

UNITED STATES DEPARTMENT OF JUSTICE
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2

IN THE MATTER OF:)

Pierson's Creek Superfund Site)

429 Delancy Associates, L.L.C.,)

Owner)

Proceeding Under the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, 42 U.S.C. §§ 9601-9675)

CERCLA Docket No. 02-2021-2033

**ADMINISTRATIVE SETTLEMENT
AGREEMENT
FOR REMOVAL ACTION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Removal Action (“Settlement”) is entered into voluntarily by the United States on behalf of the Environmental Protection Agency (EPA) and 429 Delancy Associates, L.L.C. (“Owner”). This Settlement provides for the performance of a removal action by Owner and the payment of certain response costs incurred by the United States at or in connection with the property located on Delancy Street, specifically Block 5042, Lot 15.02, encompassing 9.55 acres Newark, Essex County, New Jersey (the “Property”), a portion of which is a part of the Pierson’s Creek Superfund Site (“Site”).

2. This Settlement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601-9675. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional official.

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

4. EPA has notified the State of New Jersey (the “State”) of this action.

5. Owner represents that it is a bona fide prospective purchaser (BFPP) as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Sections 101(40) and 107(r)(1) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the removal action at the Site, and the risk of claims under CERCLA being asserted against Owner notwithstanding Section 107(r)(1) as a consequence of Owner’s activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XIX (Reservations of Rights by United States), any potential liability of Owner under CERCLA for the Existing Contamination as defined by Paragraph 11 below.

6. The resolution of this potential liability, in exchange for Owner’s performance of the Work and reimbursement of certain response costs, is fair, reasonable, and in the public interest.

7. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Owner in accordance with this Settlement do not constitute an admission of any liability. Owner does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations) of this Settlement. Owner agrees to comply with and be bound by the terms of

this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms, or the United States' right to enforce this Settlement.

II. PARTIES BOUND

8. This Settlement is binding upon the United States, including EPA, and upon Owner and its successors and assigns. Any change in ownership or corporate status of Owner does not alter Owner's responsibilities under this Settlement.

9. The undersigned representative of Owner certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Owner to this Settlement.

10. Owner shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Owner with respect to the Property or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Owner or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Owner shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

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

“Action Memorandum” shall mean the EPA Action Memorandum relating to the Site to be signed by the Regional Administrator, EPA Region 2, or his/her delegate, and all attachments thereto. The “Action Memorandum” shall be incorporated as Appendix 6 when issued by EPA.

“Acquisition Date” shall mean September 19, 2007, the date upon which Owner acquired the Property.

“BFPP” shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

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

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

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

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXX.

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

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

“Existing Contamination” shall mean:

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

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement costs, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, and/or to secure implement, monitor, maintain, or enforce institutional controls, including, but not limited to, the amount of just compensation), Section XII (Emergency Response and Notification of Releases), Paragraph 94 (Work Takeover), Paragraph 118 (Access to Financial Assurance), Section XIV (Dispute Resolution), and all litigation costs.

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

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

“OSC” shall mean the On-Scene Coordinator as defined in 40 C.F.R. § 300.5.

“Owner” shall mean 429 Delancy Associates, L.L.C.

“NJDEP” shall mean the New Jersey Department of Environmental Protection.

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

“Parties” shall mean the United States and Owner.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

“Property” shall mean that portion of the Site, located on Delancy Street, designated as Block 5042, Lot 15.02, encompassing approximately 9.55 acres, which generally consists of Pierson’s Creek and a 50’ corridor on the western side of the Creek and is depicted in Appendix 3 of this Settlement.

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

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

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

“Settlement” shall mean this Administrative Settlement Agreement for Removal Action and all appendices attached hereto (listed in Section XXXI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Pierson’s Creek Superfund Site located in Newark, Essex County, New Jersey, and depicted generally on the map attached as Appendix 2. The Site includes a portion of the Property, and all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located.

“State” shall mean the State of New Jersey.

“Statement of Work” or “SOW” shall mean the document describing the activities Owner must perform to implement the removal action pursuant to this Settlement, as set forth in Appendix 1, and any modifications made thereto in accordance with this Settlement.

“Stabilization Plan” shall mean the EPA-approved document referenced in Paragraphs 37 and 44 and developed pursuant to the SOW describing the activities Owner must perform should Owner reach the cap on costs established in Paragraph 44.e. for the removal action before its completion.

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

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

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any mixture containing any of the constituents noted in (a), (b) or (c), above.

“Work” shall mean all activities and obligations Owner is required to perform under this Settlement except those required by Section X (Record Retention).

IV. STATEMENT OF FACTS

12. Pierson’s Creek originates north of the Property and enters the Property after having flowed through a series of open channels and closed culverts in a general south-southwesterly direction before discharging into the Port Newark Channel of Newark Bay.

13. Pierson’s Creek enters the Property from the north and bisects the Property into a 1.55-acre western parcel and an 8-acre eastern parcel. The Creek flows through the Property as an open channel.

14. Owner acquired the Property in 2007 after conducting a Phase I Environmental Site Assessment in accordance with the standards for conducting all appropriate inquiries set forth in 40 CFR Section 312.20, and the American Society for Testing and Materials Designation E1527-05, as well as a Preliminary Assessment performed in accordance with New Jersey Administrative Code 7:26E-3.1 and 3.2. Prior to acquiring the Property, the Owner made all appropriate inquiries into the previous ownership and uses of the Property in accordance with generally accepted good commercial and customary standards and practices. The Owner inquired into previous ownership through a Chain of Title Records search and evaluation of previous ownership through historical environmental data base research, historic insurance maps, aerial photographs, topographic maps, city directories, historical industrial directories, federal state, county and local government records and the NJDEP Geographic Information System.

15. The Property was originally part of a larger land purchase. In 2016, Owner subdivided the parcel into two, a western parcel consisting of 32.45 acres and, the Property, which abuts the larger parcel. Owner sold the 32.45-acre parcel in 2016 and retains the 9.55-acre Property. The parcel that was sold was not part of the Site.

16. As a result of its inquiries, Owner became aware that the Property contained various pollutants, contaminants and hazardous substances.

17. In October 2012, EPA conducted an investigation of Pierson’s Creek that confirmed the presence of mercury in the Creek sediments throughout the accessible portions of the Creek including the channel of the Creek that flows through the Property.

18. Mercury has been shown to be genotoxic in humans and animals. Long-term exposure to either inorganic or organic mercury can permanently damage the brain, kidney, and

the developing fetus in humans. In fish and shellfish, toxic effects include a variety of reproductive, growth, and metabolic dysfunctions, as well as increased mortality in larval and juvenile stages.

19. The presence of mercury in the sediments and along the Creek bed constitutes a release or threat of release of a hazardous substance.

20. Owner has conducted numerous investigations at the Property to fulfill NJDEP Site Remediation Reform Act requirements.

21. Investigations conducted by the Owner on the portion of Pierson's Creek that runs through its Property include: January 2014 sampling of Pierson's Creek in order to more fully delineate the extent of metals contamination in stream sediments that may have come from an upstream source and to determine whether or not those sediments, if dredged, would be considered hazardous waste; and a November 2014 investigation to determine if sediments were deposited along the Creek during any former dredging operations that may have occurred prior to Owner's purchase of the Property. Results indicated that the Creek was previously dredged and the dredged material was placed on the banks of the Creek.

22. The Site was placed on the NPL by EPA on September 22, 2014. EPA is the lead regulatory agency for planning and implementing response actions at the Site. NJDEP serves as a support agency for the Site.

23. In 2015, Owner submitted a brownfield redevelopment plan for the Property to NJDEP and the City of Newark. The proposed redevelopment contemplates the construction of a 105,775 square foot warehouse facility on the Property along with associated parking areas, utilities and access roads. Both the NJDEP and the City of Newark have approved and supported this conceptual design.

24. At EPA's request, in October 2016, Owner conducted an underground piping investigation in order to locate and abandon any Creek outfalls that could potentially act as a conduit for releases to the Creek.

V. DETERMINATIONS

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

a. The Pierson's Creek Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Statement of Facts above, include(s) [a] "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Owner is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). On June 4, 2018, EPA issued a memorandum in support of preparing an Engineering Evaluation/Cost Analysis (EE/CA) in support of a CERCLA non-time critical removal action at the Site.

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

VI. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, REMEDIAL PROJECT MANAGER AND ON-SCENE COORDINATOR

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

27. Within fourteen (14) days after the Effective Date, Owner shall designate a Project Coordinator who shall be responsible for administration of all actions by Owner required by this Settlement and shall submit to EPA the designated Project Coordinator’s name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on the Property or readily available during work at the Property. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 26. If EPA disapproves of the designated Project Coordinator, Owner shall retain a different Project Coordinator and shall notify EPA of that person’s name, title, contact information, and qualifications within seven (7) days following

EPA's disapproval. Notice or communication relating to this Settlement from EPA to Owner's Project Coordinator shall constitute notice or communication to Owner.

28. EPA has designated Pamela Tames of the New York Remediation Branch, Region 2, as its Remedial Project Manager (RPM). EPA may designate an On-Scene Coordinator (OSC) to also oversee the work. EPA and Owner shall have the right, subject to Paragraph 26, to change their respective designated RPM or OSC or Project Coordinator. Owner shall notify EPA thirty (30) days before such a change is made. The initial notification by Owner may be made orally, but shall be promptly followed by a written notice.

29. The RPM and OSC shall be responsible for overseeing Owner's implementation of this Settlement. The RPM and OSC shall have the authority vested in them by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the RPM or OSC from the Site shall not be cause for stoppage of work unless specifically directed by the RPM or OSC.

VII. WORK TO BE PERFORMED

30. Owner shall perform, at a minimum, all actions necessary to implement the SOW, consistent with the Action Memorandum, CERCLA, the NCP, and EPA guidance. This includes EPA Region 2's "Clean and Green Policy" which may be found at: <https://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy>

31. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Owner receives notification from EPA of the modification, amendment, or replacement.

32. **Data Review.** In accordance with Task I of the SOW, Owner has submitted and EPA has approved the Data Summary Report summarizing the existing data associated with the area of the Property that borders Pierson's Creek and Pierson's Creek itself.

33. **Engineering Evaluation/Cost Analysis (EE/CA).** Owner has submitted a draft EE/CA for EPA review and approval in accordance with Task III of the SOW. The draft EE/CA evaluates the levels of contamination in the area of the Property that borders Pierson's Creek and Pierson's Creek itself and considers alternatives to address that contaminated material. EPA will provide comments on the draft EE/CA. If EPA provides comments that require Owner to revise the draft EE/CA, Owner shall do so within thirty (30) days of receiving comments from EPA on the draft EE/CA, and Owner shall prepare a revised EE/CA that is responsive to the directions in all EPA comments. Owner shall submit the revised EE/CA to EPA for approval, unless Owner is directed otherwise by EPA in writing.

34. After the EE/CA is approved by EPA, EPA will provide the public an opportunity to comment on the proposed removal action. After EPA considers public comments, EPA will prepare an Action Memorandum selecting a removal action. EPA will, upon approval and signature, provide a copy of the Action Memorandum to Owner.

35. Removal Work Plan and Implementation

a. Within thirty (30) days of the date of the signature of the Action Memorandum, Owner shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan"). The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement as detailed in the SOW and include a Stabilization Plan.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part to ensure consistency with the removal action as detailed in the Action Memorandum. If EPA requires revisions, Owner shall submit a revised draft Removal Work Plan within fourteen (14) days of receipt of EPA's notification of the required revisions. Owner shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Within thirty (30) days after approval or approval with modifications of the Removal Work Plan, Owner shall commence implementation of the removal action in accordance with the schedule included therein. Owner shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under this Settlement, the SOW or the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph. Once approved, or approved with modifications, any additional deliverables, and any subsequent modifications are incorporated into and become fully enforceable under this Settlement.

36. Submission of Deliverables

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, Owner shall direct all submissions required by this Settlement to the RPM at:

Pamela Tames, P.E., Remedial Project Manager
Pierson's Creek Superfund Site
Superfund and Emergency Management Division
US EPA, Region 2
290 Broadway, 19th Floor
New York, NY 10007
tames.pam@epa.gov
(212) 637-4255

Owner shall submit all deliverables required by this Settlement, including the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Owner shall submit all deliverables in electronic form, unless otherwise agreed upon with EPA. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36.b. All other deliverables shall be submitted to EPA in the form specified by the RPM.

b. Technical Specifications for Deliverables.

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format as specified by EPA. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Owner does not, and is not intended to, define the boundaries of the Site.

37. **Stabilization Plan.** Within thirty (30) days of the date of the signature on the Action Memorandum, Owner shall submit for EPA review and comment, a draft Stabilization Plan that includes a cost estimate for performing the activities under the Plan.

38. **Health and Safety Plan.** Within thirty (30) days of the date of the signature on the Action Memorandum, Owner shall submit for EPA review and comment, if necessary, an updated plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <http://www.epaosc.org/HealthSafetyManual/manual-index.htm>.

In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Owner shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action. Owner shall assume that COVID-19 protocols are required to be included in the plan unless informed otherwise by EPA.

39. Quality Assurance, Sampling, and Data Analysis

a. Owner shall use quality assurance, quality control, 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 “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. **Sampling and Analysis Plan.** Within thirty (30) days of the date of the signature on the Action Memorandum, Owner shall submit, if necessary, an updated Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

c. Owner shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Owner in implementing this Settlement. In addition, Owner 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 the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Owner shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement 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” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> 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/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<http://www3.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://www3.epa.gov/ttnamtl1/airtox.html>).

d. Upon approval by EPA, Owner may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) 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. Owner shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), 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 (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Owner shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Owner shall provide split or duplicate samples to EPA or its authorized representatives. Owner shall notify EPA not less than seven (7) 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 Owner split or duplicate samples of any samples it takes as part of EPA’s oversight of Owner’s implementation of the Work.

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

g. Owner waives any objections to any data gathered, generated, or evaluated by EPA, the State or Owner in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved work plans or Sampling and Analysis Plans. If Owner objects to any other data relating to the Work, Owner 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 fifteen (15) days after the monthly progress report containing the data.

40. Post-Removal Site Control. In accordance with and as part of the Removal Work Plan schedule, or as otherwise directed by EPA, Owner shall submit to EPA for review and approval a proposal for Post-Removal Site Control consistent with Section 300.415(J) of the NCP and considering OSWER Directive No. 9360.2-02. Upon EPA approval, Owner shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal

Site Control is necessary. Owner shall provide EPA with documentation of all Post-Removal Site Control commitments.

41. **Progress Reports.** Owner shall submit a written monthly progress report to EPA concerning actions undertaken pursuant to this Settlement on the 15th day of the following month, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the RPM. 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, 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. The progress reports also shall identify the cost amount expended by Owner to date towards the \$4,000,000.00 limit identified in Paragraph 44.a. Within 14 days of EPA's request, Owner shall provide EPA with copies of invoices, proof of payment, and other appropriate documentation of these expenditures.

42. **Final Report.** Within sixty (60) days after completion of all Work required by this Settlement as outlined in the SOW, other than continuing obligations listed in Paragraph 124 (notice of completion), Owner shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP titled "OSC Reports" and EPA guidance entitled "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, 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, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Owner or Owner's Project Coordinator: "Under penalty of perjury under the laws of the United States, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

43. **Modification of Removal Work Plan**

a. If at any time during implementation of the Work under this Settlement, Owner identifies a need for additional data, Owner shall submit a memorandum documenting the need for additional data to the RPM within thirty (30) days of identification. EPA in its discretion will determine whether the additional data will be collected by Owner and whether it will be incorporated into reports and deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Owner shall notify the RPM by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Removal Work Plan, EPA shall modify or amend the Removal Work Plan in writing accordingly. Owner shall implement the Removal Work Plan as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved Removal Work Plan, other additional Work may be necessary to accomplish the objectives of the removal action. Owner agrees to perform these response actions in addition to those required by the initially approved Removal Work Plan, including any approved modifications, if EPA determines in writing that such actions are necessary for a complete removal action.

d. Owner shall confirm its willingness to perform the additional Work in writing to EPA within fourteen (14) days of receipt of the EPA request. If Owner objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Owner may seek dispute resolution pursuant to Section XIV (Dispute Resolution). The Dispute Resolution procedures are the exclusive mechanism for resolving disputes regarding the performance of additional Work. The SOW and the Removal Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Owner shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Removal Work Plan, and/or written Removal Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Owner, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Property.

44. Stabilization Plan and Escrow Account

a. Once Owner has expended \$4 million implementing the Removal Work Plan and any approved modifications pursuant to Paragraph 43, then Owner may cease performing the obligations in the SOW and the Removal Work Plan except to perform activities according to the Stabilization Plan developed pursuant to the SOW. Owner shall provide documentation of its contractor costs satisfactory to EPA that Owner has expended \$4 million.

b. Activities required under the Stabilization Plan shall be funded by Owner from an escrow account, established pursuant to this Paragraph and separate from the financial responsibility provided under Section XXVI (Financial Responsibility) to implement the Removal Work Plan.

c. Within 30 days of EPA approval of the Stabilization Plan, and subject to the approval of EPA, Owner shall establish an interest-bearing account entitled the "Delancy Stabilization Plan Escrow Account" in a form substantially similar to the escrow agreement

attached to this Settlement (Appendix 5) and pay the amount of the draft Stabilization Plan cost estimate required pursuant to Paragraph 37 to such Escrow Account.

d. The exclusive purposes of the Delancy Stabilization Plan Escrow Account are to (a) receive payment of the amount of the draft Stabilization Plan cost estimate from Owner; (b) earn interest thereon; and (c) disburse the funds to Authorized Parties, as defined by the Escrow Account, to be used by such parties to fund performance of the Stabilization Plan.

e. Notwithstanding other provisions of this Settlement, Owner shall not be required to expend more than \$4,000,000.00 to perform all actions required by the EPA-approved Removal Work Plan, not including the monies paid for the “Stabilization Plan” pursuant to Paragraph 44.c.

45. Off-Site Shipments

a. Owner may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Owner will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Owner 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. Owner may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides 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. Owner 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. Owner shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Owner may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

VIII. PROPERTY REQUIREMENTS

46. **Access and Non-Interference.** Owner shall, commencing on the Effective Date: (i) provide EPA, and its representatives, including contractors, and subcontractors with access at

all reasonable times to the Property, and to any other property owned or controlled by Owner that is part of the Site, to conduct any activity regarding the Settlement, including those activities listed in Paragraph 46.a. (Access Requirements); and (ii) refrain from using such Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, including the restrictions as determined in Paragraph 46.b. (Land, Water, or Other Use Restrictions).

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Property;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner or its agents consistent with Section IX (Access to Information);
- (8) Assessing Owner's compliance with the Settlement;
- (9) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement;
- (10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls implemented pursuant to Paragraph 46.c. (Land, Water, or Other Resource Use Restrictions).
- (11) Providing EPA with unimpeded access to the Creek in order to conduct activities pursuant to CERCLA.

b. Owner will maintain a 50-foot buffer on the western and eastern side of the Creek within which the Owner will not conduct any activity that will impede access for remediation and long-term monitoring and maintenance.

c. **Land, Water, or Other Resource Use Restrictions.** Owner shall implement and comply with any land use restrictions and institutional controls on the property in connection with a response action. A list of land, water, or other resource use restrictions applicable to the Property will be specified in the Action Memorandum.

47. In addition to the removal action taking place on its Property, Owner is aware that Pierson's Creek, a Superfund Site listed on the National Priorities List, flows through its Property and that EPA or potentially responsible parties performing work under EPA oversight may need to access the Creek through the Property in order to conduct remediation and long-term monitoring and maintenance.

48. Where any action under this Settlement is to be performed in areas owned by or in possession of someone other than Owner, Owner shall use best efforts to secure from such owners an agreement, enforceable by Owner and EPA, providing that such owner: (i) provide the EPA, Owner, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 46.a. (Access Requirements); and (ii) refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, including the restrictions listed in Paragraph 46.c. (Land, Water, or Other Resource Use Restrictions).

a. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Owner would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. If Owner is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Owner, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIII (Payment of Future Response Costs).

49. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form required under state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Owner shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

50. **Notice to Successors-in-Title**

a. Owner shall within fifteen (15) days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner's Property in the appropriate land records office. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title that: (i) the Property is part of, or related to, the Site, (ii) EPA will select a removal action for the Site, and (iii) Owner has entered into an Administrative Settlement Agreement requiring implementation of this removal action and

compliance with the property requirements in Section VIII; and (3) identify the name, docket number, and Effective Date of this Settlement. Owner shall record the notice within ten (10) days after EPA's approval of the notice and submit to EPA, within ten (10) days thereafter, a certified copy of the recorded notice.

b. Owner shall, prior to entering into a contract to Transfer its Property, or sixty (60) days prior to transferring its Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a removal action regarding the Site, that the Owner has entered into an Administrative Settlement Agreement requiring implementation of such removal action and compliance with the property requirements in Section VIII (identifying the name, docket number, and the Effective Date of this Settlement); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee and notify EPA if Owner seeks termination of its obligations under Paragraph 52.

51. For so long as Owner is an owner or operator of the Property or any part thereof, Owner shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Owner shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property or any part thereof implement and comply with any land use restrictions and institutional controls on the Property in connection with any response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property or any part thereof.

52. Owner shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date. Upon sale or other conveyance of the Property or any part thereof, Owner shall require that each successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Owner shall require that each successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof shall comply with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property or any part thereof. After EPA's issuance of the Notice of Completion and Owner's written demonstration to EPA that a successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof agrees to comply with the requirements of this Paragraph 52, EPA will notify Purchase that its obligations under the Settlement are terminated with respect to the Property or any part thereof, except for its obligations under Record Retention (Section X) and Access to Information (Section IX).

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

IX. ACCESS TO INFORMATION

54. Owner shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Owner’s possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Owner 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.

55. Privileged and Protected Claims

a. Owner may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Owner complies with Paragraph 55.b, and except as provided in Paragraph 55.c.

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

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

56. **Business Confidential Claims.** Owner may assert that all or part of a Record provided to EPA under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Owner shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Owner asserts business confidentiality claims. Records that Owner claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Owner that the Records are not

confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Owner.

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

X. RECORD RETENTION

58. For a period of 10 years following completion of the Work, unless EPA agrees in writing to a shorter time period, Owner shall preserve all Records relating to the Work and any hazardous substances, pollutants or contaminants found on or released from the Property in connection with the Work. At the conclusion of the document retention period, Owner shall notify EPA at least 90 days prior to the destruction of any such records, and upon request by EPA, except as provided in Paragraph 55 (Privileged and Protected Claims), Owner shall deliver any such records to EPA. These record retention requirements apply regardless of any corporate retention policy to the contrary and is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

59. Owner 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 (other than identical copies) relating to its potential liability regarding the Site and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XI. COMPLIANCE WITH OTHER LAWS

60. Nothing in this Settlement limits Owner's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Owner shall identify ARARs in the Removal Work Plan subject to EPA approval.

61. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Owner shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Owner may seek relief under the provisions of Section XV (Force Majeure) for any delay in the performance of

the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

62. **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 Property that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Owner shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Owner shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Owner 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 Owner fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Owner shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIII (Payment of Future Response Costs).

63. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Owner 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, Owner 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 EPCRA, 42 U.S.C. § 11004.

64. For any event covered under this Section, Owner shall submit a written report to EPA within seven (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.

XIII. PAYMENT OF FUTURE RESPONSE COSTS

65. **Payments for Future Response Costs.** Owner shall pay to EPA all Future Response Costs not inconsistent with the NCP.

Owner shall make payment at <https://www.pay.gov/> in accordance with the following payment instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the following information: Respondent’s name, address, telephone number and email of remitter; type of payment (**Superfund**); Site ID (**02MV**); Payment Amount (**insert amount**); Installments (**No**); Region (**2**); and “Are you paying for yourself or another party?” (**Self_Payment**). Please insert the Site

name (**Pierson's Creek Superfund Site**) and the Case Docket No. (**CERCLA Docket No. 02-2021-2033**) in the Comment Field.

- a. At the time of each payment, Owner shall send notice that such payment has been made to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number: 02MV and the EPA docket number 02-2021-2033.

- b. **Periodic Bills.** On a periodic basis, EPA will send Owner a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-line system ("SCORPIOS") Report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. Owner shall make all payments within thirty (30) days of Owner's receipt of each bill requiring payment and in accordance with Paragraph 65.a and 65.b, except as otherwise provided in Paragraph 67 (Contesting Future Response Costs).
- c. **Deposit of Future Response Costs Payments.** The total amount to be paid by Owner pursuant to Paragraph 65.c. (Periodic Bills) will be deposited by EPA into the EPA Hazardous Substance Superfund.

66. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, consistent with Paragraph 65.c., Owner shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Owner's 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 Owner's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

67. **Contesting Future Response Costs.** Owner may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 65 (Payments for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Owner shall submit a Notice of Dispute in writing to the RPM within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Owner submits a Notice of Dispute, Owner shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response

Costs to EPA in the manner described in Paragraph 65 and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Owner shall send to the RPM 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. If EPA prevails in the dispute, within five (5) days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA in the manner described in Paragraph 65. If Owner prevails concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 65. Owner 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 XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Owner's obligation to reimburse EPA for its Future Response Costs.

XIV. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Owner shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

69. **Informal Dispute Resolution.** If Owner objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA, with a copy to DOJ, a written Notice of Dispute describing the objection(s) within twenty-one (21) days after such action. EPA and Owner shall have thirty (30) days from EPA's receipt of Owner's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Owner pursuant to this Section shall be in writing and shall, upon signature by EPA and Owner, be incorporated into and become an enforceable part of this Settlement.

70. **Formal Dispute Resolution.** If EPA and Owner are unable to reach an agreement within the Negotiation Period, Owner shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may submit a statement of position in response. Thereafter, an EPA management official at the Deputy Director level or higher in the Superfund and Emergency Management Division will issue a written decision on the dispute to Owner, with a copy to DOJ. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Owner shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

71. Except as provided in Paragraph 67 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Owner under this Settlement. Except

as provided in Paragraph 81, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Owner does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

72. “Force Majeure” for purposes of this Settlement, is defined as any event arising from causes beyond the control of Owner, of any entity controlled by Owner, or of Owner’s contractors that delays or prevents the performance of any obligation under this Settlement despite Owner’s best efforts to fulfill the obligation. The requirement that Owner exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or increased cost of performance.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Owner intends or may intend to assert a claim of force majeure, Owner shall notify EPA’s RPM orally or, in his or her absence, the Chief of the Passaic, Hackensack, Newark Bay, Remediation Branch, EPA Region 2, within five (5) days of when Owner first knew that the event might cause a delay. Within seven (7) days thereafter, Owner shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Owner’s rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Owner, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Owner shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Owner shall be deemed to know of any circumstance of which Owner, any entity controlled by Owner, or Owner’s contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Owner from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 72 and whether Owner has exercised its best efforts under Paragraph 72, EPA may, in its unreviewable discretion, excuse in writing Owner’s failure to submit timely or complete notices under this Paragraph.

74. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the

delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Owner in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Owner in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure

75. If Owner elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA’s notice. In any such proceeding, Owner shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Owner complied with the requirements of Paragraphs 72 and 73. If Owner carries this burden, the delay at issue shall be deemed not to be a violation by Owner of the affected obligation of this Settlement identified to EPA.

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

XVI. STIPULATED PENALTIES

77. Owner shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 78.a. and 79 for failure to comply with the obligations specified in Paragraphs 78.b. and 79, unless excused under Section XV (Force Majeure). “Comply” as used in the previous sentence include compliance by Owner with all applicable requirements of this Settlement within the deadlines established under this Settlement.

78. Stipulated Penalty Amounts – Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 78.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14th day
\$3,000	15th through 30th day
\$6,000	31st day and beyond

b. Noncompliance

- (1) Failure to submit revised EE/CA under Section VII
- (2) Failure to submit Removal Work Plan under Section VII
- (3) Failure to submit Final Report under Section VII

- (4) Failure to pay any amount due under Section XIII (Payment of Future Response Costs).
- (5) Failure to establish and maintain financial assurance in accordance with Section XXVI (Financial Responsibility).
- (6) Failure to establish and maintain the Delancy Stabilization Plan Escrow Account in accordance with Paragraph 44.
- (7) Failure to establish an escrow account to hold any disputed Oversight Costs under Paragraph 67 (Contesting Future Response Costs).

79. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 78.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th day
\$1,500	15th through 30th day
\$3,000	31st day and beyond

80. In the event that Owner (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner which may cause an endangerment to human health or the environment pursuant to Paragraph 94 (Work Takeover), Owner shall be liable for a stipulated penalty in an amount to be determined by EPA in its sole and unreviewable discretion of up to \$500,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 94 (Work Takeover) and 118 (Access to Financial Assurance).

81. 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. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within fifteen (15) days after the agreement or the receipt of EPA’s decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 35 (Removal Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies Owner of any deficiency; and (b) with respect to a decision by the EPA Management Official designated in Paragraph 70 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

82. Following EPA’s determination that Owner has failed to comply with a requirement of this Settlement, EPA may give Owner written notification of the failure and

describe the noncompliance. EPA may send Owner a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Owner of a violation.

83. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Owner's receipt from EPA of a demand for payment of the penalties, unless Owner invokes the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. Owner shall make all payments and shall send notice of such payments in accordance with the procedures under Paragraph 65 (Payments for Future Response Costs). Owner should indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

84. If Owner fails to pay stipulated penalties when due, Owner shall pay Interest on the unpaid stipulated penalties as follows: (a) if Owner has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 81 until the date of payment; and (b) if Owner fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 84 until the date of payment. If Owner fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

86. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Owner's violation of this Settlement or of the statutes and regulations upon which it is based including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that the United States shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XIX (Reservations of Rights by United States), Paragraph 91.

87. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVII. CERTIFICATION

88. By entering into this Settlement, Owner certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Owner and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its

qualification for this Settlement. Owner also certifies that to the best of its knowledge and belief it is a BFPP as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

XVIII. COVENANTS BY UNITED STATES

89. Except as provided in Section XIX (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against Owner pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination, the Work, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Owner of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by Owner relating to Owner's involvement with the Site and the certification made by Owner in Paragraph 88. These covenants extend only to Owner and do not extend to any other person.

90. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from Owner, if the information provided to EPA by Owner relating to Owner's involvement with the Site, or the certification made by Owner in Paragraph 88, is false or in any material respect, inaccurate.

XIX. RESERVATIONS OF RIGHTS BY UNITED STATES

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

92. The covenants set forth in Section XIX (Covenants by United States) do not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement is without prejudice to, all rights against Owner with respect to all other matters, including, but not limited to:

- a. liability for failure by Owner to meet a requirement of this Settlement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for violations of federal or state law that occur during or after implementation of the Work;

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;

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

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site, except as relates to Existing Contamination from the Site or Property.

93. With respect to any claim or cause of action asserted by the United States, Owner shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Owner has complied with all of the requirements of 42 U.S.C. §§ 9601(40) and 9607(r).

94. Work Takeover

a. In the event EPA determines that Owner: (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Owner. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Owner a period of seven (7) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 7-day notice period specified in Paragraph 94.a., Owner has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Owner in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 94.b. In addition, nothing in this Settlement shall limit EPA’s authority under Section XXVI (Financial Responsibility).

c. Owner may invoke the procedures set forth in Section XIV (Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 94.b. However, notwithstanding Owner’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 94.b until the earlier of (1) the date that Owner remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 70 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to require any and all response actions to be taken as authorized by law.

XX. COVENANTS BY OWNER

95. Owner covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Future Response Costs, and this Settlement, including, but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Existing Contamination, Work, Future Response Costs, and this Settlement.

96. 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 any of the reservations set forth in Section XIX (Reservations of Rights by United States), other than in Paragraphs 92.a. (liability for failure to meet a requirement of the Settlement), 92.b. (criminal liability), or 92.d. (violations of federal/state law during or after implementation of the Work), but only to the extent that Owners' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

XXI. OTHER CLAIMS

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

100. Except as expressly provided in Section XVIII (Covenants by United States), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Owner or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

101. No action or decision by EPA pursuant to this Settlement 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

102. Nothing in this Settlement creates any rights in, or grants any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Owner), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

103. If a suit or claim for contribution is brought against Owner, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Owner is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM), the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Owner has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are Existing Contamination, the Work, and Future Response Costs, and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States or any other person, except the State. However, if the United States exercises rights under the reservations in Section XIX (Reservations of Rights by United States)), other than in Paragraphs 92.a (claims for failure to meet a requirement of the Settlement), 92.b (criminal liability), or 92.d (violations of federal/state law during or after

implementation of the Work), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

104. If Owner is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement or at the direction of EPA’s RPM, the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Owner 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).

105. Owner shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim.

106. Owner shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Owner shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XXIII. RELEASE AND WAIVER OF LIEN(S)

107. Subject to the Reservations of Rights in Section XIX of this Settlement, upon satisfactory completion of the Work specified in Section VII (Work to be Performed) and payment of Future Response Costs due under Section XIII, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

XXIV. INDEMNIFICATION

108. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Owner as EPA’s authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Owner shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Owner, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Owner’s behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Owner agrees to pay the United States all costs it incurs, 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 Owner, 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. The United States shall not be held out as a party to any contract entered into by or on behalf of Owner in carrying out activities

pursuant to this Settlement. Neither Owner nor any such contractor shall be considered an agent of the United States.

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

110. Owner covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Owner and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays. In addition, Owner 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 Owner and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

111. No later than thirty (30) days before commencing any on-site Work, Owner shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Owner pursuant to this Settlement. In addition, for the duration of the Settlement, Owner shall provide EPA with certificates of such insurance and a copy of each insurance policy. Owner shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Owner 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 Owner in furtherance of this Settlement. If Owner 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, Owner need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Owner shall ensure that all submittals to EPA under this Paragraph identify the Pierson's Creek Superfund Site, Newark, Essex County, New Jersey and the EPA docket number for this action.

XXVI. FINANCIAL RESPONSIBILITY

112. In order to ensure completion of the Work, Owner shall secure financial assurance, initially in the amount of the cost estimate in the draft EE/CA referred to in Paragraph 33, except that in no case shall Owner be required to secure financial assurance in an amount above \$4 million ("Estimated Cost of the Work"). The financial assurance must be one or more

of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Owner may use multiple mechanisms if those are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Director of the Superfund and Emergency Management Division advises the trustee in writing that: (i) payments are necessary to fulfill the affected Owner’s obligations under the Settlement; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Settlement;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment and/or performance in accordance with Paragraph 118 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 118 (Access to Financial Assurance);

d. A demonstration by Owner that it meets the financial test criteria of Paragraph 114; or

e. A guarantee to fund or perform the Work executed by a company: (1) that is a direct or indirect parent company of Owner or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Owner; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 114.

113. **Standby Trust.** If Owner seeks to establish financial assurance to by using a surety bond, a letter of credit, or a corporate guarantee, Owner shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 112.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 118 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 114. Until the standby trust fund is funded pursuant to Paragraph 118 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

114. Within thirty (30) days after the Effective Date, Owner shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 112 for EPA's review. Within 60 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Owner's financial assurance, whichever is later, Owner shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Chief, Resource Management/Cost Recovery Section, Superfund and Emergency Management Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 18th Floor, New York, NY 10007.

115. Owner seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 112.d or 112.e must, within thirty (30) days of the Effective Date:

a. Demonstrate that:

(1) the Owner or guarantor has:

- (a) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- (b) Net working capital and tangible net worth each at least six times the sum of 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; and
- (c) Tangible net worth of at least \$10 million; and
- (d) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of 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

(2) Owner or guarantor has:

- (a) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- (b) Tangible net worth at least six times the sum of 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; and

- (c) Tangible net worth of at least \$10 million; and
- (d) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of 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; and

b. Submit to EPA for Owner or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

116. An Owner providing financial assurance by means of a demonstration or guarantee under Paragraph 112.d or 112.e it must also:

a. Annually resubmit the documents described in Paragraph 115.b within ninety (90) days after the close of the Owner's or guarantor's fiscal year;

b. Notify EPA within thirty (30) days after Owner or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within thirty (30) days of EPA's request, reports of the financial condition of Owner or guarantor in addition to those specified in Paragraph 115.b; EPA may make such a request at any time based on a belief that Owner or guarantor may no longer meet the financial test requirements of this Section.

117. Owner shall diligently monitor the adequacy of the financial assurance. If Owner becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Owner shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Owner of such determination. Owner shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Owner, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Owner shall follow the procedures of Paragraph 119 (Modification of Amount, Form,

or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Owner's inability to secure and submit to EPA financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

118. Access to Financial Assurance.

a. If upon expiration of the 7-day notice period specified in Paragraph 94.a., Owner has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA initiates a Work Takeover pursuant to Paragraph 94, then, in accordance with any applicable financial assurance mechanism EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund, or (ii) arrange for performance of the Work in accordance with this Settlement.

b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel such mechanism, and Owner fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

119. Modification of Amount, Form, or Terms of Financial Assurance. Owner may submit, on any anniversary of the Effective Date or following Owner's request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA individual(s) referenced in Paragraph 114, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 112 and 113 (Standby Trust). EPA will notify Owner of its decision to approve or disapprove a requested reduction or change. Owner may reduce the amount or change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Owner shall submit to EPA individual(s) referenced in Paragraph 114 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

120. Release, Cancellation, or Discontinuation of Financial Assurance. Owner may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's written approval after Owner begins implementing the Stabilization Plan; or (c) in accordance with any other EPA written approval of such release, cancellation, or discontinuation.

XXVII. MODIFICATION

121. EPA's RPM may make minor modifications to any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but has as its effective date the date of the RPM's oral direction, unless otherwise indicated. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties, unless otherwise specified in this Settlement.

122. If Owner seeks permission to deviate from any approved work plan or schedule or the SOW, Owner's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Owner may not proceed with the requested deviation until receiving oral or written approval from EPA pursuant to Paragraph 35.

123. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Owner shall relieve Owner of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

124. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including but not limited to, continued compliance with CERCLA § 101(40) with respect to the Property in accordance with Paragraph 5 of this Settlement, Post-Removal Site Controls, record retention, and compliance with the property requirements in Section VIII, EPA will provide written notice to Owner. Owner may submit a written request to EPA for a determination that the Work has been so completed, and EPA will endeavor to respond in writing to Owner's request within 60 days. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Owner, provide a list of the deficiencies, and require that Owner modify the Removal Work Plan if appropriate in order to correct such deficiencies. Owner shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Owner to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXIX. PUBLIC COMMENT

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

XXX. EFFECTIVE DATE

126. The effective date of this Settlement shall be the date upon which EPA issues written notice to Owner that the United States has fully executed the Settlement after review of and response to any public comments received pursuant to Paragraph 125.

XXXI. INTEGRATION/APPENDICES

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

- a. Appendix 1 is the Statement of Work.
- b. Appendix 2 is a map of the Site.
- c. Appendix 3 is a map of the Property.
- d. Appendix 4 is a deed of the Property.
- e. Appendix 5 is a draft escrow agreement.
- f. Appendix 6 is the Action Memorandum.

XXXII. DISCLAIMER

128. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XXXIII. ENFORCEMENT

129. Notwithstanding Paragraph 89 of this Settlement, and except as otherwise expressly stated in this Settlement, if Owner fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the United States District Court for the District of New Jersey. In any such action, Owner consents to and agrees not to contest the exercise of personal jurisdiction over it by the court. Owner further acknowledges that venue in the United States District Court for the District of New Jersey is appropriate and agrees not to raise any challenge on this basis.

130. In the event the United States files a civil action as contemplated by Paragraph 129, above, to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity.

XXXIV. NOTICES AND SUBMISSIONS

131. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered, or as of the date of receipt by certified mail/return receipt requested or express mail.

Submissions to Owner shall be addressed to:

John V. Visceglia
429 Delancy Associates, L.L.C.
c/o Summit Associates, Inc.
110 Fieldcrest Avenue, Mailbox 33
Edison, NJ 08837
Email: jvv@sairealestate.com

All submissions to U.S. EPA shall be addressed to:

Pamela Tames, P.E.
Remedial Project Manager
Pierson's Creek Superfund Site
Superfund and Emergency Management Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, NY 10007-1866
Email: tames.pam@epa.gov

Legal submissions to U.S. EPA shall be addressed to:

Pierson's Creek Superfund Site Attorney
New Jersey Superfund Branch
Office of Regional Counsel
U.S. EPA, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
Email: wagner.amelia@epa.gov

Address submissions to DOJ:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eesdcopy@usdoj.gov
Re: DJ# 90-11-3-12032

Signature page for Administrative Settlement Agreement regarding the Pierson's Creek Superfund Site (CERCLA Docket No. 02-2021-2033)

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

**Evangelista,
Pat**

Digitally signed by
Evangelista, Pat
Date: 2021.09.29 21:26:13
-04'00'

Dated

Pat Evangelista
Director, Superfund and Emergency Management Division
Region 2

Signature page for Administrative Settlement Agreement regarding the Pierson's Creek Superfund Site (CERCLA Docket No. 02-2021-2033)

IT IS SO AGREED AND SO ORDERED:

UNITED STATES DEPARTMENT OF JUSTICE:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

12/21/2021

s/ Patrick B. Bryan

Dated

PATRICK B. BRYAN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
202-616-8299
patrick.bryan@usdoj.gov

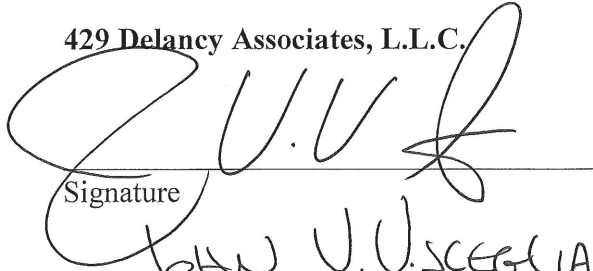
Signature page for Administrative Settlement Agreement regarding the Pierson's Creek Superfund Site (CERCLA Docket No. 02-2021-2033)

IT IS SO AGREED:

9-29-2021

Dated

429 Delancy Associates, L.L.C.



Signature

John V. Uscoglia
Print Name

U.C.
Title

110 FIELDCREST AVE. EDISON, NJ
Address

APPENDIX 1

**STATEMENT OF WORK FOR
PERFORMANCE OF A NON-TIME CRITICAL REMOVAL ACTION
AT THE 429 DELANCY STREET PROPERTY
PIERSON'S CREEK SUPERFUND SITE
NEWARK, ESSEX COUNTY, NEW JERSEY**

Introduction: This Statement of Work (SOW) outlines the response actions to be performed at the 429 Delancy Street portion of the Pierson's Creek Superfund Site (Property). This SOW is attached to and incorporated into the Administrative Settlement Agreement for Removal Action (Settlement), CERCLA Docket No. 02-2021-2033, at the Pierson's Creek Superfund Site between the U.S. Environmental Protection Agency (EPA) and 429 Delancy Associates, L.L.C. (Owner). Technical work described in the SOW is intended to complement, add to, and be consistent with the Settlement and is not intended to change the meaning of any defined term in the Settlement. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300. Any discrepancies between the Settlement and SOW are unintended and, whenever necessary, the Settlement will control in any interpretive disputes.

Purpose: In 2007, the City of Newark dredged Pierson's Creek, a portion of which flowed through the Property. The dredge spoils were then placed on the upland areas adjacent to the creek. These spoils were later found to be contaminated with elevated levels of mercury and other metals. The Owner would like to remove these spoils so that the Property can be developed. In addition, at some time in the past, Pierson's Creek was relocated within the Property. The former location of the creek may or may not be contaminated and also needs to be investigated prior to any development of the parcel. In February 2016, Owner submitted to EPA an Environmental Investigation Summary and a Remedial Activities Summary along with soil sampling data from the dredge spoils on the Property, prepared by Matrix New World Engineering Consultants. The summaries include the results of soil investigations on the Property and show elevated levels of mercury but do not fully characterize the contamination.

The remaining work includes the collection of supplemental data, an Engineering Evaluation/Cost Analysis (EE/CA) and the design and implementation of the response action that is selected by the Environmental Protection Agency (EPA).

Project Description: Owner shall perform all activities necessary for the completion of the EE/CA and design and implementation of the selected response action.

Task I: Site Characterization

EPA reviewed the previously submitted data and determined that supplemental data was needed. Matrix New World Engineering Consultants, Owner's consultant, collected the additional soil samples in February 2018 under EPA's oversight. These samples were analyzed and validated

using EPA's contract laboratory program. The previously submitted data and the newly collected data will form the basis for the EE/CA.

Task II: Streamlined Risk Assessment.

Owner shall submit a streamlined risk assessment within thirty (30) days following the effective date this Settlement. The risk assessment will use sampling data from the Property to identify the chemicals of concern, provide an estimate of how and to what extent people might be exposed to these chemicals, and provide an assessment of the health effects associated with these chemicals. A streamlined risk assessment projects the potential risk of health problems occurring if no cleanup action is taken at a site. Please refer to OSWER Publication 9285.7-01B, Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual, Part A, Interim Final (December 1989), EPA/540/1-89/002, PB90-155581, for guidance on conducting risk evaluations.

Task III: Development of EE/CA.

Owner has submitted a draft EE/CA for the Property. The EE/CA will document the data collected and characterize the contamination present at the Property. The streamlined risk assessment will be included in the draft EE/CA as well as contaminant- and location-specific applicable or relevant and appropriate requirements, or ARARs. Non-time critical removal action alternatives will be identified and analyzed according to their effectiveness, implementability and cost. Please refer to OSWER Directive 9360.0-32, Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA, for further information.

EPA will either approve the EE/CA or require Owner to submit a revised EE/CA for review.

If EPA determines that revisions to the EE/CA are necessary, within thirty (30) days of EPA's notification to Owner of the need to revise the EE/CA, Owner shall submit a revised EE/CA that is responsive to EPA's comments.

At the completion of the EE/CA, EPA will be responsible for the public comment period, response to comments, and selection of the non-time critical removal action for the Property and will document the removal action selection in an Action Memorandum. The removal action alternative selected by EPA will meet the cleanup standards specified in CERCLA Section 121. That is, the selected removal action will be protective of human health and the environment, will be in compliance with, or include a waiver of ARARs, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final EE/CA, as adopted by EPA, and the streamlined risk assessment will, with the administrative record, form the basis for the selection of the removal action for the Property and will provide the information necessary to support the development of the Action Memorandum.

Task IV: Design and Implementation Non-Time-Critical Removal.

Within thirty (30) days of the date of EPA's signing of the Action Memorandum selecting a non-time critical removal action, Owner shall submit to EPA for review and approval a detailed draft work plan (Removal Work Plan) describing in detail the tasks necessary to design and implement

the selected non-time critical removal action and a schedule for its implementation. If sampling to further delineate the contamination on the upland areas is needed and/or post-remedial sampling is required as part of the selected removal action, the Removal Work Plan shall also include a Quality Assurance Project Plan (QAPP), Health and Safety Plan (HSP), and Field Sampling Plan (FSP) in accordance with the Settlement. The existing QAPP, HSP, and FSP utilized during the February 2018 Field Investigation, may be updated, as necessary, to perform sampling to further delineate the contamination in the upland areas. The Removal Work Plan shall also include a Stabilization Plan to secure any exposed contaminated soils in order to prevent the spread of contamination should the work be suspended prior to completion.

Within thirty (30) days after EPA's approval of the Removal Work Plan, Owner shall commence implementation of the EPA-approved Removal Work Plan. Owner shall fully implement the EPA-approved Removal Work Plan in accordance with the terms and schedule therein and in accordance with the Settlement. All Work required pursuant to this Settlement shall be completed within six (6) months after EPA's approval of the Removal Work Plan.

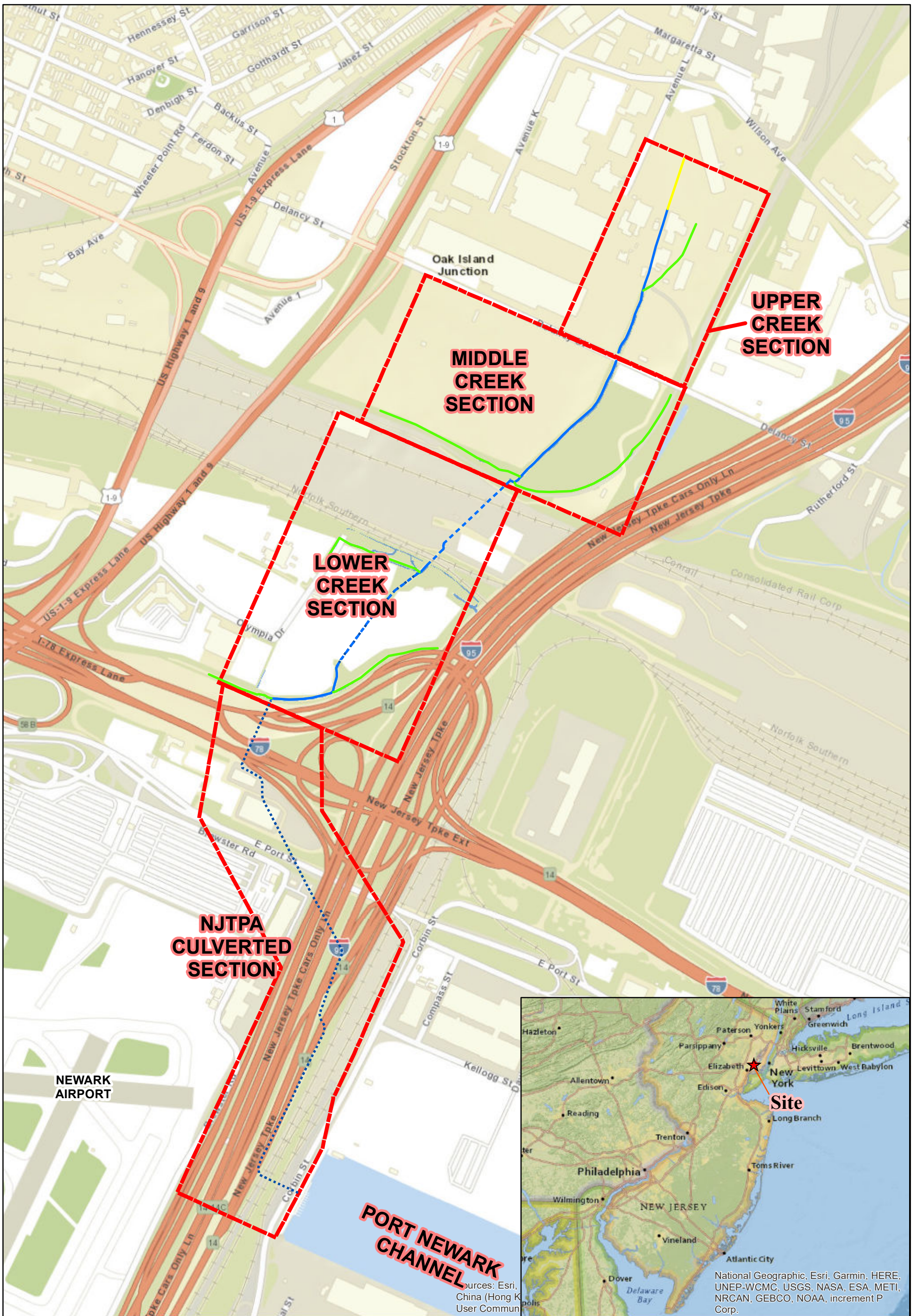
Within sixty (60) days after completion of the removal action activities, Owner shall submit for EPA review and approval, a Final Report summarizing the removal work completed at the Property and any plans for continued Operation and Maintenance of the completed actions. The Final Report shall conform, at a minimum, with the requirements set forth for remedial action reports in EPA guidance entitled "Close Out Procedures for National Priorities List Sites" (OSWER Directive 9320.2-22 May 2011). The Final Report shall include a good faith estimate of total costs and/or a statement of actual costs incurred in performing the removal action, 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, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of perjury under the laws of the United States, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

General Requirements

EPA will provide oversight of Owner's activities throughout the preparation of the EE/CA and the implementation of the non-time-critical removal action including the Stabilization Plan. EPA review and approval of deliverables is a tool to assist this process and to satisfy, in part, EPA's responsibility to provide effective protection of public health, welfare, and the environment. EPA will review deliverables to assess the likelihood that the EE/CA will achieve its goals and that its performance requirements have been met. Acceptance of deliverables by EPA does not relieve the Owner of responsibility for the adequacy of the deliverables.

APPENDIX 2



- Pierson's Creek Orientation**
- Current Pierson's Creek Channel (open channel)
 - - - Current Pierson's Creek Channel (culverted)
 - Tributaries
 - Former Portion of Pierson's Creek
 - Creek Sections



0 600 1,200 Feet

1 in = 600 feet

Figure 1-1
Site Location Map
Pierson's Creek Superfund Site
Newark, NJ



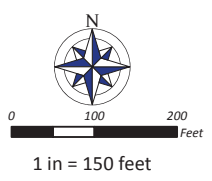
Sources: Esri, China (Hong Kong), Swire, User Community, National Geographic, Esri, Garmin, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, increment P Corp.

APPENDIX 3



Pierson's Creek Orientation

- Current Pierson's Creek Channel (open channel)
- - - Current Pierson's Creek Channel (culverted)
- Feeder Creeks
- Former Portion of Pierson's Creek
- - - Creek Sections



Sample Locations: ◆ Shallow Monitoring Well

Labels: ◆ TMW-01 -Transect Monitoring Well

Figure 1
Revised Sample Locations - Middle Creek Section
Pierson's Creek Superfund Site
Newark, NJ



APPENDIX 4

Schedule A-2
(Premises)

Tax Lot 15.02 in Block 5042
City of Newark, Essex County, New Jersey

MATRIXNEWORLD

Engineering Progress

Description of property to be known as Tax Lot 15.02 in Block 5042 in the City of Newark, Essex County, New Jersey.

BEGINNING at a point in the southerly line of Delancy Street, a 60.00 feet wide right of way, where same is intersected by the westerly right of way line of lands of Conrail, formerly the Elizabeth Port Branch Central Railroad, known as Tax Lot 90 Block 5042, said point having New Jersey State Plane Coordinates of North: 685,335.73 East: 590,617.01; and runs thence

1. Along the westerly line of lands of Conrail, South 27 degrees 35 minutes 46 seconds West 426.36 feet to a point being marked by a concrete monument found; thence
2. Continuing along the line of lands of Conrail, being Lot 70 in Block 5042, South 43 degrees 04 minutes 59 seconds West 310.04 feet to an angle point in same being marked by a concrete monument found; thence
3. Continuing along the line of lands of Conrail, being Lot 70 in Block 5042, South 77 degrees 50 minutes 52 seconds West 334.07 feet to an angle point in same being marked by a concrete monument found; thence
4. Along the northerly line of lands of Conrail, being Lot 70 in Block 5042, North 67 degrees 13 minutes 14 seconds West 310.68 feet to a point, said point having New Jersey State Plane Coordinates NAD 83 of North 684,781.40 East: 589,594.70; thence

By a new line across existing Lot 15 the following five courses:

5. North 45 degrees 34 minutes 46 seconds East 421.31 feet to a point; thence
6. North 47 degrees 29 minutes 30 seconds East 212.74 feet; thence
7. North 40 degrees 46 minutes 37 seconds East 44.38 feet; thence
8. North 23 degrees 56 minutes 30 seconds East 178.03 feet; thence
9. North 26 degrees 55 minutes 48 seconds East 116.20 feet to a point in the southerly line of Delancy Street, said point having New Jersey State Plane Coordinates NAD 83 of North 685,519.95 East: 590,206.30; thence
10. Along the southerly line of Delancy Street, South 65 degrees 50 minutes 28 seconds East 450.14 feet to the point and place of **BEGINNING**.


Containing 9.5545 acres of land.

MATRIXNEWORLD

Engineering Progress

The basis of bearing for this description is the New Jersey State Plane Coordinate System NAD 83.

This description is prepared by and in accordance with "Minor Subdivision Plat, 391-543 Delancy Street, Lots 15, 95, 96, 97 & 98; Block 5042, City of Newark, Essex County New Jersey prepared by Matrix New World Engineering, James D. Sens, PLS dated July 9, 2015 and revised January 12, 2016.



James D. Sens, PLS
NJ Professional Land Surveyor
Lic. #24GS04322600
January 12, 2016

APPENDIX 5

Model Delancy Stabilization Plan Escrow Account

This Escrow Agreement is entered into by and between: The "Grantor," 429 Delancy Associates, L.L.C., a New Jersey Limited Liability Corporation; and the "Escrow Agent," [name of Escrow Agent]. The Grantor and the Escrow Agent are hereinafter collectively referred to as the "Parties."

Recitals

Whereas, on [insert date] the United States Environmental Protection Agency, an agency of the United States Government ("Agency"), entered into an Administrative Settlement Agreement and Order on Consent ("ASAOC");

Whereas, the ASAOC requires that the Grantor shall provide assurance that funds will be available should the Delancy Stabilization Plan, as specified in the ASAOC, need to be implemented;

Whereas, this Escrow Agreement is the Agency approved form of a financial assurance instrument that provides for the funding of the Delancy Stabilization Plan, as required by the ASAOC. This Escrow Agreement defines the terms and conditions under which the account will be held and disbursed;

Whereas, the "Required Escrow Amount" to be placed in the Escrow Account is sufficient to implement the Delancy Stabilization Plan in its entirety;

Whereas, the Escrow Agent agrees to accept, hold, and disburse the Escrow Account funds and the earnings thereon in accordance with the terms of this Escrow Agreement; and

Whereas said Escrow Agent shall establish a standby trust fund as is required when an Escrow Account is used to provide such financial assurance.

Now, therefore, in consideration of the recitals above, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Escrow Account

1. The Grantor shall deliver to the Escrow Agent the Required Escrow Amount of \$[insert dollars] at least [insert number (#)] calendar days prior to [insert date].

2. Within [insert number (#)] business days of receipt of the Required Escrow Amount or additional funds pursuant to Paragraph 3 below, the Escrow Agent shall place the Required Escrow Amount in an interest bearing account (the "Escrow Account") at the "Financial Institution", [insert name of financial institution] located at [insert city, state]. All funds delivered by the Grantor to the Escrow Agent shall be deposited and held by the Escrow Agent in the Escrow Account.

3. Within [insert number (#)] calendar days of any disbursement from the Escrow Account, the Grantor shall deliver additional funds to the Escrow Agent so that the amount available in the Escrow Account shall be no less than the Required Escrow Amount, provided that at no time may the Escrow Account incur a negative balance.

4. The Financial Institution shall be entitled to charge the Escrow Account for services related to the maintenance of the Escrow Account at a rate not exceeding the Financial Institution's standard charges to other customers for similar services.

5. The Escrow Account shall be opened with the signature of the Escrow Agent indicating that checks drawn against the Escrow Account shall be signed by the Escrow Agent and by no other persons. Disbursements shall be made from the Escrow Account only in accordance with the terms of this Agreement.

6. The Escrow Agent shall maintain a record of all deposits, income, disbursements, and other transactions concerning the Escrow Account.

7. The Escrow Agent shall keep in its possession all book(s) and records relating to the Escrow Account until such time as they are delivered to a successor Escrow Agent pursuant to [insert paragraph] or to the Grantor and the Agency pursuant to [insert paragraph] below.

Disbursements

8. The Escrow Agent shall make disbursements of the Escrow Account funds including any accrued interest only as follows:

a. [Number (#) business days] following receipt of written direction from the Agency stating that funds held in the Escrow Account are required to pay for implementing the Delancy Stabilization Plan, the Escrow Agent shall disburse such funds to the standby trust fund in the amount(s) identified, in accordance with the Agency's written direction that the Stabilization Plan must be implemented and directing that the Escrow Agent shall disburse such funds to the standby trust fund within [Number (#) of business days].

b. The Escrow Agent shall disburse all funds in the Escrow Account to the Grantor within [number (#)] business days of receipt of written direction from the Agency that the Escrow Account funds are no longer required to fund the implementation of the Stabilization Plan.

Duties and Liabilities of Escrow Agent

9. The Escrow Agent shall have no liability or obligation with respect to the Escrow Account funds except for the Escrow Agent's willful misconduct, bad faith, or gross negligence. The Escrow Agent shall be under no duty to: (a) pass upon the adequacy of any documents; (b) determine whether any of the Parties are complying with the terms and provisions of the Escrow Agreement; or (c) determine the identity or authority of any person purporting to be a signatory authorized by the Grantor or the Agency.

Escrow Agent's Fee

10. The Escrow Agent shall be entitled to compensation from the Grantor for its services under this Escrow Agreement in accordance with the attached fee schedule.

Investment Risk

11. In no event shall the Escrow agent have any liability as a result of any loss occasioned by the financial difficulty or failure of any institution, including the Financial Institution, or for failure of any banking institutions, including the Financial Institution, to follow the instructions of the Escrow Agent.

Notices

12. All notices, certifications, authorizations, request, or other communications permitted or required shall be delivered (with a copy by electronic mail) as follows:

- a. To the Grantor: [insert address]
- b. To the Agency: Remedial Project Manager, Pierson's Creek Superfund Site, Superfund and Emergency Management Division, 290 Broadway, 19th Floor, New York, New York 10007-1866. Email: tames.pam@epa.gov
- c. To the Escrow Agent: [insert address]

13. The Escrow Agent shall annually, at least 30 days prior to the anniversary date of establishment of the account, furnish to the Grantor and to the Agency a statement confirming the value of the account. Any securities in the account shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the account. The failure of the Grantor to object in writing to the Escrow Agency within 90 days after the statement has been furnished to the Grantor and the Agency shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Escrow Agent with respect to matters disclosed in the statement.

Resignation, Removal and Successor Escrow Agent

14. If, at anytime, the Escrow Agent shall resign, be removed, be dissolved, or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any reason, the Parties shall promptly appoint a successor Escrow Agent.

15. The Escrow Agency may not cancel or terminate the Escrow Account unless there is a failure to pay service fees. The Escrow Agent should send notice of cancellation by certified mail (with a copy by electronic mail) to the Grantor and the Agency.

16. All interest income accrued on funds in the Escrow Account shall become part of the Escrow Account and shall remain in the Escrow Account. The Grantor shall be solely responsible for the payment of all federal and state taxes on accrued Escrow Account interest.

Miscellaneous

17. This Escrow Agreement constitutes the entire agreement between the Parties relating to the holding, investment, and disbursement of the Escrow Account funds.

18. The Escrow Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their successors and assigns. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the laws of the State of New Jersey with regard to the Grantor without giving effect to the conflict of laws principles thereof. Any claims relating to EPA will be resolved under federal law including, but not limited to the Federal Tort Claims Act 28 U.S.C. §§2671, 2680.

19. This Escrow Agreement may be executed in any number of counterparts each which shall constitute an original and all counterparts shall constitute one Agreement.

20. This Escrow Agreement may not be assigned, amended, altered, or modified except by written instrument duly executed by all of the Parties, with the concurrence of the Agency Division Director, or by the Escrow Agent if the Grantor ceases to exist.

21. This Escrow Agreement shall terminate, and the Escrow Agent shall be relieved of all liability to the Grantor after: (a) all funds in the Escrow Account have been properly disbursed in accordance with the terms and conditions of this agreement; (b) the Escrow Agent has provided a final accounting of all transactions hereunder to the Parties; and (c) a copy of all books and records relating to the Escrow Account has been delivered to the Grantor, and, if requested, to the Agency. The Agency does not indemnify either the Grantor or the Escrow Agent due to the restrictions imposed by the Anti-Deficiency Act, 31 U.S.C. §1341.

22. This Agreement shall take effect on the latest date of execution by the Grantor or Escrow Agent.

In witness whereof, the Parties have caused this Escrow Agreement to be duly executed as set forth below.

[Signature of Grantor]

[Date]

[Printed Name]

[Title]

[Signature of Escrow Agent]

[Date]

[Printed Name]

[Title]

APPENDIX 6