

UNITED STATES DEPARTMENT OF JUSTICE  
AND  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8  
AND  
THE STATE OF COLORADO

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IN THE MATTER OF: )  
 )  
Sand Creek Superfund Site )  
Operable Units 3 & 6 )  
Commerce City, Colorado )  
 )  
Triangle Logistics Center, LLC, )  
 )  
 )  
Purchaser )  

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CERCLA Docket No.  
CERCLA-08-2022-0005

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT FOR RESPONSE  
ACTIONS AND PAYMENT OF  
RESPONSE COSTS BY  
PROSPECTIVE PURCHASER**

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## I. GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Response Actions and Payment of Response Costs by Prospective Purchaser (“Settlement”) is entered into voluntarily by and between the United States on behalf of the Environmental Protection Agency (EPA), and the Colorado Department of Public Health and Environment on behalf of the State of Colorado (the “State”), and the prospective purchaser, Triangle Logistics Center, LLC, a Delaware limited liability company (“Purchaser”). This Settlement provides for the performance of response actions by Purchaser and the payment of certain response costs incurred by the United States and the State at or in connection with the property consisting of five parcels totaling approximately ninety-two (92) acres with South Adams County Assessor parcel numbers 0182317300008, 0182317300029, and City and County of Denver Assessor parcel numbers 01184-00-014-000, 01184-01-008-000, and 01184-01-007-000 (the “Property”), which is part of Operable Units (“OUs”) 3 and 6 of the Sand Creek Industrial 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 State is entering into this Settlement pursuant to Section 25-16-103, C.R.S.

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

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

6. The United States, the State and Purchaser (collectively, the “Parties”) recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. Purchaser does not admit and it retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations) of this Settlement. Purchaser agrees to comply with and be bound by the terms of this Settlement, and to not contest the basis or validity of this Settlement or its terms, or the United States’ or State’s right to enforce this Settlement.

## II. PARTIES BOUND

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

8. **Transfer.** Purchaser may Transfer title to the Property or any portion of the Property to any third party, including a Title 32 Metropolitan District and/or any other governmental or quasi-governmental entity or owners' association, without the approval or consent of EPA or the State, provided that Purchaser shall continue to be bound by all terms and conditions, and remain the sole party entitled to all benefits, of this Settlement. Otherwise, Purchaser may Transfer its rights, obligations, and benefits of the Settlement, either together or with or separate from title to the Property, to any such third party in whole or in part, provided EPA, the State, and Purchaser so agree and modify this Settlement in writing, pursuant to Section XXVI, and subject to the following:

a. Any such Transfer by Purchaser, of the rights, benefits, and obligations conferred upon Purchaser under this Settlement, shall require the prior written consent of the EPA and the State in their sole discretion, and is not subject to judicial review.

b. EPA and the State expect the transferee to any such Transfer of all or any portion of the Property, as applicable, to avail itself of protections afforded a "bona fide prospective purchaser" under 42 U.S.C. Sections 9601(40) and 9607(r)(1) and will maintain its status as a "bona fide prospective purchaser" for the duration of its interest in the Property that is transferred. Written agreement of Transfer and/or any modification to this Settlement shall document to whom the rights, benefits, and obligations are conferred, and shall include EPA approval of modifications to the Work Plan, intended to ensure continued protectiveness of the remedy.

c. Prior to or simultaneous with any such Transfer of all or any of Purchaser's rights, benefits, and obligations hereunder by Purchaser, the future transferee must consent in a written modification to this Settlement, pursuant to Section XXVI, to be bound by all the transferred terms, conditions, and obligations of this Settlement, which must include but are not limited to Section VII, the certifications contained in Section XVII, contribution protection under Section XXVI of this Settlement, and financial assurance under Section XXV in order for the covenants not to sue in Section XVIII to be available to that party. The covenants not to sue in Section XVIII and the contribution protection under Section XXVI will be effective with respect to any transferee upon counter signature by EPA and the State.

d. Purchaser agrees to pay the reasonable costs incurred by EPA and the State to review any subsequent request for consent to transfer the rights, benefits, and obligations conferred by this Settlement.

e. Following modification of this Settlement in accordance with this Paragraph 8, any such transferee may further Transfer its rights, obligations, and benefits under this Settlement, either together with or separate from title, to all or a portion of the Property, to another third party, subject to the terms and conditions of this Paragraph 8.

f. Such modification shall be in substantially the form attached as Appendix 8.

9. Each of the undersigned representatives of Purchaser certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

10. Consistent with the requirements of Section VI (Designation of Contractor, Project Coordinator, and Remedial Project Manager), Purchaser may contract for performance of any of Purchaser's obligations hereunder to a third party, including a Title 32 Metropolitan District and/or any other governmental or quasi-governmental entity or owners' association, without the approval of EPA or the State, provided that Purchaser shall continue to be bound by all the terms and conditions and remain the sole party entitled to all benefits of this Settlement. Purchaser shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Purchaser with respect to the Property or the Work, and it shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Purchaser or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Purchaser shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

### **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 have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Settlement, the following definitions apply:

“CDPHE” means the Colorado Department of Public Health & Environment and any successor departments or agencies of the State

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

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

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

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

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

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

“Existing Contamination” means:

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

“Institutional Controls” means Proprietary Controls and state or local laws, including the Colorado Environmental Covenants and Notices of Environmental Use Restrictions Statute, section 25-15-317 to 327, C.R.S., as well as regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the remedy; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site. A compilation of Institutional Controls for the Property are attached as Appendix 5.

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

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

“Operable Unit 3” or “OU3” means the soils, groundwater, and surface water associated with the 48<sup>th</sup> and Holly landfill portion of the Site, encompassing approximately 150 acres, in both Commerce City, Adams County, Colorado and Denver, Denver County, Colorado, and depicted generally on the map attached as Appendix 2.

“Operable Unit 6” or “OU6” means the methane gas associated with the 48<sup>th</sup> and Holly landfill portion of the Site, encompassing approximately 150 acres, in both Commerce City, Adams County, Colorado and Denver, Denver County, Colorado, and depicted generally on the map attached as Appendix 2.

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

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

“Property” means that portion of the Site, encompassing approximately ninety-two (92) acres, to be acquired by Purchaser, which is generally depicted with a map in Appendix 3 of this Settlement and with the legal description and surveyed boundaries in Appendix 4 of this Settlement. The property is a triangular shape, bounded by 48<sup>th</sup> Avenue to the south, Dahlia Street to the west, 52<sup>nd</sup> Street to the north and the intersection of BNSF Railway railroad right-of-way and 48<sup>th</sup> Avenue to the east.

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

“Purchaser” means Triangle Logistics Center, LLC, a Delaware limited liability company, as the prospective purchaser of the Property.

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

“Response Costs” means all costs, including, but not limited to, direct and indirect costs, that the United States incurs (1) in reviewing or developing deliverables submitted pursuant to this Settlement; (2) 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; (3) 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); the costs incurred pursuant to Section XII (Emergency Response and Notification of Releases); Paragraph 92 (Work Takeover); the costs incurred pursuant to Paragraph 113 (Access to Financial Assurance); the costs incurred pursuant to Section XIV (Dispute Resolution); the costs incurred pursuant to Paragraph 8 (Transfer); (4) all litigation costs incurred; and (5) costs incurred in development and negotiation of this Settlement, between December 1, 2020 and the Effective Date.

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

“ROD” means the EPA Record of Decision relating to the Sand Creek Industrial Superfund Site, Operable Units 3 and 6, signed on June 3, 1993.

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

“Settlement” means this Administrative Settlement Agreement for Response Actions and Payment of Response Costs by Prospective Purchaser, all appendices attached hereto (listed in Section XXVII (Integration/Appendices)), and all deliverables included under and incorporated by reference into this Settlement. In the event of conflict between this Settlement and any appendix, this Settlement controls.

“Site” means the Sand Creek Industrial Superfund Site, located in both Commerce City, Adams County, Colorado and Denver, Denver County, Colorado, and depicted generally on the map attached as Appendix 2.

“Sand Creek Special Account” means the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” means the State of Colorado.

“State Response Costs” means all costs, including, but not limited to, direct and indirect costs, that the State incurs (1) in reviewing or developing deliverables and submittals related to the development of the Property and operations and maintenance of the remedy for OUs 3 and 6 of the Site, from October 1, 2020 to the Effective Date, and all deliverables and submittals pursuant to this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement costs, and attorney costs; (2) in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement costs, and attorney costs; (3) 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 92 (Work Takeover); Paragraph 113 (Access to Financial Assurance); Section XIV (Dispute Resolution); Paragraph 8 (Transfer); (4) all litigation costs; and (5) costs incurred in development and negotiation of this Settlement, between December 1, 2020 and the Effective Date, including attorney costs.

“State Project Manager” means the CDPHE personnel designated as the Site project manager.

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

“Waste Material” means (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).

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

“Work Plan” means the document describing the activities Purchaser must perform to implement the response actions pursuant to this Settlement, as set forth in Appendix 1, and any modifications made thereto in accordance with this Settlement.

#### **IV. STATEMENT OF FACTS**

12. The Site is located at 48<sup>th</sup> and Holly in Commerce City, Adams County, Colorado and Denver, Denver County, Colorado and encompasses an area of approximately 550 acres. Beginning in the 1940s, several types of businesses operated at the Site, including an oil refinery, pesticide manufacturing facility, an herbicide chemical plant, and a landfill. Site operations, waste management practices, spills and explosions at the Site contaminated soil, air, groundwater, and surface water with hazardous chemicals.

13. EPA divided the Site in OUs for the purposes of response actions. The OUs which are the subject of this Settlement are OUs 3 and 6, which pertain to the landfill portion of the Site.

14. The landfill, encompassing approximately 150 acres, is bordered on the north by East 52<sup>nd</sup> Avenue, on the south by East 48<sup>th</sup> Avenue, on the west by Dahlia Street, and on the east by the intersection of the railroad right-of-way and East 48<sup>th</sup> Avenue, approximately one-quarter mile east of Ivy Street.

15. Operations began at the landfill in 1967. Fill operations began at the southern end of the landfill and proceeded north in one layer or “lift.” Cover material was graded from on-Site areas and the waste was watered to aid compaction. The landfill accepted both demolition and domestic refuse, which were sorted prior to dumping. Wastes disposed of at the landfill included household, industrial, institutional, commercial, and agricultural wastes, among others. Metal refuse was placed under the nearby railroad right-of-way. The landfill was closed in 1975 and revegetated.

16. In 1982, the EPA performed an investigation of the area to determine whether the Site should be placed on the National Priorities List (NPL). Analytical results indicated the presence of several volatile organic compounds in the surface and ground water, including 1,1-dichloroethane (1,1-DCA), 1,2 transdichloroethene (1,2 trans-DCE), 1,1,1-trichloroethane (1,1,1-TCA) and 1,1-dichloroethene (1,1-DCE). Inorganic compounds that were detected at concentrations elevated above background levels included arsenic, cadmium, nickel, and zinc.

17. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, in December 1982, the Site was added to the NPL, set forth at 40 C.F.R. Part 300, Appendix B.

18. A Remedial Investigation/Feasibility Study (RI/FS) was completed in 1988 for the Site. Twenty-three contaminants of concern were identified at the Site which constituted a

threat to human health and/or the environment. These chemicals included volatile organics and heavy metals that have been determined to be carcinogenic and/or to pose the greatest relative risk to humans and the environment. The presence of these volatile organic compounds and heavy metals constitute a release and/or threatened release of a hazardous substance at the Site.

19. Identified potential release mechanisms associated with the landfill include leaching of chemicals in refuse and their subsequent movement into the groundwater and volatilization of landfill gases, including methane. Identified potential transport processes from the landfill include groundwater flow and withdrawal, groundwater discharge to surface water, and dispersion of volatile organics. Identified potential exposure pathways include inhalation of ambient air for local residents, nearby workers, and the schools nearest the landfill, as well as dermal exposure through human contact with surface water.

20. A supplemental RI and FS was completed in 1992 to characterize target compounds/chemicals at the Site which may have contributed to groundwater contamination by the landfill. In March 1993, due to results of additional sampling events, an OU3 RI and Focused FS were completed.

21. In accordance with Section 117 of CERCLA, 42 U.S.C. § 9617, EPA issued a Proposed Plan for OUs 3 and 6 on March 19, 1993. The Proposed Plan, along with the Focused FS, results from the RA, and the Administrative Record were all made available to the public for comment.

22. EPA's selection of a remedy for OUs 3 and 6 is embodied in a ROD, executed on June 30, 1993 (available at: <https://semspub.epa.gov/work/08/809865.pdf>).

23. The selected remedy reduces risk to potential exposed populations and the environment through control of both landfill gases and exposure to contaminated groundwater and by restricting contact with the landfill.

24. In January 1994, pursuant to Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(1) and 9607, EPA issued a Unilateral Administrative Order for Remedial Design and Remedial Action (UAO) to Browning-Ferris Industries of Colorado, Incorporated and Burlington Northern Railroad Company.

25. Since 1994, pursuant to the UAO, a Landfill Gas Extraction System (LFGES) has been operated; a soil cover system, fencing, and signage for the landfill has been maintained; environmental monitoring programs for landfill gas, groundwater, and well abandonment have been implemented; and Institutional Controls have been implemented.

26. Following completion of the construction of the remedy components for all OUs, EPA deleted the Site from the Superfund program's National Priorities List (NPL) in 1996. Sitewide operations and maintenance activities are ongoing in order to ensure the long-term protectiveness of the remedy.

27. Purchaser is acquiring the Property to develop an industrial park and logistics center.

28. Purchaser intends to construct an industrial park and logistics center (“Park”) on the Property and may own, lease, and/or operate the Park in its entirety, may sell or lease individual buildings within the Park, or may sell the Park in its entirety. Therefore, pursuant to the terms and conditions of this Settlement, Purchaser anticipates that a metropolitan district, authorized under the Special District Act of Colorado (C.R.S. §§ 32-1-101, *et seq.*), and/or an owner’s association, will be formed to finance, manage, and conduct long-term operations and maintenance for the Property.

## **V. DETERMINATIONS**

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

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

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

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

d. The conditions described in Paragraphs 16 to 19 of the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site and/or the Property as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The conditions present at the Site may constitute an imminent and substantial endangerment to the public health, welfare, or the environment under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

f. The Work 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.

g. The Institutional Controls required by this Settlement are necessary to protect public health, welfare, and the environment.

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

30. Purchaser has designated, and EPA has not disapproved, the following contractor, who will be responsible for performance of the Work: Mark White, Terracon, 10625 W. I-70 Frontage Road, Suite 3, Wheat Ridge, Colorado 80333, 303-454-5208, mewwhite@terracon.com. Purchaser shall also notify EPA and the State of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least ten (10) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Purchaser. If EPA disapproves of a selected

contractor or subcontractor, Purchaser shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within fifteen (15) days after EPA's disapproval. With respect to any proposed contractor, Purchaser shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Purchaser are subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

31. Purchaser has designated, and EPA has not disapproved, the following individual as Project Coordinator, who will be responsible for administration of all actions by Purchaser required by this Settlement: Lynx Chan, LC Development Consulting, 1807 S. Washington, Suite 327, Naperville, IL 60565, 312-209-0608, lynx.chan@lcdevcon.com. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 30. Notice or communication relating to this Settlement from EPA to Purchaser's Project Coordinator constitutes notice or communication to Purchaser. Purchaser has the right, subject to Paragraph 30, to change its designated Project Coordinator. Purchaser shall notify EPA and the State fifteen (15) days before such a change is made. The initial notification by Purchaser may be made orally to EPA and the State but shall be promptly followed by a written notice.

32. EPA has designated Sai Appaji of the Superfund and Emergency Management Division, Region 8, as its Remedial Project Manager (RPM). EPA has the right to change its designated RPM. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Sai Appaji at Appaji.Sairam@epa.gov.

33. The RPM is responsible for overseeing Purchaser's implementation of this Settlement. The RPM has the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of the RPM from the Property is not cause for stoppage of Work unless specifically directed by the RPM.

34. CDPHE has designated Kyle Sandor of the Hazardous Materials and Waste Management Division as the State Project Manager. CDPHE has the right to change its designated State Project Manager. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Kyle Sandor at Kyle.Sandor@state.co.us.

## VII. RESPONSE ACTIONS TO BE PERFORMED

35. Purchaser shall perform, at a minimum, all actions necessary to implement the Work Plan. The actions to be implemented generally include, but are not limited to, the following: 1) modification and operation of the LFGES; 2) landfill gas and groundwater monitoring; 3) maintenance of landfill cover, fencing, and signage; and 4) implementation, maintenance, monitoring, and reporting on Institutional Controls, which Institutional Controls shall require the installation and operation of vapor intrusion mitigation systems in structures constructed on the Site.

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

### 37. **Submission and Review of Deliverables**

#### a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Purchaser shall direct all deliverables required by this Settlement and the attached Work Plan to the EPA RPM (Sai Appaji, Remedial Program Manager, Appaji.Sairam@epa.gov) and the CDPHE Project Manager (Kyle Sandor, Project Manager, Kyle.Sandor@state.co.us). Purchaser shall submit all deliverables required by this Settlement and the attached Work Plan to EPA and the State in accordance with the schedule set forth in such plan.

(2) Purchaser shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 37.b. Purchaser shall submit all other deliverables to EPA and the State in the form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Purchaser shall also provide EPA and the State with paper copies of such exhibits.

#### b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. 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 <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

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

c. **Review and Incorporation of Deliverables.** Following a consultation process with the State and, unless otherwise provided, EPA will approve, disapprove, require revisions to, or modify deliverables in whole or in part that are submitted by Purchaser under this Settlement. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Purchaser shall submit the revised deliverable by the required deadline. Once approved or approved with modifications, Purchaser shall commence implementation as required by the deliverable, and the deliverable will be incorporated into and fully enforceable under this Settlement. Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Purchaser may seek subsequent modifications to approved deliverables in accordance with Paragraph 117.

38. **Health and Safety Plan.** The Health and Safety Plan (“HSP”) is attached as Appendix 6. Purchaser shall implement the plan during the pendency of the response action.

39. **Quality Assurance, Sampling, and Data Analysis**

a. Purchaser 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, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002) (<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA-50-B-04-900A-900C, DOD-DTIC-ADA-427785 (March 2005).

b. **Sampling and Analysis Plan.** In accordance with requirements and schedule set forth in the Work Plan, Purchaser shall submit a Sampling and Analysis Plan to EPA and the State for review and EPA approval in accordance with Paragraph 37. This plan must consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Work Plan, 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) (<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA-50-B-04-900A-900C, DOD-DTIC-ADA-427785 (March 2005).

c. Purchaser shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories used by Purchaser in implementing this Settlement. In addition, Purchaser shall ensure that such laboratories analyze all samples submitted by EPA and the State 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 <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Purchaser 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 <https://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 (<https://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846/sw-846-compendium>), “Standard Methods for the Examination of Water and Wastewater” (<https://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<https://www3.epa.gov/ttnamti1/airtox.html>).

d. However, upon approval by EPA, Purchaser 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, American Society for Testing and Materials (ASTM), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA). Purchaser 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, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-2-epa-requirements-quality-management-plans>), 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. Purchaser 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, Purchaser shall provide split or duplicate samples to EPA or their State or their authorized representatives. Purchaser shall notify EPA and the State not less than ten (10) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State will provide to Purchaser split or duplicate samples of any samples it takes as part of EPA's or the State's oversight of Purchaser's implementation of the Work.

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

g. Purchaser waives any objections to any data gathered, generated, or evaluated by EPA, the State, or Purchaser 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 Purchaser objects to any other data relating to the Work, Purchaser shall submit to EPA and the State 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 and the State within fifteen (15) days after the progress report containing the data.

40. **Progress Reports.** Purchaser shall submit a written progress report to EPA and the State concerning actions undertaken pursuant to this Settlement on at a frequency set out in the Work Plan, or as otherwise requested by EPA, from the Effective Date. These reports must 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.

41. **Material Management Plan.** Purchaser shall comply with the approved Materials Management Plan ("MMP"), attached as Appendix 7, and any amendment thereto for handling any contaminated material removal from or handled at the Property.

## VIII. PROPERTY REQUIREMENTS

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

43. **Access, Appropriate Care, and Non-Interference.** Commencing on the Effective Date, Purchaser shall: (1) provide EPA, the State, and their representatives, including contractors, and subcontractors, with full cooperation, assistance, and access to the Property, and to any other property owned or controlled by Purchaser that is part of the Site, at all reasonable times to conduct any activity regarding the Settlement and to any other persons that are



authorized to conduct response actions at the Property, including those activities listed in Paragraph 43.a (Access Requirements); (2) exercise appropriate care with respect to hazardous substances found at the Property as described in Paragraph 43.b (Appropriate Care), and (3) 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 remedy, including restrictions in Paragraph 43.c (Land, Water, and Other Resource Use Restrictions). To the extent practicable, EPA, the State, and their representatives shall provide advance notice to Purchaser of the times they plan to access the Property.

a. **Access Requirements.** The following is a non-exclusive list of activities for which access to the Property is required pursuant to this Settlement:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (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 Work Plan and/or as defined in the approved SAP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 92 (Work Takeover);
- (8) Implementing a response action by persons performing under EPA oversight;
- (9) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Purchaser or its agents consistent with Section IX (Access to Information);
- (10) Assessing Purchaser's compliance with the Settlement;
- (11) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement or an EPA decision document for the Site;

(12) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any Institutional Controls regarding the Property.

b. **Appropriate Care.** Purchaser shall take reasonable steps to stop any continuing releases; prevent any threatened future releases; and prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

c. **Land, Water, or Other Resource Use Restrictions.** Purchaser shall remain in compliance with any land use restrictions, including Institutional Controls associated with the Property and any later revised or amended Institutional Controls, established in connection with any response action at the Property; implement, maintain, monitor, and report on Institutional Controls; and not impede the effectiveness or integrity of any Institutional Control employed at the Property in connection with a response action.

44. **Notice to Successors-in-Title.** Purchaser shall, prior to entering into a contract to Transfer the Property or any part of the Property, or sixty (60) days prior to transferring the Property or any part of the Property, whichever is earlier:

a. Notify the proposed transferee that EPA has selected a remedy regarding the Site, that the Purchaser has entered into an Administrative Settlement Agreement requiring implementation of certain response actions and compliance with the property requirements in Section VIII (identifying the name, CERCLA docket number, and the Effective Date of this Settlement); and

b. Notify EPA and the State of the name and address of the proposed transferee, and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

45. For so long as Purchaser is an owner or operator of the Property or any part thereof, Purchaser shall include in any contract or other agreement that any transferees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property or any part thereof, terms requiring that such parties provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall further include in any such contract or agreement with any transferees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property or any part thereof, terms requiring such parties to 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. EPA and the State shall be designated as third-party beneficiaries with the right to enforce such terms.

46. Upon Transfer of the Property or any part of the Property, Purchaser shall include in any contract or agreement for such Transfer terms requiring that each successor in title, grantee, transferee or other holder of an interest in the Property or any part of the Property shall provide access and cooperation to EPA and the State, as well as their authorized officers, employees, representatives, and all other persons performing response actions under EPA and

State oversight. Purchaser shall further include in any contract or agreement for such Transfer terms requiring that each successor in title, grantee, transferee or other holder of an interest in the Property or any part of the Property shall implement and comply with any land use restrictions and Institutional Controls on the Property in connection with a response action and not contest EPA or the State's authority to enforce any land use restrictions and Institutional Controls on the Property or any part of the Property. EPA and the State shall be designated as third-party beneficiaries with the right to enforce such terms.

47. Purchaser shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use the Property or any part thereof as of the Effective Date.

48. Notwithstanding any provision of this Settlement, EPA and the State retain 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**

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

50. Purchaser shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Purchaser's possession or control or that of 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. Purchaser shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **51. Privileged and Protected Claims**

a. Purchaser may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal or state law, in lieu of providing the Record, provided Purchaser complies with Paragraph 51.b, and except as provided in Paragraph 51.c.

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

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

52. **Business Confidential Claims.** Purchaser may assert that all or part of a Record provided to EPA and the State under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Purchaser shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Purchaser asserts business confidentiality claims. Records that Purchaser claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA or the State has notified Purchaser that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Purchaser.

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

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

## **X. RECORD RETENTION**

55. For a period of ten (10) years following completion of the Work, unless EPA agrees in writing to a shorter time period, Purchaser shall preserve all documents and information in Purchaser's possession or control and relating to the Work and any hazardous substances, pollutants or contaminants found on or released from the Property. At the conclusion of the document retention period, Purchaser shall notify EPA and the State at least ninety (90) days prior to the destruction of any such records, and upon request by EPA and/or the State, except as provided in Paragraph 51 (Privileged and Protected Claims), Purchaser shall deliver any such records to EPA and/or the State. These record retention requirements apply regardless of any corporate retention policy to the contrary and is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

## **XI. COMPLIANCE WITH OTHER LAWS**

56. Nothing in this Settlement limits Purchaser's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies

of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

57. 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, Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Purchaser may seek relief under the provisions of Section 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**

58. **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, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Purchaser shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Purchaser shall also immediately notify both the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (303) 293-1788 of the incident or Property conditions, and the State's Project Manager. If Purchaser fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Purchaser shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIII (Payment of Response Costs).

59. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Purchaser 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, Purchaser shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (303) 293-1788, the National Response Center at (800) 424-8802, and the State Project Manager. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

60. For any event covered under this Section, Purchaser shall submit a written report to EPA and the State 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 RESPONSE COSTS

61. **Payment of Response Costs.** Purchaser shall pay to EPA all Response Costs and to the State all State Response Costs not inconsistent with the NCP.

62. **EPA Response Costs:**

a. On a periodic basis, EPA will send Purchaser a bill requiring payment of Response Costs that includes a standard EPA cost report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Purchaser shall make all payments within thirty (30) days of Purchaser's receipt of each bill requiring payment in accordance with Paragraph c, except as otherwise provided in Paragraph 65 (Contesting Response Costs).

b. EPA will send Purchaser an electronic billing notification to the following email address:

bjais@ca-ventures.com

with copies to:

jtrinkle@ca-ventures.com and lynx.chan@lcdevcon.com.

c. **Payment Instructions.** Purchaser shall make all payments 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 Payments Form - Cincinnati Finance Center. Complete the form including the Site Name, CERCLA docket number and Site/Spill ID Number 08-14. Purchaser shall send to EPA in accordance with Paragraph 123, a notice of this payment including these references.

d. **Deposit of Payments.** The total amount to be paid by Purchaser pursuant to Section XIII (Payment of Response Costs) may be deposited by EPA in the Sand Creek Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Sand Creek Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Purchaser pursuant to the dispute resolution provisions of this Settlement or in any other forum.

63. **State Response Costs:**

a. **Payment of State Response Costs.** On a periodic basis, the State will send Purchaser a bill requiring payment of State Response Costs. Purchaser shall make all payments within thirty (30) days of Purchaser's receipt of each bill, requiring payment in

accordance with Paragraph 63.b, except as otherwise provided in Paragraph 65 (Contesting Response Costs).

b. **State Payment Instructions.** Payment shall be made by certified or cashier's check drawn to the order of "State of Colorado, Treasurer, For Deposit in the Hazardous Substance Response Fund" and sent to:

Budget Officer  
Colorado Department of Public Health and Environment  
Hazardous Materials and Waste Management Division  
4300 Cherry Creek Drive South  
Denver, CO 80246

64. **Interest.** If any payment is not made by the date required, Purchaser shall pay Interest on the unpaid balance. The Interest on Response Costs and State Response Costs under Section XIII (Payment of Response Costs) shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Purchaser's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States and/or the State by virtue of Purchaser's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

65. **Contesting Response Costs.** Purchaser may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any Response Costs or State Response Costs billed under Section XIII (Payment of Response Costs) if it determines that EPA or the State has made a mathematical error or included a cost item that is not within the definition of Response Costs or State Response Costs, or if it believes EPA or the State incurred excess costs as a direct result of an EPA action or State action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Purchaser shall submit a Notice of Dispute in writing to the RPM or State Project Manager within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Response Costs or State Response Costs and the respective basis for objection. If Purchaser submits a Notice of Dispute, Purchaser shall within the thirty (30)-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Response Costs to EPA or State Response Costs to the State in the manner described in Paragraph 62.c, 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 Response Costs or State Response Costs. Purchaser shall send to the RPM or State Project Manager a copy of the transmittal letter and check paying the uncontested Response Costs or State Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA or the State 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 or the State in the manner described in Paragraphs 62.c or 63.b. If Purchaser 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 or the State in

the manner described in Paragraphs 62.c or 63.b. Purchaser 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 under Purchasers' obligation to reimburse EPA for its Response Costs and the State for its State Response Costs.

#### **XIV. DISPUTE RESOLUTION**

66. 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.

67. **EPA Dispute Resolution.** EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement, EPA will notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 67.a (Informal Dispute Resolution).

a. **Informal Dispute Resolution.** If Purchaser objects to any EPA action taken pursuant to this Settlement, including billings for Response Costs, Purchaser shall send the RPM and EPA counsel, with a copy to DOJ, a written Notice of Dispute describing the objection(s) within ten (10) days after such action. EPA and Purchaser shall have thirty (30) days from EPA's receipt of Purchaser'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 Purchaser pursuant to this Section shall be in writing and shall, upon signature by EPA and Purchaser, be incorporated into and becomes an enforceable part of this Settlement.

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

c. Except as provided in Paragraph 65 (Contesting 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 Purchaser under this Settlement. Except as provided in Paragraph 78, 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. If Purchaser does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).



68. **State Dispute Resolution.** The State and Purchaser shall attempt to resolve any disagreement concerning this Settlement expeditiously and informally. The Parties anticipate that the only potential dispute that the State and Purchaser may have are disputes over billing for State Response Costs. If Purchaser objects to a billing for State Response Costs, Purchaser shall send the State a written Notice of Dispute in accordance with Paragraph 65. If the State contends that Purchaser is in violation of this Settlement with respect to payment of State Response Costs, the State will notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute State's position pursuant to Paragraphs 68.a and b.

a. **Informal Dispute Resolution.** If Purchaser objects to a State determination that it is in violation of the requirement to pay State Response Costs, Purchaser shall send the Hazardous Materials and Waste Management Project Manager and State counsel in the Colorado Attorney General's Office a written Notice of Dispute describing the objection(s) within ten (10) days after such action. The State and Purchaser shall have thirty (30) days from the State's receipt of Purchaser'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 the State. Any agreement reached by the State and Purchaser pursuant to this Section shall be in writing and shall, upon signature by the State and Purchaser, be incorporated into and becomes an enforceable part of this Settlement.

b. **Formal Dispute Resolution.** If the State and Purchaser are unable to reach an agreement within the Negotiation Period, Purchaser shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the Hazardous Materials and Waste Management Project Manager and State counsel in the Colorado Attorney General's Office. The State may, within twenty (20) days thereafter, submit a statement of position. Thereafter, the Hazardous Materials and Waste Management Division Director will issue a written decision on the dispute to Purchaser, with a copy to State counsel in the Colorado Attorney General's Office. The State's decision will be incorporated into and become an enforceable part of this Settlement. Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the State's decision, whichever occurs.

## XV. FORCE MAJEURE

69. "Force Majeure," for purposes of this Settlement, is defined as any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of Purchaser's contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Purchaser exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards set forth in the ROD.

70. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Purchaser intends or may intend to assert a claim of force majeure, Purchaser shall notify EPA's RPM orally or, in his or her absence, the Director of the Superfund and Emergency Management Division, EPA Region 8, and the Hazardous Materials and Waste Management Division Program Manager within eight (8) days of when Purchaser first knew that the event might cause a delay. Within eight (8) days thereafter of notice given, Purchaser shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Purchaser shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Purchaser shall be deemed to know of any circumstance of which Purchaser, any entity controlled by Purchaser, or Purchaser's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Purchaser from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, and after a consultation process with the State, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 71 and whether Purchaser has exercised best efforts under Paragraph 69, EPA may, in its unreviewable discretion, excuse in writing Purchaser's failure to submit timely or complete notices under this Paragraph.

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

72. If Purchaser 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, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 69 and 70. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement identified to EPA.

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

**XVI. STIPULATED PENALTIES**

74. Purchaser shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 75.a and 76 for failure to comply with the obligations specified in Paragraphs 75.b and 76, unless excused under Section XV (Force Majeure). “Comply” as used in the previous sentence include compliance by Purchaser with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

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

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 75.b:

<b>Penalty per Violation per Day</b>	<b>Period of Noncompliance</b>
\$800	1st through 14th day
\$1,200	15th through 30th day
\$3,000	31st day and beyond

**b. Obligations to EPA**

(1) Payment of any amount due to EPA under Section XIII (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXV (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 65 (Contesting Response Costs).

(4) Failure to timely submit adequate Landfill Gas Extraction System Construction Completion Report.

(5) Failure to timely submit adequate Methane Mitigation System Construction Completion Report(s).

(6) Failure to timely submit adequate Operations & Maintenance Reports.

**c. Obligations to the State**

(1) Payment of any amount due to the State under Section XIII (Payment of Response Costs).

76. **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 75.b. (including, but not limited to, Well Abandonment Reports and Monthly Progress Reports):

<b>Penalty per Violation per Day</b>	<b>Period of Noncompliance</b>
\$600	1st through 14th day
\$1,000	15th through 30th day
\$2,250	31st day and beyond

77. If EPA assumes performance of a portion or all of the Work pursuant to Paragraph 92 (Work Takeover), Purchaser shall be liable for a stipulated penalty in the amount of \$125,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 92 (Work Takeover) and 113 (Access to Financial Assurance).

78. 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 or the State's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 37.c (Review and Incorporation of Deliverables), during the period, if any, beginning on the 31st day after EPA's or the State's receipt of such submission until the date that EPA or the State notify Purchaser of any deficiency; and (b) with respect to a decision by the EPA management official at the Division Director level or higher, under Paragraph 67.b (Formal Dispute Resolution), or the State, under Paragraph 68.b (Formal Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the Negotiation Period begins until the date that the EPA management official or the State 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.

79. Following an EPA or State determination that Purchaser has failed to comply with a requirement of this Settlement, if pursuing stipulated penalties, EPA or the State shall give Purchaser written notification of the failure and describe the noncompliance. EPA or the State may send Purchaser a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of the date EPA or the State has notified Purchaser of a violation or provided a demand for payment.

80. All penalties accruing under this Section shall be due and payable to EPA or the State within thirty (30) days of Purchaser's receipt from EPA or the State of a demand for payment of the penalties, unless Purchaser invokes the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the thirty (30)-day period. Purchaser shall make all payments and shall send notice of such payments in accordance with the procedures under Paragraphs 62.c (Payment Instructions) or 63.b (State Payment Instructions). Purchaser should indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

81. If Purchaser fails to pay stipulated penalties when due, Purchaser shall pay Interest on the unpaid stipulated penalties as follows: (a) if Purchaser has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 78 until the date of payment; and (b) if Purchaser fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 80 until the date of payment. If Purchaser fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

83. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Settlement or of the statutes and regulations upon which it is based including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that the United States shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XIX, (Reservations of Rights by United States), Paragraph 92.

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

## **XVII. CERTIFICATION**

85. By entering into this Settlement, Purchaser certifies under penalty of perjury that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and the State all information known to Purchaser and all information in the possession or control of its members, managers, 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. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site.

## **XVIII. COVENANTS BY UNITED STATES AND THE STATE**

86. Except as provided in Section XIX (Reservations of Rights by United States and the State), the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and the State covenants not to sue or take administrative action against Purchaser pursuant to 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Existing Contamination, the Work, and payments under Section XIII (Payment of Response Costs). These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by

Purchaser of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA and the State by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 85.

87. Except with respect to a future Transfer, pursuant to Paragraph 8 of this Settlement, these covenants extend only to Purchaser and do not extend to any other person.

88. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States, EPA, or the State to seek or obtain further relief from Purchaser if the information provided to EPA or the State by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in Paragraph 85 is false or in any material respect inaccurate.

### **XIX. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE STATE**

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

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

- a. liability for failure by Purchaser to meet a requirement of this Settlement;
- b. criminal liability;
- c. liability for violations of federal or state law that occur during or after implementation of the Work;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments, which is not impacted by this Settlement;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f. liability resulting from an act or omission (not including any act or omission completed in compliance with this Settlement) that causes exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Property, except as provided in clause c of the definition of Existing Contamination.

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

**92. Work Takeover**

a. If EPA after consultation with the State determines that Purchaser: (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 Purchaser. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Purchaser a period of thirty (30) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the thirty (30)-day notice period specified in Paragraph 92.a, Purchaser has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Purchaser in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 92.b. Funding of Work Takeover costs is addressed under Paragraph 113 (Access to Financial Assurance).

c. Purchaser may invoke the procedures set forth in Paragraph 67.b (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 92. However, notwithstanding Purchaser’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 92 until the earlier of: (1) the date that Purchaser remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice; or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 67.b (Formal Dispute Resolution).

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

**XX. COVENANTS BY PURCHASER**

93. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to Existing Contamination, the Work, payments under Section XIII (Payment of 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, including any claim under the United States Constitution, the Colorado Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

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

94. These covenants not to sue shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by United States and the State), other than in Paragraph 90.a (liability for failure to meet a requirement of the Settlement), or 90.b (criminal liability), or 90.c (violations of federal or state law during or after implementation of the Work), but only to the extent that Purchaser's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

95. 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), or Section 112 of CERCLA, 42 U.S.C. § 9612, or 40 C.F.R. Part 307.

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

## **XXI. OTHER CLAIMS**

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

98. Except as expressly provided in Section XVIII (Covenants by United States and the State) and Section XXII (Effect of Settlement/Contribution), nothing in this Settlement



constitutes a satisfaction of or release from any claim or cause of action against Purchaser or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States or the State for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

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

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

101. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Sections 113(f)(2) and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, payments under Section XIII (Payment of 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, the State, or any other person. However, if the United States or the State exercises rights under the reservations in Section XIX (Reservations of Rights by United States and the State), other than in Paragraphs 90.a (claims for failure to meet a requirement of the Settlement), 90.b (criminal liability), or 90.c (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

102. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

within ten (10) days after service of the complaint or claim upon it. In addition, Purchaser shall notify EPA and the State within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

### **XXIII. INDEMNIFICATION**

104. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Purchaser shall indemnify, save, and hold harmless the United States and the State, their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its members, managers, officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Purchaser's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Purchaser agrees to pay the United States and the State all costs they incur, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Purchaser, its members, managers, 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 and the State shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement. Neither Purchaser nor any such contractor shall be considered an agent of the United States or the State.

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

106. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

### **XXIV. INSURANCE**

107. No later than ten (10) days before commencing any Work at the Property, Purchaser shall secure, and shall maintain 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 Purchaser pursuant to this Settlement. In addition, for the duration of the Settlement, Purchaser shall provide EPA with certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Purchaser shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Purchaser in furtherance of this Settlement. If Purchaser 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, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure that all submittals to EPA under this Paragraph identify the Sand Creek Superfund Site, Commerce City, Colorado and the CERCLA docket number for this action.

## **XXV. FINANCIAL ASSURANCE**

108. In order to ensure completion of the Work, Purchaser shall secure financial assurance, initially in the amount of \$6,497,000 ("Estimated Cost of the Work"), for the benefit of EPA. 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 EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Purchaser may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies. Without limiting Paragraph 114, the amount of such financial assurance may be reduced to \$2,726,000 upon EPA approval of the Final Construction Completion Report for LFGES Modification.

- a. A surety bond guaranteeing payment and/or performance of the Work that is 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;
- b. An irrevocable letter of credit, payable to or at the direction of EPA, that is 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;
- c. A trust fund established for the benefit of EPA that is 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;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
- e. A demonstration by a Purchaser that it meets the financial test criteria of Paragraph 110; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Purchaser or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Purchaser; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 110.

109. Purchaser has selected, and EPA has found satisfactory, an irrevocable letter of credit as an initial form of financial assurance. Within thirty (30) days after the Effective Date, Purchaser 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 Regional Financial Management Officer at:

Regional Financial Management Officer  
Superfund Cost Recovery  
Financial Management Unit (MSD-FM-B)  
U.S. EPA, Region 8  
1595 Wynkoop St.  
Denver, CO 80202  
Johnson.Karren@epa.gov

110. A Purchaser seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 108.e or 108.f must, within twenty (20) days of the Effective Date:

a. Demonstrate that:

(1) the Purchaser or guarantor has:

- i. 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
- ii. 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
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least ninety (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) The Purchaser or guarantor has:
- i. 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
  - ii. 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
  - iii. Tangible net worth of at least \$10 million; and
  - iv. 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 the affected Purchaser 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 - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

111. A Purchaser providing financial assurance by means of a demonstration or guarantee under Paragraph 108.e or 108.f must also:

a. Annually resubmit the documents described in Paragraph 110 within ninety (90) days after the close of the Purchaser's or guarantor's fiscal year;

b. Notify EPA within thirty (30) days after the Purchaser 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 the Purchaser or guarantor in addition to those specified in Paragraph 110; EPA may make such a request at any time based on a belief that the Purchaser or guarantor may no longer meet the financial test requirements of this Section.

112. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser 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,

Purchaser shall notify EPA of such information within thirty (30) 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 Purchaser of such determination. Purchaser 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 Purchaser, 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 forty-five (45) days. Purchaser shall follow the procedures of Paragraph 114 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

### **113. Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 92, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 113.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 113.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 92, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 108.e or 108.f then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Purchaser shall, within fifteen (15) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 113 must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Sand Creek Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 113 must be reimbursed as Response Costs under Section XIII (Payment of Response Costs).

114. **Modification of Amount, Form, or Terms of Financial Assurance.** Purchaser may submit, on any anniversary of the Effective Date or at any other time agreed to by the EPA and Purchaser, 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 in accordance with Paragraph 123, 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. EPA will notify Purchaser of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Purchaser may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIV (Dispute Resolution). Purchaser may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism is not subject to challenge by Purchaser pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within thirty (30) days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Purchaser shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 109.

115. **Release, Cancellation, or Discontinuation of Financial Assurance.** Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only: (a) in accordance with EPA's approval of such release, cancellation, or discontinuation or (b) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV (Dispute Resolution).

## XXVI. MODIFICATION

116. EPA's RPM may make non-material modifications to any plan or schedule or the Work Plan in writing or by oral direction. EPA's RPM shall make a reasonable attempt to confer with the State Project Manager before making any such modification. Any oral modification will be memorialized in writing by EPA promptly and sent to the Purchaser and State Project Manager, 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.

117. If Purchaser seeks permission to deviate from any approved work plan or schedule or the Work Plan, Purchaser's Project Coordinator shall submit a written request to EPA and the State for approval outlining the proposed modification and its basis. Purchaser may not proceed with a requested deviation under this Paragraph until receiving oral or written approval from the RPM pursuant to Paragraph 116.

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

## **XXVII. INTEGRATION/APPENDICES**

119. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements and understandings, whether oral or written, regarding the subject matter of the Settlement embodied herein. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix 1 is the Work Plan.
- b. Appendix 2 is a map of the Site.
- c. Appendix 3 is a map depicting the Property.
- d. Appendix 4 provides the surveys and legal descriptions of the Property.
- e. Appendix 5 is a compilation of Institutional Controls for the Property.
- f. Appendix 6 is the HSP for the Property
- g. Appendix 7 is the approved MMP for the Property
- h. Appendix 8 is substantially the form for modification, pursuant to Paragraph 8 (Transfer)

## **XXVIII. ENFORCEMENT**

120. The Parties agree that the United States District Court for the District of Colorado (“Court”) will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any judicial enforcement action brought with respect to this Settlement. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. Section 9613(j), the remedy set forth in the ROD or Section VII (Response Actions To Be Performed) to be performed by Purchaser shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

121. Notwithstanding Paragraph 86 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States or the State may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

122. If the United States or the State file a civil action as contemplated by Paragraph 121, 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.



## XXIX. NOTICES AND SUBMISSIONS

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

Address submissions to Purchaser to:

Triangle Logistics Center, LLC  
130 East Randolph Street, Suite 2100  
Chicago, IL 60601  
Attention: Legal Department, Michael Podboy & Joe Trinkle  
Email: legalnotices@ca-ventures.com, mpodboy@ca-ventures.com; and  
jtrinkle@ca-ventures.com

With copies to:

Polsinelli PC  
150 N. Riverside, Suite 3000  
Chicago, IL 60606  
Attention: Eric G. Greenfield & Keith H. Londo  
Email: egreenfield@polsinelli.com and klondo@polsinelli.com

Kaplan Kirsch & Rockwell LLP  
1675 Broadway, Suite 2300  
Denver, Colorado 80202  
(303) 825-7000  
Attention: Polly B. Jessen  
Email: pjessen@kaplankirsch.com

Address submissions to EPA to:

Sai Appaji  
Remedial Project Manager – Sand Creek Site  
Superfund and Emergency Management Division  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202  
(303) 312-6313  
Appaji.Sairam@epa.gov

Max Greenblum  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202  
(303) 312-6108  
Greenblum.Max@epa.gov

Address submissions to DOJ to:

eescdcopy.enrd@usdoj.gov  
DJ Number: 90-11-3-167/2 (Attn.: Stacy Coleman)

Address submissions to the State to

Kyle Sandor  
Hazardous Materials and Waste Management Division Project Manager  
Environmental Protection Specialist II  
4300 Cherry Creek Drive South  
Denver, CO 80246  
Kyle.Sandor@state.co.us

With copies to:

Emily Splitek  
Assistant Attorney General  
Colorado Attorney General's Office  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, CO 80203

### **XXX. PUBLIC COMMENT**

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

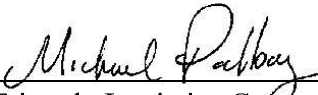
### **XXXI. EFFECTIVE DATE**

125. The Effective Date of this Settlement is the date upon which both of the following have occurred: (1) EPA issues written notice to Purchaser that the United States and the State have fully executed the Settlement after review of and response to any public comments received; and (2) Purchaser acquires the Property. Purchaser shall notify EPA and the State in writing within three (3) days of acquiring the Property.

Signature Page for Administrative Settlement Agreement regarding the Sand Creek Superfund Site (CERCLA Docket No. CERCLA-08-2022-0005)

IT IS SO AGREED:

BY:

  
\_\_\_\_\_  
Triangle Logistics Center, LLC,  
a Delaware limited liability company  
Michael Podboy, its authorized signatory

\_\_\_\_\_  
Date

Signature Page for Administrative Settlement Agreement regarding the Sand Creek Superfund Site (CERCLA Docket No. CERCLA-08-2022-0005)

IT IS SO AGREED:

THE STATE OF COLORADO

BY:

**Tracie White** Digitally signed by Tracie White  
Date: 2022.04.28 15:41:08 -06'00'

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Tracie White Date  
Division Director  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health and Environment

Approved as to form:

**Emily Splitek** Digitally signed by Emily Splitek  
Date: 2022.04.28 11:33:17 -06'00'

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Emily Splitek (Attorney Reg. #46619) Date  
Assistant Attorney General  
Colorado Attorney General's Office

Signature Page for Administrative Settlement Agreement regarding the Sand Creek Superfund Site (CERCLA Docket No. CERCLA-08-2022-0005)

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

**Bielenberg, Ben** Digitally signed by Bielenberg, Ben  
Date: 2022.04.27 17:29:50 -06'00'

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Betsy Smidinger  
Division Director  
Superfund and Emergency Management Division  
U.S. Environmental Protection Agency, Region 8

Date

**AMY SWANSON** Digitally signed by AMY SWANSON  
Date: 2022.04.28 14:24:42 -06'00'

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Christopher Thompson  
Associate Regional Counsel for Enforcement  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 8

Date


Signature Page for Administrative Settlement Agreement regarding the Sand Creek Superfund Site (CERCLA Docket No. CERCLA-08-2022-0005)

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

NATHANIEL  
DOUGLAS

 Digitally signed by NATHANIEL  
DOUGLAS  
Date: 2022.04.27 12:45:48 -04'00'

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Nathaniel Douglass, Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date