

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF THE  
TECHCITY SUPERFUND SITE

iPark 87, LLC,

Respondent,

Proceeding under Sections 106(a) and 122 of  
the Comprehensive Environmental Response,  
Compensation, and Liability Act of 1980, as  
amended, 42 U.S.C. §§ 9606(a) and 9622.

Index Number  
CERCLA-02-2022- 2013

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
FOR A REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (the “Settlement Agreement”) is entered into voluntarily by iPark 87, LLC (“Respondent”) and the United States Environmental Protection Agency, Region 2 (“EPA”) and requires Respondent to perform removal activities (primarily involving abating asbestos in one building, designated as building 1 and three piles containing regulated asbestos-containing material (“RACM”)) and pay certain response costs in connection with the TechCity Superfund Site (“Site”) located at 300 Enterprise Drive, Town of Ulster, Ulster County, New York.

2. This Settlement Agreement is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9606(a) and 9622(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 *Fed. Reg.* 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and redelegated within Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated January 19, 2017. Effective April 28, 2019, the Emergency and Remedial Response Division was renamed the Superfund and Emergency Management Division (“SEMD”). All delegations to the Director of the Emergency and Remedial Response Division were conferred upon the Director of SEMD in a memorandum by the EPA Regional Administrator dated March 27, 2019.

3. Respondent's participation in this Settlement Agreement shall neither constitute nor be construed as an admission of liability or an admission of the Findings of Fact or Conclusions of Law contained in this Settlement Agreement. To effectuate the mutual objectives of EPA and Respondent, Respondent agrees to comply with and be bound by the terms of this Settlement Agreement. Respondent agrees not to contest the authority or jurisdiction of the Director of the Superfund and Emergency Management Division or his delegate to issue this Settlement Agreement, and further agrees that it will not contest the validity of this Settlement Agreement or its terms in any proceeding to enforce the terms of this Settlement Agreement.

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

## II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and Respondent and their successors and assigns. Any change in the ownership or business status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondent under this Settlement Agreement. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

## III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in an attachment to this Settlement Agreement, the following definitions shall apply:

a. "Day" means a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next Working Day.

b. "Effective Date" means the date specified in Paragraph 121.

c. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

d. "Party" or "Parties" means EPA and/or Respondent.

e. "Respondent" shall mean iPark 87, LLC.

f. “Response Costs” means all direct and indirect costs incurred by EPA in conducting response activities at the Site through the Effective Date, the costs of overseeing Respondent’s implementation of the Work until the date of EPA’s written notification of completion pursuant to Section 114 below, and any costs EPA incurs to undertake any Work required under this Settlement Agreement.

g. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2022-2013, and the appendix attached hereto. In the event of conflict between this Settlement Agreement and the appendix, this Settlement Agreement shall control.

h. “Site” shall mean the TechCity Superfund Site which includes approximately 258 acres and is located at 300 Enterprise Drive, Town of Ulster, Ulster County, New York. The Site contains numerous separate tax parcels containing commercial/industrial buildings, support structures, and debris piles. A Site map is attached hereto as Appendix A.

i. “Waste” means (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any “pollutant or contaminant” under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.

j. “Work” means all work relating to the asbestos in building 1 and the three RACM piles and other activities that Respondent is required to perform pursuant to this Settlement Agreement.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The Site is bordered by Neighborhood Road to the north, Boices Lane, with both residential and business areas, to the south, and an active rail line to the east. Enterprise Drive is located to the west and three other commercial properties are located west of Enterprise Drive. The Site contains several buildings and support structures. Many of the buildings are currently vacant but a few are occupied by commercial tenants. A number of debris piles including three large piles containing RACM are also located on-Site. A Site map is attached hereto as Appendix A.

8. The Site is the location of a former International Business Machines Corporation (“IBM”) computer manufacturing facility. IBM built its facility in 1955 and occupied the Site for over 30 years. IBM’s operations at the Site included performance of metal plating and electronic card etching, and involved the use of a powerhouse building, a sewage disposal facility, an engineering laboratory, and paint shops.

9. Contamination was discovered in the soils and groundwater at the Site in the late 1970s. Since that time, IBM has been undertaking various investigations, cleanup actions, and monitoring

activities pursuant to certain permits and enforcement instruments under state law, with New York State Department of Environmental Conservation (“NYSDEC”) oversight.

10. Documents prepared by or for IBM showed the presence of friable and/or non-friable asbestos containing material (“ACM”) in buildings 1 and 2, both constructed in 1955, and in other buildings at the Site prior to IBM’s sale of the Site.

11. In February 1998, companies established and controlled by Mr. Alan Ginsburg, a real estate developer, purchased the Site from IBM. AG Properties of Kingston, LLC (“AG Properties”) owned the Site and TechCity Properties, Inc. (“TechCity Properties”) operated and managed the Site from that time until approximately December 2021.

12. Asbestos inspections and surveys conducted in 2009, 2010, and 2015 for TechCity Properties noted ACM in areas of building 1, including in floor tile, pipe insulation, floor adhesive or mastic, caulking, and roofing materials.

13. In early 2015, Mr. Ginsberg announced he was interested in selling the Site and would be demolishing seven buildings, including buildings 1, 2 and 25. TechCity Properties hired contractors to undertake asbestos abatement work at buildings slated for demolition but Building 25 was not included in the asbestos abatement work, despite evidence of asbestos-containing floor tiles within the building. TechCity Properties also hired a related contractor to demolish and remove the buildings. A September 2015 sample from building 25 collected by an asbestos monitoring company showed that certain floor tiles tested positive for asbestos. Demolition of buildings at the Site began in the Fall of 2015, including all of building 25 and part of building 2.

14. The New York State Department of Labor (“NYSDOL”) issued nearly a dozen Notices of Violation to the asbestos abatement contractor during the course of its work on-Site. On August 1, 2016, NYSDOL inspected the asbestos abatement activities at building 1 and observed several individuals conducting dry removal of ACM, which was causing visible ACM emissions throughout the building. Inspectors noted a number of violations including failure to establish critical barriers to prevent the spread of asbestos. NYSDOL issued a stop work order to the asbestos abatement contractor for violations of New York State Industrial Code Rule 56, 12 NYCRR Part 56.

15. In August 2016, in response to the NYSDOL stop work order, an asbestos monitor undertook an asbestos contamination assessment of building 1 and noted that the asbestos abatement work had been undertaken without the use of engineering controls and that asbestos debris was scattered throughout the building. The report estimated that approximately 300,000 square feet of ACM were disturbed during the improper abatement of thermal systems insulation.

16. In May 2017, EPA was first contacted by Ulster County officials requesting assistance in addressing potential public health and environmental threats associated with friable asbestos at

the Site. Between May 2017 and November of 2019, EPA attempted to have the Site owner/operators address the asbestos conditions concerning buildings 1, 2, and 25.

17. On December 11, 2019, EPA notified five parties, including Mr. Ginsberg, of their potential liability under CERCLA and sought their voluntary performance of a CERCLA removal action to permanently address the release or threat or release of friable asbestos at buildings 1, 2, and 25. None of the parties indicated a willingness to undertake all the work called for by EPA.

18. On February 12, 2020, EPA authorized the use of federal funds to undertake CERCLA removal activities at the Site to address the most immediate threats to human health, welfare, or the environment including replacing and/or repairing critical barriers on building 1 and demolishing building 2. By the end of March 2020, EPA had demolished building 2, removed approximately 200 tons of asbestos-contaminated debris, recycled approximately 150 tons of decontaminated steel, and secured building 1. On or about August 23, 2021, six parcels (parcels 18 through 23) located along the rail line were sold to a third party, unrelated to Respondent.

19. On September 16, 2020, EPA issued Administrative Order for a Removal Action, Index No. CERCLA-02-2020-2038 (“Order”), to six parties, including Mr. Ginsberg, directing them to abate the significant remaining threats posed by friable asbestos at the Site. The Order became effective on October 14, 2020. Only Mr. Ginsberg and two of his companies initially complied with the Order, but they ceased complying with the Order.

20. On July 15, 2021, Ulster County filed an action to foreclose on 18 parcels at the Site for failure to pay over \$12 million in property taxes. The County had previously foreclosed on several other parcels at the Site including the two parcels containing buildings 1 and 2.

21. On September 23, 2021, EPA filed a Notice of Federal Lien against two Site parcels after learning that a sale of the remaining Site parcels was imminent. The value of EPA’s lien was over \$634,000 at the time of filing.

22. On December 1, 2021, a settlement of the foreclosure litigation was approved by the court whereby Respondent agreed to enter into a transaction to obtain title to the Site (not including the six parcels referenced above) from the Ulster County Economic Development Alliance, Inc. The settlement anticipated that Respondent would perform the work required under the Order and EPA’s past response costs at the Site would be reimbursed as more particularly set forth herein.

23. Respondent is a limited liability company registered in the state of Delaware. Respondent is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and will acquire ownership of certain parcels at the Site after the effective date of this Settlement Agreement. Respondent’s acquisition may be construed to impart future liability to it under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1).

24. The Site constitutes a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).



25. Asbestos is a “hazardous substance” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. The conditions at the Site, including the presence of unsecured and exposed friable asbestos, constitutes a “release” or threat of “release” of a hazardous substance into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. Respondent has been given the opportunity to discuss with EPA the basis for issuance of this Settlement Agreement and its terms.

#### V. DETERMINATIONS

28. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”). These factors include, but are not limited to, the following conditions:

- a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants; and
- b. Weather conditions may cause hazardous substances or pollutants to migrate or to be released.

29. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, will be considered to be consistent with the NCP.

30. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record, EPA has determined that actual or threatened releases of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Respondent shall undertake certain Work as set forth in Section VI (Work To Be Performed), below and comply with the provisions of this Settlement Agreement.

#### VI. WORK TO BE PERFORMED

##### A. Designation of Contractor and Designated Project Coordinator

31. Respondent has selected Carl Monheit as the Designated Project Coordinator. Selection of the Designated Project Coordinator was approved by EPA in writing on March 18, 2022. The Designated Project Coordinator shall be responsible on behalf of Respondent for oversight of the implementation of this Settlement Agreement. He shall have the technical expertise sufficient to

adequately oversee all aspects of the Work contemplated by this Settlement Agreement and shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

32. Respondent may change its Designated Project Coordinator provided that EPA has received written notice at least ten (10) days prior to the desired change. If EPA disapproves of a proposed Designated Project Coordinator, Respondent shall propose a different person and notify EPA of that person's name, address, telephone number, and qualifications within fourteen (14) days following EPA's disapproval. All changes of the Designated Project Coordinator shall be subject to EPA approval.

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

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

35. Respondent shall retain at least one contractor to perform the Work. Respondent shall notify EPA of the name and qualifications of a proposed contractor within thirty (30) days of the Effective Date. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Settlement Agreement at least five (5) days prior to commencement of such Work. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with the Uniform Federal Policy for Implementing Quality Systems (UFP-QS), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer, by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

36. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves in writing of any of Respondent's proposed contractors to conduct the Work, Respondent shall propose a different contractor within twenty-one (21) days of receipt of EPA's disapproval.

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

#### B. Description of Work

38. Respondent shall perform a removal action at the Site in accordance with this Settlement Agreement, CERCLA, the NCP, EPA relevant guidance documents, and other applicable Federal and New York State laws and regulations including NYSDOL rules and regulations regarding Industrial Code Rule 56, 12 NYCRR Part 56. Respondent shall perform, at a minimum, all actions necessary to implement the Work herein. Specifically, Respondent shall abate asbestos in building 1 and the three RACM piles including, but not limited to, the following:

- a. Application of best management practices such as the use of water and/or a stabilizing agent to limit migration of asbestos during the removal action;
- b. Management of all temporary measures taken to address asbestos, including coordinating with Ulster County on maintaining critical barriers on building 1 and the covers on the RACM piles until off-site disposal has been completed;
- c. Removal of all asbestos-containing debris for off-Site disposal in compliance with the EPA Off-Site Rule, 40 C.F.R. § 300.440.
- d. Securing of the Site during the removal action to prevent access; and
- e. Provision of necessary air monitoring.

39. Within thirty (30) days of the Effective Date, Respondent shall submit to EPA for review and approval a detailed Site Operating Plan (“SOP”) for the Work. The SOP shall be submitted in accordance with this Settlement Agreement, CERCLA, the NCP, EPA’s relevant guidance documents, 12 NYCRR Part 56, the National Emissions Standards for Hazardous Air Pollutants (“NESHAPS”) regulations promulgated at 40 C.F.R. Part 61, Subpart M, and other applicable Federal and New York State laws and regulations. The SOP shall include the following:

- a. Site-specific Work Plan;
- b. Transportation and Disposal (“T&D”) Plan;



- c. Site Health and Safety Plan (“HASP”);
- d. Quality Assurance Project Plan (“QAPP”);
- e. Air Monitoring Plan; and
- f. Green Strategy Plan. The Green Strategy Plan should follow EPA Region 2’s *Clean and Green Policy* which may be found at: <https://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy> [www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy](https://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy).

40. The Site-specific Work Plan shall discuss the proper characterization, staging, handling, sampling and analysis, and disposal of all materials containing hazardous substances, pollutants or contaminants at the Site, and at a minimum, address the following:

- a. Proposed timeline for the completion of all work activities and all other requirements of this Settlement Agreement. The schedule shall provide for completion of all field work no later than three (3) months from the date of approval of the SOP for the RACM piles and no later than nine (9) months from the date of the approval of the SOP for building 1.
- b. Procedures for preventing the release of hazardous substances to the environment during staging, handling, sampling, and disposal; and
- c. A plan for providing Site security including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas and the Site for the duration of the cleanup.

41. The T&D Plan shall outline procedures for the proper transporting and disposing of all hazardous substances, pollutants and contaminants, hazardous waste, and any solid waste generated during the Work. This plan shall include the identification of the proposed disposal facilities for all waste streams and include waste profile information, facility acceptance documentation, and analytical characterization of each waste stream. In addition, this plan shall ensure compliance with the CERCLA Off-Site Rule, 40 CFR Section 300.440 and include the following information to be documented by Respondent:

- a. the transporter and disposal identification numbers for each proposed transporter and disposal company;
- b. documentation of the current permit status of proposed transporters and disposal facilities; and
- c. the date of the most recent New York State or EPA regulatory inspection of each proposed disposal company, and any special provisions or conditions attached to the disposal permits as a result of the most recent inspection.

After permitted disposal facilities have been finalized, all wastes shall be properly manifested and shipped off-Site via permitted transporters. All final signed manifests, bills of lading and certificates of destruction for such disposal shall be provided by Respondent to EPA's Project Coordinator identified in Paragraph 52 and included in weekly and/or monthly progress reports.

42. The HASP shall ensure the protection of the public health and safety during performance of Work under this Settlement Agreement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at [www.epa.gov/nscep](http://www.epa.gov/nscep), and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at [www.epaossc.org/HealthSafetyManual/manual-index.htm](http://www.epaossc.org/HealthSafetyManual/manual-index.htm). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning. The HASP should also reflect recent guidance and guidelines issued by the CDC and EPA regarding COVID-19; such guidance will be provided upon request. Respondent shall incorporate all changes to the plan required by EPA and shall implement the plan during the duration of the removal action. The HASP, at a minimum, shall address the following:

- a. Delineation of the work zones;
- b. Personnel monitoring requirements, paying attention to monitoring specific job functions in compliance with OSHA requirements;
- c. Personal protective equipment requirements and upgrade thresholds based on real-time air monitoring;
- d. Demonstration that all personnel, including subcontractor personnel, have current certifications as per applicable OSHA regulations;
- e. Decontamination procedures for personnel and equipment exiting any hot zone; and
- f. Compliance with OSHA requirements for Health and Safety Plans.

If any of the Work performed by Respondent pursuant to this Settlement Agreement requires alteration of the HASP, Respondent shall submit to EPA for review such amendments to the HASP prior to the performance of such work.

43. The QAPP shall provide for the following:

- a. The QAPP shall include detailed procedures, methods, and sampling parameters to be implemented to sample and analyze all Wastes handled pursuant to this Settlement Agreement.
- b. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondent shall ensure said

procedures are consistent with and the UFP-QAPP, Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer.

c. If any of the Work performed by Respondent pursuant to this Settlement Agreement requires alteration of the QAPP, Respondent shall submit to EPA for review and approval proposed amendments to the QAPP.

d. Respondent shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.

e. The QAPP shall require that any laboratory utilized by Respondent is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Settlement Agreement, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program, National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation, or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require Respondent to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondent's utilization of a laboratory that is not certified. EPA approval shall be based on Respondent's submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.

f. Respondent shall ensure that EPA and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Settlement Agreement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) ([www.epa.gov/irmpoli8/epa-qa-field-activities-procedures](http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures)). Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement Agreement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" ([www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements](http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements)) and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program ([www.epa.gov/clp](http://www.epa.gov/clp)), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" ([www.epa.gov/hw-sw846](http://www.epa.gov/hw-sw846)), "Standard Methods for the Examination of Water and Wastewater" ([www.standardmethods.org/](http://www.standardmethods.org/)), 40 C.F.R. Part 136, "Air Toxics - Monitoring

Methods” ([www3.epa.gov/ttnamti1/airtox.html](http://www3.epa.gov/ttnamti1/airtox.html)).” However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control 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, National Institute for Occupational Safety and Health, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network laboratories, laboratories accredited under NELAP, or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

g. The QAPP shall provide for electronic submittal of sampling data in accordance with EPA Region 2 policies, guidelines, and formats. The Region 2 Electronic Data Deliverable (“EDD”) is a standardized format for all electronic submittals to EPA Region 2. The most recent EDD Guidance and Requirements can be found at: [www.epa.gov/superfund/region-2-superfund-electronic-data-submission](http://www.epa.gov/superfund/region-2-superfund-electronic-data-submission).

44. The Air Monitoring Plan (“AMP”) shall provide for the following:

- a. Work zone air monitoring;
- b. Perimeter air monitoring;
- c. Community air monitoring;
- d. Particulate monitoring, response levels and actions;
- e. Monitoring as required by NYDOL rules and regulations (12 NYCRR Part 56); and
- f. Dust control.

45. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing Work under this Settlement Agreement. Respondent shall notify EPA not less than seven (7) Working Days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.



46. EPA either will approve the SOP or will require modifications thereto pursuant to Section D (Plans and Reports Requiring EPA Approval), below.

47. Within fourteen (14) days after EPA's approval of the SOP, Respondent shall commence the Work described in the EPA-approved SOP. Respondent shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Settlement Agreement.

48. Respondent shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondent to receive Wastes from the Site. Respondent shall provide such notification to EPA for approval at least five (5) Working Days prior to off-Site shipment of such Wastes.

49. At the time of completion of all field activities required by this Settlement Agreement, demobilization shall include sampling if sampling related to the demobilization is deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Settlement Agreement, and any equipment or structures constructed to facilitate the cleanup.

50. Respondent shall conduct the Work required hereunder in accordance with CERCLA, the NCP, 12 NYCRR Part 56, NESHAPS regulations promulgated at 40 C.F.R. Part 61, Subpart M, as well as applicable provisions of the following guidance documents, and of other guidance documents referenced in the following guidance documents: EPA Region 2's *Clean and Green Policy*, cited above, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. EPA Project Coordinator, Other Personnel, and  
Modifications to EPA-Approved SOP

51. All activities required of Respondent under the terms of this Settlement Agreement shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by the federal government, and New York State, and all work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

52. The EPA Project Coordinator for the Site is: Don Graham, Removal Action Branch, Superfund & Emergency Management Division, U.S. Environmental Protection Agency, Region 2, 2890 Woodbridge Avenue, Building 205, Edison, New Jersey 08837, telephone number 732-321-4345. EPA will notify Respondent's Project Coordinator if EPA designates a different Project Coordinator for this Site.

53. EPA, including the Project Coordinator, or his/her authorized representative, will conduct oversight of the implementation of this Settlement Agreement. The Project Coordinator shall have the authority vested in an OSC by the NCP. The Project Coordinator shall have the



authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondent at the Site consistent with this Settlement Agreement. Absence of the Project Coordinator from the Site shall not be cause for stoppage of Work unless specifically directed by the Project Coordinator.

54. As appropriate during the course of implementation of the actions required of Respondent pursuant to this Settlement Agreement, Respondent or its consultants or contractors, acting through the Designated Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date, the Designated Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Settlement Agreement and shall be implemented by Respondent.

## VII. PLANS AND REPORTS REQUIRING EPA APPROVAL

55. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement, Respondent shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

56. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondent pursuant to Section XVI., below. Respondent shall implement any such item(s) as amended or developed by EPA.

57. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all Work performed pursuant to this Settlement Agreement.

58. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

## VIII. REPORTING AND NOTICE TO EPA

60. Commencing on the thirtieth (30th) day after the Effective Date, unless there is field work at the Site, Respondent shall provide monthly progress reports to EPA. Whenever, during the implementation of this Settlement Agreement, Respondent is engaged in active field work, Respondent shall provide, via email to EPA's Project Coordinator, at least one (1) week advance notice of all field activities. During active field work, Respondent shall provide EPA with written progress reports, including photo documentation, every seven (7) days beginning from the date of commencement of field work. After active field work has been completed, Respondent shall resume monthly written progress reports, commencing thirty (30) days after the submission of the last weekly written progress report. All progress reports shall fully describe all actions and activities undertaken pursuant to this Settlement Agreement. Such progress reports shall, among other things: a) describe the actions taken toward achieving compliance with this Settlement Agreement during the previous interval; b) include all results of sampling and tests and all other data received by Respondent after the most recent progress report submitted to EPA; c) describe all actions which are scheduled for the next interval; d) provide other information relating to the progress of Work as is customary in the industry and e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

61. Respondent shall provide EPA with at least one (1) week advance notice of any change in the schedule.

62. The Final Report referred to in Paragraph 64, below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Settlement Agreement shall be signed by a responsible official of Respondent or by the Project Coordinator. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

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

1 paper copy and 1 electronic copy to:

U.S. Environmental Protection Agency, Region 2  
Superfund and Emergency Response Division, Removal Action Branch  
2890 Woodbridge Avenue, Building 205  
Edison, New Jersey 08837  
Attn: Don Graham  
[graham.don@epa.gov](mailto:graham.don@epa.gov)  
732-321-4345

1 electronic copy to:

U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel, New York/Caribbean Superfund Branch  
290 Broadway, 17th Floor  
New York, NY 10007-1866  
Attn: Marla E. Wieder  
[wieder.marla@epa.gov](mailto:wieder.marla@epa.gov)  
212-637-3184

1 electronic copy to:

New York State Department of Environmental Conservation  
Daniel R. Lanners, PE  
Project Manager, Remedial Bureau C  
Division of Environmental Remediation,  
625 Broadway  
Albany, NY 12233-7014  
[daniel.lanners@dec.ny.gov](mailto:daniel.lanners@dec.ny.gov)  
518-402-9652

64. Within thirty (30) days after completion of the Work required by the SOP, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include, as applicable:

- a. A synopsis of all Work performed under this Settlement Agreement;
- b. A detailed description of all EPA-approved modifications to the SOP that occurred during Respondent's performance of the Work required under this Settlement Agreement;
- c. A listing of quantities and types of materials removed from the Site or handled at the Site;
- d. A discussion of removal and disposal options considered for those materials;
- e. A listing of the ultimate destination of those materials;
- f. A presentation of the analytical results of all sampling and analyses performed, including data and chain of custody records;
- g. Accompanying appendices containing all relevant documentation generated during the Work (*e.g.*, manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits;
- h. An accounting of expenses incurred by Respondent in performing the Work; and
- i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this document is true, accurate, and complete."

65. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 55-58, above.

#### IX. OVERSIGHT

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

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

#### X. COMMUNITY RELATIONS

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

#### XI. ACCESS TO PROPERTY AND INFORMATION

69. EPA, NYSDEC, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Respondent shall at all times permit EPA, the NYSDEC, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be related to EPA oversight of the implementation of this Settlement Agreement.

70. In the event that the Work performed by Respondent under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the present owners within twenty (20) days of the Effective Date of this Settlement Agreement for purposes of implementing the Work required in this Settlement Agreement. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as New York State and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with



Site activities. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

71. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on Respondent's behalf, in connection with the implementation of this Settlement Agreement.

72. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

## XII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

73. Respondent shall preserve all documents and information relating to Work performed under this Settlement Agreement or relating to Waste found on or released from the Site, for six (6) years after completion of the Work required by this Settlement Agreement. At the end of the six (6) year period, Respondent shall notify EPA at least ninety (90) before any such document or information is intentionally destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

74. All documents submitted by Respondent to EPA in the course of implementing this Settlement Agreement shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may



release all such documents to New York State, and New York State may make those documents available to the public unless Respondent conforms with applicable state or federal law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific, or engineering data relating to the Work performed hereunder.

### XIII. OFF-SITE SHIPMENTS

75. All hazardous substances and pollutants or contaminants removed from the Site pursuant to this Settlement Agreement for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with: (a) Section 121(d)(3) of CERCLA; 42 U.S.C. § 9621(d)(3); (b) Section 300.440 of the NCP; (c) the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; (d) RCRA; (e) the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; and (f) all other applicable federal and state requirements.

76. If hazardous substances from the Site are to be shipped outside New York State, Respondent shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) Working Days prior to such Waste shipments, Respondent shall notify the environmental agency of the accepting entity of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

77. Certificates of disposal must be provided to EPA upon Respondent's receipt of such. These certificates must be included in the progress reports and in the Final Report.

### XIV. COMPLIANCE WITH OTHER LAWS

78. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable New York State and federal laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement 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 New York State environmental or facility siting laws. See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

79. As provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted

entirely on-Site. Where any portion of the Work requires a federal or New York State permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any federal or New York State statute or regulation.

#### XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

80. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center (telephone number (800) 424-8802), Respondent shall also immediately orally notify the Chief of the Removal Action Branch of the Superfund & Emergency Management Division of EPA, Region 2, at (732) 321-6658, or the EPA Region 2 Emergency 24-hour Hot Line at (732) 548-8730, and the Project Coordinator of the incident or Site conditions. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 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.

81. In the event of any action or occurrence during Respondent's performance of the requirements of this Settlement Agreement which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondent shall take such action in accordance with applicable provisions of this Settlement Agreement including, but not limited to, the HASP. In the event that EPA determines that: (a) the activities performed pursuant to this Settlement Agreement; (b) significant changes in conditions at the Site; or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat.

82. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

#### XVI. REIMBURSEMENT OF RESPONSE COSTS

83. Respondent hereby agrees to reimburse EPA for all Response Costs. EPA will periodically send billings to Respondent for Response Costs. The billings will be accompanied by a printout

of cost data in EPA's financial management system. Respondent shall remit payment to EPA within thirty (30) days of receipt of each such billing.

84. Respondent shall make payment at <https://www.pay.gov> in accordance with the following instructions: enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the following information: debtors name, address, phone, and email; type of payment (Superfund); Site ID (A27N) or Bill No.; Payment Amount (amount of each payment); Installments (no); Region (2); and, "Are you paying for yourself or another party" (Self Payment). Please insert the Site Name (TechCity Superfund Site) and the Docket No: (CERCLA-02-2022-2013) in the Comment field. Respondent shall send to EPA, a notice of each payment including the above information, via email to: [graham.don@epa.gov](mailto:graham.don@epa.gov) and [wieder.marla@epa.gov](mailto:wieder.marla@epa.gov).

85. Respondent shall pay interest on any amounts overdue under Paragraph 83 above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### XVII. FORCE MAJEURE

86. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercises "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondent to perform such Work.

87. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA Project Coordinator or, in his absence, the Section Chief of the Removal Action Branch of SEMD at 732-321-6614 or 908-420-4450 within forty-eight (48) hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven (7) calendar days after the date when Respondent first becomes aware or should have become aware of the circumstances that may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond their control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay;

and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Settlement Agreement. Respondent's failure to timely and properly notify EPA as required by this Paragraph shall constitute a waiver of Respondent's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondent.

88. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Settlement Agreement that are not directly affected by the force majeure. Respondent shall use best efforts to avoid or minimize any delay or prevention of performance of its obligations under this Settlement Agreement.

### XVIII. STIPULATED AND STATUTORY PENALTIES

89. If Respondent fails to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 60, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance, \$750 per day, per violation, for the 8th through 15th day of noncompliance, \$1,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$1,500 per day, per violation, for the 26th day of noncompliance and beyond.

b. For the progress reports required by Paragraph 60, stipulated penalties shall accrue in the amount of \$100 per day, per violation, for the first seven days of noncompliance, \$250 per day, per violation, for the 8th through 15th day of noncompliance, \$500 per day, per violation, for the 16th through 25th day of noncompliance, and \$1,000 per day, per violation, for the 26th day of noncompliance and beyond.

90. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 106 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$500,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 106 (Work Takeover) and 102 (Access to Financial Assurance).

91. Any such penalty shall accrue as of the first day after the applicable requirement or deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written



demand from EPA. Payment of any such penalty to EPA shall be made in accordance with the payment procedures in Paragraph 84 above and note that payment is for a penalty. Respondent shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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

93. Notwithstanding any other provision of this Settlement Agreement, failure of Respondent to comply with any provision of this Settlement Agreement may subject Respondent to civil penalties of up to sixty-two thousand six hundred eighty-nine thousand dollars (\$62,689) per violation per day, as provided in Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 87 Fed. Reg. 1676 (January 12, 2022), and 40 C.F.R. Part 19.4. Respondent may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Sections 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

#### XIX. OTHER CLAIMS

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

95. Except as expressly provided in Paragraph 109 (waiver against "*de micromis*" parties) and Section XXII (Covenant Not to Sue by EPA), below, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.



96. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review.

## XX. INDEMNIFICATION

97. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents 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). Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondent or under its control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondent. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

99. Further, Respondent agrees to pay the United States all costs it incurs including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement.

## XXI. INSURANCE

100. No later than 30 days before commencing any field Work at the Site, Respondent shall secure, and shall maintain until EPA's notification pursuant to Section XXVIII (Termination and Satisfaction), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured

with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. In addition, for the duration of this Settlement Agreement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of this Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the TechCity Superfund Site, Town of Ulster, Ulster County, New York and the EPA docket number for this action.

## XXII. FINANCIAL ASSURANCE

101. Respondent shall demonstrate its ability to perform the Work as required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the Effective Date one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets that satisfy the requirements of 40 C.F.R. § 264.143(f) and are available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than \$4 million, which is EPA's estimated cost of the Work to be performed by Respondent under this Settlement Agreement. If EPA determines that the financial assurances submitted by Respondent pursuant to this paragraph are inadequate, Respondent shall, within twenty (20) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this paragraph. The submittal required under this Paragraph shall be sent to EPA pursuant to Paragraph 63 and to:

Chief, Resource Management/Cost Recovery Section  
Program Support Branch  
Superfund and Emergency Management Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 18<sup>th</sup> Floor  
New York, New York 10007-1866  
[keating.robert@epa.gov](mailto:keating.robert@epa.gov)

### 102. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 106.b., then, in accordance with any applicable financial assurance mechanism, EPA is entitled to require that any funds guaranteed be paid in accordance with Paragraph 102.d., below.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 102.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 106, below 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 101, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph shall be, as directed by EPA: (i) paid to EPA to facilitate the completion of the Work by EPA, the State, 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, 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 TechCity Superfund 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 must be reimbursed as Response Costs under Section XVI. (Reimbursement of Response Costs).

### XXIII. COVENANT NOT TO SUE BY EPA

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

### XXIV. RESERVATION OF RIGHTS BY EPA

104. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to

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

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

- a. Claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. Liability for costs not included within the definition of Response Costs;
- c. Liability for performance of response action other than the Work;
- d. Criminal liability;
- e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. Liability arising from the past, present, or future disposal, release or threat of release of Waste outside of the Site; and
- g. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

106. Work Takeover

- a. In the event EPA determines that Respondent: (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) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. 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 Respondent a period of 30 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.
- b. If, after expiration of the 30-day notice period specified in Paragraph 106.a, Respondent 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 Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph. Funding of Work Takeover costs is addressed under Paragraph 102 (Access to Financial Assurance).

c. 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.

## XXV. COVENANT NOT TO SUE BY RESPONDENT

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

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

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

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 109 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 105 (b), (c), and (e)-(g), but only to the extent that Respondent’s claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

109. Waiver of Claims. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person’s liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.



110. The waiver in Paragraph 109 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

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

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

#### XXVI. CONTRIBUTION PROTECTION AND RIGHTS

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

112. The “matters addressed” in this Settlement Agreement are the Work and Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved any liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

114. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or

other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XXIII (Covenant Not to Sue by EPA).

115. Except as provided in Section XXIV (Covenant Not to Sue by Respondent), above, nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

#### XXVII. MODIFICATIONS

116. The EPA Project Coordinator may make modifications to any plan or schedule in writing or by oral direction to achieve the work required by this Settlement Agreement. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

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

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

#### XXVIII. TERMINATION AND SATISFACTION

119. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 64, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondent in writing. Such notification shall not affect any continuing obligations of Respondent. If EPA determines that any removal activities have not been completed in accordance with this Settlement Agreement, EPA may so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

## XXIX. INTEGRATION/APPENDIX

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

Appendix A – Site Map

## XXX. EFFECTIVE DATE

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

U.S. ENVIRONMENTAL PROTECTION AGENCY

Evangelista, Pat

Digitally signed by Evangelista,  
Pat  
Date: 2022.06.07 20:11:53 -04'00'

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Pat Evangelista, Director  
Superfund and Emergency Management Division

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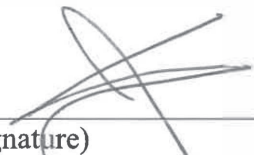
Date

In the Matter of TechCity Superfund Site  
EPA Index No. CERCLA-02-2022-2013

CONSENT

Respondent has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement on behalf of Respondent and to bind Respondent.

iPark 87, LLC

  
\_\_\_\_\_  
(Signature)

June 7, 2022  
\_\_\_\_\_  
(Date)

*Joseph Carter*  
\_\_\_\_\_  
(Printed Name of Signatory)

*President*  
\_\_\_\_\_  
(Title of Signatory)



Appendix A  
TechCity Site Map

**TechCity Site**  
**Town of Ulster**  
**Ulster County, NY**

*EPA, 2018, Created from Google Maps*

