

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:	)	
	)	SETTLEMENT AGREEMENT
	)	
THE GOWANUS CANAL SUPERFUND SITE	)	U.S. EPA Region 2
Brooklyn, Kings County,	)	CERCLA Docket No. 02-2023-2004
	)	
Paramount Global and Beam, Inc.,	)	
	)	
Settling Parties,	)	
	)	
PROCEEDING UNDER SECTION 122(h)(1) OF	)	
CERCLA, 42 U.S.C. § 9622(h)(1).	)	

**I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Orders), and was redelegated to the EPA Region 2 Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004. Effective April 28, 2019, the Emergency and Remedial Response Division has been renamed the Superfund and Emergency Management Division (“SEMD”). All delegations to the Director of the Emergency and Remedial Response Division were conferred upon the Director of SEMD in a memorandum by the EPA Regional Administrator dated March 27, 2019. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice (“DOJ”).

2. This Settlement Agreement is made and entered into by EPA, Paramount Global (“Paramount”), and Beam, Inc. (“Beam”). Paramount and Beam are hereinafter collectively referred to as the “Settling Parties”. Settling Parties consent to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. EPA STATEMENT OF BACKGROUND**

3. This Settlement Agreement concerns the Gowanus Canal Superfund Site (“Site”) located in Brooklyn, Kings County, New York. The Gowanus Canal (“Canal”), a brackish, tidal arm of the New York–New Jersey Harbor Estuary, extends for approximately 1.8 miles through Brooklyn, New York. The approximately 100–foot–wide Canal runs southwest from Butler Street to Gowanus Bay and Upper New York Bay. The adjacent waterfront is primarily commercial and industrial, currently including concrete plants, warehouses and parking lots, and the Site is near several residential neighborhoods.

4. The Canal was constructed by bulkheading and dredging a tidal creek and wetland. Following its completion in the late 1860s, the Canal quickly became one of the nation’s busiest industrial waterways, servicing heavy industries that included manufactured gas plants (“MGPs”), coal yards, cement manufacturers, tanneries, paint and ink factories, machine shops, chemical plants, and oil refineries. As a result of the poor environmental practices typical of the era, large quantities of wastes from many of these operations were discharged directly into the Canal. The Canal served as an open sewer when it was initially constructed. By the late 1870s, sewers entering the Canal carried a combination of household waste, industrial effluent from the MGPs and other industries, and storm water runoff.

5. Historic and ongoing discharges to the Canal have contained hazardous substances such as polycyclic aromatic hydrocarbons (“PAHs”), polychlorinated biphenyls (“PCBs”), pesticides, metals, and volatile organic compounds), causing the Canal to become one of New York’s most polluted waterways.

6. Much of the heavy industrial activity along the Canal has ceased, although many upland areas adjacent to the Canal remain zoned for industrial uses. Wet weather Combined Sewer Overflow (“CSO”) discharges continue to the present. Land uses along and near certain portions of the Canal are in the process of transitioning from heavy industrial to light industrial, commercial, and residential. The Canal is currently used by some for recreational purposes, such as boating, diving, and catching fish for consumption. The Canal, Gowanus Bay and Upper New York Bay are subject to New York State fishing advisories.

7. At the request of the New York State Department of Environmental Conservation (“NYSDEC”), by publication in the *Federal Register* on April 8, 2009, EPA proposed the Site for inclusion on the National Priorities List (“NPL”) established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. On March 2, 2010, EPA listed the Site on the NPL.

8. EPA conducted field work for a remedial investigation (“RI”) between 2009 and 2010 and issued a draft RI report in January 2011. An RI report was completed in January 2011 and a Feasibility Study (“FS”) report was completed in December 2011. An FS addendum report was completed in December 2012.

9. EPA issued the Record of Decision (“ROD”) for the Site on September 27, 2013. The selected remedy includes, among other things, the dredging of contaminated accumulated sediments in the Canal, the capping of contaminated native sediments, and the construction of

controls for hazardous substance-contaminated solids releases from CSO and other discharge events (“CSO Controls”). The 2013 ROD includes an estimate that the cost of the remedy would be \$506 million. The near completion of the remedial design (“RD”) and commencement of field work have resulted in an updated estimation of the cost of the remedy.

10. In 2009, EPA began the investigation of potentially responsible parties (“PRPs”) for the Site. EPA began issuing letters notifying parties of their potential liability, and thus their status as PRPs, in August 2009.

11. EPA alleges that Paramount is, among other things, the successor to a former owner/operator of a facility where electroplating operations were conducted. The facility operated from 1901 until 1922, and later served as headquarters for marine service operations until the property was sold in or around 1935. EPA alleges that during some or all of these times, hazardous substances were released to the Canal from the former facility, which was located more than one block from the Canal, via the sewers. By letter dated December 29, 2011, EPA notified CBS Corporation of its status as a PRP. On December 4, 2019, CBS Corporation changed its name to ViacomCBS Inc. (a Delaware corporation). On February 15, 2022, ViacomCBS Inc. amended and restated its certificate of incorporation to change its name to “Paramount Global.”

12. EPA alleges that Beam is the successor to a former owner of a facility at the Site where its subsidiary, the American Machine and Foundry, Inc. (“American Machine”), operated a foundry and machinery manufacturing plant from 1902 until 1912, when American Machine was spun off as an independent publicly traded company. EPA alleges that during some or all of these times, hazardous substances were released to the Canal from the Beam facility, which was located one block from the Canal, via the sewers. By letter dated October 5, 2012, EPA notified Beam of its status as a PRP.

13. EPA alleges that the Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

15. In performing response actions at the Site, EPA has incurred and will incur response costs. On September 30, 2013, EPA issued a Notice for the Commencement of RD Negotiations and Demand for Past Costs (“Notice and Demand”) to PRPs for the Site including Settling Parties. The Notice and Demand, among other things, sought \$11,115,105 in reimbursement of EPA’s then outstanding past response costs for the Site, plus interest, and execution of a RD consent order.

16. On March 21, 2014, EPA issued an administrative order, Index Number CERCLA-02-2014-2001 (the “Dredging RD Order”), to 31 PRPs, including Settling Parties, requiring performance of the pre-RD and RD for all elements of the remedy selected in EPA’s ROD, except CSO controls and cleanup and restoration of the former 1st Street turning basin. On May 28, 2014, EPA issued an administrative order, Index Number CERCLA-02-2014-2014, to the City

requiring that it perform the pre-RD and RD related to CSO controls and cleanup and restoration of the former 1st Street turning basin, as well as requiring that the City participate and cooperate in the Dredging RD Order. In accordance with the provisions of the Dredging RD Order, Settling Parties submitted to EPA their respective notices of intent to comply with the Dredging RD Order.

17. On April 11, 2019, EPA issued an administrative order, Index Number CERCLA-02-2019-2010, to 28 PRPs requiring performance of a removal action, including, among other things, construction of bulkhead and bridge structural support and access dredging, in preparation for dredging and capping in the upper Canal. On January 28, 2020, EPA issued an administrative order, Index Number CERCLA-02-2020-2003, requiring implementation of the first portion of the remedial action selected in the ROD including dredging and capping in the upper Canal. EPA did not include Settling Parties as respondents to the 2019 and 2020 administrative orders because they were in settlement discussions with EPA. Following their notices of intent to comply with the Dredging RD Order in 2014, Settling Parties had provided to EPA factual information relating to their involvement at the Site, including corporate relationships of certain historic companies to Settling Parties, historic operations of those entities, timeframes of operations, and locations of operations. EPA expects to seek implementation of the remainder of the remedy selected in the ROD through other means with other PRPs.

18. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs incurred or to be incurred at or in connection with the Site.

19. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Parties. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

20. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

#### **IV. STATEMENT OF PURPOSE**

21. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid potentially costly and protracted litigation by allowing Settling Parties to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

#### **V. DEFINITIONS**

22. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- b. “Day” or “day” shall mean a calendar day. 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 working day.
- c. “Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVI.
- d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- e. “Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507 (the “Fund”), 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.
- f. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lowercase letter.
- g. “Parties” shall mean EPA and Settling Parties.
- h. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- i. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. “Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

k. “Settling Parties” shall mean Paramount Global (f/k/a ViacomCBS Inc.) and Beam Inc.

l. “Site” shall mean the Gowanus Canal Superfund Site, located in Brooklyn, Kings County, New York.

m. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

## **VI. PAYMENT OF RESPONSE COSTS**

23. Payment by Settling Parties for Response Costs. Within 30 days after the Effective Date, Beam shall pay to EPA \$534,917, and Paramount shall pay to EPA \$377,651.

24. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Eastern District of New York shall provide to Settling Parties, in accordance with Section XIII (Notices and Submissions), instructions for making this payment, including a Consolidated Debt Collection System (“CDCS”) reference number. Settling Parties shall make such payment at <https://www.pay.gov> in accordance with the FLU’s instructions, including references to the CDCS Number. Settling Parties shall send notices of payment to DOJ and EPA in accordance with Section XIII. These notices shall include the date of payment, payment amount, Site name, Index Number CERCLA 02-2023-2004, and each Settling Party’s name and address. If either Settling Party is late in making any payment required under Paragraph 23, that Settling Party shall pay, in addition to any stipulated penalties owed under Paragraph 27, an additional amount for Interest accrued from the Effective Date until the date of the late payment.

25. EPA will deposit the total amounts paid under Paragraph 23 (Payment by Settling Parties for Response Costs) in the Gowanus Canal Special Account within the Fund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

## **VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

26. Interest on Late Payments. If either Settling Party fails to make its respective payment required by Paragraph 23 (Payment by Settling Parties for Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the due date through the date of payment.

27. Stipulated Penalty.

a. If either Settling Party does not pay any amount due to EPA under Paragraph 23 (Payment by Settling Parties for Response Costs) by the required date, such Settling Party shall be

in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 26 (Interest on Late Payments), \$2,500 per violation per day that such payment is late.

b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after such Settling Party's receipt from EPA of a demand for payment of the penalties. Such Settling Party shall make any payment required by this Section at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site/Spill ID and DJ numbers listed in Section XIII (Notices and Submissions), and the purpose of the payment.

c. At the time of penalty payment, such Settling Party shall send notice that payment has been made as provided in Paragraph 24 (Notice of Payment).

d. Penalties shall accrue as provided above regardless of whether EPA has notified the applicable Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

28. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of any Settling Party's failure to comply with the requirements of this Settlement Agreement, any Settling Party that fails or refuses to comply with any term or condition of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, such Settling Party(ies) shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

29. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse a Settling Party from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

#### **VIII. COVENANTS BY EPA**

30. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by each Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Parties and do not extend to any other person.

## **IX. RESERVATIONS OF RIGHTS BY EPA**

31. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within Section VIII (Covenant by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

a. liability for failure of a Settling Party to meet a requirement of this Settlement Agreement;

b. criminal liability;

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

d. liability based on the ownership or operation of the Site by Settling Parties when such ownership or operation commences after signature of this Settlement Agreement by Settling Parties;

e. liability based on Settling Parties' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Parties;

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;

g. liability for performance of response action or for reimbursement of response costs to the extent the total response costs paid at or in connection with the Site by EPA or any other person exceed \$1,237,206,185, excluding any response costs for the canal uplands and for the design, construction, operation, and maintenance of the CSO Controls paid by the City of New York.

32. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

## **X. COVENANTS BY SETTLING PARTIES**

33. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the Fund, based on 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 claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

34. Except as provided in Paragraph 36 (claims against other PRPs) and Paragraph 41 (res judicata and other defenses), the covenants in this Section shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 31.a (liability for failure to meet a requirement of the Settlement Agreement) or 31.b (criminal liability), but only to the extent that Settling Parties' claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation. Settling Parties reserve, and this Settlement Agreement is without prejudice to, contribution claims against the United States, other than EPA, in the event any claim is asserted by the United States against Settling Parties, but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking.

35. Nothing in this Settlement Agreement 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).

36. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

## **XI. EFFECT OF SETTLEMENT / CONTRIBUTION PROTECTION**

37. Except as provided in Paragraph 36 (regarding claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Parties), each of the Parties reserves any and all rights (including, but not limited to, any right to contribution under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 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 action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

38. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or by any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 31.a (liability for failure to meet a requirement of the Settlement Agreement) or 31.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

39. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party 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).

40. Each Settling Party shall, with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also shall, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Party 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 Agreement.

41. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-

splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section VIII.

42. Effective upon signature of this Settlement Agreement by a Settling Party, such Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 38, and that, in any action brought by the United States related to the “matters addressed,” such Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

## **XII. ACCESS TO INFORMATION & RECORD RETENTION**

43. Settling Parties shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, 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 Site.

44. Until 10 years after the Effective Date, each Settling Party shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to liability of any person under CERCLA with respect to the Site. Each Settling Party must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records now in its possession or control or that come into its possession or control that relate in any manner to the performance of response action at the Site, including all data and other Records generated during such response action. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

45. After the conclusion of the 10-year record retention period, each Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, except as provided in Paragraph 46 (Privileged and Protected Claims), the Settling Party shall deliver such Records to EPA.

46. Privileged and Protected Claims

a. Settling Parties may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 46.b and except as provided in Paragraph 46.c.

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

c. Settling Parties may make no claim of privilege or protection regarding:

(1) any data regarding the Site, 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 Site; or

(2) the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.

47. Business Confidential Claims. Each Settling Party may assert that all or part of a Record submitted by it to EPA under this Section 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). Any Settling Party that asserts a business confidentiality claim shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which the Party asserts a business confidentiality claim. Records submitted to EPA determined to be confidential by EPA will be accorded 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, or if EPA has notified Settling Parties 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 Settling Parties.

48. Each Settling Party certifies individually 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 Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

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

### **XIII. NOTICES AND SUBMISSIONS**

50. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless the one Party gives notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to DOJ:                    *via email to:*  
  
[eesdcopy.enrd@usdoj.gov](mailto:eesdcopy.enrd@usdoj.gov)  
Re: DJ # 90-11-3-10529

As to EPA:                    *via email to:*  
  
U.S. EPA, Region 2  
Superfund and Emergency Management Division  
290 Broadway, 19<sup>th</sup> Floor  
New York, NY 10007-1866  
Attn: Christos Tsiamis, Gowanus Canal Superfund Site Project Manager  
[tsiamis.christos@epa.gov](mailto:tsiamis.christos@epa.gov)  
Re: Site/Spill ID # 02ZP

and                                U.S. EPA, Region 2  
Office of Regional Counsel  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866  
Attn: Brian Carr, Gowanus Canal Superfund Site Attorney  
[carr.brian@epa.gov](mailto:carr.brian@epa.gov)  
Re: Site/Spill ID # 02ZP

As to Settling Parties: via email to:

Counsel for Beam, Inc.  
Thor W. Ketzback, Esq.  
Bryan Cave Leighton Paisner LLP  
161 North Clark Street, Suite 4300  
Chicago, IL 60601-3315  
[thor.ketzback@bclplaw.com](mailto:thor.ketzback@bclplaw.com)

and Counsel for Paramount Global  
Lindsay P. Howard, Esq.  
Babst Calland  
603 Stanwix Street, 6<sup>th</sup> Floor  
Two Gateway Center  
Pittsburgh, PA 15222  
[lhoward@babstcalland.com](mailto:lhoward@babstcalland.com)

and Jo Ann Haller, Esq.  
SVP and Assistant General Counsel  
Paramount Global  
20 Stanwix Street, 10<sup>th</sup> Floor  
Pittsburgh, PA 15222  
[JoAnn.Haller@paramount.com](mailto:JoAnn.Haller@paramount.com)

#### **XIV. INTEGRATION**

51. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

#### **XV. PUBLIC COMMENT**

52. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

**XVI. EFFECTIVE DATE**

53. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 52 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: **Pat Evangelista**  
PAT EVANGELISTA  
Director  
Superfund and Emergency Management Division  
U.S. Environmental Protection Agency  
Region 2

Digitally signed by Pat Evangelista  
Date: 2022.11.28 10:50:40 -05'00'

\_\_\_\_\_ Date

Signature Page for Settlement Agreement Regarding Gowanus Canal Superfund Site, U.S. EPA  
Region 2 Docket No. CERCLA 02-2023-2004:

U.S. DEPARTMENT OF JUSTICE

By:



\_\_\_\_\_  
DAVID LAUFMAN WEIGERT  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
Phone: (202) 514-0133  
Fax: (202) 616-2427

\_\_\_\_\_  
March 3, 2023

Date

BREON PEACE  
U.S. Attorney  
Eastern District of New York  
Brooklyn, NY 11201

\_\_\_\_\_  
/s/ Richard K. Hayes

RICHARD K. HAYES  
Deputy Chief  
Civil Division  
U.S. Attorney's Office  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, NY 11201  
(718) 254-7000

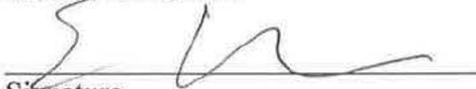
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March 3, 2023

Date

Signature Page for Settlement Agreement Regarding Gowanus Canal Superfund Site, U.S. EPA  
Region 2 Docket No. CERCLA 02-2023-2004:

PARAMOUNT GLOBAL

By:

  
Signature

November 9, 2022

Date

Name

Eric J. Sobczak

Title

EVP & Associate General Counsel

Organization

Paramount Global

Address

20 Stanwix Street, Pgh., PA 15222

Address

(412) 642-5633

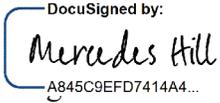
Phone Number

eric.sobczak@paramount.com

Email Address

Signature Page for Settlement Agreement Regarding Gowanus Canal Superfund Site, U.S. EPA  
Region 2 Docket No. CERCLA 02-2023-2004:

BEAM, INC.

By:  \_\_\_\_\_  
A845C9EFD7414A4...

10 November 2022  
\_\_\_\_\_  
Date

Mercedes Hill  
\_\_\_\_\_  
Name

Associate General Counsel  
\_\_\_\_\_  
Title

Beam Suntory  
\_\_\_\_\_  
Organization

222 W. Merchandise Mart Plaza Suite 1600  
\_\_\_\_\_  
Address

Chicago, IL 60654  
\_\_\_\_\_  
Address

312-964-6907  
\_\_\_\_\_  
Phone Number

mercedes.hill@beamsuntory.com  
\_\_\_\_\_  
Email Address