

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

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| _____) | |
| IN THE MATTER OF:) | |
| US SMELTER AND LEAD REFINERY) | CERCLA Docket No. V-W-22-C-004 |
| SITE, EAST CHICAGO, INDIANA) | |
| INDUSTRIAL DEVELOPMENT) | |
| ADVANTAGE OF EAST CHICAGO,) | |
| LLC) | |
| Purchaser) | |
| Proceeding Under the Comprehensive) | ADMINISTRATIVE SETTLEMENT |
| Environmental Response, Compensation,) | AGREEMENT FOR REMEDIAL |
| and Liability Act, 42 U.S.C. §§ 9601–9675) | ACTION BY PROSPECTIVE |
| _____) | PURCHASER |

TABLE OF CONTENTS

| | | |
|----------------|--|-----------|
| I. | GENERAL PROVISIONS | 1 |
| II. | PARTIES BOUND..... | 1 |
| III. | DEFINITIONS | 2 |
| IV. | STATEMENT OF FACTS..... | 7 |
| V. | DETERMINATIONS | 9 |
| VI. | DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER..... | 10 |
| VII. | REMEDIAL DESIGN AND REMEDIAL ACTION TO BE PERFORMED..... | 11 |
| VIII. | PROPERTY REQUIREMENTS..... | 12 |
| IX. | ACCESS TO INFORMATION | 15 |
| X. | RECORD RETENTION | 16 |
| XI. | COMPLIANCE WITH OTHER LAWS | 17 |
| XII. | PAYMENT OF RESPONSE COSTS..... | 17 |
| XIII. | DISPUTE RESOLUTION..... | 17 |
| XIV. | FORCE MAJEURE..... | 18 |
| XV. | STIPULATED PENALTIES | 20 |
| XVI. | CERTIFICATION..... | 23 |
| XVII. | COVENANTS BY THE UNITED STATES AND THE STATE | 23 |
| XVIII. | RESERVATIONS OF RIGHTS BY THE UNITED STATES AND THE STATE | 24 |
| XIX. | COVENANTS BY PURCHASER | 25 |
| XX. | OTHER CLAIMS | 26 |
| XXI. | EFFECT OF SETTLEMENT/CONTRIBUTION | 27 |
| XXII. | INDEMNIFICATION | 28 |
| XXIII. | FINANCIAL ASSURANCE..... | 28 |
| XXIV. | INSURANCE..... | 28 |
| XXV. | MODIFICATION | 29 |
| XXVI. | INTEGRATION/APPENDICES | 29 |
| XXVII. | DISCLAIMER..... | 30 |
| XXVIII. | ENFORCEMENT | 30 |
| XXIX. | NOTICES AND SUBMISSIONS..... | 30 |
| XXX. | PUBLIC COMMENT | 32 |
| XXXI. | EFFECTIVE DATE..... | 32 |

I. GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Remedial Action by Prospective Purchaser (“Settlement”) is entered into voluntarily by and between the United States on behalf of the Environmental Protection Agency (“EPA”), the State of Indiana (“State”), and Industrial Development Advantage of East Chicago, LLC (“Purchaser”). This Settlement provides for the performance of remedial action by Purchaser at or in connection with real property located in East Chicago, Indiana, to be acquired by Purchaser (the “Property”) as defined and set forth herein.

2. This Settlement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601-9675. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional official. The State enters into this Settlement pursuant to 42 U.S.C. § 9621(f)(1) and the Indiana Hazardous Substances Response Trust Fund, Indiana Code 13-25-4 et seq.

3. EPA has notified the State of this action and the State has elected to be a party to this Settlement.

4. Purchaser agrees to undertake all actions required by the terms and conditions of this Settlement. In view of the risk of claims under CERCLA being asserted against Purchaser upon it becoming an owner of the Property, one of the purposes of this Settlement is to resolve Purchaser’s potential CERCLA liability in accordance with the covenants not to sue in Section XVII (Covenants by United States and the State), subject to the reservations and limitations contained in Section XVIII (Reservations of Rights by United States and the State).

5. The resolution of this potential liability, in exchange for Purchaser’s performance of the Work, is fair, reasonable, and in the public interest.

6. The United States, the State, and Purchaser (collectively, the “Parties”) recognize that this Settlement has been negotiated in good faith and that the actions 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, including, but not limited to, all documents approved under and incorporated by reference into this Settlement, and further agrees that it will not contest the basis or validity of this Settlement or its terms, or the United States’ right to enforce this Settlement.

II. PARTIES BOUND

7. This Settlement is binding upon the United States, the State, and Purchaser and upon Purchaser’s successors and assigns. Any change in ownership or corporate status of Purchaser does not alter Purchaser’s responsibilities under this Settlement.

8. The 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.

9. 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 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. With regard to the activities undertaken pursuant to this Settlement, each contractor and subcontractor shall be deemed to be in a contractual relationship with Purchaser within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

III. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Settlement, the following definitions apply:

“2012 Record of Decision” or “2012 ROD” means the decision document signed by EPA on November 30, 2012, which identified a selected remedy for Operable Unit 1 of the Site.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“CERCLA Docket Number” or “CERCLA Docket No.” means the number assigned to the Settlement by EPA and located on the right side of the caption on the first page of the Settlement.

“Day” or “day” means 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 runs until the close of business of the next working day.

“DOJ” means the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” means the effective date of this Settlement as provided in Section XXXI.

“EPA” means the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” means the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” means:

- a. any hazardous substances, pollutants, or contaminants present or existing on or under the Property prior to or as of the Effective Date;
- b. any hazardous substances, pollutants, or contaminants that migrated from the Property prior to the Effective Date; and,
- c. any hazardous substances, pollutants, or contaminants present or existing at the Site as of the Effective Date that migrate onto or under or from the Property after the Effective Date.

“Future Federal Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs reviewing or developing deliverables submitted pursuant to the OU1 ASAOC, this Settlement, or the OU1 RODs; overseeing implementation of the SOW or the OU1 RODs; or otherwise implementing, overseeing, or enforcing this Settlement, the OU1 RODs, or the OU1 ASAOC after December 31, 2020, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement costs, the costs incurred pursuant to Section VIII of this Settlement (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, and/or to secure, implement, monitor, maintain, or enforce Institutional Controls, including, but not limited to, the amount of just compensation), costs incurred in taking response action described in Paragraph 82 of the OU1 ASAOC and/or Paragraph 82 of the this Settlement because of Purchaser’s failure to take emergency action under Section 3.9 of the SOW, costs incurred in implementing Paragraph 85 of this Settlement (Work Takeover), Paragraph 49 of the OU1 ASAOC (Access to Financial Assurance), and the costs incurred by the United States in enforcing the terms of the OU1 ASAOC, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs. For the sake of clarity, the term “Future Federal Response Costs” shall: (1) include, but shall not be limited to, response costs that the United States incurs in implementing Institutional Controls as required by the OU1 RODs throughout OU1 and the requirement to perform five-year remedy reviews in accordance with 42 U.S.C. § 9621; and (2) not include any unreimbursed costs incurred by the United States through December 31, 2020.

“Future State Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the State incurs in reviewing or developing deliverables submitted pursuant to the OU1 ASAOC, this Settlement, or the OU1 RODs, in overseeing implementation of the SOW or the OU1 RODs, or otherwise implementing, overseeing, or enforcing this Settlement, the OU1 RODs, or the OU1 ASAOC after November 1, 2014, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement costs, the costs incurred pursuant to Section VIII of this Settlement (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, and/or to secure implement, monitor, maintain, or enforce Institutional Controls, including, but not limited to, the amount of just

compensation), costs incurred in taking response action described in Paragraph 82 of the OU1 ASAOC and/or Paragraph 82 of this Settlement because of Purchaser's failure to take emergency action under Section 3.9 of the SOW, costs incurred in implementing Paragraph 85 of this Settlement (Work Takeover), Paragraph 49 of the OU1 ASAOC (Access to Financial Assurance), and the costs incurred by the State in enforcing the terms of the OU1 ASAOC, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs. For the sake of clarity, the term "Future State Response Costs" shall: (1) include, but shall not be limited to, response costs that the State incurs in implementing Institutional Controls as required by the OU1 RODs throughout OU1 and the requirement to perform five-year remedy reviews in accordance with 42 U.S.C. § 9621; and (2) not include any unreimbursed response costs incurred by the State through November 1, 2014.

"IDEM" means the Indiana Department of Environmental Management and any successor departments or agencies of the State.

"Institutional Controls" means proprietary controls (*i.e.*, easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office) and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the Remedial Action; (c) provide information intended to modify or guide human behavior at or in connection with the Site; or (d) any combination thereof.

"Interest" means 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 is 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>.

"Modified Zone 1" means the surface and subsurface soils in the area encompassed by the former West Calumet Housing Complex ("WCHC"), Goodman Park, and a utility corridor located in the western portion of OU1 between Zone 1 and Zone 2, but does not include the Carrie Gosch School property which is the portion of Zone 1 that has been previously remediated. Modified Zone 1 is depicted on Figure 2 of the ROD Amendment and is attached hereto as Appendix B.

"OU1 ASAOC" means the Administrative Settlement Agreement and Order on Consent for Providing Financial Assurance and Payment of Response Costs Associated with Prospective Purchaser Agreement for Remedial Design and Remedial Action at Modified Zone 1 of the U.S. Smelter and Lead Refinery, Inc. Superfund Site entered into between EPA, the State, and Atlantic Richfield Company, The Chemours Company, FC, LLC, E. I. du Pont de Nemours and

Company, U.S. Smelter and Lead Refinery, Inc., and United States Metals Refining Company (“Respondents”) and Arava Natural Resources Company, Inc., Mining Remedial Recovery Company, and Mueller Industries, Inc. (“Additional Covered Parties”).

“OU1 RODs” shall mean, collectively: (1) the 2012 ROD; (2) the ROD Amendment, and (3) an Explanation of Significant Differences (“ESD”) that selects Alternative 4A, excavation of soils above commercial/industrial cleanup levels to a depth of 12”, off-site disposal of contaminated soils, and soil and groundwater ICs.

“National Contingency Plan” or “NCP” means 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.

“Operable Unit 1” or “OU1” shall mean the surface and subsurface soil of the area located inside the red highlighted boundaries on Appendix C. OU1 is generally bounded on the north by East Chicago Avenue; on the east by Parrish Avenue; and the south by East 151st Street/149th Place on the south; and on the west by the Indiana Harbor Canal.

“Operable Unit 2” or “OU2” shall mean groundwater associated with the Site as well as the surface soil, subsurface soil, and sediments located inside the blue highlighted boundaries on Appendix C. The area within the blue highlighted boundaries on Appendix C consists of approximately 79 acres, is commonly known as 5300 Kennedy Avenue, and is generally bounded on the north by the Indiana Harbor Belt Railroad; on the east by Kennedy Avenue; on the south and west by the Grand Calumet River; and on the northwest by the Indiana Harbor Canal.

“Paragraph” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, the State, and Purchaser.

“Performance Standards” or “PS” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD Amendment.

“Property” means that portion of Modified Zone 1 purchased by Purchaser and subject to the terms of this Settlement. A legal description of the Property is attached hereto as Appendix D and a map of which is attached hereto as Appendix E.

“Purchaser” means Industrial Development Advantage of East Chicago, LLC.

“RCRA” means the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Remedial Action” or “RA” means the remedial action selected in an ESD issued by EPA in accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, which selects the remedy identified in Alternative 4A in the ROD Amendment.

“Remedial Action Work Plan” or “RA Work Plan” means the document to be submitted pursuant to Section 3.1 of the SOW.

“Remedial Design” or “RD” means those activities to be undertaken by Purchaser to develop final plans and specifications for the RA as stated in the SOW.

“Remedial Design Work Plan” or “RD Work Plan” means the document to be submitted pursuant to Section 3.1 of the SOW.

“ROD Amendment” means the EPA Record of Decision Amendment relating to Operable Unit 1, Zone 1, signed on March 24, 2020.

“RPM” means the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Remedial Action by Prospective Purchaser and all appendices attached hereto (listed in Section XXVI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement controls.

“Site” shall mean the U.S. Smelter and Lead Refinery, Inc. Superfund Site, located in the City of East Chicago, Lake County, Indiana, and depicted generally on the map attached as Appendix C. The Site includes both OU1 and OU2.

“State” means the State of Indiana.

“Statement of Work” or “SOW” means the document describing the activities Purchaser must perform at the Property to implement and maintain the Remedial Action pursuant to this Settlement, as set forth in Appendix A, and any modifications made thereto in accordance with this Settlement.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or under Indiana Code 13-11-2-98; (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), or under Indiana Code 13-11-2-42; (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), or under Indiana Code 13-11-2-205; (d) any “hazardous material” under Indiana Code 13-11-2-96; and any “hazardous waste” under Indiana Code 13-11-2-99(c).

“Work” means all activities and obligations Purchaser is required to perform under this Settlement, except those required by Section X (Record Retention) and Section XII (Payment of Response Cost).

“Z1” or “Zone 1” shall mean the surface and subsurface soil generally bordered: (1) on the south by East 151st Street; (2) on the west by the Indian Harbor Canal; (3) on the north by the

southern boundary of the Carrie Gosch Elementary School and a line extending eastward from that boundary to the eastern edge of a north/south utility right of way that runs parallel to McCook Avenue north of East 149th Place; and (4) on the east by: (i) the eastern-most edge of a north/south utility right of way that runs parallel to McCook Avenue until East 149th Place, and (ii) McCook Avenue between East 149th Place and 151st Street. The Carrie Gosch School property is part of Zone 1 but is not included within Modified Zone 1.

“Z2” or “Zone 2” shall mean the surface and subsurface soil found in an area located inside the yellow highlighted boundaries on Appendix F and labeled as “Zone 2.” Zone 2 is generally bordered: (1) on the north by Chicago Avenue; (2) on the east, by the eastern edge of the railroad right of way that runs principally north and south and is labeled on Appendix F as “Elgin Joliet and Eastern Rlwy”; (3) on the south by East 151st Street; and (4) on the west by: (i) the Indiana Harbor Canal between Chicago Avenue and the northern boundary of the Carrie Gosch Elementary School; (ii) the eastern-most edge of a north/south utility right of way that runs parallel to McCook Avenue until East 149th Place, and (iii) McCook Avenue between East 149th Place and 151st Street.

“Z3” or “Zone 3” shall mean the surface and subsurface soil found in an area located inside the yellow highlighted boundaries on Appendix F and labeled as “Zone 3.” Zone 3 is generally bordered: (1) on the north by Chicago Avenue; (2) on the east by Parrish Avenue; (3) on the south by the northern edge of the railroad right of way located generally to the south of East 149th Place and labeled on Appendix F as “Elgin Joliet and Eastern Rlwy”; and (4) on the west by the eastern edge of the railroad right of way that runs principally north and south and is labeled on Appendix F as “Elgin Joliet and Eastern Rlwy.” The triangular plot of land bounded by several railroad spurs in the southeastern portion of the area labeled Zone 3 on Appendix F is a part of Zone 3.

11. 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.

IV. STATEMENT OF FACTS

12. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”) by publication in the Federal Register on April 8, 2009, 74 Fed. Reg. 16,126–34.

13. Between 2009 and 2012, EPA conducted a Remedial Investigation (“RI”) and Feasibility Study in connection with the Site, which consists of two Operable Units: OU1 and OU2.

14. On November 30, 2012, EPA issued the 2012 ROD, which set forth a selected remedy for OU1.

15. OU1 consists of surface and subsurface soil within the geographic boundaries identified in the definition of OU1. OU1 does not include groundwater beneath the Site; groundwater beneath the Site is included in OU2.

16. OU1 was divided by EPA into three zones for administrative purposes. From west to east, these zones are Zone 1, Zone 2, and Zone 3.

17. In 2014, EPA entered a consent decree with certain potentially liable parties to fund and perform the selected remedy for OU1, Zones 1 and 3.

18. In 2016, EPA and certain potentially liable parties began to implement the selected remedy in OU1, Zone 3. EPA undertook certain response actions in OU1, Zone 1 but did not begin to implement the selected remedy for OU1, Zone 1.

19. In 2016, the East Chicago Housing Authority (“ECHA”) requested permission from the U.S. Department of Housing and Urban Affairs (“HUD”) to demolish the public housing complex then located in Modified Zone 1 and known as the West Calumet Housing Complex (“WCHC”). HUD gave permission to ECHA to proceed with the demolition of WCHC and provided funds for the demolition work. By 2018, ECHA had completed the demolition of the WCHC and relocation of the WCHC’s approximately 1,200 residents, likely altering the potential future uses within OU1, Zone 1.

20. Following the demolition of the WCHC in 2018, EPA determined that the remedy for Zone 1 set forth in the 2012 ROD required review. Contaminated soils that had previously been buried beneath streets, sidewalks and other structures were now exposed. Contaminated soils adjacent to the Carrie Gosch School, previously included within the definition of Zone 1, have been remediated.

21. In November 2018, EPA issued a proposed plan for how to address the new conditions within Modified Zone 1. The proposed plan was presented to the public through a series of public meetings and the publication and distribution of written information. The proposed plan anticipated that the future use of land within Modified Zone 1 might shift from residential use to a commercial or industrial use.

22. In November 2019, EPA learned that the City of East Chicago, Indiana (“the City”) had executed a Letter of Intent (“LOI”) with Purchaser. The LOI proposed a commercial/industrial rather than residential use for the Property. In December 2019, the City confirmed in a letter to EPA that it now favored development of the Property for commercial/industrial purposes.

23. Purchaser and its affiliates specialize in the redevelopment of properties that contain or once contained hazardous substances. Purchaser has represented, and for purposes of this Settlement EPA and the State have relied on the representation, that it has had no prior connection to the Site. The City entered into the LOI with Purchaser after considering redevelopment proposals received from other entities in response to a nationally circulated request for proposals.

24. On March 24, 2020, EPA amended the Record of Decision (“ROD Amendment”). The ROD Amendment contained a contingent remedy. The remedy selected initially assumed that Modified Zone 1 remained slated for residential development and contained action levels and Institutional Controls consistent with residential development. However, the ROD Amendment provides that EPA may change the selected remedy under two conditions from a residential remedy to a remedy compatible with a commercial/industrial end use: that the zoning classification of the Property be changed from residential to light industrial, and that the City and ECHA transfer titles to parcels that comprise Modified Zone 1 to an entity intending to develop Modified Zone 1 for commercial/industrial use.

25. To develop the ROD Amendment, EPA relied on the results of the RI and a supplemental RI performed by EPA. The RI and supplemental RI documented the presence of soils throughout OU1 with varying concentrations of lead and arsenic.

26. Lead is a hazardous substance, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The Agency for Toxic Substances and Disease Registry (“ATSDR”) has determined that exposure to lead presents human health risks.

27. Arsenic is a hazardous substance, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). ATSDR has determined that exposure to arsenic presents human health risks. Ingesting very high levels of arsenic can result in death.

28. The data contained in the RI and supplemental RI support the conclusion that the concentrations of lead and arsenic in soils throughout OU 1, including soils in Modified Zone 1, posed and continue to pose a threat to human health and the environment.

29. In May 2020, the City changed the zoning classification of Modified Zone 1 to light industry.

30. The City and/or ECHA is expected to transfer title to the Property to the Purchaser to support the redevelopment of the Property.

31. EPA has prepared and expects to issue an Explanation of Significant Differences that selects Alternative 4A, excavation of soils above commercial/industrial cleanup levels to a depth of 12”, off-site disposal of contaminated soils, and soil and groundwater ICs, once the Purchaser has satisfied both conditions set forth in the ROD Amendment.

V. DETERMINATIONS

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

a. The Site is a “facility” and the Property is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

c. 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 as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The conditions at the Property described in the Statement of Facts above and in the attached Amended Record of Decision constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

VI. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

33. Purchaser shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA and IDEM of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 14 days after the Effective Date. Purchaser shall also notify EPA and IDEM of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 14 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Purchaser. If EPA disapproves of a selected contractor or subcontractor, Purchaser shall retain a different contractor or subcontractor and shall notify EPA of that contractor’s or subcontractor’s name, title, contact information, and qualifications within 21 days after EPA’s disapproval. With respect to any proposed contractor, Purchaser shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), by submitting a copy of the proposed contractor’s Quality Management Plan (QMP). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Purchaser are subject to EPA’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

34. Purchaser has designated, and EPA has not disapproved, the following individual as Project Coordinator, who will be responsible for administration of all actions by Purchaser required by this Settlement: David B. Mustafaga, Senior Consultant, Verdantas. Steve Radel, Industrial Development Advantage of East Chicago, LLC, shall be the alternate Project Coordinator. The contact information for the Project Coordinator and alternate is provided in Paragraph 109 of this Settlement. Purchaser will ensure, to the greatest extent possible, that the

Project Coordinator is present at the Property or readily available during Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 33. If EPA disapproves of the designated Project Coordinator, Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 21 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Purchaser's Project Coordinator constitutes notice or communication to Purchaser. Purchaser has the right, subject to Paragraph 33, to change its designated Project Coordinator. Purchaser shall notify EPA seven 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.

35. EPA has designated Thomas Alcamo of the Superfund & Emergency Management Division, Region 5, as its RPM. EPA has designated Karen Kirchner as its Alternate RPM. EPA has the right, subject to Section XXIX ("Notices and Submissions"), to change its designated RPM.

36. The RPM is responsible for overseeing Purchaser's implementation of this Settlement. The Parties agree that the RPM has the authority vested in a remedial project manager and/or an on-scene coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of the RPM from the Site is not cause for stoppage of Work unless specifically directed by the RPM.

37. IDEM has designated Stephanie Andrews as its State Project Coordinator. IDEM has designated Jessica Fliss as its Alternate State Project Coordinator. IDEM has the right, subject to Section XXIX ("Notices and Submissions"), to change its designated State Project Coordinator.

VII. REMEDIAL DESIGN AND REMEDIAL ACTION TO BE PERFORMED

38. **Performance of Work in Accordance with SOW.** Purchaser shall develop, implement, operate, maintain, and monitor the effectiveness of the Remedial Action in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the SOW shall be subject to approval by EPA in accordance with Paragraph 5.6 (Approval of Deliverables) of the SOW. The terms of the SOW are fully enforceable and an integral part of this Settlement. The RA actions to be implemented are set forth with specificity in the SOW and are generally described herein as follows: sampling soils, excavating soils in the top 12" of the Property that exceed the action levels of 800 parts per million ("ppm") for lead and 26 ppm for arsenic; replacing excavated soils with clean fill; covering excavated areas with either sod, top soil and seed, impermeable hardscapes, or permanent structures; monitoring the remedy to ensure it remains protective of human health and the environment, and recording appropriate Institutional Controls.

39. **Community Involvement.** If requested by EPA, Purchaser shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2.1 (Community Involvement) of the SOW. Such activities may include, but are

not limited to, designation of a Community Involvement Coordinator. Costs incurred by the United States and the State under this Section constitute Future Response Costs to be reimbursed under Section XII (Payment of Response Costs).

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

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in paragraphs 1.1 and 1.3 of the SOW, then EPA may notify Purchaser of such modification. If Purchaser objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) in accordance with the final resolution of the dispute if the Purchaser invokes the dispute resolution procedures. The modification shall be incorporated into and enforceable under this Settlement, and Purchaser shall implement all work required by such modification. Purchaser shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to select further response actions for the Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Settlement limits Purchaser's rights, under section 113(k) or 117 of CERCLA, to comment on any further response actions proposed by EPA for the Site in accordance with the requirements of CERCLA and the NCP.

41. Purchaser shall conduct, in accordance with paragraph 5.7(k) (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

42. Nothing in this Settlement, the SOW, or any Deliverable required under the SOW constitutes a warranty or representation of any kind by EPA that compliance with the requirements set forth in the SOW or related Deliverable will achieve the Performance Standards set forth in the ROD Amendment.

43. This Settlement is a formal recognition that the Remedial Action, if implemented and completed, will support commencement of the process for a partial deletion of the Site from the NPL by the EPA in accordance with the NCP at 40 C.F.R. 300.425(e).

VIII. PROPERTY REQUIREMENTS

44. **Notices.** Purchaser shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

45. **Access, Appropriate Care, and Non-Interference.** Commencing on the Effective Date, Purchaser shall: (i) provide EPA, the State, and their representatives, including contractors, and subcontractors, with full cooperation, assistance, and access to the Property at all reasonable times and to any other persons that are authorized to conduct response actions or natural resource assessment or restoration at the Property, including those activities listed in Subparagraph 45.a (Access Requirements); (ii) exercise appropriate care with respect to hazardous substances found at the Property as described in Subparagraph 45.b (Appropriate Care), and (iii) 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 RA, including the restrictions listed in Subparagraph 45.c (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 activities required by the Work;
- (2) Monitoring construction activities at the Property to ensure they do not impede the effectiveness of the Remedial Action;
- (3) Verifying any data or information submitted to the United States or the State;
- (4) Conducting investigations regarding contamination at or near the Site;
- (5) Obtaining samples for any purpose or phase of response actions at the Property or the Site;
- (6) Assessing the need for, planning, implementing, or monitoring response actions;
- (7) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plan as provided in the SOW;
- (8) Implementing the Work pursuant to the conditions set forth in Paragraph 85 (Work Takeover);
- (9) Implementing any component of the selected remedy by persons performing response actions under EPA oversight;
- (10) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Purchaser or its agents consistent with Section IX (Access to Information);
- (11) Assessing Purchaser's compliance with the Settlement;

- (12) 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 or the RA;
- (13) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls required at the Property.

b. **Appropriate Care.** Purchaser shall take reasonable steps to

- (1) Stop any continuing releases;
- (2) Prevent any threatened future releases; and
- (3) Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

c. **Land, Water, or Other Resource Use Restrictions.** Purchaser shall (i) remain in compliance with any land use restrictions established in connection with any response action at the Property, (ii) implement, maintain, monitor, and report on Institutional Controls at the Property, and (iii) not impede the effectiveness or integrity of any Institutional Control employed at the Property in connection with a response action. Purchaser shall prepare and submit to EPA consistent with Section 4.2 of the SOW an Institutional Controls Implementation and Assurance Plan (ICIAP).

46. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Purchaser shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such Institutional Controls.

47. **Notice to Successors-In-Title**

a. Purchaser shall within 15 days after the Effective Date, submit for EPA approval a notice to be filed in the appropriate land records office regarding the Property. 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 affected by, the Site, (ii) EPA has selected a remedy for the Site, and (iii) Purchaser has entered into an Administrative Settlement Agreement requiring implementation of certain aspects of the remedy and compliance with the property requirements in this Section VIII; and (3) identify the name, CERCLA 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 10 days thereafter, a certified copy of the recorded notice.

b. Purchaser shall, prior to entering into a contract to sell, assign, convey, lease, secure a mortgage, or grant a security interest in any portion of the Property, or 60 days prior to closing on such transaction, whichever is earlier:

- (1) notify the proposed transferee that EPA has selected a remedy for the Site, that Purchaser has entered into an Administrative Settlement Agreement requiring implementation of certain aspects of the remedy and compliance with the property requirements in this Section VIII (identifying the name, CERCLA docket number, and the Effective Date of this Settlement); and
- (2) notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

48. For so long as Purchaser is an owner or operator of any of the Property, Purchaser shall require that successors in interest, and any lessees, sublessees and other parties with rights to use any of the Property 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 successors in interest, and any lessees, sublessees, and other parties with rights to use any portion of the Property, implement and comply with any land use restrictions and Institutional Controls on the Property in connection with any response action, and not contest EPA's authority to enforce any land use restrictions and Institutional Controls on any portion of the Property.

49. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of its rights to require land, water or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable federal and state statutes or regulations.

IX. ACCESS TO INFORMATION

50. Purchaser shall comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

51. 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 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.

52. 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 Subparagraph 52.b, and except as provided in Subparagraph 52.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 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 Purchaser is required to create or generate pursuant to this Settlement.

53. **Business Confidential Claims.** Purchaser may assert that all or part of a Record provided to EPA and the State under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). 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.

54. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Settlement.

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

X. RECORD RETENTION

56. For a period of 10 years following EPA's issuance of the Certification of RA Completion under Section 3.11 of the SOW, unless EPA agrees in writing to a shorter time period, Purchaser shall preserve all non-identical documents and information relating to the SOW and this Settlement and any hazardous substances, pollutants or contaminants found on or released from the Property. At the conclusion of the document retention period, Purchaser 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 52 (Privileged and Protected Claims), Purchaser shall deliver any such records to EPA. These record retention requirements apply regardless of any corporate retention policy to the contrary and 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.

XI. COMPLIANCE WITH OTHER LAWS

57. 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)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), 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. Purchaser shall include ARARs identified by EPA in the ROD Amendment in the Remedial Action Work Plan.

58. No local, state, or federal permit shall be required for any portion of the SOW activities conducted entirely on-site at the Property (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the SOW), 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 SOW activity that is not on-site at the Property 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 XIV (Force Majeure) for any delay in the performance of the SOW resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the SOW, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XII. PAYMENT OF RESPONSE COSTS

59. Payments of Future Federal Response Costs, payments of Future State Response Costs, calculation of interest on either such cost, and the procedures for contesting Future Federal or Future State Response Costs are all addressed in the OUI ASAOC.

XIII. DISPUTE RESOLUTION

60. 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. EPA, the State, and the Purchaser shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA and/or the State contends that Purchaser is in violation of this Settlement, EPA and/or the State shall notify Purchaser in writing, setting forth the basis for that position. Purchaser may dispute that position pursuant to Paragraph 61.

61. **Informal Dispute Resolution.** If Purchaser objects to any EPA action taken pursuant to this Settlement, Purchaser shall send the RPM and EPA counsel, with a copy to DOJ, a written Notice of Dispute describing the objection(s) within 21 days after such action. EPA and Purchaser shall have 30 days from EPA's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). If Purchaser objects to any IDEM action taken pursuant to this Settlement, Purchaser shall send the State Project Coordinator and IDEM counsel a written Notice of Dispute describing the objection(s) within 21 days after such action. IDEM and Purchaser shall have a 30-day Negotiation Period from IDEM's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations. The Negotiation Period may be extended at the sole discretion of EPA or IDEM (as applicable). Any agreement reached by Purchaser and EPA or IDEM (as applicable) pursuant to this Section shall be in writing and shall, upon signature by Purchaser and EPA or IDEM (as applicable), be incorporated into and become an enforceable part of this Settlement.

62. **Formal Dispute Resolution.** If Purchaser and EPA or IDEM (as applicable) are unable to reach an agreement within the Negotiation Period, Purchaser shall, within 21 days after the end of the Negotiation Period, submit a statement of position. For any dispute involving an action by EPA: (i) Purchaser shall submit its statement of position to the RPM and EPA counsel, with a copy to DOJ; (ii) EPA may, within 21 days thereafter, submit a statement of position; (iii) an EPA management official at the Superfund & Emergency Management Division, Deputy Division Director level or higher will issue a written decision on the dispute to Purchaser, with a copy to DOJ; and (iv) EPA's decision shall be incorporated into and become an enforceable part of this Settlement. For any dispute involving an action by IDEM: (i) Purchaser shall submit its statement of position to the State Project Coordinator and IDEM counsel; (ii) IDEM may, within 21 days thereafter, submit a statement of position; (iii) an IDEM management official will issue a written decision on the dispute to Purchaser; and (iv) IDEM'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 the EPA decision or IDEM decision, whichever occurs.

63. 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.

XIV. FORCE MAJEURE

64. "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 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 a failure to achieve the Performance Standards.

65. 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 EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund & Emergency Management Division, EPA Region 5, within 15 days of when Purchaser first knew that the event might cause a delay. Within five 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 Purchaser, or Purchaser's 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 64 and whether Purchaser has exercised best efforts under Paragraph 64, EPA may, in its unreviewable discretion, excuse in writing Purchaser's failure to submit timely or complete notices under this Paragraph.

66. 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.

67. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. 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 64 and 65. 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.

68. 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.

XV. STIPULATED PENALTIES

69. If EPA proceeds with a Work Takeover under Paragraph 85 (Work Takeover), Purchaser shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraph 85 (Work Takeover) and Paragraph 49 of the ASAOC (Access to Financial Assurance).

70. Purchaser shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 71 and 72 for failure to comply with the obligations specified in Paragraphs 71.b and 72.b, unless excused under Section XIV (Force Majeure). “Comply” as used in the previous sentence includes compliance by Purchaser with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

71. Stipulated Penalty Amounts –Major Deliverables.

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the obligations identified in Paragraph 71.b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$250 | 1st through 14th day |
| \$500 | 15th through 30th day |
| \$1,000 | 31st day and beyond |

- b. Obligations

- (1) Submission of the Remedial Design/Remedial Action Work Plan under paragraph 3.1 of the SOW;
- (2) Submission of the Preliminary Remedial Design under paragraph 3.4 of the SOW;
- (3) Submission of the Pre-Final Remedial Design under paragraph 3.5 of the SOW;
- (4) Submission of the Final Remedial Design under paragraph 3.6 of the SOW; and
- (5) Submission of the RA Report under paragraph 3.11(b) of the SOW.

72. Stipulated Penalty Amounts – Other Deliverables.

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the obligations identified in Paragraph 72.b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$150 | 1st through 14th day |
| \$300 | 15th through 30th day |
| \$500 | 31st day and beyond |

b. Obligations

- (1) Participation in community involvement as required under paragraph 2.1(b) of the SOW;
- (2) Designation of a Community Involvement (CI) Coordinator as required under paragraph 2.1(c) of the SOW;
- (3) Notification to EPA of the designation of CI Coordinator as required by paragraph 2.1(c) of the SOW;
- (4) Submission of Progress Reports as required under paragraph 4.1 of the SOW;
- (5) Submission of a Soil Management Plan as required under paragraph 3.7 of the SOW;
- (6) Submission of a Health and Safety Plan as required under paragraph 5.7(a) of the SOW;
- (7) Submission of an Emergency Response Plan as required under paragraph 5.7(b) of the SOW;
- (8) Submission of a Field Sampling Plan as required under paragraph 5.7(c) of the SOW;
- (9) Submission of a Quality Assurance/Quality Control Project Plan as required under paragraph 5.7(d) of the SOW;
- (10) Submission of a Construction Quality Assurance/Quality Control Plan as required under paragraph 5.7(e) of the SOW;
- (11) Submission of an Air Monitoring Plan as required under paragraph 5.7(f) of the SOW;
- (12) Submission of a Transportation and Off-Site Disposal Plan as required under paragraph 5.7(g) of the SOW;
- (13) Submission of an Operation and Maintenance Plan as required under paragraph 5.7(h) of the SOW;
- (14) Submission of a Groundwater Monitoring Well Abandonment and Installation Plan as required under paragraph 5.7(i) of the SOW;

- (15) Submission of an Institutional Controls Implementation and Assurance Plan as required under paragraph 5.7(j) of the SOW; and
- (16) Submission of a Periodic Review Support Plan as required under paragraph 5.7(k) of the SOW.

73. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate non-compliances with this Settlement. Stipulated penalties accrue regardless of whether Purchaser been notified of noncompliance, and regardless of whether Purchaser initiated dispute resolution under Section XIII, provided, however, that no penalties will accrue as follows:

- a. with respect to a submission that EPA subsequently determines is deficient under paragraph 5.6 of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Purchaser of any deficiency; or
- b. with respect to a matter that is the subject of dispute resolution under Section XIII, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position is received or the date that Purchaser' reply thereto (if any) is received until the date of the written decision under ¶ 62.

74. All penalties accruing under this Section shall be due and payable within 30 days of Purchaser's receipt of a demand for payment of the penalties unless Purchaser invokes the Dispute Resolution procedures pursuant to Section XIII. All payments to EPA under this Section XV shall be made at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the USS Lead Sitewide Special Account C5NN, the EPA CERCLA Docket Number V-W-22-C-004, and the purpose of the payment. At the time of any payment, Purchaser shall send notice that such payment has been made to Thomas Alcamo at alcamo.thomas@epa.gov and Steven P. Kaiser at kaiser.steven@epa.gov, including these references. IDEM will neither assess nor collect stipulated penalties under this Settlement.

75. If Purchaser fails to pay stipulated penalties when due, Purchaser shall pay Interest on the unpaid stipulated penalties as follows: (a) if Purchaser has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraphs 71 and 72 until the date of payment; and (b) if Purchaser fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 73 until the date of payment. If Purchaser fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

76. The payment of penalties and Interest, if any, shall not alter in any way Purchaser's obligation to complete the performance of the Work required under this Settlement.

77. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Settlement or of the statutes and regulations upon which it is based including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that the United States shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the SOW pursuant to Section XVIII, (Reservations of Rights by the United States and the State), Paragraph 85.

78. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that has accrued and is payable to EPA pursuant to this Settlement, including penalties that may accrue, if Purchaser fails to implement the Work as a direct result of Respondents' failure to meet their contractual obligations to Purchaser.

XVI. CERTIFICATION

79. 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, other than information Respondents have previously provided to EPA or which is already in the public record, and all information in the possession or control of its officers, directors, employees, contractors and agents that 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 Site that is not already in the public record. Purchaser also certifies to its qualification for this Settlement and 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, pollutants or contaminants at the Site.

XVII. COVENANTS BY THE UNITED STATES AND THE STATE

80. Except as provided in Section XVIII (Reservations of Rights by the United States and the State), 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. Except as provided in Section XVIII (Reservations of Rights by the United States and State), the State covenants not to sue or to take administrative action against Purchaser pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Existing Contamination and the Work. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 79. These covenants extend to any successor of Purchaser, but only to the extent that the alleged liability of any successor is based

on the alleged liability of Purchaser. Except as provided here, these covenants do not extend to any other person.

81. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States, including EPA, or the State, to seek or obtain further relief from Purchaser if the information provided to EPA and the State by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in Paragraph 78 is false or in any material respect inaccurate.

XVIII. RESERVATIONS OF RIGHTS BY THE UNITED STATES AND THE STATE

82. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States, including EPA, or the State 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 the United States or the State from seeking legal or equitable relief to enforce the terms of this Settlement or from taking other legal or equitable action as it deems appropriate and necessary.

83. The covenants set forth in Section XVII (Covenants by the United States and the State) do not pertain to any matters other than those expressly identified therein. The United States and the State reserve, 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 Site after the Effective Date, not within the definition of Existing Contamination;
- f. liability resulting from an act or omission that causes 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.

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

85. **Work Takeover**

a. If EPA determines that Purchaser: (1) has ceased implementation of any portion of the SOW, (2) is seriously or repeatedly deficient or late in its performance of the SOW, or (3) is implementing the SOW 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 30 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 85.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 SOW or otherwise secure performance of all or any portion(s) of the SOW 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 Subparagraph 85.b. Funding of Work Takeover costs is addressed in the OU1 ASAOC.

c. Purchaser may invoke the procedures set forth in Paragraph 62 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 85. 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 85 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 Paragraph 62 (Formal Dispute Resolution).

d. If EPA determines, in its unreviewable discretion, that Purchaser’s failure to implement the SOW under subsections (a)(1) and (2) of this Paragraph is a direct result of Respondents’ failure to meet their contractual obligations to Purchaser, then EPA may consider Purchaser’s further involvement in completing implementation of the SOW.

e. 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

86. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their 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 Indiana 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.

87. These covenants not to sue shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservations of Rights by United States and the State), other than in paragraphs 83.a (liability for failure to meet a requirement of the Settlement), or 83.b (criminal liability), or 83.c (violations of federal/state law during or after implementation of the Work), but only to the extent that Purchaser's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

88. 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).

89. Purchaser reserves, and this Settlement is without prejudice to, claims against the State and 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 or the State, 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 or the State, 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

90. By entry into this Settlement, the United States and EPA and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Purchaser. Neither the United States nor EPA nor the State shall be deemed a party to any contract entered into by Purchaser or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

91. Except as expressly provided in Section XVII (Covenants by United States and the State), 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 and any claims of the State for costs, damages, and interest under Section 107 of CERCLA, 42 U.S.C. § 9607.

92. No action or decision by EPA pursuant to this Settlement gives 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

93. Nothing in this Settlement creates any rights in, or grants any cause of action to, any person not a Party to this Settlement. Except as provided in Section XIX (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States or the State, 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).

94. 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 and the State within the meaning of Sections 113(f)(2) and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States, the State, or any other person. However, if the United States exercises rights under the reservations in Section XVIII (Reservations of Rights by United States and the State), other than in Subparagraphs 83.a (claims for failure to meet a requirement of the Settlement), 83.b (criminal liability), or 83.c (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

95. 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 and the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

96. Purchaser shall, with respect to any suit or claim brought by it against any party for matters related to this Settlement, notify EPA and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim. Purchaser shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA and the State in writing within ten (10) days after service of the complaint or claim upon it. In addition, Purchaser shall notify EPA and the State within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XXII. INDEMNIFICATION

97. The United States and the State do 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 and the State, their 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, including, but not limited to, any claims arising from any designation of Purchaser as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Purchaser agrees to pay the United States and the State all costs they incur, 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 and the State 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. Neither the United States nor the State shall 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 or the State.

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

99. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State, respectively, for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, 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 and the State 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 Property, including, but not limited to, claims on account of construction delays.

XXIII. FINANCIAL ASSURANCE

100. Financial assurance will be provided in accordance with the terms of the OUI1 ASAOC.

XXIV. INSURANCE

101. No later than 21 days before commencing any on-site SOW activities, Purchaser shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of RA Completion pursuant to paragraph 3.11 of the SOW, 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 and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Purchaser pursuant to this Settlement. Prior to commencement of the on-site SOW activities, Purchaser shall provide to EPA and the State 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 its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the SOW activities on behalf of Purchaser in furtherance of this Settlement. If Purchaser demonstrates by evidence satisfactory to EPA and the State 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 U.S. Smelter and Lead Refinery, Inc. Site in East Chicago, Indiana and the EPA CERCLA Docket Number for this action.

XXV. MODIFICATION

102. Except as provided in Paragraph 40 (Modification of SOW or Related Deliverables), material modifications to this Settlement, including the SOW, shall be in writing and effective upon signature by the United States and Purchaser. Except as provided in Paragraph 40, non-material modifications to this Settlement, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Purchaser. All modifications to the Settlement, other than the SOW, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

103. 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. INTEGRATION/APPENDICES

104. This Settlement and all documents approved under and incorporated by reference into this Settlement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the

settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix A is the Statement of Work.
- b. Appendix B is a map of Modified Zone 1 at the Site.
- c. Appendix C is the Site map.
- d. Appendix D is the Property legal description.
- e. Appendix E is the Property map.
- f. Appendix F is a map of OU1 depicting Zones 1, 2, and 3.

XXVII. DISCLAIMER

105. Subject to Paragraph 32, 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.

XXVIII. ENFORCEMENT

106. The Parties agree that the United States District Court for the Northern District of Indiana (“Court”) will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement, including any action set forth in Section XXVIII (Enforcement) of this Settlement.

107. Notwithstanding Paragraph 80 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States or the State may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

108. If the United States or the State files a civil action as contemplated by Paragraph 106, above, to remedy breach of this Settlement, the United States or the State may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity.

XXIX. NOTICES AND SUBMISSIONS

109. Whenever notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, they must be directed to the person(s) specified below at the address(es) specified below. Any party may change the person and/or address applicable to it by providing notice of such changes to all parties. All notices under this Section are effective upon receipt,

unless otherwise specified. Notice should be provided by email, if available, with notice by regular mail as an acceptable alternative, unless otherwise specified. Except as otherwise noted, notice to a party by email or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement regarding such party. Notices are deemed submitted either when an email is transmitted and received, it is hand-delivered, or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Address submissions to Purchaser to:

Brett Hickman
Steve Radel
Industrial Development Advantage of East Chicago, LLC
2105 West 1800 North
Farr West, UT 84404
bah@indevadv.com
sbr@indevadv.com

David Mustafaga
Senior Consultant
Verdantas
6397 Emerald Parkway, Suite 200
Dublin, OH 43016

Anne E. Viner
Corporate Law Partners, PLLC
140 S. Dearborn
7th Floor
Chicago, IL 60603
aviner@corporatelawpartners.com

Address submissions to EPA to:

Thomas Alcamo
77 W. Jackson Blvd.,
Chicago, IL 60604
312-886-7278
alcamo.thomas@epa.gov

Steven P. Kaiser
Jamie Getz
77 W. Jackson Blvd, C-14J
Chicago, IL 60604
312-353-3804
kaiser.steven@epa.gov
getz.jamie@epa.gov

Address submissions to DOJ to:

Katherine Abend
Enforcement Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Katherine.abend@usdoj.gov

Matthew Indrisano
Enforcement Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Matthew.indrisano@usdoj.gov

Address submission to IDEM to:

Stephanie Andrews
Senior Environmental Manager, Federal Programs
Indiana Department of Environmental Management
100 North Senate Avenue
IGCN – 11th Floor
Indianapolis, Indiana 46204
sandrews@idem.in.gov

Lisa McCoy
Office of Legal Counsel
Indiana Dep't of Environmental Management
IGCN – 13th Floor
Indianapolis, Indiana 46204
lmccoy@idem.in.gov

XXX. PUBLIC COMMENT

110. This Settlement is subject to a thirty (30) day public comment period, after which the United States or the State may withhold its consent or seek to modify this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXXI. EFFECTIVE DATE

111. The effective date of this Settlement is the date upon which each of the following has occurred: (a) EPA issues written notice to Purchaser that the United States and the State have fully executed the Settlement after review of and response to any public comments; (b) Purchaser

acquires title to the Property; (c) Purchaser within three (3) days of acquiring title notifies EPA and the State in writing that it has acquired title to the Property; and (d) EPA issues written notice to Purchaser that EPA has issued an Explanation of Significant differences that selects Alternative 4A, excavation of soils above commercial/industrial cleanup levels to a depth of 12", off-site disposal of contaminated soils, and soil and groundwater ICs.

Signature Page for Administrative Settlement Agreement for Remedial Action by Prospective Purchaser regarding the USS Lead Superfund Site, East Chicago, Indiana (CERCLA Docket No. V-W-22-C-004)

U.S. ENVIRONMENTAL PROTECTION AGENCY:

03/28/22

Dated



Digitally signed by
DOUGLAS BALLOTTI
Date: 2022.03.28
14:46:58 -05'00'

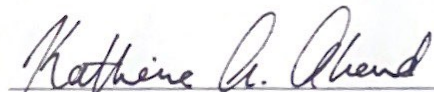
Douglas Ballotti, Director
Superfund and Emergency Management Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604

Signature Page for Administrative Settlement Agreement for Remedial Action by Prospective Purchaser regarding the USS Lead Superfund Site, East Chicago, Indiana

U.S. DEPARTMENT OF JUSTICE:

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

Dated: April 7, 2022



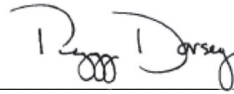
Katherine A. Abend
Matthew Indrisano
Trial Attorneys
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Administrative Settlement Agreement for Remedial Action by Prospective Purchaser regarding the USS Lead Superfund Site, East Chicago, Indiana (CERCLA Docket No. V-W-22-C-004)

STATE OF INDIANA

3/15/2022

Dated



Peggy Dorsey
Assistant Commissioner
Office of Land Quality
Indiana Department of Environmental Management
Indiana Government Center North 1154
100 N. Senate Avenue
Indianapolis, IN 46202

Signature Page for Administrative Settlement Agreement for Remedial Action by Prospective Purchaser regarding the USS Lead Superfund Site, East Chicago, Indiana (CERCLA Docket No. V-W-22-C-004)

**INDUSTRIAL DEVELOPMENT ADVANTAGE OF
EAST CHICAGO, LLC**

03/18/22

Dated



Steve Radtke

Member

Industrial Development Advantage of East Chicago, LLC

2105 West 1800 North

Farr West, UT 84404

APPENDIX A

TO THE ADMINISTRATIVE SETTLEMENT AGREEMENT FOR
REMEDIAL ACTION BY PROSPECTIVE PURCHASER

STATEMENT OF WORK

REMEDIAL DESIGN/REMEDIAL ACTION
STATEMENT OF WORK
USS LEAD SUPERFUND SITE
MODIFIED ZONE 1
EAST CHICAGO, LAKE COUNTY, STATE OF INDIANA

TABLE OF CONTENTS

| | | |
|----|---------------------------------------|----|
| 1. | INTRODUCTION | 1 |
| 2. | COMMUNITY INVOLVEMENT | 2 |
| 3. | REMEDIAL DESIGN/REMEDIAL ACTION | 2 |
| 4. | REPORTING | 8 |
| 5. | DELIVERABLES..... | 9 |
| 6. | SCHEDULES | 16 |
| 7. | STATE PARTICIPATION..... | 17 |
| 8. | REFERENCES | 17 |

1. INTRODUCTION

1.1 Purpose of the SOW. This Remedial Design/Remedial Action Statement of Work (SOW) sets forth the procedures and requirements for implementing and ensuring the integrity of the remedy for soils (Alternative 4A) selected by EPA and set forth in the ROD Amendment and an Explanation of Significant Differences.

1.2 Structure of the SOW

- Section 2 (Community Involvement) sets forth EPA's and Purchaser's responsibilities for community involvement.
- Section 3 (Remedial Design/Remedial Action) sets forth the process for developing the RD, which includes the submission of specified primary deliverables, and the requirements regarding the completion of the RA, including primary deliverables related to completion of the RA .
- Section 4 (Reporting) sets forth Purchaser's reporting obligations.
- Section 5 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding Purchaser's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 6 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
- Section 7 (State Participation) addresses State participation.
- Section 8 (References) provides a list of references, including URLs.

1.3 The scope of the remedy being implemented by this SOW includes the actions described in Section VI of the ROD Amendment and in an ESD for the area described as Modified Zone 1, which will be conducted on the real property acquired by Purchaser as depicted in Appendix E and described in Appendix D ("Property"). The remedy includes excavation of contaminated soils that exceed the industrial/commercial performance standards of 800 ppm for lead and 26 ppm for arsenic, down to a maximum depth of 12" below ground surface (bgs). Excavated areas will be backfilled with clean material to grade and the backfilled areas will be restored with sod or topsoil and seed unless an impermeable surface will be placed over the excavated area within 60 days. Contaminated soils will be disposed of at a licensed, off-site Subtitle C or Subtitle D landfill, as appropriate. Ex-situ treatment may be required for some soils before disposal. Institutional Controls will also be implemented as set forth in the ROD Amendment and in this SOW.

1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Administrative Settlement Agreement for Remedial Action and Payment of Response Costs by Prospective Purchaser ("Settlement"), have the meanings

assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated. In the event of conflict between the Settlement and any appendix, including this SOW, the Settlement controls. To the extent any provisions of this SOW are found to conflict or not be consistent with the Settlement, the Settlement shall control.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. In connection with other work at the Site, EPA developed previously a Community Involvement Plan (CIP). Pursuant to 40 C.F.R. § 300.435(c), EPA will review the existing CIP and determine whether to revise the CIP to describe additional public involvement activities to be undertaken before, during and after the completion of the Work.
- (b) If required by the CIP, Purchaser shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work 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 the Property. Purchaser’s support of EPA’s community involvement activities may include providing online access to initial submissions and updates of deliverables to any Community Advisory Groups or other entities to provide them with a reasonable opportunity for review and comment. EPA may describe Purchaser’s responsibilities for community involvement activities in a revised CIP. All community involvement activities conducted by Purchaser at EPA’s request are subject to EPA’s oversight. Upon EPA’s request, Purchaser shall establish a community information repository at or near the Site to house a copy of the administrative record.
- (c) Purchaser’s CI Coordinator. If requested by EPA, Purchaser shall within 15 days designate and notify EPA of Purchaser’s Community Involvement Coordinator (“Purchaser’s CI Coordinator”). Purchaser may hire a contractor for this purpose. Purchaser’s notice must include the name, title, and qualifications of Purchaser’s CI Coordinator. Purchaser’s CI Coordinator is responsible for providing support in connection with EPA’s community involvement activities. This support includes coordinating with EPA’s CI Coordinator to prepare responses to the public’s inquiries about the Property.

3. REMEDIAL DESIGN/REMEDIAL ACTION

- 3.1 RD/RA Work Plan.** Purchaser shall submit a Remedial Design (RD)/Remedial Action (RA) Work Plan (RDRAWP) for EPA approval within 60 days of the Effective Date of the Settlement. The goal of the RDRAWP is to enable Purchaser to implement the

remedy for soils (Alternative 4A) set forth in the ROD Amendment and the Explanation of Significant Differences and to manage contaminated soils during the construction of the commercial warehousing facility. The RDRAWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) If necessary, a description of any proposed treatability study for treatment of soils to be disposed of off-site that exceed the toxicity characteristic leaching potential (TCLP) test;
- (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (h) Description of plans for obtaining access to perform the RA, such as property acquisition, property leases, and/or easements; and a description of any pre-construction activities including project staging and associated activities;
- (i) A description of construction activities including, but not limited to soil excavation and import, transportation, backfilling, grading, and site restoration;
- (j) Quality control and testing requirements; and
- (k) Reporting and schedules.

3.2 Purchaser shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

3.3 Treatability Study (if necessary)

- (a) Purchaser shall perform a Treatability Study (TS), if necessary, to determine whether treatment of soils is required prior to off-site disposal.
- (b) If it so chooses, Purchaser shall submit a TS Work Plan (TSWP) for EPA approval. Purchaser shall prepare the TSWP in accordance with EPA's *Guide for*

Conducting Treatability Studies under CERCLA, Final (Oct. 1992), as supplemented for RD by the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995).

- (c) Following completion of the TS, Purchaser shall submit a TS Evaluation Report for EPA review and approval. The TS Evaluation Report shall set forth the results of and conclusions drawn from the TS.
- (d) EPA may require Purchaser to supplement the TS Evaluation Report and/or to perform additional treatability studies.

3.4 Preliminary (30%) RD for the Excavation and Off-site Disposal of Soils. Purchaser shall submit a Preliminary (30%) RD for EPA's comment within 30 days of the Effective Date. The Preliminary RD must include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) A preliminary Operation and Maintenance (O&M) Plan
- (e) A description of monitoring and control measures to be implemented during the RA, including stormwater, air monitoring and dust suppression, to protect human health and the environment;
- (f) Any proposed revisions to the RA Schedule that is set forth in ¶6.3 (RA Schedule); and
- (g) Drafts of supporting deliverables required to implement the site remedy as described in ¶ 5.7 (Supporting Deliverables).

3.5 Pre-Final (95%) RD for the Excavation and Off-site Disposal of Soil. Purchaser shall submit the Pre-final (95%) RD for EPA's comment within 30 days of receiving comments from EPA on the Preliminary (30%) RD. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments on the Preliminary RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (i) certified by a registered professional engineer licensed in the State of Indiana; and (ii) suitable for procurement;
- (b) A survey and engineering drawings showing existing Property features, such as elements, property borders, easements, and Property conditions;

- (c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary RD;
 - (d) A specification for photographic documentation of the RA; and
 - (e) Updates of all supporting deliverables required along with the Preliminary RD.
- 3.6 Final (100%) RD.** Purchaser shall submit the Final (100%) RD for EPA approval within 30 days of receiving comments from EPA on the Pre-Final (95%) RD. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.
- 3.7 Soil Management Plan (SMP).** The Purchaser shall develop a Soil Management Plan that describes the measures to be used to control dust emissions during the construction of the warehouse. In addition, the Purchaser may encounter former utilities from the demolished public housing complex and demolition debris from the former smelter. The SMP shall also describe how these materials will be handled during the building construction.
- 3.8 Meetings and Inspections**
- (a) **Preconstruction Conference.** Purchaser shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). Purchaser shall prepare minutes of the conference and shall distribute the minutes to all Parties.
 - (b) **Periodic Meetings.** During the construction portion of the RA, Purchaser shall meet every week with EPA, and others as directed or determined by EPA, to discuss construction issues. Purchaser shall distribute an agenda and list of attendees to all Parties prior to each meeting. Purchaser shall prepare minutes of the meetings and shall distribute the minutes to all Parties.
 - (c) **Inspections**
 - (1) EPA, or its representative, and the State may have an on-site presence during the Work. At EPA's or the State's request, the Project Coordinator or other designee shall accompany EPA, or its representative, or the State during inspections.
 - (2) Purchaser shall provide office space near the Property for EPA personnel, or their representatives, and the State's personnel to perform their oversight duties.
 - (3) Subject to Section XIII (Dispute Resolution) of the Settlement, upon notification by EPA of any deficiencies during the RA construction, Purchaser shall take all necessary steps to correct the deficiencies and bring the RA construction into compliance with the approved Final RD,

any approved design changes, and/or the approved RDRAWP. Purchaser shall comply with any schedule provided by EPA in its notice of deficiency.

3.9 Emergency Response and Reporting

- (a) **Emergency Action.** If any event occurs during performance of the activities required by this SOW that causes or threatens to cause a release of Waste Material on, at, or from the Property and that either constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Purchaser shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in Paragraph 3.9(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the activities required by this SOW that requires Purchaser 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 notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under Paragraph 3.9(a) and Paragraph 3.9(b) is the EPA Remedial Project Manager (RPM), the EPA Alternate RPM (if the RPM is unavailable), or the EPA Emergency Response Unit, Region 5 (if neither the RPM nor Alternate RPM is available).
- (d) For any event covered by Paragraph 3.9(a) and Paragraph 3.9(b), Purchaser shall: (1) submit within 7 days after the onset of such event a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under Paragraph 3.9 are in addition to the reporting required by CERCLA § 103 and/or EPCRA § 304.

3.10 Off-Site Shipments

- (a) Purchaser may ship hazardous substances, pollutants, and contaminants from the Property to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Purchaser will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Purchaser obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

- (b) Purchaser may ship Waste Material from the Property to an out-of-state waste management facility only if, prior to any out-of-state shipment, Purchaser provides notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Purchaser also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the notice of an out-of-state shipment after the award of the contract for RA construction and before Purchaser ships the Waste Material.
- (c) Purchaser may ship Investigation Derived Waste (IDW) from the Property to an off-Site facility only if Purchaser complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Amended ROD. Wastes shipped off-site to a laboratory for characterization, and RCRA hazardous wastes shipped off-site for treatability studies that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) are not subject to 40 C.F.R. § 300.440.

3.11 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA is complete for purposes of this Paragraph when it has been fully performed and the Performance Standards have been achieved. Purchaser shall schedule an inspection for the purpose of obtaining from EPA a Certification of RA Completion. The inspection must be attended by Purchaser and EPA and/or their representatives. The State's representatives may also attend any such inspections.
- (b) **RA Report.** Within 14 days following the RA Completion Inspection, Purchaser shall submit a RA Report to EPA requesting EPA's Certification of RA Completion. The RA Report must: (1) include certifications by a registered professional engineer licensed in the State of Indiana and by Purchaser's Project Coordinator that the RA is complete; (2) include as-built drawings for the remedy signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); and (4) be certified in accordance with Paragraph 5.5 (Certification).
- (c) If EPA concludes that the RA is not complete, EPA shall so notify Purchaser. EPA's notice must include a description of the deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require Purchaser to

submit a schedule for EPA approval. Subject to Section XIII (Dispute Resolution) of the Settlement, Purchaser shall perform all activities described in the notice of deficiency in accordance with the schedule.

- (d) If EPA concludes, based on the initial or any subsequent RA Report requesting Certification of RA Completion, that the RA is complete, EPA shall issue a Certification of RA Completion. This certification will constitute the Certification of RA Completion for purposes of the Settlement.

4. REPORTING

4.1 Progress Reports. Commencing on the 15th day of the month following the Effective Date of the Settlement and until EPA issues the Certification of RA Completion, Purchaser shall submit progress reports to EPA on a monthly basis, or as otherwise requested by EPA. The progress reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Settlement;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Purchaser;
- (c) A description of all deliverables that Purchaser submitted to EPA;
- (d) A description of all activities relating to RA construction that are scheduled for the next six weeks;
- (e) An updated RA Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the RA, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that Purchaser has proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next six weeks.

4.2 Notice of Progress Report Schedule Changes. If the schedule changes for any activity described in the progress reports, including activities required to be described under Paragraph 4.1(d), Purchaser shall notify EPA of such change at least seven (7) days before performance of the activity.

5. DELIVERABLES

- 5.1 Applicability.** Purchaser shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither approval nor comment is specified, the deliverable does not require EPA's approval or comment. Paragraphs 5.2 (In Writing) through 5.4 (Technical Specifications) apply to all deliverables. Paragraph 5.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 5.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 5.2 In Writing.** All deliverables under this SOW must be in writing unless otherwise specified.
- 5.3 General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. Purchaser shall submit all deliverables to EPA in electronic form specified by the RPM. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 5.4. If requested by EPA, Purchaser shall also provide EPA with paper copies of any deliverable including maps, drawings, or other exhibits that are larger than 8.5" by 11".
- 5.4 Technical Specifications.**
- (a) Sampling and monitoring data should be submitted in the Region 5 Electronic Data Deliverable (EDD) format and successfully uploaded to the Region 5 EQuIS database. Please use the following resources:
- <https://www.epa.gov/superfund/region-5-superfund-electronic-data-submission>
- <https://www.epa.gov/superfund/region-5-superfund-electronic-data-submission-documents>
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.
- (c) Each file must include an attribute name for each unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

- (d) Spatial data submitted by Purchaser does not, and is not intended to, define the boundaries of the Site or Property.

5.5 Certification. All deliverables that require compliance with this Paragraph 5.5 must be signed by Purchaser's Project Coordinator, or other responsible official of Purchaser, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

5.6 Approval of Deliverables.

(a) **Initial Submissions**

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove the submission, in whole or in part; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

(b) **Resubmissions.** Upon receipt of a notice of disapproval under Paragraph 5.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 5.6(a), Purchaser shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Purchaser to correct the deficiencies; or (5) any combination of the foregoing.

(c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph 5.6(a) (Initial Submissions) or Paragraph 5.6(b)

(Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) Purchaser shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 6.6(a) or Paragraph 6.6(b) does not relieve Purchaser of any liability for stipulated penalties under Section XV (Stipulated Penalties) of the Settlement.

5.7 Supporting Deliverables. Purchaser shall submit at the time it submits the Preliminary Design each of the following supporting deliverables for EPA approval, except as specifically provided. Purchaser shall develop the deliverables in accordance with all applicable regulations, guidance documents, and policies (see Section 8 (References)). Purchaser shall update each of these supporting deliverables as necessary or appropriate during the course of the RA, and/or as requested by EPA.

- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the SOW activities. Purchaser shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover RD activities and should be, as appropriate, updated to cover activities during the RA, and updated to cover activities after RA completion. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with Paragraph 3.9(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under CERCLA § 103 and/or EPCRA § 304; and

- (5) A description of all necessary actions to ensure compliance with Paragraph 3.9 (Emergency Response and Reporting) of the SOW in the event of an occurrence during the performance of the activities required by this SOW that causes or threatens a release of Waste Material from the Property that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Purchaser shall develop the FSP in accordance with previous discussions with EPA's Fields Group.
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Purchaser's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Purchaser shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:
 - (1) To ensure that EPA and the State and their authorized representative have reasonable access to laboratories used by Purchaser in implementing the Settlement (Purchaser's Labs);
 - (2) To ensure that Purchaser's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that Purchaser's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that Purchaser's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For Purchaser to provide EPA and the State with notice at least 14 days prior to any sample collection activity;

- (6) For Purchaser to provide split samples and/or duplicate samples to EPA and the State upon request;
 - (7) For EPA and the State to take any additional samples that they deem necessary;
 - (8) For EPA and the State to provide to Purchaser, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For Purchaser to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the Settlement.
- (e) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:
- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the PS required to be met to achieve completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (f) **Air Monitoring Plan (AMP).** The AMP describes plans to ensure the RA minimizes emissions of fugitive dust and ensures that emissions of fugitive dust do not exceed the airborne screening levels for lead and arsenic established by EPA. EPA has calculated airborne screening levels for lead and arsenic that will

be referenced as the action levels and will be provided to the Purchaser. The Purchaser will upload air monitoring results for lead and arsenic to EPA's webviewer. EPA will provide to Purchaser the format for submittal of the laboratory data. The AMP shall include but not be limited to the following:

- (1) A description of the air monitoring methodology including monitoring locations, monitoring equipment, and the location of a relevant metrological station;
 - (2) An air monitoring schedule;
 - (3) A description of action levels and response actions to be used to address any exceedances of the action levels;
 - (4) A description of Quality Control for laboratory and field samples including sample handling;
 - (5) Forms to be used to implement the Air Monitoring Plan such as Activity Dust Field Log and Weather Observation Field Log;
- (g) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with Paragraph 3.10 (Off-Site Shipments). The TODP may be a part of the RD/RA Work Plan and must include:
- (1) Proposed routes for off-site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (h) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. Purchaser shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) A description of Performance Standards (PS) required to be met to implement the remedy selected in the ROD Amendment and Explanation of Significant Differences;
 - (2) A description of activities to be performed: (a) to provide confidence that the PS will be met; and (b) to determine whether PS have been met;
 - (3) A description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and the State;

- (4) Description of corrective action in case of systems failure, including:
 - (a) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (b) analysis of vulnerability and additional resource requirements should a failure occur; (c) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (d) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (i) **Groundwater Monitoring Well Abandonment and Installation Plan.** The Groundwater Monitoring Well Abandonment and Installation Plan describes the steps to be taken to abandon existing groundwater monitoring wells and to reinstall groundwater monitoring wells at completion of the RA.
 - (j) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Property. 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) including accurate mapping and geographic information system (GIS) coordinates of such interests; 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.).
 - (3) A list of land, water, or other resource use restrictions applicable to the Property:
 - (4) Prohibiting certain activities which could interfere with any remedial action;
 - (5) Prohibiting use of groundwater, potable or otherwise;
 - (6) Prohibiting activities which could result in exposure to contaminants in subsurface soils and groundwater;

- (7) Ensuring that any new structures on the Property will not be constructed in a manner which could interfere with the Remedial Action or any other response action; and
 - (8) Ensuring that any new structures on the Property will be constructed in a manner which will minimize potential risk of inhalation of contaminants including lead and arsenic.
- (k) **Periodic Review Support Plan.** The Periodic Review Support Plan (PRSP) describes plans to support EPA’s reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

6. SCHEDULES

6.1 Applicability and Revisions. All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. Purchaser may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA’s approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

6.2 RD Schedule

| | Description of Deliverable, Task | ¶ Ref. | Deadline |
|---|---|---------------|---|
| 1 | RDRAWP | 3.1 | 60 days after the Effective Date |
| 2 | Treatability Study Work Plan (if necessary) | 3.3 | 30 days after Effective Date |
| 3 | Preliminary (30%) RD | 3.4 | 30 days after EPA approval of Final RDRAWP |
| 4 | Pre-final (95%) RD | 3.5 | 30 days after EPA comments on Preliminary RD |
| 5 | Final (100%) RD | 3.6 | 30 days after EPA comments on Pre-final RD |
| 6 | Soil Management Plan | 3.7 | 30 days after EPA approval of Final RD/RA Work Plan |

6.3 RA Schedule

| | Description of Deliverable / Task | ¶ Ref. | Deadline |
|---|---|---------|--|
| 1 | Award RA contract | | 30 days after EPA Notice of Authorization to Proceed with RA |
| 2 | Pre-Construction Conference | 3.8(a) | 15 days after Approval of RAWP |
| 3 | Start of Construction | | Pursuant to Schedule in RAWP |
| 4 | RA Completion Inspection | 3.11(a) | 10 days after Completion of Work |
| 5 | RA Report | 3.11(b) | 14 days after RA Completion Inspection |
| 6 | Periodic Review Support Plan | 5.7 | 4 years after start of RA construction |
| 7 | Supporting Deliverables (Health and Safety Plan, Emergency Response Plan, Field Sampling Plan, QAPP, CQA/QCP, AMP, O&M Plan, TODP, Groundwater Monitoring Well Abandonment and Installation Plan and ICIAP) | 5.7 | Submitted at the time of the Preliminary (30%) RD |

7. STATE PARTICIPATION

- 7.1 Copies.** Purchaser shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Purchaser, send a copy of such document to the State.
- 7.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:
- (a) Any EPA approval or disapproval under Paragraph 5.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
 - (b) EPA's issuance of the Certification of RA Completion under Paragraph 3.11 (Certification of RA Completion).

8. REFERENCES

- 8.1** The following regulations and guidance documents, among others, apply to the activities required by this SOW. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in Paragraph 8.2:
- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).

- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr.1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (o) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (p) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).

- (q) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (r) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (s) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (t) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (u) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (v) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (w) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (x) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (y) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (z) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (aa) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (bb) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (cc) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (dd) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (ee) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).

- (ff) Construction Specifications Institute's MasterFormat, available from <https://www.csiresources.org/home>.
- (gg) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012)
- (hh) 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).
- (ii) 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).
- (jj) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaosc.org/_HealthSafetyManual/manual-index.htm.
- (kk) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (ll) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).
- (mm) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).
- (nn) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.

8.2 A more complete list of regulations and guidance applicable to the Work may be found on the following EPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>

For any regulation or guidance referenced in the Settlement or SOW, 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 receive notification from EPA of the modification, amendment, or replacement.

APPENDIX B

TO THE ADMINISTRATIVE SETTLEMENT AGREEMENT FOR
REMEDIAL ACTION BY PROSPECTIVE PURCHASER

MAP OF MODIFIED ZONE 1



Legend
 Approximate Site Boundary

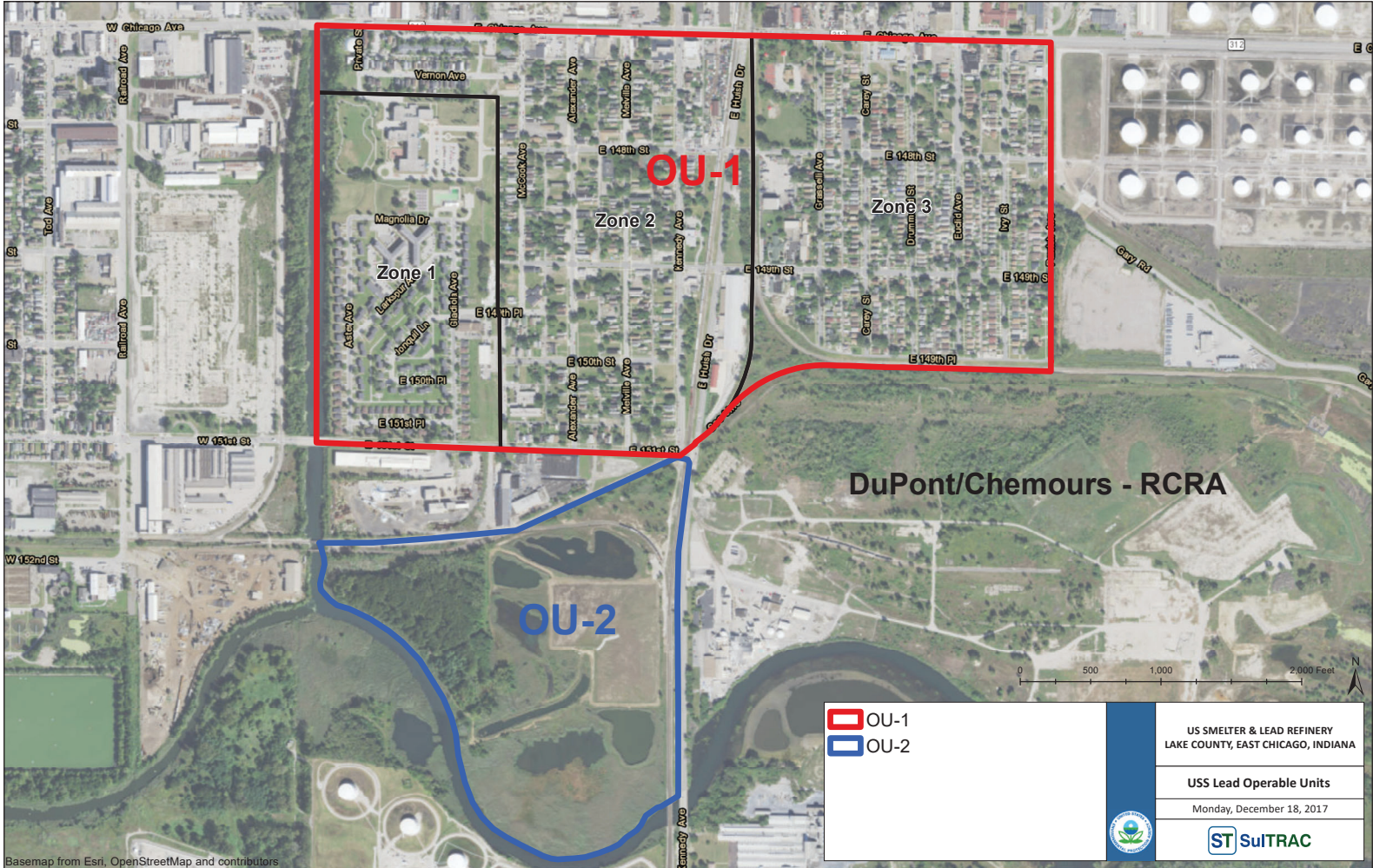
USS Lead
 East Chicago, Indiana

Figure 2
 Site Layout Map

APPENDIX C

**TO THE ADMINISTRATIVE SETTLEMENT AGREEMENT FOR
REMEDIAL ACTION BY PROSPECTIVE PURCHASER**

SITE MAP



APPENDIX D

TO THE ADMINISTRATIVE SETTLEMENT AGREEMENT FOR
REMEDIAL ACTION BY PROSPECTIVE PURCHASER

LEGAL DESCRIPTION OF THE PROPERTY

Real Estate to be purchased by Industrial Development Advantage of East Chicago, LLC

Parcels 1 and 5:

Current Vesting: East Chicago Housing Authority

**Split from Tax Parcel Numbers 45-03-28-351-046.000-024 and
45-03-33-101-005.000-024**

Part of the Southwest Quarter of Section 28, Township 37 North, Range 9 West of the Second Principal Meridian and Part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian in Lake County, Indiana, more particularly described as follows: Commencing at the Southeast corner of Block 4, Subdivision of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, in the City of East Chicago, as shown in Plat Book 4, page 4, in the Recorder's Office of Lake County, Indiana; thence North along the East line of said Block 4 and said line extended to the South right of way line of Chicago Avenue; thence East along said South line, a distance of 75 feet; thence South along a line that is 75 feet distant and parallel to the West line of this described tract to the North right of way line of 151st Street; thence West 75 feet to a point on the East line of said Block 4 that is 45 feet North of the point of commencement, excepting therefrom the North 266 feet;

Also excepting that part lying within the following described parcel of land:

That part of Block 4, as marked and laid down on the recorded Plat of Subdivision of part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, situated in the City of East Chicago, Lake County, Indiana along with part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana described as follows:

Commencing at the point of intersection of the southerly line of said Block 4 (being also the center line of 151st Street as dedicated) with a line parallel to and 30,000 feet westerly of the east line of said Block 4 (said east line being also the west line of the 75.0 foot right of way conveyed to Chicago and Calumet Terminal Transfer Railway Company by the deed dated April 2, 1890 and recorded in Deed Record 49, page 375, in the Recorder's Office of Lake County, Indiana); thence running northerly on said parallel line a distance of 755.0 feet to the Point of Beginning; thence running westerly at right angles to said parallel line 20.0 feet; thence southwesterly a distance of 51.20 feet more or less, to a point in a line 31.0 feet distant, westerly from said parallel line and 50.0 feet south of the north line of this parcel of real estate extended westerly; thence running south and parallel to said parallel line a distance of 234.00 feet; thence running easterly at right angles to said parallel line a distance of 136.00 feet to a line 75.00 feet distant and parallel to the east line of said Block 4; thence running northerly on said parallel line a distance of 512.00 feet; thence running westerly at right angles to said parallel line a distance of 105.00 feet to a line parallel to and 30.00 feet westerly of the east line of said Block 4; thence running south on said parallel line a distance of 228.0 feet to the Point of Beginning, in Lake County, Indiana.

Parcel 2:

Current Vesting: City of East Chicago for the use and benefit of its Department of Parks and Recreation

Tax Parcel Number 45-03-28-351-047.000-024

All that part of Block 13, Subdivision of the Southwest Quarter of Section 28, Township 37 North, Range 9 West of the 2nd P.M. in the City of East Chicago, Lake County, Indiana, as shown in Plat Book 2, page 25, in the Office of the Recorder of Lake County, Indiana;

EXCEPTING THEREFROM: The East 30 feet thereof;

ALSO EXCEPTING THEREFROM: Beginning at a point 100 feet East of the West Line of Section 28, which point is the Northwest corner of Block 13; thence Easterly and along the North Line of Block 13, a distance of 1,102 feet; thence Southerly and along a line 30 feet West of and parallel to the Easterly Line of said Block 13, a distance of 186.6 feet; thence Southwesterly (South 29° 44' 30" West) a distance of 27.01 feet; thence Westerly and parallel to the North Line of

Block 13, a distance of 1,088.4 feet; thence Northerly and parallel to the West Line of Section 23, a distance of 210.0 feet; to the point of beginning;

ALSO EXCEPTING THEREFROM: Commencing at the Southwest corner of Block 13, thence Northerly on and upon the West Line of said Block 13 a distance of 250.25 feet; thence Easterly parallel to the South Line of said Block 13 a distance of 125.07 feet; thence Northerly parallel to the West Line of said Block 13 a distance of 60.00 feet; thence Easterly parallel to the South Line of said Block 13 a distance of 813.34 feet; thence Southerly parallel to the East Line of said Block 13 a distance of 60.00 feet; thence Easterly parallel to the South Line of said Block 13 a distance of 163.11 feet to a line parallel to and 30 feet West of the East Line of said Block 13; thence Southerly parallel to said East Line of Block 13 a distance of 250.25 feet to the South Line of said Block 13; thence Westerly on and upon the said South Line of Block 13 a distance of 1,102.3 feet to the place of commencement.

Parcel 3:

Current Vesting: East Chicago Housing Authority

Tax Parcel Number 45-03-28-351-048.000-024

The East 30 feet of Block 13, Subdivision of the Southwest Quarter of Section 28, Township 37 North, Range 9 West of the Second Principal Meridian, in the City of East Chicago, as per plat thereof, recorded in Plat Book 2, page 25, in the Office of the Recorder of Lake County, Indiana.

Parcel 4:

Current Vesting: East Chicago Housing Authority

Split from Tax Parcel Number 45-03-33-101-004.000-024

The East 30 feet of Block 4, (except the South 45 feet thereof) Subdivision of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, in the City of East Chicago, as per plat thereof, recorded in Plat Book 4, page 4, in the Office of the Recorder of Lake County, Indiana;

Also excepting that part lying within the following described parcel of land:

That part of Block 4, as marked and laid down on the recorded Plat of Subdivision of part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, situated in the City of East Chicago, Lake County, Indiana along with part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana described as follows:

Commencing at the point of intersection of the southerly line of said Block 4 (being also the center line of 151st Street as dedicated) with a line parallel to and 30,000 feet westerly of the east line of said Block 4 (said east line being also the west line of the 75.0 foot right of way conveyed to Chicago and Calumet Terminal Transfer Railway Company by the deed dated April 2, 1890 and recorded in Deed Record 49, page 375, in the Recorder's Office of Lake County, Indiana); thence running northerly on said parallel line a distance of 755.0 feet to the Point of Beginning; thence running westerly at right angles to said parallel line 20.0 feet; thence southwesterly a distance of 51.20 feet more or less, to a point in a line 31.0 feet distant, westerly from said parallel line and 50.0 feet south of the north line of this parcel of real estate extended westerly; thence running south and parallel to said parallel line a distance of 234.00 feet; thence running easterly at right angles to said parallel line a distance of 136.00 feet to a line 75.00 feet distant and parallel to the east line of said Block 4; thence running northerly on said parallel line a distance of 512.00 feet; thence running westerly at right angles to said parallel line a distance of 105.00 feet to a line parallel to and 30.00 feet westerly of the east line of said Block 4; thence running south on said parallel line a distance of 228.0 feet to the Point of Beginning, in Lake County, Indiana.

Parcel 6:

Current Vesting: The City of East Chicago Housing Authority

Tax Parcel Number 45-03-33-101-001.000-024

All of Block 4, Subdivision of part of the Northwest Quarter of Section 33, Township 37 North, Range 9 west of the 2nd P.M. in the City of East Chicago, as per plat thereof, recorded in Plat Book 4, Page 4, in the Office of the Recorder of Lake County, Indiana, excepting the East 30 feet, also excepting that part conveyed to Goldschmidt Detinning Company by Warranty Deed dated 11-14-11 and recorded 11-18-11 in Deed Record 174, pages 391 and 392, and also excepting therefrom that part conveyed to Metal and Thermit Corporation by deed dated 11-6-62 and recorded 11-15-62 in Deed Record 1219, Page 528.

And: Commencing at the Southwest corner of Block 13, Subdivision of the Southwest Quarter of Section 28, Township 37 North, Range 9 West of the 2nd P.M. in the City of East Chicago, Indiana, as shown in Plat Book 2, Page 25, in Lake County, Indiana: thence Northerly on and upon the West line of said Block 13 a distance of 250.25 feet; thence Easterly parallel to the South line of said Block 13 a distance of 125.07 feet; thence Northerly parallel to the West line of said Block 13 a distance of 60.00 feet; thence Easterly parallel to the South line of said Block 13 a distance of 813.34 feet; thence Southerly parallel to the East line of said Block 13 a distance of 60.00 feet; thence Easterly parallel to the South line of said Block 13 a distance of 163.11 feet to a line parallel to and 30 feet West of the East line of said Block 13; thence Southerly parallel to said East line of Block 13 a distance of 250.25 feet to the South line of said Block 13; thence Westerly on and upon the said South line of Block 13 a distance of 1102.3 feet to the place of commencement.

Parcel 7:

Current Vesting: City of East Chicago

Split from Tax Parcel Number 45-03-33-101-002.000-024

That part of Block 4, as marked and laid down on the recorded plat of a Subdivision of part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, situated in the City of East Chicago, Lake County, Indiana described as follows: Beginning at the point of intersection of the Southerly line of said Block 4 (being also the center line of 151st Street as dedicated) with a line parallel to and 30.0 feet Westerly of the East line of said Block 4 (said East line being also the West line of the 75.0 foot right of way conveyed to the Chicago and Calumet Terminal Transfer Railway Company by Deed Dated April 2, 1890, and recorded in Deed Record 49, page 375, in the Recorder's Office of Lake County, Indiana); thence running Northerly on said parallel line a distance of 205.0 feet to a point, which point shall be the starting point of this description; thence running Northerly on said parallel line a distance of 550.0 feet to a point; thence running Westerly at right angles to said parallel line 20.0 feet: thence Southwesterly a distance of 51.20 feet, more or less, to a point in a line 31.0 feet distant, Westerly from said parallel line and 50.0 feet South of the North line of this parcel of real estate extended Westerly; thence running South and parallel to said parallel line a distance of 553.63 feet, more or less, to the Northwesterly side of the tract of land conveyed by Deed of East Chicago Company to Goldsmith Detinning Company, dated November 14, 1911, and recorded in Deed Record 174, page 391, in the Recorder's Office of Lake County, Indiana; thence running Northeasterly along the Northwesterly line of said tract, 62.15 feet, more or less, to the point of beginning, in Lake County, Indiana;

Excepting that part lying within the following described parcel of land:

That part of Block 4, as marked and laid down on the recorded Plat of Subdivision of part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, situated in the City of East Chicago, Lake County, Indiana along with part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana described as follows:

Commencing at the point of intersection of the southerly line of said Block 4 (being also the center line of 151st Street as dedicated) with a line parallel to and 30,000 feet westerly of the east line of said Block 4 (said east line being also the west line of the 75.0 foot right of way conveyed to Chicago and Calumet Terminal Transfer Railway Company by the deed dated April 2, 1890 and recorded in Deed Record 49, page 375, in the Recorder's Office of Lake County, Indiana); thence

running northerly on said parallel line a distance of 755.0 feet to the Point of Beginning; thence running westerly at right angles to said parallel line 20.0 feet; thence southwesterly a distance of 51.20 feet more or less, to a point in a line 31.0 feet distant, westerly from said parallel line and 50.0 feet south of the north line of this parcel of real estate extended westerly; thence running south and parallel to said parallel line a distance of 234.00 feet; thence running easterly at right angles to said parallel line a distance of 136.00 feet to a line 75.00 feet distant and parallel to the east line of said Block 4; thence running northerly on said parallel line a distance of 512.00 feet; thence running westerly at right angles to said parallel line a distance of 105.00 feet to a line parallel to and 30.00 feet westerly of the east line of said Block 4; thence running south on said parallel line a distance of 228.0 feet to the Point of Beginning, in Lake County, Indiana.

Parcel 8:

Current Vesting: City of East Chicago

Tax Parcel Number 45-03-33-101-003.000-024

That part of Block 4 in a Subdivision of part of the Northwest Quarter of Section 33, Township 37 North, Range 9 West of the 2nd Principal Meridian, in the city of East Chicago, as per plat thereof, recorded in Plat Book 4, page 4, in the Office of the Recorder of Lake County, Indiana, described as follows: Beginning at the point of intersection of the Southerly line of said Block 4 (being also the center line of 151st Street as dedicated) with a line parallel with and 30 feet Westerly of the East Line of said Block 4 (said East line being also the West line of the 75 foot right of way conveyed to the Chicago and Calumet Terminal Transfer Railway Company by Deed dated April 2, 1890); thence Northerly on said parallel line 205 feet; thence Southwesterly on a straight line 180.33 to a point in the Northerly line of 151st Street, 90 feet distant Westerly measured along said North line from its intersection with the line described as parallel with and 30 feet Westerly of the East line of said Block 4; thence Southerly parallel with said East line 45 feet to the center line of 151st Street, Thence Easterly on said center line 90 feet to the place of beginning, in Lake County, Indiana.

Parcel 9:

Current Vesting: East Chicago Housing Authority

Tax Parcel Number 45-03-28-351-045.000-024

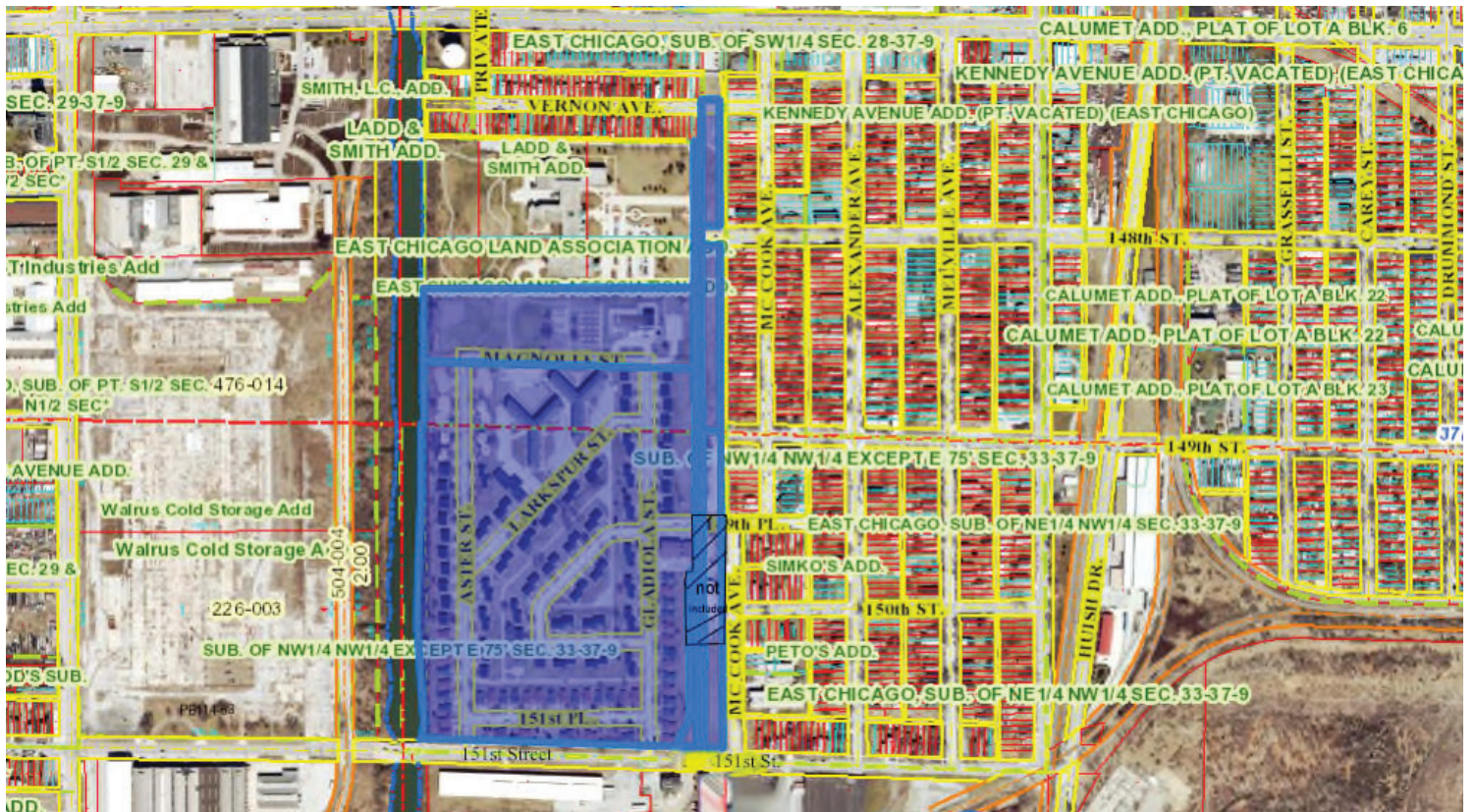
The East 30 feet of Lot 37, Block 12, Subdivision of the Southwest Quarter of Section 28, Township 37 North, Range 9 West of the Second Principal Meridian, in the City of East Chicago, as per plat thereof, recorded in Plat Book 2, page 25, in the Office of the Recorder of Lake County, Indiana;

EXCEPTING THEREFROM the North 269.4 feet thereof platted as Ladd and Smith's Addition to the City of East Chicago, Lake County, Indiana, recorded in Plat Book 6, page 22, in the Office of the Recorder of Lake County, Indiana.

APPENDIX E

TO THE ADMINISTRATIVE SETTLEMENT AGREEMENT FOR
REMEDIAL ACTION BY PROSPECTIVE PURCHASER

MAP OF THE PROPERTY

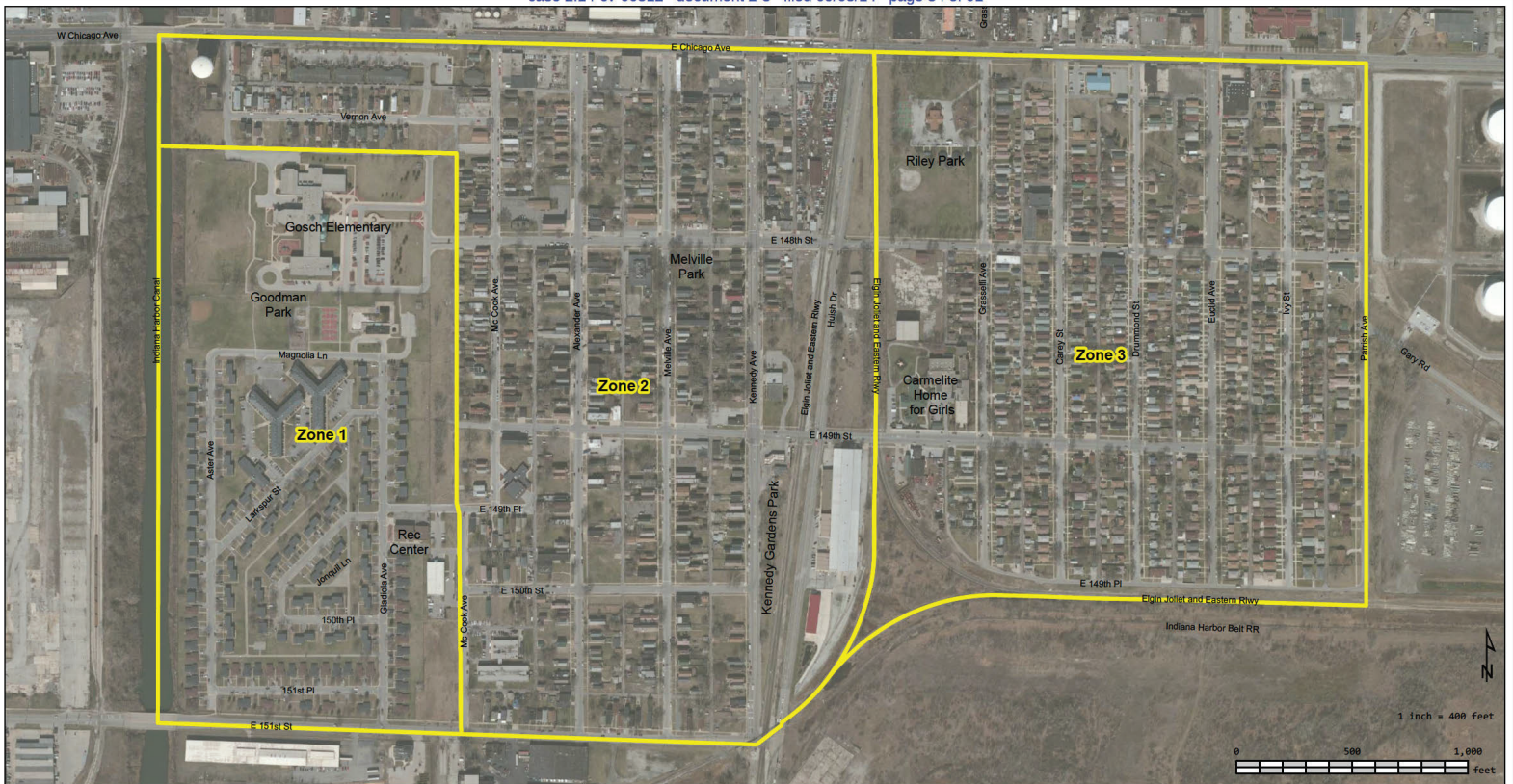


Pictorial Depiction of the real estate to be purchased by Industrial Development Advantage of East Chicago, LLC. The color blue depicts the real estate to be purchased. The area with black hash marks will not be purchased, but will be retained by the seller.

APPENDIX F



TO THE ADMINISTRATIVE SETTLEMENT AGREEMENT FOR
REMEDIAL ACTION BY PROSPECTIVE PURCHASER

MAP OF OPERABLE UNIT 1 DEPICTING
ZONES 1, 2, AND 3



Zone

Basemap source: Esri

| | |
|---|--|
|  | US SMELTER & LEAD REFINERY LAKE COUNTY, EAST CHICAGO, INDIANA |
| APPENDIX D OU1 ZONES | |
| EPA REGION 5 RAC 2 REVISION 0 JULY 2014 | |
|  | |

1 inch = 400 feet

