UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF THE GOWANUS CANAL SUPERFUND SITE	:	
The Brooklyn Union Gas Co. d/b/a National Grid NY,	:	Index No. CERCLA-02-2018-2003
Respondent,	:	
Proceeding under Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606 and 9622.	:	

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

538014

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order and Settlement Agreement ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and The Brooklyn Union Gas Co. d/b/a National Grid NY ("Respondent"). This Settlement Agreement is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606, 9607, and 9622, which authority was delegated to the Administrator of EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926 (1987). This authority was further delegated to the Regional Administrators of EPA on September 13, 1987 by EPA Delegations 14-14-C and 14-14-D, and redelegated within Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated January 19, 2017.

2. This Settlement Agreement requires Respondent to perform various removal response actions in support of the remedy selected for the Gowanus Canal Superfund Site ("Site") in EPA's September 27, 2013 Record of Decision ("ROD"), attached hereto as Appendix A. This Settlement Agreement also provides for Respondent to coordinate and cooperate with actions to be undertaken by the City of New York ("City") pursuant to Administrative Settlement Agreement and Order for Remedial Design, Removal Action and Cost Recovery, Index Number CERCLA-02-2016-2003 (the "RH-034 Tank AOC"), issued by EPA on June 9, 2016, and attached hereto as Appendix B. The RH-034 Tank AOC requires the City to, among other things, complete the Remedial Design ("RD") for the RH-034 Tank, the larger of two Combined Sewer Overflow ("CSO") retention tanks selected as a component of the remedial action. The RH-034 Tank AOC also directs the City to acquire through purchase or eminent domain, two privately owned parcels located at 242 Nevins Street and 234 Butler Street (hereinafter, the "Canal-side Property") for the purpose of siting the RH-034 Tank on those parcels, and 270 Nevins Street for purposes of staging (hereinafter, the "Staging Area Property"), subject to certain conditions. In the event that the City fails to timely acquire the Canal-side Property, as provided by the RH-034 Tank AOC, paragraph 44.a., the RH-034 Tank will be sited on the City-owned Thomas Greene Park property (hereinafter, "Park Property"). The Canal-side Property and Park Property are among eight state-designated parcels which are part of the "Former Fulton Manufactured Gas Plant ("MGP") State Superfund Site" or "Fulton MGP Site," a former Brooklyn Union Gas Co. facility. The Fulton MGP Site is located between the Gowanus Canal and Third Avenue and Douglass and President Streets and consists of former MGP parcels and non-MGP parcels for which the New York State Department of Environmental Conservation ("NYSDEC") issued a Record of Decision under state law on July 31, 2015 (the "Fulton ROD"), which is an appendix to the RH-034 Tank AOC attached hereto as Appendix B. On May 11, 2017, EPA issued an administrative order, Index Number CERCLA-02-2017-2007 (the "Fulton Wall Design UAO"), to Respondent requiring the design of a bulkhead barrier wall (the "Fulton Wall") on the eastern shore of the Canal from the head end of the Canal to the Union Street bridge. The response actions to be performed by Respondent under this Settlement Agreement are more fully described in Paragraph 44 but generally include: 1) the construction of the Fulton Wall; 2) removal of Targeted MGP-Related Source Material (as defined in Paragraph 8.s.,

below) at a) the Canal-side Property outside the footprint of the RH-034 Tank, following and contingent upon the City's acquisition of the Canal-side Property and demolition of structures thereon, b) at the Park Property if the RH-034 Tank is sited at the Canal-side Property, and c) if EPA selects the Park Property for the location of the RH-034 Tank, at the Park Property outside the footprint of the tank as EPA determines is necessary; and 3) in coordination and cooperation with the City, a) development of the plans for and provision of a temporary swimming pool or pools; and, b) if the City acquires the Canal-side Property, development of plans for and permanent replacement of the pool and impacted park areas of the Park Property. If EPA selects the Park Property for the location of the RH-034 Tank, the development of plans for and permanent replacement of the pool and impacted park areas will be performed pursuant to a future administrative order or consent decree as part of the implementation of the remedial action for the ROD, and it is anticipated that the cleanup of the Canal-side Property will be conducted under NYSDEC jurisdiction rather than as a response action overseen by EPA. Finally, this Settlement Agreement requires Respondent to pay certain EPA response costs associated with the Work and this Settlement Agreement. This Settlement Agreement and the RH-034 Tank AOC do not include cleanup of the Staging Area Property, which it is anticipated will be conducted under NYSDEC jurisdiction rather than as a response action overseen by EPA.

3. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent agrees to undertake all actions required by the terms and conditions of this Settlement Agreement, and also agrees not to contest the validity or terms of this Settlement Agreement in any action to enforce its provisions.

4. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. §9622(j)(1), EPA notified federal natural resource trustees in September 2013 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement Agreement.

5. EPA has notified the New York State Department of Environmental Conservation ("NYSDEC") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

6. This Settlement Agreement shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. The signatories to this Settlement Agreement certify that they are authorized to execute and legally bind the parties they represent.

7. Respondent shall provide a copy of this Settlement Agreement to all contractors, subcontractors, laboratories, and consultants that are retained to conduct any Work performed under this Settlement Agreement, within fourteen (14) days after the Effective Date of this Settlement Agreement or after the date of such retention. Respondent shall condition any such contracts upon satisfactory compliance with this Settlement Agreement. Notwithstanding the

terms of any contract, Respondent is responsible for compliance with this Settlement Agreement and for ensuring that its employees, contractors, consultants, subcontractors and agents comply with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto, or incorporated by reference into this Settlement Agreement, the following definitions shall apply:

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

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

c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XXXI (Effective Date and Subsequent Modification).

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Former Fulton Manufactured Gas Plant State Superfund Site" or "Fulton MGP Site" shall mean the eight state-designated parcels of the former Brooklyn Union Gas Co. facility located between the Gowanus Canal and Third Avenue and Douglass and President Streets, consisting of former MGP parcels and non-MGP parcels, for which the New York State Department of Environmental Conservation ("NYSDEC") issued a Record of Decision under state law on July 31, 2015 (the "Fulton ROD"), which is an appendix to the RH-034 Tank AOC attached hereto as Appendix B. The parcels addressed by the Fulton ROD are: Parcel I (270 Nevins Street), Parcel II (Thomas Greene Park), Parcel III (537 Sackett Street); Parcel IV (560 Degraw Street), Parcel VI (242 Nevins Street), and Parcel VII (234 Butler Street), as well as a utility corridor within Nevins and Degraw Streets.

f. "Hazardous Substances" shall mean any substance (or mixture containing any hazardous substance) that falls within the definition of a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S. C. § 9601(14).

g. "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 CERCLA § 107(a), 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.

h. "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, and codified at 40 C.F.R. Part 300, including any amendments thereto.

i. "NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" means EPA and Respondent.

l. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 27, 2013 by the Director of the Emergency Remedial Response Division, EPA Region 2, including all attachments thereto, attached as Appendix A.

m. "Respondent" shall mean The Brooklyn Union Gas Co. d/b/a National Grid NY.

n. "Response Costs" shall mean all costs from December 1, 2016, including, but not limited to, direct and indirect costs, that the United States pays in the negotiation of this Settlement Agreement, in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraphs 64 (costs and attorneys' fees and any monies paid to obtain property or secure access, including the amount of just compensation), and Paragraph 105 (Work Takeover).

o. "Section" shall mean a portion of this Settlement Agreement identified by an upper-case Roman numeral and includes one or more Paragraphs.

p. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

q. "Site" shall mean the Gowanus Canal Superfund Site, an approximately 100-foot wide, 1.8-mile-long canal located in the New York City borough of Brooklyn, Kings County, New York; such areas of Parcels I, VI and VII of the Fulton MGP Site and of 525 Union Street as are necessary to install structural supports for the Fulton Wall; Parcel II of the Fulton MGP Site; Parcels I, VI and VII of the Fulton MGP Site contingent on the City's acquisition of such parcels pursuant to the RH-034 Tank AOC; and any areas which are sources of contamination to the Canal, where contamination has migrated from the Canal, and/or suitable areas in very close proximity to the contamination which are necessary for implementation of the Work.

r. "State" shall mean the State of New York.

s. "Targeted MGP-Related Source Material" shall mean, for purposes of this Settlement Agreement only, soil or urban fill containing contamination derived from the MGP process or operations that: (1) contains (a) visually-identifiable non-aqueous phase liquid ("NAPL") which is also (i) present in sufficient quantity to visibly surround individual soil particles, (ii) can be released as a liquid upon opening of the sampling device, or (iii) can be observed in visibly saturated soil; or, (b) total PAHs over 500 parts per million based on sampling analysis; (2) is not solely contaminated by petroleum products unrelated to MGP operations; and (3) is present at elevations above -18 feet North American Vertical Datum of 1988 ("NAVD88") in such thickness or quantities that may potentially migrate, thereby presenting a potential source of recontamination to the areas of the Canal subject to the remedy selected in the September 2013 Record of Decision for the Site.

t. "United States" shall mean the United States of America.

u. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6903(27).

v. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XV (Records Retention). Such activities shall include any payments Respondent makes to the City in accordance with Paragraphs 44.h., i. and j.

IV. EPA'S FINDINGS OF FACT

9. The Gowanus Canal ("Canal") is a brackish, tidal arm of the New York–New Jersey Harbor Estuary, extending for approximately 1.8 miles through Brooklyn, New York. The

approximately 100–foot–wide canal runs southwest from Butler Street to Gowanus Bay and Upper New York Bay. The adjacent waterfront is primarily commercial and industrial, currently including concrete plants, warehouses, and parking lots, and the Site is near several residential neighborhoods.

10. The Canal was constructed by bulkheading and dredging a tidal creek and wetland. After its completion in the 1860s, the Canal quickly became one of the nation's busiest industrial waterways, home to heavy industry including gas works (*i.e.*, manufactured gas plants), coal yards, cement makers, soap makers, tanneries, paint and ink factories, machine shops, chemical plants and oil refineries.

11. Hazardous substances, pollutants and contaminants have entered the Canal via several transport pathways or mechanisms, including spillage during product shipping and handling, direct disposal or discharge, contaminated groundwater discharge, surface water runoff, storm water discharge (including combined sewer overflow) and contaminated soil erosion. As a result of decades of direct and indirect discharges of hazardous substances generated by industrial and other activity, the Canal became a repository for untreated industrial wastes, raw sewage, and runoff, causing it to become one of New York's most polluted waterways.

12. Much of the heavy industrial activity along the Canal has ceased, although many upland areas adjacent to the Canal remained zoned as manufacturing districts. Land uses along and near certain portions of the Canal are in the process of transitioning from heavy industrial to light industrial, commercial, and residential uses. The Canal is currently used by some for recreational purposes such as boating, diving, and catching fish for consumption. The Canal and New York City harbor are subject to New York State fishing advisories.

13. The Site was placed on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on March 2, 2010.

14. In April 2010, EPA entered into administrative consent orders with the City and Respondent to perform work in support of EPA's remedial investigation/feasibility study ("RI/FS"). An RI report was completed in January 2011 and an FS report was completed in December 2011. An FS addendum report was completed in December 2012.

15. Sampling results from the RI/FS documented the presence of hazardous substances in groundwater, soil, and Canal sediments at the Site. These include polycyclic aromatic hydrocarbons ("PAHs"), polychlorinated biphenyls ("PCBs"), pesticides (such as methoxychlor and DDT), metals (such as barium, cadmium, copper, lead, mercury, nickel and silver), as well as volatile organic compounds (such as benzene, toluene, ethylbenzene and xylene). The contamination extends the entire length of the Canal.

16. Based on the results of the RI/FS, chemical contamination in the Canal sediments present an unacceptable ecological and human health risk, primarily due to exposure to PAHs, PCBs, and metals (barium, cadmium, copper, lead, mercury, nickel and silver).

17. On September 27, 2013, EPA issued a ROD for the Site that selected the following response actions: 1) Dredging of the entire column of hazardous substance-contaminated sediments which have accumulated above the native sediments in the upper and mid-reaches of the Canal (referred to as "soft sediments"); 2) in-situ stabilization ("ISS") of those native sediments in select areas in the upper and mid-reaches of the canal contaminated with high levels of nonaqueous phase liquid ("NAPL"); 3) construction of a multilayered cap in the upper and mid-reaches of the Canal to isolate and prevent the migration of PAHs and residual NAPL from native sediments; 4) dredging of the entire soft sediment column in the lower reach of the Canal; 5) construction of a multilayer cap to isolate and prevent the migration of PAHs from native sediments in the lower reach of the Canal; 6) off-Site treatment of the NAPL-impacted sediments dredged from the upper and mid-reaches of the Canal with thermal desorption, followed by beneficial reuse off-Site (*e.g.,* landfill daily cover) if possible; 7) off-Site stabilization of the less contaminated sediments dredged from the lower reach of the Canal and the sediments in the other reaches not impacted by NAPL, followed by beneficial reuse off-Site; 8) excavation and restoration of approximately 475 feet of the filled-in former 1st Street turning basin; 9) excavation and restoration of the portion of the 5th Street turning basin beginning underneath the 3rd Avenue bridge and extending approximately 25 feet to the east and the installation of a barrier or interception system at the eastern boundary of the excavation; 10) implementation of institutional controls incorporating the existing fish consumption advisories (modified, as needed), as well as other controls to protect the integrity of the cap; 11) periodic maintenance of the cap and long-term monitoring to insure that the remedy continues to function effectively; and 12) CSO controls to significantly reduce overall contaminated solid discharges to the Canal, which include a) construction of retention tanks to retain discharges from outfalls RH-034 and OH-007; and b) implementation of appropriate engineering controls to ensure that hazardous substances and solids from separated stormwater, including from future upland development projects, are not discharged to the Canal.

18. On March 21, 2014, EPA issued an administrative order for RD, Index Number CERCLA-02-2014-2001 (the "Dredging RD UAO") to Respondent and 30 other parties requiring the performance of the RD, including various pre-RD investigations and analyses, to produce a set of biddable plans and specifications for the implementation of the remedy selected in EPA's September 27, 2013 ROD for the Gowanus Canal Superfund Site, other than the CSO controls and the cleanup and restoration of the former 1st Street turning basin. The work required by the Dredging RD UAO is currently being conducted.

19. On May 28, 2014, EPA issued an administrative order for RD, Index Number CERCLA-02-2014-2019 (the "City RD UAO"), to the City requiring the RD of the CSO controls and of the cleanup and restoration of the former 1st Street turning basin, as well as the City's coordination and participation in the Dredging RD UAO.

20. The Fulton MGP operated from approximately 1879 until 1929. The operation of the Fulton MGP led to contamination of subsurface soil and groundwater by coal tar, a byproduct of the gas manufacturing process. The Fulton MGP Site contains CERCLA hazardous substances, including but not limited to, PAHs, benzene, toluene, ethylbenzene and xylenes. The specific

parcels relevant to this Settlement Agreement with either former MGP operations and structures located at the parcels or MGP-related contamination include:

a. Parcel I: formerly contained Fulton MGP production facilities including an oil/naphtha collection tank, generator/retort house, condenser/blower house, coal shed, engine house, gasoline house and generators.

b. Parcel II (the Park Property): formerly contained Fulton MGP production facilities including 3 oil tanks, one relief holder/hydrogen tank and six gas oil/naphtha tanks. During World War I a United States government toluol plant was located on the northern part of the parcel. Parcel II is among the most significant source areas of the Fulton MGP Site, with MGP-related contamination present from just below the concrete-covered park surface to depths of more than 100 feet.

c. Parcel VI (comprising a portion of the Canal-side Property): was not part of the Fulton MGP; portions of this parcel are impacted by the migration of contamination from other Fulton MGP parcels towards the Canal.

d. Parcel VII (comprising the remainder of the Canal-side Property): was not part of the Fulton MGP; was formerly owned by the City; portions of this parcel are impacted by the migration of contamination from other Fulton MGP parcels towards the Canal.

21. Environmental impacts have been documented at Parcels VI and VII from Non-MGP-related owners/operators. Parcels VI and VII have been used for truck repairs and vehicle storage. Parcel VI is the location of a documented 2005 petroleum release. Parcel VII soils have been found to have non-MGP-related volatile organic compound, semi-volatile organic compound and metals impacts, and the groundwater there has been found to contain pesticides.

22. On July 31, 2015, NYSDEC issued the Fulton ROD for OU-1 under state law requiring, among other things, the construction of a bulkhead barrier wall along the westerly side of Parcels I, VI and VII, the installation of coal tar extraction wells, the removal of MGP-related contamination within a utility corridor along Nevins and Degraw Streets, and the excavation or stabilization of MGP-related contamination on Parcels I, II, III, IV, VI, and VII at such time as each of these parcels are accessible for remediation work. Pursuant to an NYSDEC multi-site MGP cleanup order, Respondent is required to implement the cleanup set forth in the Fulton ROD.

23. On June 9, 2016, EPA entered into an Administrative Settlement Agreement and Order for Remedial Design, Removal Action and Cost Recovery, Index Number CERCLA-02-2016-2003 (the "RH-034 Tank AOC"). The RH-034 Tank AOC requires the City to, among other things, complete the RD for the RH-034 Tank and directs the City to acquire through purchase or eminent domain, the Canal-side Property for the purpose of siting the RH-034 Tank on those parcels, and the Staging Area Property, subject to certain conditions. In the event that the City fails to timely acquire the Canal-side Property, as provided by the RH-034 Tank AOC, paragraph

44.a., the RH-034 Tank will be sited on the Park Property. If EPA selects the Park Property for the location of the RH-034 Tank, the development of plans for and permanent replacement of the park will be performed pursuant to a future administrative order or consent decree as part of the remedial action, and it is anticipated that the cleanup of the Canal-side Property will be conducted under NYSDEC jurisdiction rather than as a response action overseen by EPA.

24. On May 11, 2017, EPA issued an administrative order, Index Number CERCLA-02-2017-2007 (the "Fulton Wall Design UAO"), to Respondent requiring the design of a bulkhead barrier wall (the "Fulton Wall") on the east bank of the Canal between the head end of the Canal and the Union Street bridge. A primary purpose of the Fulton Wall Design UAO is to insure proper coordination between interrelated components of the Dredging RD UAO and the RH-034 Tank AOC.

25. Timely control of major ongoing sources of contamination is among the major elements of the ROD for the Site. The Fulton ROD categorizes source control at the affected Fulton MGP Site parcels as either near-term or future remedial actions. EPA has determined that a timely removal action must be implemented at the Park Property (Parcel II) in coordination with the implementation of the Remedial Action for the Site, regardless of the final location of the RH-034 Tank, in order to provide additional near-term source control. EPA has determined that a timely removal action needs to be performed at the Canal-side Property (Parcels VI and VII), contingent upon the City's acquisition of the Canal-side Property pursuant to the RH-034 Tank AOC. EPA has also determined that a timely removal action is necessary to construct the Fulton Wall.

V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

26. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. The contamination found at the Site, as identified in the Findings of Fact above, includes hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

28. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). Such releases include, but are not limited to, PAHs, PCBs, pesticides, metals, and volatile organic compounds that were discharged into the soil, groundwater and sediments at the Site.

29. The actions required by this Settlement Agreement qualify as a removal action under the NCP criteria for a removal action in 40 CFR Section 300.415, for reasons including, but not limited to, "actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants".

30. Respondent is a corporation chartered by the State of New York and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

31. Respondent is a responsible party with respect to the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

32. Respondent has discussed with EPA the basis for this Settlement Agreement and its terms.

VI. ORDER

33. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record for the Work required herein, EPA has determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby ordered and agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATED EPA PROJECT MANAGER AND RESPONDENT'S PROJECT COORDINATOR

34. Respondent's approved Project Coordinator is:

James J. Clark
Senior Principal
GZA GeoEnvironmental, Inc.
655 Winding Brook Dr., Ste. 402
Glastonbury, CT 06033
Mobile: (860) 250-6344
Office: (860) 858-3134
james.clark@gza.com

The Project Coordinator shall be responsible, on behalf of Respondent, for implementation of this Settlement Agreement. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

35. In the event that Respondent changes its Project Coordinator, Respondent shall submit the name, address, qualifications, and telephone number of the new Project Coordinator to the EPA Remedial Project Manager ("RPM") specified in Paragraph 42, below. The new Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Settlement Agreement.

36. Selection of a new Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondent shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within seven (7) days following EPA's disapproval. Respondent may change its Project Coordinator provided that EPA has received written notice at least ten (10) days prior to the desired change. The initial notification may be made orally, but shall be promptly followed by a written notice. All changes of the Project Coordinator shall be subject to EPA approval.

37. EPA correspondence related to this Settlement Agreement will be sent to the Project Coordinator. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondent for all matters relating to the Work under this Settlement Agreement and shall be effective upon receipt. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days. Respondent shall retain a Project Coordinator at all times until EPA issues a Notice of Completion of the Work in accordance with Paragraph 130.

38. Respondent has retained GZA GeoEnvironmental, Inc. as its Supervising Contractor to perform the Work. Respondent shall notify EPA of the name and qualifications of any change to the Supervising Contractor as well as any other contractor or subcontractor proposed to perform Work under this Settlement Agreement, at least ten (10) days prior to commencement of such Work by such entity.

39. All activities required of Respondent under the terms of this Settlement Agreement shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, State, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards. All plans and specifications shall be prepared under the supervision of, and signed/certified by, a licensed New York professional engineer.

40. EPA retains the right to disapprove any or all of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves in writing any of Respondent's proposed contractors, Respondent shall propose a different contractor within seven (7) days of receipt of EPA's disapproval.

41. Respondent shall provide a copy of this Settlement Agreement to each contractor and subcontractor approved and retained to perform the Work required by this Settlement Agreement. Respondent shall include in all contracts or subcontracts entered into for Work required under this Settlement Agreement provisions stating that such contractors or subcontractors, including its agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Settlement Agreement and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

42. EPA has designated Christos Tsiamis of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region 2, as its RPM. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the RPM via e-mail at tsiamis.christos@epa.gov and by regular mail, at U.S. EPA, Region 2, 290 Broadway, 20th Floor, New York, NY 10007.

43. EPA's RPM shall have the authority lawfully vested in an RPM by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt any Work required by this Settlement Agreement and to take any necessary response action when the RPM determines that conditions at the Site may present an immediate endangerment to public health, welfare, or the environment. The absence of the RPM from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

44. Within the time frames set forth in the Work Schedule attached hereto as Appendix C, or as otherwise specified in EPA-approved plans and schedules, Respondent shall perform all actions necessary to complete the Work set forth below:

Parcels VI and VII (Canal-side Property)

a. Complete a Preliminary Design Investigation ("PDI") to further delineate the extent of Targeted MGP-Related Source Material at Parcels VI and VII for areas where access is possible prior to demolition of structures on these parcels;

b. Design a response action at Parcels VI and VII, consistent with the Fulton MGP Site ROD, to address Targeted MGP-Related Source Material outside the footprint of the RH-034 Tank and any associated conduit areas, utilizing response methods which may include, but are not limited to, excavation or in-situ stabilization. In addition, the design shall include any temporary groundwater treatment and/or management system for such work outside the footprint of the RH-034 Tank; all necessary sheet piling or other support of excavation; any temporary fabric structure(s) that may be required; and a community air monitoring program to monitor Fulton MGP-related contaminant emissions. The lateral and vertical extent of the response action will be determined during the design process based upon the PDI results and the EPA-approved footprint for the RH-034 Tank. For areas of Parcels VI and VII that are not accessible prior to demolition by the City pursuant to the RH-034 Tank AOC, the design shall provide specifications for post-demolition sampling to delineate such remaining areas, which shall be addressed utilizing the selected response method as part of the response action implementation in Paragraph 44.c.;

c. Following the City's acquisition of Parcels VI and VII and the City's demolition of structures thereon, conduct the response action in accordance with the design prepared pursuant to Paragraph 44.b. and approved by EPA. Such performance shall not be required if

EPA notifies Respondent that EPA has determined that conditions set forth in the RH-034 Tank AOC for construction of the RH-034 Tank on the Canal-side Property have not been met, and that EPA has directed the City to construct the RH-034 Tank at the Park Property. In the event of such notification, it is anticipated that the response action at Parcels VI and VII shall be conducted under the jurisdiction and oversight of NYSDEC. Nonetheless, Respondent agrees to address, at a minimum, the Targeted MGP-Related Source Material as part of any response action conducted by Respondent at Fulton MGP Parcels I, VI and VII under NYSDEC jurisdiction;

d. Cooperate and coordinate with the City's design and performance of a response action at Parcels VI and VII with respect to the City's excavation and disposal of Targeted MGP-Related Source Material within the footprint of the RH-034 Tank to ensure that any actions taken by Respondent or the City do not compromise the structural integrity of the tank construction or the Fulton Wall; such cooperation shall include implementation by Respondent of a community air monitoring program to monitor Fulton MGP contaminant-related emissions and coordination on other aspects, as necessary, of the City's design and construction of the RH-034 Tank;

Parcel II (The Park Property)

e. Commence a design for a response action at the Park Property, which design shall be completed pursuant to an EPA-approved schedule after the City's acquisition of the Canal-side Property, and which shall address Targeted MGP-Related Source Material utilizing response activities which may include, but are not limited to, excavation or in-situ stabilization, followed by backfill of any area excavated by Respondent, together with the design of any temporary groundwater treatment and/or management system for such work; all necessary sheet piling or other support of excavation; any temporary fabric structure(s) that may be required; and a community air monitoring program to monitor Fulton MGP contaminant-related emissions;

f. In the event that EPA notifies Respondent that EPA has determined the conditions set forth in the RH-034 Tank AOC for construction of the RH-034 Tank on the Canal-side Property have not been met, that EPA has directed the City to construct the RH-034 Tank at the Park Property, and that the footprint of the RH-034 Tank for the Park Property excludes a portion of the Park Property where Targeted MGP-Related Source Material is present, Respondent shall submit to EPA an engineering assessment for EPA's determination as to whether a response action is necessary for such portion of the Park Property. If EPA determines that a response action is necessary, Respondent shall submit to EPA a proposed schedule for submission of a design for a response action to address such Targeted MGP-Related Source Material outside the RH-034 Tank footprint utilizing response methods which may include, but are not limited to, excavation or in-situ stabilization;

g. Following EPA's final determination that the RH-034 Tank will be sited on the Canal-Side Property, or that the RH-034 Tank will be located at the Park Property and a response action is necessary for any areas outside the footprint of the RH-034 Tank, conduct the response

action at the Park Property in accordance with the corresponding design prepared pursuant to either Paragraph 44.e. or f. and approved by EPA;

h. Consistent with the cooperate and coordinate provisions in Paragraph 44.i. of the RH-034 Tank AOC, and without regard to the final location of the RH-034 Tank, site, design, and construct, following approval by the New York City Department of Parks and Recreation, a temporary seasonal swimming pool or pools. Respondent may negotiate an agreement with the City, at the City's and Respondent's discretion, in which Respondent pays, in lieu of performance, an agreed upon amount for some or all of such tasks to be conducted by the City or its contractors. Any agreement between Respondent and the City regarding the temporary pool(s) shall be subject to EPA approval under this Settlement Agreement and the RH-034 Tank AOC. Planning, location, leasing, construction, and the start of such temporary pool operations shall be done in a manner that ensures that there are no interruptions in swimming pool services when the Park Property is closed for the response action by the City and/or Respondent. Respondent shall not be required to acquire real property for the purpose of siting the temporary pool(s) or otherwise satisfying its obligations under this subparagraph. Respondent's obligation to provide the temporary pool(s) (including leasing property, if necessary) shall expire upon the earlier of (i) completion of the permanent restoration of the Park Property or (ii) following the sixth season of operation of the temporary pool(s), unless this Settlement Agreement and/or the RH-034 Tank Order are modified by EPA, Respondent and/or the City. For purposes of this Settlement Agreement and Paragraph 44.i. of the RH-034 Tank AOC, EPA shall consider the requirement to "coordinate and cooperate" to include the City's good faith efforts to identify City-owned and/or controlled property for siting the temporary pool(s), and the City's good faith response to Respondent's good faith efforts to obtain the City's review, comment and endorsement of the temporary pool design(s). Pursuant to Paragraph 44.i. of the RH-034 Tank AOC, operation of such temporary pool(s) will be performed by the New York City Department of Parks and Recreation;

i. Consistent with the cooperate and coordinate provisions of Paragraph 44.j. of the RH-034 Tank AOC, after the City's acquisition of the Canal-side Property, complete the design, with approval by the New York City Department of Parks and Recreation, for the replacement permanent park at the Park Property. Respondent's design obligation is limited to restoring the Park Property's pre-response action functions in kind, subject to applicable regulatory requirements. Respondent is not responsible for incremental design costs for upgrades to the Park Property. Respondent may negotiate an agreement with the City, at the City's and Respondent's discretion, in which Respondent pays, in lieu of performance, an agreed upon amount for the design to be conducted by the City or its contractors. Any agreement between Respondent and the City regarding the permanent park design shall be subject to EPA approval under this Settlement Agreement and the RH-034 Tank AOC. For purposes of this Settlement Agreement and the RH-034 Tank AOC, EPA shall consider the requirement to "coordinate and cooperate" to include the City's good faith response to Respondent's good-faith efforts to obtain the City's review, comment and endorsement of the permanent park design;

j. Consistent with the cooperate and coordinate provisions of Paragraph 44.j. of the RH-034 Tank AOC, following completion of the response action referred to in Paragraph 44.e. above, construct the replacement permanent park in accordance with the design prepared pursuant to Paragraph 44.i. and approved by EPA. Respondent is not responsible for incremental construction costs for upgrades to the Park Property. Respondent may negotiate an agreement with the City, at the City's and Respondent's discretion, in which Respondent pays, in lieu of performance, an agreed upon amount for such construction to be conducted by the City or its contractors. Any agreement between Respondent and the City regarding the permanent park construction shall be subject to EPA approval under this Settlement Agreement and the RH-034 Tank AOC;

k. Respondent may elect to satisfy its obligations under subparagraphs 44(i) and (j) of this Settlement Agreement by entering into a "design/build" contract with a qualified contractor for the design and construction of the replacement permanent park at the Park Property. In the event Respondent so elects, for purposes of this Settlement Agreement and the RH-034 Tank AOC, EPA shall consider the requirement to "coordinate and cooperate" to include the City's good faith response to Respondent's efforts to obtain the City's approval of a qualified contractor, and the City's review, comment and approval of the resulting design. To the extent the City determines that it desires upgrades to the Park Property beyond its pre-response action functions in kind, the City will be responsible for the selection, scoping and payment associated with such upgrades and such actions as are necessary to effect such upgrades, which may include but are not limited to entering into an agreement with Respondent, which agreement shall be subject to EPA approval under this Settlement Agreement and the RH-034 Tank AOC;

l. In the event that EPA determines pursuant to the RH-034 Tank AOC that the Canal-side Property is no longer an appropriate tank siting location and EPA changes the location of the RH-034 Tank from the Canal-side Property to the Park Property, Respondent shall cooperate and coordinate, as necessary, in the restoration of the Park Property, which restoration will occur after installation of the RH-034 Tank and will be performed pursuant to a future administrative order or judicial consent decree as part of the remedial action;

Fulton Wall

m. Construct the Fulton Wall along the east bank of the Gowanus Canal adjacent to Parcels I, VI, VII and 525 Union Street, extending to the Union Street bridge, consistent with the conceptual design approved by EPA on July 17, 2017, as modified by any superseding design documents approved by EPA pursuant to the Fulton Wall Design UAO**;**

n. Design, construct and operate any permanent groundwater management and/or treatment system, including but not limited to the implementation of passive or other measures, necessary to prevent or address property damage or flooding from projected or actual groundwater mounding which is caused by the Fulton Wall and/or any upland response actions on Parcels II, VI, or VII which Respondent is required to perform pursuant to this Settlement

Agreement. Baseline groundwater conditions will be assessed before and after response actions are implemented at Parcels II, VI and VII under this Settlement Agreement to determine whether any measures under this subparagraph are necessary. Pursuant to subparagraph 44.c. of the RH-034 Tank AOC, the City is responsible for designing any groundwater management system necessary for the long-term operation of the RH-034 Tank, the construction and operation of which, as necessary, is anticipated to be the subject of a future administrative order or consent decree;

All Parcels

o. Secure, through acquisition, lease or otherwise, access to any staging areas necessary to perform the Work.

p. Coordinate and cooperate with the City regarding any MGP-related technical issues which pertain to the design and construction of the RH-034 Tank or groundwater treatment and/or management.

Additional Work

q. Conduct such other investigations, studies, and response actions as Respondent or EPA may propose and upon which all agree to include under this Settlement Agreement.

45. Within 60 days of the Effective Date of this Settlement Agreement, Respondent shall prepare and submit to EPA for approval a list of all work plans and submissions necessary to carry out the Work described in Paragraph 44 above, together with a schedule for such work plans and submissions, unless otherwise listed in Appendix C of this Settlement Agreement.

46. Quality Assurance, Sampling, and Data Analysis. Respondent shall use QA/QC and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

Prior to the commencement of any monitoring project under this Settlement Agreement, Respondent shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the Removal Action Work Plan, the NCP, the Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans ("UFP-QAPP"), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer, and other guidance documents referenced in the aforementioned guidance documents as well as http://www2.epa.gov/fedfac/assuring-quality-federal-cleanups. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all

laboratories utilized by Respondent in implementing this Settlement Agreement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with "EPA QA Field Activities Procedure" (https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures). Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement Agreement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" (http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf) and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)," and any amendments made thereto during the course of the implementation of this Settlement Agreement. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (a) QA/QC criteria are contained in the method(s) and the method(s) are included in the QAPP, (b) the analytical method(s) are at least as stringent as the methods listed above, and (c) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ANSI/ASQC E-4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American National Standard, 2004, and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program, or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than seven days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement Agreement.

47. Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by this Settlement Agreement or any EPA-approved work plans or sampling and analysis plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

48. Respondent shall assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain-of-custody procedures.

49. Off-Site Shipments

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

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

50. Site Management Plan ("SMP"). Following completion of the response actions under this Settlement Agreement, and in accordance with EPA policy, the parcels subject to this Settlement agreement shall be referred to NYSDEC for any further response actions, including implementation of a SMP, consistent with the requirements of the Fulton ROD. Respondent shall submit copies of all SMP documentation to the parties listed in Paragraph 59.b.

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

51. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a written notice to Respondent, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondent at least one written notice of deficiency and an opportunity to cure within twenty one (21) days or other time frame as determined by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

52. In the event of written approval, approval upon conditions, or modification by EPA, pursuant to subparagraphs 51(a), (b) or (c) above, Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 51 and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

53. Respondent may submit a written request to EPA seeking modifications to the Work Schedule. EPA in its sole discretion will determine whether any modifications to the Work Schedule are warranted.

54. Resubmission of Plans.

a. Upon receipt of a written notice of disapproval pursuant to Paragraph 51, Respondent shall, within ten (10) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the ten (10) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 51 and 52.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 51, Respondent shall proceed, at the written direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

55. If EPA disapproves in writing a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA also retains

the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA.

56. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately. Stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

57. In the event that EPA takes over some of the tasks, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

58. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and become enforceable under this Settlement Agreement.

X. SUBMISSION OF PLANS AND REPORTING REQUIREMENTS

59. Reporting.

a. Beginning on the 30th day after the Effective Date, Respondent shall submit written monthly progress reports to EPA and the State concerning actions undertaken pursuant to this Settlement Agreement until termination of this Settlement Agreement, unless otherwise directed in writing by EPA. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, property access status, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems. In addition to the written monthly progress reports, Respondent shall provide, via email to EPA's Project Coordinator, at least one (1) week advance notice of all field activities, and weekly progress reports, or such other frequency as approved by EPA's Project Coordinator, while Respondents are conducting field activities.

b. Final Reports. Within 120 days after completion of the Work required by Paragraphs 44.c, 44.g., 44.j. and 44.m. of this Settlement Agreement, respectively, Respondent shall submit for EPA review and approval final reports summarizing the actions taken to implement those provisions of this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the

analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

c. Respondent shall submit copies of all plans, reports, or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan as set forth below. Any electronic submissions must be in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. Reports should be submitted to the following:

3 copies: (1 bound, 1 unbound, 1 electronic)	Remedial Project Manager - Gowanus Canal Site Emergency and Remedial Response Division U.S. Environmental Protection Agency, Region 2 290 Broadway, 20th Floor New York, New York 10007-1866 tsiamis.christos@epa.gov
1 copy: (via email or electronic)	Chief, New York/Caribbean Superfund Branch Office of Regional Counsel United States Environmental Protection Agency, Region 2 290 Broadway, 17th Floor New York, New York 10007-1866 Attn: Gowanus Canal Superfund Site Attorney carr.brian@epa.gov
1 copy each: (via email)	N.Y.S. Department of Environmental Conservation gardiner.cross@dec.ny.gov george.heitzman@dec.ny.gov patrick.foster@dec.ny.gov sally.dewes@dec.ny.gov aaron.fischer@dec.ny.gov gerard.burke@dec.ny.gov

d. Notices as to Respondent will be submitted to the following:

Theodore.Leissing@nationalgrid.com
John.T.Parkinson@nationalgrid.com
Bonnie.Barnett@dbr.com

XI. OVERSIGHT

60. During the implementation of the requirements of this Settlement Agreement, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent, including inspections at the Site and at laboratories where analytical work is being done hereunder.

61. Respondent and its employees, agents, contractor(s), and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Settlement Agreement.

XII. COMMUNITY RELATIONS

62. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings that may be held or sponsored by EPA to explain activities at or concerning the Property; and provide a suitable location for public meetings, as needed.

XIII. SITE ACCESS

63. If any portion of the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA and the State, and their representatives, including contractors, with access at all reasonable times to such property, including without limitation, any vessels, where Respondent are conducting any Work, for the purpose of conducting or overseeing any activity related to this Settlement Agreement. Respondent shall also provide the City with access to all such property which EPA determines is necessary for the purposes of carrying out response actions for the RH-034 Tank AOC and/or this Settlement Agreement.

64. Where any response action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use best efforts to obtain all necessary access within thirty (30) days after the Effective Date, or as otherwise specified in writing by EPA. Respondent shall immediately notify EPA if, after using best efforts, it is unable to obtain such access. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in detail in writing its efforts to obtain access. EPA may then assist Respondent in gaining

access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs).

65. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), and any other applicable statutes or regulations.

66. If Respondent cannot obtain access agreements through "best efforts" in a timely manner, EPA may obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate this Settlement Agreement. If EPA performs those tasks or activities with EPA contractors and does not terminate this Settlement Agreement, Respondent shall perform all other activities not requiring access and shall reimburse EPA for all costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XIV. ACCESS TO INFORMATION

67. Respondent shall provide to EPA upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, property acquisition, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

68. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondent that the documents or information 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 documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

69. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with

the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege asserted by Respondent. However, no documents, records or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

70. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at, or around, the Site.

XV. RECORD RETENTION

71. During the pendency of this Settlement Agreement and until ten (10) years after Respondent's receipt of EPA's notification that the Work has been completed, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any retention policy to the contrary. Until ten (10) years after notification that the Work has been completed, Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work.

72. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such documents, records, or other information and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: a) the title of the document, record, or other information; b) the date of the document, record, or other information; c) the name and title of the author of the document, record, or other information; d) the name and title of each addressee and recipient; e) a description of the subject of the document, record, or other information; and f) the privilege asserted by Respondent. However, no documents, records, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

73. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit

against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVI. COMPLIANCE WITH OTHER LAWS

74. Respondent shall undertake all action that this Settlement Agreement requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Settlement Agreement. The activities conducted pursuant to this Settlement Agreement, if approved by EPA, shall be considered consistent with the NCP.

75. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

76. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

77. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 732-906-6850 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

78. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 732-906-6850, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

79. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVIII. PAYMENT OF RESPONSE COSTS

80. Respondent hereby agrees to reimburse EPA for all Response Costs. EPA will periodically send billings to Respondent for Response Costs. EPA's billings will be accompanied by a printout of cost data in EPA's financial management system, as well as a brief narrative statement of the activities performed. Respondent shall, within thirty (30) days of receipt of each such billing, remit payment of the billed amount. Respondent's payment pursuant to this Paragraph shall be made by Electronic Funds Transfer ("EFT") to EPA. To effect payment via EFT, Respondent shall instruct its bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondent:

- Amount of payment
- Bank: **Federal Reserve Bank of New York**
- Account code for Federal Reserve Bank account receiving the payment: **68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- SWIFT Address: **FRNYUS33**
  33 Liberty Street
  New York, NY 10045
- Field Tag 4200 of the Fedwire message should read:
  D 68010727 Environmental Protection Agency
- Name of remitter:
- Settlement Agreement Index number: **CERCLA–02-2018-2003**
- Site/spill identifier: **02-ZP**

At the time of payment, Respondent shall send notice via regular mail that such payment has been made to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and via email to the following: cinwd_acctsreceivable@epa.gov; Henderson.Jessica@epa.gov; tsiamis.christos@epa.gov; and carr.brian@epa.gov.

Such notices shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Respondent's Project Coordinator's name and address.

81. All payments by Respondent pursuant to Paragraph 77 shall be deposited in the Gowanus Canal Superfund Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

82. Respondent may contest payment of any Response Costs billed under Paragraph 77 if it determines that EPA has made an accounting error, or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP or not within the definition of Response Costs. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA RPM. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, Respondent shall, within the thirty (30) day period, pay all uncontested Response Costs to EPA in the manner described in Paragraph 77. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the EPA RPM a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued Interest) to EPA in the manner described in Paragraph 77. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to EPA in the manner described in Paragraph 77. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for Response Costs.

83. Respondent shall pay Interest on any amounts overdue under Paragraphs 77 or 78. Such Interest shall begin to accrue on the first day that the respective payment is overdue and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XXI.

XVIX. DISPUTE RESOLUTION

84. Respondent shall not invoke dispute resolution under this Settlement Agreement or in any other forum for any dispute regarding this Settlement Agreement other than Payment of Response Costs (Section XVIII), Stipulated Penalties (Section XXI), final design submittals under Approval of Plans (Section IX), and EPA's determination that the Work has not been completed in accordance with this Settlement Agreement pursuant to Section XXXII, below. The dispute resolutions provisions of this Section are the exclusive mechanism for resolving such disputes arising under this Settlement Agreement and shall not apply to any dispute Respondent may have concerning the dispute resolution process. Respondent may not dispute any other requirements of this Settlement Agreement in any enforcement action or forum. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

85. Notwithstanding any other provision of this Settlement Agreement, Respondent may not invoke dispute resolution procedures more than once regarding the same issue.

86. If Respondent objects to any billings for Response Costs or demand for Stipulated Penalties, it shall notify EPA in writing of its objection(s) within twenty (20) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have twenty (20) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended only by EPA.

87. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Deputy Division Director level will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision.

XX. FORCE MAJEURE

88. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including, but not limited to, its contractors and subcontractors, that delays or

prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event: (a) as it is occurring; and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible.

89. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within two (2) days of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing: 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; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

90. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event 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* event 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* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XXI. STIPULATED PENALTIES

91. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 88 through 90 above (Force Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

a. For non-compliance with any requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 59.a., stipulated penalties shall accrue in the amount of $1,500 per day, per violation, for the first fourteen (14) days of noncompliance, $5,000 per day, per violation, for the 15th through 30th day of noncompliance, and $10,000 per day, per violation, for the 31st day of noncompliance and beyond.

b. For non-compliance with the requirement to submit progress reports in Paragraph 59.a., stipulated penalties shall accrue in the amount of $500 per day, per violation, for the first seven (7) days of noncompliance, $750 per day, per violation, for the 8th through 15th day of noncompliance, $1,000 per day, per violation, for the 16th through 25th day of noncompliance, and $2,000 per day, per violation, for the 26th day of noncompliance and beyond.

92. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that EPA has determined that EPA will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the payment procedures in Paragraph 77 above. Respondent shall pay Interest on any amounts overdue under this paragraph. Such Interest shall begin to accrue on the first day that payment is overdue.

93. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement Agreement.

94. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 105, Respondent shall be liable for a stipulated penalty in the amount of $5,000,000.

95. All penalties shall begin to accrue on the day after the complete performance is due, or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section IX (EPA Approval of Plans and Other Submissions) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; 2) with respect to a decision by the Deputy Division Director as provided in Section XIX (Dispute Resolution) Paragraph 87 of this Settlement Agreement, during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the Deputy Division Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

96. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties.

97. Respondent shall pay EPA all penalties accruing under this Section within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XIX (Dispute Resolution).

98. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

99. Penalties shall continue to accrue during any dispute resolution period but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

100. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest.

101. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXIII (Reservation of Rights by EPA), Paragraph 105. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XXII. COVENANT NOT TO SUE BY EPA

102. In consideration of the actions that Respondent will perform and the payments that Respondent will make under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Response Costs. This covenant not to sue shall take effect upon the Effective Date of this Settlement Agreement and is conditioned upon Respondent's complete and satisfactory performance of all obligations under this Settlement Agreement, including, but not limited to, the satisfactory performance of the Work and payment of Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXIII. RESERVATION OF RIGHTS BY EPA

103. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement Agreement, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

104. The covenant not to sue set forth in Section XXII above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Response Costs;

c. liability for performance of response actions other than the Work;

d. liability for failure to comply with the Fulton Wall RD UAO;

e. criminal liability;

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

g. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred, or to be incurred, by the U.S. Department of Justice on behalf of EPA or the Agency for Toxic Substances and Disease Registry, related to the Site.

105. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of any or all portion(s) of the Work as EPA determines necessary. Costs that EPA incurs in performing the Work pursuant to this Paragraph shall be considered Response Costs that Respondent shall

pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANT NOT TO SUE BY RESPONDENT

106. Respondent 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 the Work or Response Costs reimbursed under this Settlement Agreement, or this Settlement Agreement, 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 the Work or arising out of the response actions for which the Response Costs will be incurred, including any claim under the United States Constitution, the State 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 against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or Response Costs; provided however, this Settlement Agreement shall not have any effect on claims or causes of action that Respondent has or may have against the United States or any of its agencies or departments, other than EPA, as responsible parties relating to the Site.

107. Except as expressly provided in Section XXIV, Paragraphs 110, 112, and 113 (*De Micromis*, *De Minimis* and Municipal Solid Waste ("MSW") Generators/Transporters Waivers), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 104(b), (c), (f), (g) and (h), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

108. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code, 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 while acting within the scope of his 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, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions or the oversight or approval of Respondent's

plans or activities. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

109. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

110. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent 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, 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.

111. The waiver in Paragraph 110 shall not apply with respect to any defense, claim or cause of action that Respondent may have against any person meeting the above criteria, if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e) or Section 3007 of RCRA, 42 U.S.C. §6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

112. Respondent agrees 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, 42 U.S.C. §§9607(a) and 9613) that it may have for all matters relating to the Site, against any person that has entered into a final *de minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.

113. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

114. The waiver in Paragraph 113 above shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA determines that: (a) the MSW contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e) or Section 3007 of RCRA, 42 U.S. C. §6927, or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

XXV. OTHER CLAIMS

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

116. Except as expressly provided in Section XXIV, Paragraph(s) 110, 112, and 113 (*De Minimis,* De Micromis, and MSW Waivers)" and Section XXII (Covenant Not to Sue by EPA), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as provided in Paragraphs 110, 112, and 113, Respondent 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 which Respondent may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

117. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXVI. CONTRIBUTION PROTECTION

118. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent 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).

XXVII. INDEMNIFICATION

119. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including, but not limited to, attorneys' fees and other expenses of litigation and settlement, arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

121. Respondent waives all claims 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 Respondent and any person for performance of Work on, or relating to, the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from, or on account of, any contract, agreement, or arrangement between Respondent and any person for performance of Work on, or relating to, the Site.

XXVIII. INSURANCE

122. No later than fourteen days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXXII (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. In addition, for as long as such insurance is maintained under this Settlement Agreement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for as long as such insurance is maintained under this Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Gowanus Canal Superfund Site, Brooklyn, NY and the EPA docket number for this action. Respondent may, together with the submission of supporting documents, request EPA approval to self-insure in order to satisfy, in whole or in part, the requirements of this Paragraph.

XXIX. FINANCIAL ASSURANCE

123. Respondent shall demonstrate its ability to complete the Work required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the Effective Date of this Settlement Agreement one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; (4) a demonstration that Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) for $100,000,000.00, which is the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee, or (5) internal financial information to allow EPA to determine that Respondent has sufficient assets to perform the Work. If EPA determines that the financial assurances submitted by Respondent pursuant to this paragraph are inadequate, Respondent shall, within fifteen (15) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this paragraph.

XXX. INTEGRATION/APPENDICES

124. This Settlement Agreement, its appendices, and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into, and enforceable under, this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

125. In the event of a conflict between any provision of this Settlement Agreement and the provisions of any document attached to this Settlement Agreement or submitted or approved pursuant to this Settlement Agreement, the provisions of this Settlement Agreement shall control.

126. The following documents are attached to and incorporated into this Settlement Agreement:

Appendix A is the ROD

Appendix B is the RH-034 Tank AOC

Appendix C is the Work Schedule

XXXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

127. This Settlement Agreement shall be effective on the date that EPA transmits a fully executed copy thereof via electronic mail to Respondent. All times for performance of actions or activities required herein will be calculated from said Effective Date.

128. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. The EPA RPM does not have the authority to sign amendments to the Settlement Agreement.

129. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXXII. NOTICE OF COMPLETION OF WORK

130. When EPA determines that all Work has been fully performed in accordance with the other requirements of this Settlement Agreement, with the exception of any continuing

obligations required by this Settlement Agreement, including, payment of Response Costs or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require Respondent to complete the Work. Failure by Respondent to complete such Work shall be a violation of this Settlement Agreement.

By: _____

JOHN PRINCE
Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2

MAY 24, 2018
Date

In the Matter of the Gowanus Canal Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2018-2003

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Settlement Agreement and Order. Respondent hereby consents to the issuance of this Settlement Agreement and Order and to its terms. The individual executing this Settlement Agreement and Order on behalf of the Respondent certifies under penalty of perjury under the laws of the United States that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and Order and to bind such Respondent thereto.

The Brooklyn Union Gas Co. d/b/a National Grid NY
Name of Respondent

Signature

5/22/18
Date

Jeannette Mills
Printed Name

Senior Vice President
Title of Signatory

In the Matter of the Gowanus Canal Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2018-2003

Appendix A – September 2014 Gowanus Canal ROD (Electronic)

Appendix B – Administrative Settlement Agreement and Order for Remedial Design, Removal Action and Cost Recovery, City of New York Respondent,
Index Number CERCLA-02-2016-2003 (Electronic)

Appendix C – Work Schedule

	Description of Deliverable/Task[1]	¶ Ref.	Deadline
	Design a response action at Parcels VI and VII to address MGP-Related Source Material outside the footprint of the RH-034 Tank	44.b.	*Complete 95% design by September 1, 2019, which design shall include a schedule for performance of the response action at Parcels VI and VII*
	Conduct the response action for the design set forth in Paragraph 44.b., and implement such design	44.c.	*Initiate procurement such that mobilization can occur within 60 days after completion of demolition at Parcels VI and VII; complete the response action pursuant to the schedule contained in the approved design*
	Construct the Fulton Wall along the east bank of the Gowanus Canal from the head end of the Canal to the Union Street bridge	44.l.	*Complete construction no later than December 2, 2019*
	Submit a list of all work plans and submissions necessary to carry out the Work described in Paragraph 44, together with a schedule for such work plans and submissions not listed in Appendix C	45.	*Within 60 days of the Effective Date of the Settlement Agreement*

[1] Work descriptions are partial summaries which are for information purposes only. Please see Work To Be Performed requirements in Paragraph 44 of this Settlement Agreement for full descriptions.