

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DICO, INC. and )  
TITAN TIRE CORPORATION, )  
 )  
Defendants. )  
\_\_\_\_\_ )

No. 4:10-cv-00503-RP-RAW

**CONSENT DECREE**

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## **I. BACKGROUND**

A. On October 26, 2010, the United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 (CERCLA), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Southern Iowa Mechanical Site in Ottumwa, Iowa (the “SIM Site”), and pursuant to Sections 106(b)(1) and 107(c)(3) of CERCLA seeking civil penalties and punitive damages for violations of a Unilateral Administrative Order issued with respect to the Des Moines TCE Superfund Site in Des Moines, Iowa (the “Des Moines TCE Site”).

B. On February 25, 2014, the Court entered judgment in this case against Defendant Dico for \$1.62 million in civil penalties related to the Des Moines TCE Site, which was affirmed on appeal on December 10, 2015. On September 7, 2017, the Court entered judgment against Defendants jointly and severally for the United States’ past response costs (totaling \$5,454,370 at the time of trial) and future response costs at the SIM Site, and against Defendant Dico for \$5,454,370 million in punitive damages related to the Des Moines TCE Site. These judgments were affirmed on appeal on April 11, 2019.

C. On April 21, 1995, the United States, on behalf of EPA, filed a complaint in Case No. 4-95-cv-10289 (S.D. Iowa) pursuant to Section 107(a) of CERCLA, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with Operable Unit 01 of the Des Moines TCE Site. On March 29, 2000, the Court entered judgment against Defendant Dico for \$4,120,426.67 in past response costs and for future response costs with respect to the Des Moines TCE Site. That judgment was affirmed on appeal on November 27, 2001. Defendant Dico has not paid this judgment.

D. Defendant Dico has submitted evidence in this case showing that it has no source of income and essentially no assets other than its property at 200 Southwest 16th Street in Des Moines, Iowa (the “Dico Property”).

E. Dico’s ultimate parent corporation, Titan International, Inc. (“Titan International”) holds an \$11 million mortgage lien on the Dico Property, which it contends is superior to all other liens, including those filed by the United States to enforce judgments it has obtained against Defendant Dico.

F. Remedies addressing contamination at the Des Moines TCE Site have been in place since the 1990s.

i. The Record of Decision (ROD) for OU1 was signed on July 21, 1986 to address trichloroethene-impacted groundwater infiltrating the city of Des Moines public water supply through the DMWW north infiltration gallery. The major components of the OU1 remedy, as implemented, included the installation and operation of a groundwater extraction and treatment system consisting of groundwater extraction wells and an air stripper and the installation of groundwater wells across the site.

ii. In March 1994, the EPA issued a Unilateral Administrative Order, or UAO, to Dico for the Building Response Action to address numerous hazardous substances within several on-site buildings. The hazardous substances were identified as pesticides, herbicides, dioxins, and PCBs. The action called for repairing, sealing, and protecting building insulation; cleaning the interior surfaces of the buildings and encapsulation of building floors and walls by sealing with durable epoxy/urethane protective coating to prevent direct-contact exposures. In June 1994, the EPA issued a second UAO to Dico for the Surface Capping Response Action. The action required either excavation of soils or capping of soils containing the pesticides aldrin, dieldrin, and chlordane above specified health-based levels. In December 1995, the EPA issued an Administrative Order on Consent to the DiChem Customer Group for the South Pond Area Response Action. The action required characterization, excavation, and offsite disposal of soils containing aldrin and chlordane above health-based cleanup levels from a drainage ditch adjacent to the east side of the Dico property and around the South Pond Area. The onsite buildings, the contaminated soil, and the South Pond Area are cumulatively OU2 and OU4.

iii. The ROD for OU2 and OU4 was signed on December 13, 1996. Major components of the remedy included continued maintenance activities.

iv. The ROD for OU3 was signed on September 18, 1992 to address potential sources of groundwater contamination in the area north of the Raccoon River, commonly known as the “North Plume.” The North Plume contains chlorinated VOCs present in low concentrations with no identified source. The ROD selected a no action remedy with periodic groundwater monitoring, acknowledging that groundwater from the OU3 area will continue to be captured and treated by the OU1 extraction and treatment system. The Iowa Department of Natural Resources currently manages OU3.

G. Defendants contend that the Dico Property has value exceeding the remaining costs of response at the Des Moines TCE Site. The Parties agree that transfer of the Dico Property to a third party willing and able to complete remaining response actions at the Dico Property and return the Dico Property to use serves the public interest and goals of CERCLA.

H. The City of Des Moines is willing and able to accept title to the Dico Property and to assume responsibility for the performance of certain response actions in accordance with the terms of this Consent Decree. The resolution of the City of Des Moines’ potential CERCLA liability arising from its acquisition of the Dico Property pursuant to this Consent Decree, in exchange for provision by the City of Des Moines of a substantial benefit through its performance of certain response actions at the Dico Property, as set forth in this Consent Decree, is in the public interest.

I. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the applicable RODs and the Work to be performed by the City shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

J. The United States has incurred \$6,994,240 in past response costs at the SIM Site (comprising \$2,970,799 in EPA response costs through August 21, 2019 and \$4,023,441 in DOJ response costs through August 3, 2019).

K. The United States believes that it has potential claims against Titan International under general principles of corporate veil-piercing that could permit recoveries against it for judgments entered against Dico with respect to the Dico and SIM Sites.

L. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b). With respect to obligations imposed by this Consent Decree on the City of Des Moines, the Court has subject matter jurisdiction under 28 U.S.C. § 1367 and 28 U.S.C. § 1651 and will have subject matter jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought pursuant to this Consent Decree. The Court also has personal jurisdiction over Settling Defendants and the City of Des Moines. Solely for the purposes of this Consent Decree, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants and the City of Des Moines shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their successors and assigns, and upon the City of Des Moines. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the City of Des Moines or of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

“Affected Property” means all real property at the Dico Property and any other real property, owned or controlled by Owner Settling Defendant, where EPA determines, at any

time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Des Moines TCE Site, including, but not limited to, the Dico Property.

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

“City of Des Moines” or “City” shall mean the City of Des Moines, Iowa.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Des Moines TCE Special Account” shall mean the special account, within the EPA within the EPA Hazardous Substance Superfund, to be established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3) for the receipt of a portion of funds paid by Settling Defendants.

“Dico Property” shall mean the property owned by Defendant Dico located at 200 Southwest 16th Street in Des Moines, Iowa, encompassing approximately 40 acres, and further defined in Appendix B to this Consent Decree.

“Des Moines TCE Site” shall mean the Des Moines TCE Superfund Site in Des Moines, Iowa, CERCLIS ID# IAD980687933, encompassing approximately 200 acres, located at 200 Southwest 16th St. in Des Moines, Iowa, and generally shown on the map included in Appendix A.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“Existing Contamination” shall mean:

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

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

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Consent Decree with respect to the Des Moines TCE Site, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement costs, the costs incurred pursuant to Paragraph 16 (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 ICs, including, but not limited to, the amount of just compensation), Paragraph 18 (Emergency Response/Release Reporting), Paragraph 21 (Work Takeover), and Paragraph 25 (Dispute Resolution).

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Institutional Controls” or “ICs” shall mean Proprietary Controls 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 Des Moines TCE Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the integrity of the removal action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Des Moines TCE Site.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Owner Settling Defendant” shall mean Defendant Dico.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, Settling Defendants, and the City of Des Moines.

“Performance Standards” or “PS” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the RODs for OU-01, OU-02, and OU-04.

“Plaintiff” shall mean the United States.

“Proprietary Controls” shall mean easements or covenants running with the land that: (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

“Reimbursable Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs with respect to 1) any partial or complete Work Takeover under Paragraph 21 and 2) the response actions set forth in Section IX.

“Remedial Action” or “RA” shall mean the remedial action selected in the RODs for OU-01, OU-02, and OU-04.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Dico, Inc., Titan Tire Corporation, and Titan International, Inc.

“SIM Site” shall mean the Southern Iowa Mechanical Site in Ottumwa, Iowa, CERCLIS ID# IAN000705908, encompassing approximately 2.6 acres, located at 3043 Pawnee Drive in Ottumwa, Wapello County, Iowa, and generally shown on the map included in Appendix A.

“Sites” shall mean, collectively, the Des Moines TCE Site and SIM Site.

“State” shall mean the State of Iowa.

“Statement of Work” or “SOW” shall mean the document describing the activities the City must perform to implement response actions pursuant to this Consent Decree, as set forth in Appendix D, and any modifications made thereto in accordance with this Consent Decree.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

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

“Waste Material” or “Waste Materials” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous waste” under Iowa Code Section 455B.411 and 455B.464; and (5) any “special waste” under Iowa Code Section 567.100.2

“Work” shall mean all activities and obligations the City is required to perform under this Consent Decree except those required by Paragraph 19 (City Record Retention).



## V. PAYMENT OF JUDGMENTS

4. **Payments by Settling Defendants.** Settling Defendants shall pay a total of \$11.5 million, plus Interest, on the schedule set forth in this Paragraph. Of the principal amount, \$7,000,000 shall constitute reimbursement of response costs incurred by the United States relating to the SIM Site, \$1,580,588 shall constitute civil penalties and punitive damages related to the Des Moines TCE Site, and \$2,919,412 shall constitute reimbursement of response costs incurred by the United States relating to the Des Moines TCE Site.

a. Not later than 30 days after the Effective Date, Settling Defendants shall pay to EPA \$9,000,000, plus an additional sum for Interest on that amount calculated from September 24, 2019 through the date of payment.

b. Not later than one year after the Effective Date, Settling Defendants shall pay to EPA an additional \$1,500,000, plus an additional sum for Interest on that amount calculated from September 24, 2019 through the date of payment.

c. Not later than two years after the Effective Date, Settling Defendants shall pay to EPA an additional \$1,000,000, plus an additional sum for Interest on that amount calculated from September 24, 2019 through the date of payment.

5. Settling Defendants shall make payment at <https://www.pay.gov> or via Fedwire Electronic Funds Transfer (EFT) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (FLU) of the U.S. Attorney's Office for the Southern District of Iowa after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Todd Shoot  
Titan International, Inc.  
SVP, Investor Relations & Treasurer  
2701 Spruce Street | Quincy, Illinois 62301  
Office: 217-221-4416  
Email: [todd.shoot@titan-intl.com](mailto:todd.shoot@titan-intl.com)

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XVIII (Notices and Submissions).

6. Settling Defendants shall not deduct any penalties or punitive damages paid under this Decree pursuant to this Section or Section 26.c (Failure to Comply with Consent Decree) in calculating their federal income tax.

7. **Deposit of Payment.** Of the total amount to be paid pursuant to Paragraph 4.a, \$2.9 million shall be deposited by EPA in the Des Moines TCE Special Account to be retained and used to conduct or finance response actions at or in connection with the Des Moines TCE Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund,

and the remainder shall be deposited by EPA in the EPA Hazardous Substance Superfund. The amounts to be paid pursuant to Paragraphs 4.b and 4.c shall be deposited by EPA in the EPA Hazardous Substance Superfund.

8. **Notice of Payment.** At the time of each payment, Settling Defendants shall send notice that payment has been made: (a) to EPA in accordance with Section XVIII (Notices and Submissions); (b) to DOJ by email or by mail in accordance with Section XVIII (Notices and Submissions); and (c) to the EPA Cincinnati Finance Center in accordance with Paragraph 68.

Such notice shall reference the CDCS Number, Site/Spill ID Number A7K9 for the Southern Iowa Mechanical Site, Site/Spill ID Number 0725 for the Des Moines TCE Site, and DJ Number 90-11-3-09925.

## **VI. TRANSFER OF DICO PROPERTY**

### **9. Property Transfer to City.**

a. Not more than 180 days after the Effective Date, as further described herein and upon mutual agreement as to the time of transfer, Defendant Dico shall convey the Dico Property to the City via donation at no cost to the City (provided that the City and Dico may agree instead to a sale transaction with a sale price of no more than \$10). Dico shall convey the Dico Property to the City in fee simple by general warranty deed and free and clear of all liens and encumbrances. The City shall accept the conveyance of title.

b. Prior to the conveyance described in this section, Dico shall provide the City and its representatives with access to the Dico Property in a timely manner upon request.

c. Dico shall pay all costs associated with the conveyance of the Dico Property, including closing costs, filing fees, and title insurance fees (but not including any legal or other fees incurred by the City, EPA, DOJ, or any other governmental entity).

## **VII. ADDITIONAL OBLIGATIONS OF SETTLING DEFENDANTS**

10. Not more than 30 days after the Effective Date, Titan International shall release all liens it holds, cancel and forgive all mortgages and/or lines of credit it has issued, cancel any Uniform Commercial Code filings it has made, and otherwise release, cancel, and/or withdraw any other title encumbrance it has placed, relating to the Dico Property.

## **VIII. OBLIGATIONS OF THE CITY OF DES MOINES**

11. **Certification.** By entering into this Consent Decree, the City of Des Moines certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to the City and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Dico Property and to its qualification for this Consent Decree. The City also certifies that, to the best of its knowledge and belief, it has

not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Des Moines TCE Site, as of the Effective Date.

12. **Notice to Work Contractors, Representatives.** The City shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing the City with respect to the Dico Property or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The City or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The City shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree.

13. **Insurance.** EPA acknowledges that the City is self-insured and will not require additional insurance to be provided by the City. Thus, no later than 30 days before commencing any on-site Work, the City shall ensure that any and all contractors or other parties performing work at Dico Property shall secure, and shall maintain, for the duration of operation and maintenance, commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident. In addition, for the duration of the CD, the City 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 work on behalf of the City in furtherance of this CD.. The City shall ensure that all submittals to EPA under this Paragraph identify the Des Moines TCE Site and the docket number for this action.

14. **Work to be Performed.**

a. The City shall perform, at a minimum, all actions necessary to implement the SOW (attached as Appendix D).

b. The City shall perform all actions required by this Consent Decree 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 CD or SOW shall be subject to approval by EPA in accordance with ¶ 7.3 (Approval of Deliverables) of the SOW.

15. **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 ¶ 2 (Scope of Remedy) of the SOW, then EPA may notify the City of such modification. If the City objects to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 25.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if the City invokes dispute

resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and the City shall implement all work required by such modification. The City 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 require performance of further response actions as otherwise provided in this CD.

## 16. **Property Requirements**

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

b. **Access, Appropriate Care, and Non-Interference.** Commencing on the date of transfer from Dico to the City, the City shall: (i) provide EPA and its representatives, including contractors and subcontractors, with full cooperation, assistance, and access to the Dico 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 Dico Property, including those activities listed in Paragraph 16.b(1) (Access Requirements); (ii) exercise appropriate care with respect to hazardous substances found at the Dico Property as described in Paragraph 16.b(2) (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 removal action, including the restrictions listed in Paragraph 16.b(3) (Land, Water, or Other Resource Use Restrictions)].

(1) **Access Requirements.** The following is a list of activities for which access is required regarding the Dico Property

- (a) Conducting investigations regarding contamination at or near the Site;
- (b) Obtaining samples;
- (c) Assessing the need for, planning, implementing, or monitoring response actions;
- (d) Assessing implementation of quality assurance and quality control practices as defined in any approved quality assurance quality control plan;
- (e) Inspecting and copying records, operating logs, contracts, or other documents maintained or

generated by the City or its agents consistent with Paragraph 17 (Access to Information);

- (f) Assessing the City's compliance with the Consent Decree;
- (g) Determining whether the Dico Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree;
- (h) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Dico Property.

(2) **Appropriate Care.** The City shall take reasonable steps to

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

(3) **Land, Water, or Other Resource Use Restrictions.** The City shall (i) remain in compliance with any land use restrictions established in connection with any response action at the Dico Property, (ii) implement, maintain, monitor, and report on Institutional Controls, and (iii) not impede the effectiveness or integrity of any Institutional Control employed at the Dico Property in connection with a response action without prior approval of EPA. The following is a summary of land, water, or other resource use restrictions applicable to the Dico Property, which are set forth in greater detail in Appendix C (Form of Environmental Covenant), ¶ 8 (Activity and Use Limitations):

- (a) Limiting use of the Dico Property to non-residential purposes and multi-family residential purposes such as apartments or condominiums.

Without prior approval from EPA, the Dico Property shall not be used for first-floor residential occupancy, such as single-family homes or duplexes, or daycare facilities, elder care facilities, nursing homes, or hospitals.

- (b) Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater:
  - 1) breaching the asphalt cap without prior approval from EPA; or
  - 2) excavation of soils underneath the asphalt cap without prior approval from EPA;
- (c) Restricting use of contaminated groundwater without prior approval from EPA;
- (d) Ensuring groundwater monitoring and extraction wells and associated piping, pumps, structures, and appurtenances are protected against damage, interference, or removal unless otherwise directed or approved by EPA.
- (e) Ensuring that any new structures on the Dico Property will be constructed with vapor barriers or vapor mitigation systems to minimize potential risk of inhalation of contaminants.

c. **Proprietary Controls.** The City shall, not later than fifteen (15) days after the Effective Date, submit for EPA approval a proposed Environmental Covenant substantially in the form attached as Appendix C to this Consent Decree to be filed with the Recorder's Office, Polk County, State of Iowa, that imposes as Proprietary Controls the land, water, and other resource use restrictions on the Dico Property identified in Paragraph

16.b(3). The City shall record the Covenant within ten (10) days after EPA's approval and submit to EPA, within ten (10) days thereafter, a certified copy of the recorded Covenant. The City shall not Transfer the Dico Property unless it has executed and recorded all Proprietary Controls regarding the Dico Property set forth in this Paragraph.

d. **Notice to Successors-in-Title.** The City shall, not later than fifteen (15) days after the Effective Date, submit for EPA approval a notice to be filed with the Recorder's Office, Polk County, State of Iowa. The notice must: (1) include a proper legal description of the Dico Property; (2) provide notice to all successors-in-title that: (i) the Dico Property is part of, or related to, the Des Moines TCE Site; (ii) EPA has selected remedies for Operable Units OU-1 through OU-4; and (iii) that the City has entered a Consent Decree requiring performance of Work necessary for operation and maintenance of those remedies; and (3) identify the United States District Court in which the Consent Decree was filed, the name and civil action number of the case, and the date the Consent Decree was entered by the Court. The City shall record the notice within ten (10) days after EPA's approval of the notice and submit to EPA, within ten (10) days thereafter, a certified copy of the recorded notice.

e. For so long as the City is an owner or operator of the Dico Property, the City shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Dico Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. The City shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Dico Property implement and comply with any land use restrictions and Institutional Controls on the Dico Property in connection with any removal action, and not contest EPA's authority to enforce any land use restrictions and Institutional Controls on the Dico Property. The City shall provide a copy of this Consent Decree to any current lessees, sublessee, and other party with rights to use the Dico Property as of the date the City acquires the Dico Property.

f. Notwithstanding any provision of this Consent Decree, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water or other resource use restrictions and ICs, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## 17. **Access to Information**

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

b. The City shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "City Records") within the City's possession or control or that of their contractors or agents relating to activities at the Dico Property or to the implementation of this Consent Decree, 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. The City shall also make available to EPA, for purposes of investigation, information gathering, or

testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of any work related to response actions that may be taken on the Dico Property.

**c. Privileged and Protected Claims**

(1) The City may assert all or part of a City Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the City Record, provided the City complies with Paragraph 17.c(2) and except as provided in Paragraph 17.c(3).

(2) If the City asserts such a privilege or protection, it shall provide EPA with the following information regarding such City 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 City Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a City Record, the City shall provide the City Record to EPA in redacted form to mask the privileged or protected portion only. The City shall retain all City Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the City's favor.

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

**d. Business Confidential Claims.** The City may assert that all or part of a City Record provided to EPA under this Paragraph or Paragraph 18 (City Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). The City shall segregate and clearly identify all City Records or parts thereof submitted under this Settlement for which the City asserts business confidentiality claims. City Records that the City 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 City Records when they are submitted to EPA, or if EPA has notified the City that the City 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 City Records without further notice to the City.

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



18. **Emergency Response/Release Reporting.** In the event the City becomes aware of any action or occurrence which causes or threatens a release of Waste Materials at or from the Dico Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the City shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release. In the event that the City fails to take appropriate response action as required by this Paragraph, and EPA takes such instead, the City shall reimburse EPA for all costs of such response action not inconsistent with the NCP within 30 days of EPA's demand for such costs in the manner provided in Paragraph 23.c and d. The requirements of this Paragraph, other than the requirement to notify EPA contained in the first sentence hereof, do not apply to the response actions to be performed by EPA pursuant to Section IX (Response Actions by EPA) of this Consent Decree.

19. **City Record Retention.** The City agrees to retain and make available to EPA all business and operating records, contracts, Des Moines TCE Site studies and investigations, and documents relating to operations at the Dico Property, for at least ten years following the Effective Date unless otherwise agreed to in writing by EPA. At the end of ten years, the City shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

20. **Compliance with Other Laws.**

a. Nothing in this Consent Decree limits the City's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Consent Decree 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.

b. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. The City may seek relief under the provisions of Paragraph 24 (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

21. **Work Takeover**

a. In the event EPA determines that the City: (1) has ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to the City. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide the City a period of ten (10) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice. EPA may provide the City a period of up to thirty (30) days within which to remedy the circumstances giving rise to EPA’s issuance of the work takeover notice if EPA determines, in its unreviewable discretion, that there is no endangerment.

b. If, after expiration of the notice period specified in ¶ 21.a, the City has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify the City in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 21.b.

c. The City may invoke the procedures set forth in ¶ 25.d (Record Review), to dispute EPA’s implementation of a Work Takeover under ¶ 21.b. However, notwithstanding the City’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 ¶ 21.b until the earlier of (1) the date that the City 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 final decision is rendered in accordance with ¶ 25.d (Record Review) requiring EPA to terminate such Work Takeover.

22. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

**23. Failure of the City to Comply with Consent Decree.**

a. If the City does not comply with Sections VI (Transfer of Dico Property) or VIII (Obligations of the City of Des Moines), the City shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$500 per violation per day of such noncompliance; Provided, however, that if EPA disapproves all or a portion of any Deliverable pursuant to ¶ 7.3(b) of the SOW, any stipulated penalties applicable to the original submission, as provided in this Paragraph, shall accrue during the period set forth in the notice of disapproval for the City to correct the deficiency, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided further that, if the original submission was so deficient as to constitute a material breach of the City’s obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

b. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 21 (Work Takeover), the City shall be liable for a stipulated penalty in the amount of \$250,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶ 21 (Work Takeover). If the City invokes Dispute Resolution under Paragraph 25 (Dispute Resolution) with respect to stipulated penalties assessed under

this Paragraph 23.b, it shall be liable for such penalties only if the result of Dispute Resolution is to uphold EPA's decision to assume performance of all or a portion of the Work.

c. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA shall include a reference to the Site/Spill ID Number 0725 and DJ Number 90-11-3-09925, and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

d. **Notice of Payment.** For each payment made under this Paragraph, the City shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 68.

e. If the United States brings an action to enforce this Consent Decree against the City, the City shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

f. Penalties shall continue to accrue as provided in ¶ 23.a during any dispute resolution period, but need not be paid until the following:

(1) If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

(2) If the dispute is appealed to this Court and the United States prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 23.f(3);

(3) If the District Court's decision is appealed by any Party, the City shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to the City to the extent that it prevails.

(4) If the City fails to pay stipulated penalties when due, the City shall pay Interest on the unpaid stipulated penalties as follows: (a) if the City 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 ¶ 23.f until the date of payment; and (b) if the City fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 23.c until the date of payment. If the City fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

g. Payments made under this Paragraph shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the City's failure to comply with the requirements of this Consent Decree.

h. Notwithstanding any other provision of this Paragraph, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse the City from performance of any other requirements of this Consent Decree.

#### **24. Force Majeure**

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

b. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which the City intends or may intend to assert a claim of force majeure, the City shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 7, within 72 hours of when the City first knew that the event might cause a delay. Within 5 days thereafter, the City 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; the City's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The City shall include with any notice all available documentation supporting their claim that the delay was attributable

to a force majeure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude the City 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 ¶ 24.a and whether the City has exercised its best efforts under ¶ 24.a, EPA may, in its unreviewable discretion, excuse in writing the City's failure to submit timely or complete notices under this Paragraph.

c. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this CD that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify the City in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

d. If the City elects to invoke the dispute resolution procedures set forth in Paragraph 25 (Dispute Resolution) regarding EPA's decision, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of ¶ 24. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this CD identified to EPA and the Court.

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

## **25. Dispute Resolution.**

a. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve disputes between the City and the United States under this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the City that have not been disputed in accordance with this Paragraph.

b. A dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the City and the United States. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

### **c. Statements of Position.**

(1) In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Subparagraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, the City invokes the formal dispute resolution procedures of this Paragraph by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the City. The Statement of Position shall specify the City's position as to whether formal dispute resolution should proceed under ¶ 25.d (Record Review) or 25.e.

(2) Within 60 days after receipt of the City's Statement of Position, EPA will serve on the City its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 25.d (Record Review) or 25.e. Within 30 days after receipt of EPA's Statement of Position, the City may submit a Reply.

(3) If there is disagreement between EPA and the City as to whether dispute resolution should proceed under ¶ 25.d (Record Review) or 25.e, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the City ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 25.d and 25.e.

d. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. The City shall not challenge, using the dispute resolution procedures under this Paragraph, or judicially, EPA's remedial action selection embodied in the ROD.

(1) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

(2) The Director of the Superfund and Emergency Management Division, EPA Region VII, will issue a final administrative decision resolving the dispute based on the administrative record described in

¶ 25.d(1). This decision shall be binding upon the City, subject only to the right to seek judicial review pursuant to ¶¶ 25.d(3) and 25.d(4).

(3) Any administrative decision made by EPA pursuant to ¶ 25.d(2) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the City with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this CD. The United States may file a response to the City's motion.

(4) In proceedings on any dispute governed by this Subparagraph (Record Review), the City shall have the burden of demonstrating that the decision of the Superfund and Emergency Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 25.d(1).

e. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Subparagraph.

(1) The Director of the Superfund and Emergency Management Division, EPA Region VII, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 25.c. The Superfund and Emergency Management Division Director's decision shall be binding on the City unless, within 10 days after receipt of the decision, the City files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to the City's motion.

(2) Notwithstanding ¶ J (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

f. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of the City under this CD, except as agreed by EPA or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 23.f. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 23 (Stipulated Penalties).

**26. Transfer of Dico Property by the City.**

a. Notwithstanding any other provisions of this Consent Decree 1) in the event of any Transfer of the Property, unless EPA otherwise consents in writing, the City shall continue to comply with its obligations under this Consent Decree and 2) none of the rights, benefits or obligations conferred upon the City under this Consent Decree may be assigned or transferred to any person without the prior written consent of EPA in its sole discretion.

b. In the event of a Transfer by the City of all or any portion of the Dico Property, all proceeds from such Transfer transaction(s) shall be deposited first into an interest-bearing escrow account or the Court registry, and then divided and paid in the following order:

(1) First, EPA shall receive an amount equal to its Reimbursable Response Costs; and then

(2) Second, the City shall receive an amount equal to its costs in performing the Work; and then

(3) Third, EPA and the City shall each receive fifty (50) percent of any further or remaining proceeds.

c. Funds, with accrued interest, if any, shall be paid to EPA within 60 days of closing on the relevant transaction as set forth in Paragraphs 26.b(1) and (2).

d. Funds received by EPA pursuant to this Paragraph shall be deposited by EPA in the Des Moines TCE Special Account to be retained and used to conduct or finance response actions at or in connection with the Des Moines TCE Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

**IX. RESPONSE ACTIONS BY EPA**

27. After the Effective Date, EPA will perform, or will already have commenced performance of, the following response actions at the Dico Property using either funds from the Superfund or from the Des Moines TCE Special Account:

a. The time-critical removal action regarding the South Pond as set forth in the applicable Action Memorandum, issued by EPA in substantially similar form to the draft Action Memorandum attached as Appendix E.

b. The non-time-critical removal action regarding buildings 1, 2, and 3 as set forth in the applicable Action Memorandum, to be issued by EPA after the Effective Date in substantially similar form to the draft Action Memorandum attached as Appendix F.

c. The replacement/upgrade of the groundwater treatment system as described in the June 2020 Remedial System Optimization Memorandum attached as Appendix G.

28. EPA shall coordinate the implementation of response actions under this Section IX (Response Actions by EPA) with the City to maximize efficient implementation



of response actions and other engineering, demolition, and construction work at the Dico Property.

**X. FAILURE OF SETTling DEFENDANTS TO COMPLY WITH CONSENT DECREE**

29. **Interest on Late Payments.** If any Settling Defendant fails to make any payment under Paragraph 4 (Payment of Judgments) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

30. **Stipulated Penalties.**

a. If any amounts due to EPA under Paragraph 4 (Payment of Judgments) are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 29, \$2,000 per violation per day that such payment is late.

b. If Settling Defendants do not comply with Sections VI (Transfer of Dico Property) or VII (Additional Obligations of Settling Defendants), Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$5,000 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall include a reference to the Site/Spill ID Number 0725 and DJ Number 90-11-3-09925 and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read  
“D 68010727 Environmental Protection Agency”

d. **Notice of Payment.** For each payment made under this Paragraph, the SDs shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 68.

31. If the United States brings an action to enforce this Consent Decree against Settling Defendants, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

32. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

33. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

34. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

## **XI. COVENANTS BY PLAINTIFF**

35. **Covenants for Settling Defendants by United States.** Except as specifically provided in Section XII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607 relating to the Sites. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

36. **Satisfaction of Judgments.** Within 60 days after receipt of the Settling Defendants' initial payment required by Paragraph 4.a, the United States will release its liens and/or abstracts of judgment on the Dico Property and file Satisfactions of Judgment for all judgments in this case and in Case No. 4-95-cv-10289.

37. **Covenants for the City by United States.** Except as specifically provided in Section XII (Reservations of Rights by United States) and in Paragraph 26 (Transfer of Dico Property by the City), the United States covenants not to sue or to take administrative action against the City pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination, the Work, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by the City of its obligations under this Consent Decree. These covenants are also conditioned upon the veracity of the information provided to EPA by the City relating to the City's involvement with the Dico Property and the certification made by the City in Paragraph 11. These covenants extend only to the City and do not extend to any other person. Nothing in this Consent Decree constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the City, if the information provided to EPA by the City relating to the City's involvement with the Dico Property, or the certification made by the City in Paragraph 11, is false or in any material respect, inaccurate.

38. Except as expressly provided in this Section XI (Covenants by Plaintiff), nothing in this Consent Decree constitutes a satisfaction of or release from any claim or cause of action against the City or Defendants or any person not a party to this Consent Decree, 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.

## **XII. RESERVATIONS OF RIGHTS BY UNITED STATES**

### **39. United States' New Information/New Conditions Reservations.**

Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Defendant Dico to perform further response actions relating to the Des Moines TCE Site, or to compel Defendants Dico and Titan Tire to perform further response actions relating to the SIM Site, and/or to pay the United States for additional costs of response if (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the selected response action is not protective of human health or the environment.

40. For purposes of ¶ 39 (United States' New Information/New Conditions Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date EPA certifies or certified completion of the response action and set forth in the ROD or other decision document, the administrative record supporting the ROD or decision document, or in the post-ROD or post-decision document administrative record.

41. **General Reservations with Respect to SDs.** The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Paragraph 35 (Covenants for Settling Defendants by United States) and Paragraph 36 (Satisfaction of Judgments). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Sites;
- c. liability based on the ownership of the Sites by Settling Defendants when such ownership commences after signature of this CD by Settling Defendants;
- d. liability based on the operation of the Sites by Settling Defendants when such operation commences after signature of this CD by Settling Defendants and does not arise solely from Settling Defendants' performance of response actions required by EPA;
- e. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Sites, other than as provided in a ROD or other

decision document, or otherwise ordered by EPA, after signature of this CD by Settling Defendants;

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

g. criminal liability;

42. **General Reservations with Respect to the City.** The United States reserves, and this Consent Decree is without prejudice to, all rights against the City with respect to all matters not expressly included within Paragraph 37 (Covenants for the City by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the City with respect to:

a. claims based on a failure by the City to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for violations of federal, state, or local law or regulations 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 Dico Property after the Effective Date, not within the definition of Existing Contamination;

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

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

### **XIII. COVENANTS BY SETTLING DEFENDANTS**

43. **Covenants for Plaintiff by Settling Defendants.** Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Sites and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Sites and this CD; or

c. any claims arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the Iowa Constitution, the

Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

44. **Covenants for the City by Settling Defendants.** Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the City, or its contractors or employees, with respect to the Des Moines TCE Site or the Dico Property and this Consent Decree under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or analogous state law.

45. **Covenants by Settling Defendants Regarding Section 106(b) Petitions.** No later than 30 days after the Effective Date, Defendants Dico and Titan Tire shall withdraw their CERCLA Section 106(b) petitions with respect to the SIM Site currently pending before the Environmental Appeals Board of EPA. Settling Defendants agree not to reinstate such petitions.

46. **Waiver of Claims by Settling Defendants**

a. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Sites against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) **Waiver Regarding Southern Iowa Mechanical.** For all matters relating to the Sites against Southern Iowa Mechanical, LLC and its president, Jim Hughes, (collectively, "SIM") arising from SIM's arrangement or transport for disposal, or disposal, of hazardous substances at or from the Sites or from any contractual relationship with any Settling Defendant related to such activities.

b. **Exceptions to Waiver**

(1) The waivers under this Paragraph 46 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Sites against such Settling Defendant.

**XIV. COVENANTS BY THE CITY OF DES MOINES**

47. **Covenants for Plaintiff by the City.** The City covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its

contractors or employees, with respect to Existing Contamination, the Work, Future Response Costs and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, 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, Future Response Costs, and this Consent Decree.

48. Nothing in this Consent Decree 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).

49. The covenants not to sue set forth in Paragraph 47 shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Paragraph 42 (General Reservations with Respect to the City), other than in Paragraph 42.a (liability for failure to meet a requirement of the Settlement), 42.b (criminal liability), or 42.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 is seeking pursuant to the applicable reservation.

50. **Covenants for Settling Defendants by the City.** The City covenants not to sue and agrees not to assert any claims or causes of action against the Settling Defendants, or their contractors or employees, with respect to the Des Moines TCE Site and the Dico Property and this Consent Decree under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or analogous state law.

51. **No Assumption of Liability by United States.**

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of the City as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3).

b. The United States shall not be held out as a party to any contract entered into by or on behalf of the City in carrying out activities pursuant to this Consent Decree. Neither the City nor any such contractor shall be considered an agent of the United States.

c. The City covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the City and any person for performance of

Work on or relating to the Dico Property, including, but not limited to, claims on account of construction delays. In addition, the City shall agree to pay on behalf of the United States any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the City and any person for performance of Work on or relating to the Dico Property, including, but not limited to, claims on account of construction delays

52. **Reservation by City.** The City reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of the City's deliverables or activities.

## **XV. EFFECT OF SETTLEMENT/CONTRIBUTION**

53. Except as provided in Paragraph 46 (Waiver of Claims by Settling Defendants), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XIII (Covenants by Settling Defendants), 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 it may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

54. By this Consent Decree, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the City. The United States or EPA shall not be deemed a party to any contract entered into by the City or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Consent Decree.

55. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(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" with respect to the SDs in this Consent Decree. The "matters

addressed” with respect to the SDs in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Sites, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section XVI (Covenants by Plaintiff), other than in ¶¶ 41.a (claims for failure to meet a requirement of the CD), 41.g (criminal liability), or 42 (General Reservations with Respect to the City), the “matters addressed” with respect to the SDs in this CD will no longer include those response costs or response actions that are within the scope of the exercised reservation.

56. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action, and the complaint filed by the United States in Case No. 4-95-cv-10289, are each a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendants have, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

57. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which the City has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(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” with respect to the City in this Consent Decree. The “matters addressed” with respect to the City in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination, the Work, and Future Response Costs by the United States or by any other person, except the State; provided, however, that if the United States exercises rights under the reservations in Paragraph 42, other than in ¶¶ 42.a (claims for failure to meet a requirement of the CD), 42.b (criminal liability), or 42.c (violations of law during or after implementation of the Work), the “matters addressed” with respect to the City in this CD will no longer include those response costs or response actions that are within the scope of the exercised reservation. .

58. The parties further agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which the City has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

59. Each Settling Defendant and the City shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant and the City also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant and the City shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.



60. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Sites, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section XI.

## **XVI. PROPERTY REQUIREMENTS FOR OWNER SETTLING DEFENDANT**

61. **Agreements Regarding Access and Non-Interference.** Owner Settling Defendant shall, with respect to its Affected Property, until it completes the transfer of its Affected Property to the City as required by Section VI (Transfer of Dico Property):

a. Provide the United States, potentially responsible parties and/or the City, and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Des Moines TCE Site including the following activities:

- (1) Verifying any data or information submitted to the United States;
- (2) Conducting investigations regarding contamination at or near the Des Moines TCE Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner Settling Defendant or its agents, consistent with Section XVII (Access to Information);
- (6) Assessing Owner Settling Defendant compliance with the Consent Decree;
- (7) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Des Moines TCE Site.

c. Continue to carry out its obligations required by 1) Unilateral Administrative Order for Remedial Action, Docket No. 86-F0011 (July 21, 1986); 2) Unilateral Administrative Order for Removal Action, Docket No. VII-94-F-0017 (March 4, 1994); and 3) Unilateral Administrative Order for Removal Action, Docket No. VII-94-F-0009 (June 4, 1994).

62. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in addition to those already in place in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Owner Settling Defendant shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls. EPA shall notify the City shall prior to the application of any institutional controls developed pursuant to this Paragraph 62.

63. Notwithstanding any provision of the Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## **XVII. ACCESS TO SETTLING DEFENDANT INFORMATION**

64. Settling Defendants shall provide to EPA and/or the City, 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 "SD Records") within their possession or control or that of their contractors or agents (to the extent Settling Defendants have a right to obtain such records) relating to activities at the Sites or to the implementation of this Consent Decree, 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 Sites.

### **65. Privileged and Protected Claims**

a. Settling Defendants may assert that all or part of a SD Record is privileged or protected as provided under federal law, provided they comply with Paragraph 65.b, and except as provided in Paragraph 65.c.

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

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

(1) any data regarding the Sites, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other SD Record that evidences conditions at or around the Sites; or

(2) the portion of any SD Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

66. **Business Confidential Claims.** Settling Defendants may assert that all or part of a SD Record submitted to Plaintiff under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendants shall segregate and clearly identify all SD Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. SD Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies SD Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the SD 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 SD Records without further notice to Settling Defendants.

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

## XVIII. NOTICES AND SUBMISSIONS

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

**As to DOJ by email:** eescdcopy.enrd@usdoj.gov  
Re: DJ# 90-11-3-09925

**As to DOJ by mail:** EES Case Management Unit  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-09925

**As to EPA:** Kristen Nazar  
Office of Regional Counsel  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219

**At to EPA Cincinnati Finance Center:** EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268  
cinwd\_acctsreceivable@epa.gov

**As to Settling Defendants:** Michael G. Troyanovich  
Titan International, Inc.  
Corporate Secretary/General Counsel  
2701 Spruce Street  
Quincy, IL 62301

Stephen Locher  
Belin McCormick  
Attorneys at Law  
666 Walnut Street, Suite 2000  
Des Moines, Iowa 50309-3989  
shlocher@belinmccormick.com

**As to the City:** City Manager  
Office of the City Manager  
City Hall  
400 Robert D. Ray Dr.  
Des Moines, IA 50309

City Attorney  
Legal Department  
City Hall  
400 Robert D. Ray Dr.  
Des Moines, IA 50309

## **XIX. MODIFICATION**

69. Except as provided in ¶¶ 15 (Modification of SOW or Related Deliverables) and 70, material modifications to this CD, including the SOW, shall be in writing, signed by the United States and the Parties, and shall be effective upon approval by the Court. Except as provided in ¶ 15, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and the Parties. 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).

70. Any modification that does not affect the obligations of or the protections afforded to Settling Defendants may be executed without the signatures of Settling Defendants. Any modification that does not affect the obligations of or the protections afforded to the City may be executed without the signature of the City.

71. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

## **XX. RETENTION OF JURISDICTION**

72. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **XXI. INTEGRATION/APPENDICES**

73. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

- a. "Appendix A" – Maps of Sites
- b. "Appendix B" – Legal description of the Dico Property
- c. "Appendix C" – Form of Environmental Covenant
- d. "Appendix D" – Statement of Work (SOW)
- e. "Appendix E" – Draft Action Memorandum (OU4 – South Pond Area)
- f. "Appendix F" – Draft Action Memorandum (OU2 – Buildings 1-3)
- g. "Appendix G" – June 2020 Remedial System Optimization Memorandum

## **XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

74. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

75. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

### **XXIII. SIGNATORIES/SERVICE**

76. Each undersigned representative of a Settling Defendant, the City, and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

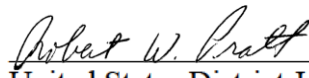
77. Each Settling Defendant and the City agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants and the City in writing that it no longer supports entry of the Consent Decree.

78. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

### **XXIV. FINAL JUDGMENT**

79. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants and the City. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

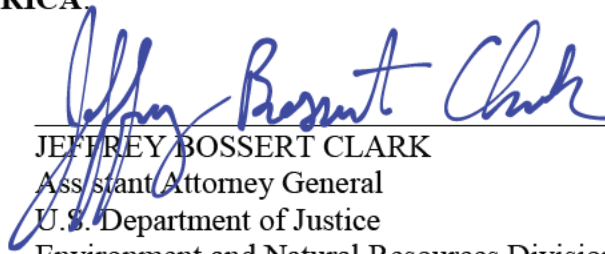
SO ORDERED THIS 1ST DAY OF FEBRUARY, 2021.


  
United States District Judge

Signature Page for Consent Decree Regarding Des Moines TCE Superfund Site and  
Southern Iowa Mechanical Site

**FOR THE UNITED STATES OF AMERICA:**

9/1/20  
Dated

  
\_\_\_\_\_  
JEFFREY BOSSERT CLARK  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division  
Washington, D.C. 0530

  
\_\_\_\_\_  
Eric D. Albert  
Trial Attorney  
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 Consent Decree Regarding Des Moines TCE Superfund Site and  
Southern Iowa Mechanical Site

**JAMES  
GULLIFORD**

Digitally signed by JAMES  
GULLIFORD  
Date: 2020.09.01  
14:59:33 -05'00'

---

James B. Gulliford  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

**LESLIE  
HUMPHREY**

Digitally signed by  
LESLIE HUMPHREY  
Date: 2020.08.27  
13:41:28 -05'00'

---

Leslie Humphrey  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
111201 Renner Boulevard  
Lenexa, Kansas 66219



Signature Page for Consent Decree Regarding Des Moines TCE Superfund Site and Southern  
Iowa Mechanical Site

**FOR DICO, INC:**

August 27, 2020

Dated



Name (print): Paul G. Reitz

Title: President

Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:	Michael G. Troyanovich
Title:	General Counsel and Corporate Secretary
Address:	1525 Kautz Road, Suite 600, West Chicago, IL 60185
Phone:	(217) 221-4389
email:	<u>mike.troyanovich@titan-intl.com</u>

Signature Page for Consent Decree Regarding Des Moines TCE Superfund Site and Southern  
Iowa Mechanical Site

**FOR TITAN TIRE CORPORATION:**

August 27, 2020

Dated



Name (print): Paul G. Reitz

Title: President & CEO

Address:

**Agent Authorized to Accept Service on Behalf of Above-signed Party:**

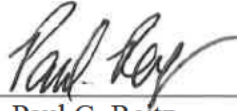
Name: Michael G. Troyanovich  
Title: General Counsel and Corporate Secretary  
Address: 1525 Kautz Road, Ste 600, West Chicago, IL 60185  
Phone: (217) 221-4389  
email: mike.troyanovich@titan-intl.com

Signature Page for Consent Decree Regarding Des Moines TCE Superfund Site and Southern  
Iowa Mechanical Site

**FOR TITAN INTERNATIONAL, INC.:**

August 27, 2020

Dated



Name (print): Paul G. Reitz

Title: President & CEO

Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Michael G. Troyanovich

Title: General Counsel and Corporate Secretary

Address: 1525 Kautz Road, Ste 600, West Chicago, IL 60185

Phone: (217) 221-4389

email: [mike.troyanovich@titan-intl.com](mailto:mike.troyanovich@titan-intl.com)

Signature Page for Consent Decree Regarding Des Moines TCE Superfund Site and Southern  
Iowa Mechanical Site

**FOR THE CITY OF DES MOINES, IOWA:**

September 14, 2020

Dated



Name (print): T.M. Franklin Cownie

Title: Mayor

Address: 400 Robert D. Ray Drive, Des Moines, Ia.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Kay Cmelik

Title: City Clerk

Address: 400 Robert D. Ray Drive  
Des Moines, Ia.

Phone: (515) 237-1338

email: pkcmelik@dmgov.org