General Motors Consent Decree" or "Consent Decree") (*See* Appendix 1). Under the terms of the Consent Decree, certain properties and other assets of General Motors Corporation (General Motors Corp.), including the Site, were placed into the Revitalizing Auto Communities Environmental Response ("RACER") Trust, an environmental response trust, in order to be cleaned up and positioned for

redevelopment. The provisions of this Settlement Agreement rely on the unique facts and circumstances of the General Motors Consent Decree, and nothing in this Settlement Agreement shall be treated as having any precedential value in any other agreements between EPA and prospective purchasers of sites that may be subject to the requirements of CERCLA and/or RCRA.

5. The Site is currently owned by the RACER Properties, LLC, and, due to the unique circumstances of the General Motors Corp. bankruptcy matter, if a prospective purchaser of a site subject to the General Motors Consent Decree determines that other statutory protections are not sufficient to address its liability concerns, Paragraph 69 of the General Motors Consent Decree provides that EPA shall select a liability clarification tool, including entering into prospective purchaser agreements, in order to address the liability concerns of prospective purchasers regarding the existing contamination on sites formerly owned by the General Motors Corp.

6. The Site is the Saginaw Malleable Industrial Land Site - EPA ID# MID005356696 (RCRA Corrective Action) in Saginaw, Michigan, and consists of approximately 150.97 acres of land that was formerly occupied by General Motors Corp. The Purchaser plans to acquire the Site which is depicted in Appendix 2. The Purchaser plans to develop the Site and lease the Site to Saginaw County for a term of years. Saginaw County will also act as a developer and will operate the Site.

7. Purchaser MDNR is the state agency responsible for and committed to the conservation, protection, management, use and enjoyment of the state's natural and cultural resources for current and future generations. Lessee Saginaw County is a local unit of government in the State of Michigan. The Site is adjacent to the Saginaw River, and the Settling Parties intend to redevelop it, in addition to two neighboring parcels, as Green Space for wildlife viewing, and to serve as a connector for development of regional trails that will support jobs that are related to those activities, thus increasing economic benefits. Saginaw County will operate the Site and will be responsible for maintaining the park (not including maintenance obligations and Environmental Actions that are RACER's responsibility), patrolling, and opening and closing of the park.

8. The Parties agree to undertake all actions required by the terms and conditions of this Settlement Agreement. The purpose of this Settlement Agreement is to settle and resolve, subject to reservations and limitations contained herein in Sections V (Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), and IX (Reservation of Rights), the potential liability of the Settling Parties for the Existing Contamination at the Site which could otherwise result from the Settling Parties' purchase of and operation at the Site.

9. The Parties agree that the Settling Parties' entry into this Settlement Agreement, and the actions undertaken by the Settling Parties in accordance with the Settlement Agreement, do not constitute an admission of any liability by the Settling Parties. The resolution of any potential liability of the Settling Parties in exchange for the provisions and obligations undertaken by the

Settling Parties in this Settlement Agreement is of a substantial benefit to EPA and is deemed to be in the public interest. The obligations of the Settling Parties are joint and several.

II. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA and/or RCRA, or in regulations promulgated under CERCLA and/or RCRA, shall have the meaning assigned to them in CERCLA and/or RCRA or in such regulations, including any amendments thereto.

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XV (Effective Date).

d. "Environmental Action" shall mean any response, removal, investigation, sampling, remediation, reclamation, closure, post-closure, corrective action, engineering controls, deed restrictions, oversight costs and operation, monitoring and maintenance activities authorized or required under law with respect to the Site.

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

f. "Existing Contamination" shall mean:

i. any hazardous substances, pollutants, or contaminants or Waste material present or existing on or under the Site as of the Effective Date of this Settlement Agreement;

ii. any hazardous substances, pollutants, or contaminants or Waste material that migrated from the Site prior to the Effective Date of this Settlement Agreement; and

iii. any hazardous substances, pollutants, or contaminants or Waste material presently at the Site that migrate onto, under, or from the Site after the Effective Date of this Settlement Agreement.

g. "General Motors Consent Decree" shall mean the Environmental Response Trust Consent Decree and Settlement Agreement Among Debtors, the Environmental Response Trust Administrative Trustee, the United States, fourteen States, and the Saint Regis Mohawk Tribe, entered in *In re: Motors Liquidation Co., et al., f/k/a General Motors Corp., et al.*, Case No. 09-50026 (REG) in the United States Bankruptcy Court for the Southern District of New York on March 31, 2011, a copy of which is attached as Appendix 1.

h. "Lessee" shall mean the County of Saginaw and any of its successor departments or agencies.

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

j. "MDNR" shall mean the Michigan Department of Natural Resources and any of its successor departments or agencies.

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

l. "Parties" shall mean the United States and the Settling Parties.

m. "Purchaser" shall mean the Michigan Department of Natural Resources and any of its successor departments or agencies.

n. "RACER" or "RACER Trust" shall mean the Revitalizing Auto Communities Environmental Response trust established by the United States Bankruptcy Court in 2011 and formed under the laws of the State of New York to clean up and position for redevelopment properties and other facilities that were owned by the former General Motors Corp. before General Motors Corp.'s bankruptcy in 2009.

o. "RCRA" shall mean the Solid Waste Disposal Act of 1976 (also known as the Resource Conservation and Recovery Act), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901-6992(k).

p. "Saginaw County" shall mean the County of Saginaw, Michigan.

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

r. "Settlement Agreement" shall mean this Settlement Agreement and Covenant Not to Sue and all Appendices attached hereto (listed in Section XVIII of this Settlement Agreement). In the event of conflict between this Settlement Agreement and any Appendix, this Settlement Agreement shall control.

s. "Site" shall mean the Saginaw Malleable Industrial Property at 77 West Center Street in Saginaw, Michigan, encompassing approximately 150.97 acres and as depicted in Appendix 2 of the Settlement Agreement.

t. "Transferee" shall mean a subsequent owner or operator of the Site or part of the Site as applicable.

u. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities, including EPA.

v. "Waste material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

III. STATEMENT OF FACTS

11. The Site that is the subject of this Settlement Agreement is a part of the previously operating General Motors Corp. North American Operations, at 77 West Center Street, Saginaw, Michigan, known as the Saginaw Malleable Industrial Property Site.

12. In June 2009, the former General Motors Corp. filed for Chapter 11 reorganization bankruptcy and subsequently emerged as two new companies. The first of these two new companies, General Motors LLC, purchased the "General Motors" name and certain assets of General Motors Corp. and now operates automobile manufacturing plants in Michigan, Ohio,

Indiana, Illinois, and Wisconsin. The second company, Motors Liquidation Company ("MLC"), retained all of the assets that General Motors LLC did not purchase, as well as the liabilities. This included many properties, including the Site.

13. In March 2011, the bankruptcy court approved MLC's plan of liquidation ("Plan"). On the effective date of the Plan, 89 sites were placed into an Environmental Response Trust (the "Trust") administrated by RACER, as defined in Section II, above. Pursuant to the terms of the Plan and the Trust, specific amounts of funds were set aside for each property in the Trust to address environmental contamination at the specific property. RACER has worked and currently works with Federal and State environmental agencies to review, approve, and undertake response actions to address the contamination at each property, including the Saginaw Malleable Industrial Property Site. MDEQ is the lead agency overseeing actions at the Saginaw Malleable Industrial Property Site and has overseen and will continue to oversee the work conducted by RACER until completion. EPA is the secondary agency and also conducts oversight of the work being conducted by RACER at the Site.

14. The Saginaw Malleable Iron Plant opened in 1917 at the Site and operated continuously until 2007. The plant occupied an area of one million square feet and operations consisted of activities associated with casting and heat-treating iron. Polycholorinated biphenyl containing oils spilled from a transformer onto the soil in 1971. The exposed soil was covered with concrete in 1972. The Queen Street (Center Street) Dump Area is located in the north north-east portion of the Site and was used as a municipal dump. General Motors Corp. purchased the

Queen Street (Center Street) Dump Area in the early 1970s. Two closed industrial solid waste landfills referred to as "Eastern" and "Central" received spent foundry sand, scrubber residues, slag, and other materials.

15. A 1998 Consent Judgment between General Motors Corp. and MDEQ required General Motors Corp. to conduct an investigation of soil, sediment, groundwater, and surface water at the Site. The report was submitted in November 2000 and was approved by MDEQ in July 2001. The following hazardous substances have been found in the soil at the Site: benzene, lead, polychlorinated biphenyls, and manganese. The following hazardous substances have been found in the groundwater at the Site: cyanide (total), vinyl chloride, iron, naphthalene, aluminum, copper, toluene, magnesium, manganese, 1,2,4-Trimethylbenzene, 1,3,5-Trimethylbenzene, benzene, ethylbenzene, xylenes (total), lead, antimony, fluoranthene, cis-1,2-Dichloroethene, chrysene, arsenic, barium, 1,1-Dichloroethene, Benzo(a)anthracene, Bis(2-Ethylhexyl)phthalate, nickel, n-Propylbenzene, pentachlorophenol, phenanthrene, silver, sulfate, TDS, aroclors (total), trichloroethene, vanadium, and zinc. A Light non-aqueous phase liquid (LNAPL) was also identified at the Site. A final Feasibility Study report was submitted in July 2003 and was approved by MDEQ in November 2003.

16. A final plan was initially submitted in July 2008, modified in December 2008, and approved by MDEQ in February 2009. A revised final plan was submitted to MDEQ in May 2009. The revised final plan identified remedial actions completed, on-going remedial and monitoring actions, and proposed remedial actions. Actions completed at the Site include:

sewer cleaning and sleeving; PCB-impacted soil and floor removal; vegetative cover and soil caps to prevent contact with impacted soil and waste; and LNAPL removal. Closure certifications have been filed for these landfills with MDEQ.

17. The approximately 150.97 acre Site is currently owned by RACER Trust, and consists of the building slab of the demolished Saginaw Malleable Iron Plant, a former water recirculation system that included a 2-acre settling pond that was graded over to form a stormwater drainage swale; a 16-acre secondary settling pond that is now used for stormwater management; a 1-acre stormwater management pond; and two closed 8-acre licensed Landfills. RACER is not currently conducting business operations at the Site.

18. RACER has and is performing additional investigation activities and remedial actions at the Site, including:

- Removal of PCB impacted soil;
- Removal of portions of the building slab of the former Saginaw Malleable Iron Plant that are impacted by PCBs;
- Evaluation of the LNAPL;
- Operation and enhancement of the LNAPL recovery system in the former plant area;
- Monitoring of several wells and manholes in the Southwest Plant LNAPL Area for the presence of residual LNAPL;
- Annual inspection of exposure pathway covers, including landfill cover materials;
- Repair of exposure pathway and landfill cover materials as needed and maintenance of landfills to prevent growth of woody plants;
- Installation and maintenance of permanent markers;
- Annual groundwater monitoring; and
- Placement of deed restrictions that prohibit residential use, identify areas where exposure barriers need to be maintained, require proper management of contaminated soil, and prohibit groundwater use for potable purposes.

19. The Settling Parties represent and, for the purposes of this Settlement Agreement, EPA relies on the Settling Parties' representation that neither has had any direct involvement in any prior use, contamination, or remediation of the Site.

IV. SETTLEMENT AGREEMENT

20. Based on the General Motors Consent Decree, the work that has been and is being conducted by RACER pursuant to the Plan, and in consideration of and exchange for the United States' Covenant Not to Sue in Section VIII of this Settlement Agreement, the Settling Parties agree to comply with all provisions of this Settlement Agreement, including, but not limited to, Sections V (Access/Cooperation), VI (Due Care), and VII (Certification) of this Settlement Agreement, and Paragraph 73 of the GM Consent Decree, which is attached as Appendix 1.

21. Nothing in this Settlement Agreement would require either Settling Party to undertake any on-going or planned response actions at the Site that are funded by and/or undertaken by RACER, so long as the Settling Party complies with the requirements of Sections V (Access/Cooperation) and VI (Due Care).

V. ACCESS/COOPERATION

22. Commencing upon the date that Purchaser MDNR acquires title to the Site, the Settling Parties shall provide access to the Site that will include the right of EPA and MDEQ, their authorized officers, employees, representatives, and all other persons performing response actions under EPA or MDEQ's oversight and/or under direction of EPA or MDEQ, to an

irrevocable right of access at all reasonable times to the Site and to any property to which access is required for the implementation of the response action at the Site, to the extent such other property is controlled by the Settling Parties, for the purposes of performing and overseeing response actions at the Site. EPA agrees to provide reasonable notice to the Settling Parties of the timing of its own actions to be undertaken at the Site. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation, including any amendments thereto.

23. The Settling Parties shall comply with any and all land use restrictions and institutional controls on the Site. If the Site is transferred to the Purchaser MDNR before RACER has finalized all necessary restrictive covenants, Purchaser MDNR shall file with Saginaw County and/or other appropriate units of government all required deed notices and restrictive covenants developed and required by EPA. These restrictions will include a prohibition on the use of groundwater, limiting land use to non-residential, and restrictions on disturbing any cover of contaminated soil in certain areas of the Site unless replaced with equivalent cover, and managing soil properly.

24. The Settling Parties shall ensure that assignees, successors in interest, lessees, and sublessees of the Site shall provide the same access and cooperation, including implementing institutional controls. Further, the Settling Parties shall ensure that a copy of this Settlement Agreement is provided to any current lessees or sublessees of the Site as of the Effective Date

and shall ensure that any subsequent leases, subleases, assignments, or transfers of the Site or an interest in the Site are consistent with this Section and Section XI (Parties Bound).

VI. DUE CARE

25. The Settling Parties shall exercise due care at the Site with respect to the Existing Contamination and comply with all applicable local, State, and federal laws and regulations, and all applicable restrictive covenants and deed restrictions. If a Settling Party, its contractors and/or subcontractors encounter any Existing Contamination during its/their construction and/or operations on the Site, it/they must handle, excavate, and dispose of any encountered Existing Contamination in accordance with all applicable federal and State law. Prior to taking any action with regard to Existing Contamination, the Settling Party shall notify EPA and MDEQ. If a new building is constructed on the Site, Settling Parties will either install a vapor mitigation system in the new building or undertake an investigation to determine that no such system is needed. The Settling Parties shall notify EPA and MDEQ of the option implemented at the new building.

26. In the event the Settling Parties become aware, after the Effective Date, of any action or occurrence which causes or threatens a release of Waste material at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, and such action or occurrence is not being addressed with funds from the Trust, the Settling Parties shall immediately take all appropriate action to prevent, abate or minimize such release or threat of release. In the event that the Settling Parties fail to take appropriate response action as required by this Paragraph and EPA takes such action instead, the

Settling Parties shall reimburse EPA all costs of the response action not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. 300, provided, however, that MDNR's obligation to reimburse such EPA costs shall be subject to receipt of funds appropriated by the Michigan Legislature that may be used for reimbursement. If insufficient funds have been appropriated the MDNR agrees to make a good faith effort to seek a supplemental appropriation from the Michigan Legislature for reimbursement. Further, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, regardless of the cause of the release, the Settling Parties will immediately notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, as well as the EPA contacts listed in Section XIV (Notices and Submissions) of this Settlement Agreement, of any release at the Site of which they become aware.

27. Nothing in the preceding Paragraphs or in this Settlement Agreement shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, subject to Section VIII of this Settlement Agreement (United States' Covenant Not to Sue).

28. The Settling Parties agree to cooperate fully with EPA and MDEQ in the implementation of response actions, corrective action, and environmental monitoring at the Site under the terms,

provisions, and limitations set forth in the General Motors Consent Decree. The Settling Parties further agree not to interfere with such activities. The Settling Parties recognize that the implementation of response actions at the Site may interfere with the use of the Site. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Parties' operations by such entry and activities.

29. The Settling Parties shall not treat, store, or dispose of Waste material at the Site, or release or cause the release of such Waste material on, to, or from the Site, except in compliance with applicable law.

VII. CERTIFICATION

30. By entering into this Settlement Agreement, each Settling Party certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to the Settling Party and all information in the possession or control of its directors, employees, contractors, and agents which relates in any way to any Existing Contamination or any past or potential future release of Waste material at or from the Site and to its qualification for this Settlement Agreement. Each Settling Party 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 Waste material at the Site. If the United States determines that information provided by a Settling Party is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the United States, shall be null and void as to that Settling Party, and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

31. Subject to the Reservation of Rights in Section IX of this Settlement Agreement, the United States covenants not to sue or take any other civil or administrative action against the Settling Parties for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Sections 3008(h) or 7003 of RCRA, 42 U.S.C. §§ 6928(h) or 6973, with respect to the Existing Contamination. These covenants not to sue extend only to the Settling Parties and do not extend to any other person except as provided in Section XI of this Settlement Agreement (Parties Bound).

IX. RESERVATION OF RIGHTS

32. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII of this Settlement Agreement (United States' Covenant Not to Sue). The United States reserves, and the Settlement Agreement is without prejudice to, all rights against the Settling Parties with respect to all other matters, including but not limited to the following:

(a) liability for a failure by a Settling Party to meet a requirement of this Settlement Agreement, including but not limited to Section V (Access/Cooperation), and Section VI (Due Care) of this Settlement Agreement;

(b) any liability resulting from future releases of Waste material, at or from the Site caused or contributed to by a Settling Party, its successors, assignees, lessees, or sublessees;

(c) any liability resulting from the exacerbation by a Settling Party, its successors,

assignees, lessees, or sublessees of Existing Contamination;

(d) any liability resulting from the release or threat of release of Waste material at the Site after the Effective Date of this Settlement Agreement that is not within the definition of Existing Contamination;

(e) criminal liability;

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

(g) liability for violations of local, State, or federal law or regulations.

33. With respect to any claim or cause of action asserted by the United States, the Settling Party shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

34. Nothing in this Settlement Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation, or other entity not a party to this Settlement Agreement.

35. Nothing in this Settlement Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Parties to perform or pay for response actions at the Site. Nothing in this Settlement Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be

required by EPA in exercising its authority under federal law. The Settling Parties acknowledge that they are purchasing/operating on the Site where response actions may be required.

X. THE SETTLING PARTIES' COVENANT NOT TO SUE

36. In consideration of the United States' Covenant Not To Sue in Section VIII of this Settlement Agreement, the Settling Parties hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Settlement Agreement, including but not limited to, any direct or indirect claims for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law; any claim against the United States, including any department, agency, or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; Section 7002(a) of RCRA; or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

37. The Settling Parties reserve, and this Settlement Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Parties' plans or activities, that are 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. Nothing herein shall be deemed to constitute 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).

38. Except as provided in this Section, the Settling Parties reserve the right to assert any defenses available to them under applicable law.

XI. PARTIES BOUND/TRANSFER OF COVENANT

39. This Settlement Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Parties, their officers, directors, and employees. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVII of this Settlement Agreement shall apply to the Settling Parties and shall apply to their officers, directors, or employees to the extent that the alleged liability of the officer, director, or employee is based on his/her status and in his/her capacity as an officer, director, or employee of the Settling Parties, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Parties. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

40. Notwithstanding any other provisions of this Settlement Agreement, all of the rights, benefits and obligations conferred upon the Settling Parties under this Settlement Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

41. Upon completion of the following conditions, a Transferee of all or a portion of the Site shall have all rights, duties and obligations of this Settlement Agreement, including Sections V (Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), IX (Reservation of Rights), X (Settling Parties' Covenant Not to Sue), and XIII

(Document Retention), excluding those rights and obligations regarding appropriation of funds in paragraph 26 necessitated by the MDNR being a governmental agency:

a. at least five (5) days before the transfer or the execution of an operations agreement as applicable, the Transferee submits to EPA an affidavit in substantially the same form as that attached as Appendix 3, which identifies the Transferee and the Site to be transferred or subject to an operations agreement, describes the proposed transfer or the operations agreement, and certifies that:

i. prior to the transfer or execution of the operations agreement, the Transferee was not and/or is not subject to potential liability under CERCLA, RCRA, and/or any other law for Existing Contamination;

ii. the Transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;

iii. the Transferee's use of the Site (or part of the Site, as the case may be) will not result in a release or threat of release of any Waste material except in compliance with law;

iv. the Transferee's use of the Site (or part of the Site, as the case may be) will not cause or contribute to the migration or new release of any Existing Contamination or any new threat to human health or the environment caused by any such release or threat of release;

v. the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the Transferee; and

b. the Transferee is bound by all of the requirements, duties, obligations, and limitations on the use of and actions at the Site set forth in this Settlement Agreement. EPA must consent in writing to the transfer of the rights, benefits, and obligations conferred under the Settlement Agreement to the Transferee. Any transfer of rights is subject to review and approval by EPA and shall not be effective until such approval is given. EPA agrees that it shall issue such approval, addressed to both the Settling Parties and the Transferee, promptly upon receipt of each Transferee's affidavit that conforms with the requirements of this Section XI (Parties Bound/Transfer of Covenant); and

c. Prior to or simultaneous with the transfer of or execution of an operations agreement for all or a portion of the Site, the Transferee consents in writing to be bound by and perform, from the date of transfer or effectiveness of the operations agreement, all of the terms and remaining obligations of the Settlement Agreement applicable to the Settling Parties or the applicable transferor.

If the Transferee's affidavit is not materially accurate or complete, or the Transferee fails to meet the obligations and requirements of this Settlement Agreement, the United States' covenants not to sue in Section VIII shall be null and void with respect to the Transferee, and the United States reserves all rights it may have against the Transferee.

42. If all conditions in Paragraph 41 are satisfied, upon transfer of ownership or effectiveness of the operations agreement for the Site (or part of the Site, as the case may be), the applicable Settling Party, to the extent they are an owner or operator, shall be released from the obligations set forth in this Settlement Agreement with respect to the Site or the portion of the Site transferred

or subject to an operations agreement.

XII. DISCLAIMER

40. This Settlement Agreement 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 Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

41. The Settling Parties agree to retain and make available to EPA all Site studies and investigations and documents relating to operations at the Site, for at least ten years, following the Effective Date of this Settlement Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Parties shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. NOTICES AND SUBMISSIONS

42. Documents that must be submitted under this Settlement Agreement shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Settling Parties and EPA designate in writing:

As to EPA:

Greg Rudloff
Remediation and Reuse Branch
Land and Chemicals Division
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: LU-9J
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As to the Settling Party MDNR

Michigan Department of Natural Resources
Marc Miller
Constitution Hall, 5th Floor, North Tower
525 West Allegan Street
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(517) 284-6367
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Michigan Department of Attorney General
Environment, Natural Resources and Agriculture Division
Attn: Assistant Attorney General in Charge
G. Mennen Williams Building, 6th Floor
525 West Ottawa Street
Lansing, Michigan 48933
(517) 373-7540

As to the Settling Party County of Saginaw

Controller/Chief Administrative Officer
Saginaw County
111 South Michigan Avenue
Saginaw, MI 48602

Chairman, Board of Commissioners
Saginaw County
111 South Michigan Avenue
Saginaw, MI 48602

XV. EFFECTIVE DATE

43. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Settling Parties that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

XVI. TERMINATION

44. If any Party believes that any or all of the obligations under Section V (Access/Cooperation) are no longer necessary to ensure compliance with the requirements of the Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XVII. CONTRIBUTION PROTECTION

45. With regard to claims for contribution against the Settling Parties, the Parties hereto agree that this Settlement Agreement is an administrative settlement for purposes of Section 113(f)(2)

of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

46. The Settling Parties agree that with respect to any suit or claim for contribution brought by them for matters related to this Settlement Agreement, they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

47. The Settling Parties also agree that with respect to any suit or claim for contribution brought against them for matters related to this Settlement Agreement, they will notify in writing the United States within 10 days of service of the complaint on them.

XVIII. APPENDICES

48. a. Appendix 1 is the General Motors Consent Decree, as defined in Section II.

b. Appendix 2 is a map of the Site, as defined in Section II.

c. Appendix 3 is a copy of the Transfer Affidavit, as described in Section XI.

XIX. PUBLIC COMMENT

49. This Settlement Agreement shall be subject to notice in the Federal Register and a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate this Settlement Agreement is inappropriate, improper, or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Douglas Ballotti
Acting Director
Superfund Division
U.S. EPA Region 5

6/21/2018
Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Tinka G. Hyde
Director
Land and Chemicals Division
U.S. EPA Region 5

6/20/18
Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

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

Date

BY:

John Broderick
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

6/20/2018
Date

IT IS SO AGREED:

By: _____ 8/14/2018
Michigan Department of Natural Resources — Date
Keith Creagh, Director

By: _____ _____
County of Saginaw — Date
Carl Ruth, Chairman of
the Board of Commissioners

By: _____ _____
County of Saginaw — Date
Robert Belleman, Controller/Chief
Administrative Officer

By: _____ _____
County of Saginaw — Date
L. William Smith, Civil Counsel

IT IS SO AGREED:

By: _____ _____
Michigan Department of Natural Resources Date
Keith Creagh, Director

By: _____ 5/23/18
County of Saginaw Date
Carl Ruth, Chairman of
the Board of Commissioners

By: _____ 05/23/2018
County of Saginaw Date
Robert Belleman, Controller/Chief
Administrative Officer

By: _____ May 23, 2018
County of Saginaw Date
L. William Smith, Civil Counsel

Appendix 1