UNITED STATES DEPARTMENT OF JUSTICE,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6,

AND TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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IN THE MATTER OF: )

) CERCLA Docket No. \_\_\_\_\_\_\_\_\_

Conroe Creosoting Superfund Site )

Conroe, Texas )

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) **ADMINISTRATIVE** **SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR CERTAIN RESPONSE ACTION ACTIVITIES BY BONA FIDE PROSPECTIVE PURCHASER**

Conroe Logistics Center, LLC )

a Delaware Limited Liability )

Company )

Purchaser )

)

)

Proceeding Under the Comprehensive )

Environmental Response, Compensation, )

and Liability Act, 42 U.S.C. §§ 9601–9675 )

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# **JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent for Certain Response Activities by Bona Fide Prospective Purchaser (Settlement) is entered into voluntarily by and between the United States on behalf of the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), and Conroe Logistics Center, LLC. (Purchaser) (collectively, the Parties). This Settlement provides for the performance of certain actions by Purchaser at or in connection with the property located at 1776 East Davis Street in Conroe, Montgomery County, Texas (Property), which is part of the Conroe Creosoting Company Superfund Site (Site).
2. This Settlement is issued under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of EPA and further delegated to the undersigned Regional official. This Settlement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, and the Executive Director of the TCEQ, pursuant to Texas Water Code Section 5.229, to enter into contracts or other agreements with the EPA and with any other entity for the purpose of carrying out the powers, duties, and responsibilities of the Commission.
3. The parties agree that the United States District Court for the Southern District of Texas will have jurisdiction pursuant to section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement, including any action set forth in Section XXXIII (Enforcement; Payment of Costs) of this Settlement.
4. EPA has notified the State of Texas (the State) of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
5. Purchaser represents that, as of the Effective Date, it is a bona fide prospective purchaser (BFPP) as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), and has complied and agrees to comply with sections 101(40) and 107(r)(1) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. Appendix 1 contains a list of reasonable steps that Purchaser should take with respect to hazardous substances as part of its BFPP obligations set forth in section 101(40). This list constitutes guidance for satisfying applicable statutory criteria for appropriate carerelative to BFPP status although it is not exhaustive and not to be deemed binding on any party to the Settlement*.* In view, however, of the additional Work to be performed at the Site, and the risk of claims under CERCLA and Texas law being asserted against Purchaser notwithstanding section 107(r)(1) as a consequence of Purchaser’s activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XIX (Reservations of Rights by United States and TCEQ), any potential liability of Purchaser under CERCLA and Texas law for the Existing Contamination as defined by Paragraph 11 below.
6. The resolution of this potential liability in exchange for Purchaser’s performance of the Work and reimbursement of certain State response costsis in the public interest.
7. EPA, TCEQ and Purchaser 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 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 further agrees that it will not contest the basis or validity of this Settlement or its terms, or the United States’ or State’s right to enforce this agreement.

# **PARTIES BOUND**

1. This Settlement is binding upon the United States, including EPA, TCEQ, and upon Purchaser and its successors and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser’s responsibilities under this Settlement, except as otherwise provided herein.
2. Each undersigned representative of Purchaser certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.
3. 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 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.

# **DEFINITIONS**

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

“Activities in the Statement of Work” or “Activities” shall mean those activities specifically listed in the Statement of Work.

“Agencies” shall mean EPA and TCEQ collectively.

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

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

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

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

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

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

“Existing Contamination” shall mean:

* 1. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;
  2. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
  3. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the integrity of the response action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

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

“Operation and Maintenance” shall mean activities relating to the long-term operation and/or completion of the remedial action under CERCLA at the Site that are required to maintain the effectiveness of such remedial action and includes sampling of monitoring wells and maintenance of the RCRA Vault and related leachate collection system.

“Oversight Costs” shall mean all direct and indirect costs incurred by EPA, the United States, or TCEQ after the Effective Date in monitoring and supervising Purchaser’s performance of the Work to determine whether such performance is consistent with the requirements of this Settlement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Settlement, as well as costs incurred in overseeing implementation of the Work.

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

“Parties” shall mean the United States, TCEQ, and Purchaser.

“Property” shall mean that portion of the Site, encompassing approximately 131 acres located at 1776 East Davis Street in Conroe, Texas, which is legally described in Appendix 2 of this Settlement. The Property does not include the RCRA Vault or the RCRA Vault Access Easement, as defined below, and as a consequence, neither Purchaser nor any subsequent purchaser of the Property shall be responsible for Operation and Maintenance requirements under CERCLA with respect to the RCRA Vault or the RCRA Vault Access Easement, or releases of hazardous substances, pollutants or contaminants from the RCRA Vault or the RCRA Vault Access Easement.

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

“Purchaser” shall mean Conroe Logistics Center, LLC and its successors and assigns.

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

“RCRA Vault” shall mean the fenced area encompassing approximately 10.042 acres located north of the Property, as shown in the map in Appendix 2.

“RCRA Vault Access Easement shall mean the 25-foot easement surrounding the RCRA Vault, as shown in the map in Appendix 2.

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

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent for Certain Response Action Activities by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXXI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Conroe Creosoting Superfund Site, encompassing approximately 147 acres, located at 1776 East Davis Street in Conroe, Montgomery County, Texas and depicted generally on the map in Appendix 3. The Site includes the Property and all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located.

“Statement of Work” or “SOW” shall mean the document describing the activities Purchaser must perform to implement the response action pursuant to this Settlement, as set forth in Appendix 4, and any modifications made thereto in accordance with this Settlement.

“TCEQ” shall mean the Texas Commission on Environmental Quality and any successor departments or agencies of the State of Texas.

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

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

“Waste Material” shall mean (a) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and (d) any “solid waste” or “hazardous substance” as defined in the Texas Solid Waste Disposal Act, Tex. Health and Safety Code ch. 361.

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

# **STATEMENT OF FACTS**

1. The Site is a former wood-treating facility in Conroe, Texas. Conroe Creosoting Company (CCC) operated the Site from 1946 to 1997, using creosote, pentachlorophenol (PCP), and copper chromated arsenate (CCA) to treat lumber, railroad cross-ties, poles and fence posts.
2. In 2002-2003, EPA performed a time-critical removal action (TCRA) at the Site. As part of the TCRA, EPA removed contaminated soils, sediments and wastes and placed the materials in an on-Site RCRA vault (the RCRA Vault), located north of the Property. In addition, EPA excavated off-Site sediments from nearby Stewart’s Creek and placed the sediments in the RCRA Vault.
3. EPA documented the TCRA in an action memorandum and cited the following as applicable or relevant and appropriate requirements, as required by 300.415(j):
   1. ambient air quality standards in 40 C.F.R. Part 50 to protect the quality of air during implementation of the action;
   2. state water quality standards for treated surface water discharges from the Site;
   3. applicable RCRA requirements for landfill closure in 40 C.F.R. § 264.111;
   4. applicable RCRA requirements for closure of surface impoundments in 40 C.F.R. § 264.228;
   5. applicable RCRA requirements for landfills in 40 C.F.R. § 264.310;
   6. applicable RCRA requirements for post-closure and monitoring of landfills in 40 C.F.R. § 264.117(a)(1); and
   7. applicable RCRA requirements for a Transportation Storage or Disposal facility in a 100-year flood plain in 40 C.F.R. § 264.18 and 40 C.F.R. Part 6, Appendix A.
4. After completing the TCRA, EPA conducted a remedial investigation/feasibility study (RI/FS) to determine the nature and extent of groundwater contamination.
5. In 2003, EPA listed the Site on the National Priorities List and issued a Record of Decision (ROD) that prescribed monitored natural attenuation of groundwater, long-term maintenance of the RCRA Vault, and Institutional Controls to prevent future installation of water supply wells and to restrict future development of the Site to non-residential uses. The ROD required no further action for on-Site soils and off-Site sediment.
6. The ROD cited Federal Safe Drinking Water Act Maximum Contaminant Levels, Maximum Contaminant Level Goals, and Action Levels in 40 C.F.R. Part 141 as applicable or relevant and appropriate requirements.
7. On August 29, 2008, EPA determined that the Site was ready for commercial/industrial reuse as long as the requirements and specifications specified in the ROD are met.
8. On October 8, 2010, the United States, the State, and Conroe Creosoting Company entered into a Consent Decree that provided for the recovery of response costs incurred by the United States and the State in relation to the response actions described above. As part of the Consent Decree, EPA agreed to release the Notice of Federal Lien filed against the Site on November 19, 2002. Per the terms of the Consent Decree, EPA filed a Notice of Federal Lien Release on July 25, 2011. By separate Releases of Lien, filed in Montgomery County property records on June 29, 2011, TCEQ released the lien for Site response costs that was placed via lien affidavit filed December 18, 2003 and the lien for Site response costs that was placed via lien affidavit filed April 11, 2005.
9. In 2012, EPA published an oral non-cancer toxicity value, or reference dose (RfD), for 2,3,7,8 tetrachlorodibenzo-p-dioxin (TCDD) in its Integrated Risk Information System.
10. Prior to March 2018, the definition of BFPP in section 101(40) of CERCLA applied to a person or a tenant of a person, thereby providing that a tenant could derive BFPP status from an owner who satisfied the BFPP criteria. In March 2018, Congress enacted the BUILD Act, which among other things, amended the definition of BFPP to include tenants of owners who were BFPPs but lost BFPP status through no fault of the tenant, and tenants who conduct all appropriate inquiries into previous ownership and uses of the facility prior to acquiring a leasehold. In both cases, tenants must comply with the other criteria in section 101(40)(B) to claim and maintain BFPP status.
11. In June 2018 EPA issued the Third Five-Year Review for the Site (Appendix 5) and noted that confirmation samples were not analyzed for TCDD following the 2003 TCRA. EPA recommended that additional data collection be performed to determine whether an unacceptable exposure scenario would exist for future industrial land use on-Site or future residential use off-Site, based on the new RfD for TCDD. EPA also recommended that a vapor intrusion assessment be conducted prior to construction of buildings on-Site and that a former supply well on-Site be properly abandoned to prevent potential contamination of the deeper aquifer.
12. In October 2019, Langan Engineering and Environmental Services, Inc. (Langan), on behalf of Purchaser, collected and analyzed soil samples from the Property using the RfD for TCDD. On January 23, 2020, Purchaser submitted to EPA and TCEQ a revised final report on TCDD sampling entitled “Limited Environmental Sampling Assessment—Dioxins.” Langan found calculated incremental lifetime cancer risks to be within or below the EPA’s risk management range and that no unacceptable cancer risks existed for the off-Site resident, or on-Site industrial worker or construction worker.
13. In January 2020, Langan, on behalf of Purchaser, completed a vapor intrusion assessment for the Property to determine whether vapor intrusion would be a concern for future workers at the Property. On March 17, 2020, Purchaser submitted a revised Final Vapor Intrusion Technical Memorandum to EPA and TCEQ entitled “Vapor Intrusion Technical Memorandum.” Langan evaluated the potential for a vapor intrusion risk to be present at the Property from pentachlorophenol and naphthalene using historic groundwater analytical data and concluded that vapor intrusion did not represent a pathway of concern for the Property.
14. Purchaser wishes to purchase the Property to construct a distribution facility. Purchaser desires to maintain its BFPP protection during implementation of the Work, construction and redevelopment of the Property, and future business activities at the Property.

# **DETERMINATIONS**

1. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:
   1. The Conroe Creosoting Superfund Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
   2. The contamination found at the Site, 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).
   3. Purchaser is a “person” as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
   4. The conditions described in the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
   5. 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.

# **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT**

1. In consideration of and in exchange for the United States’ and TCEQ’s Covenants Not to Sue in Section XVIII, and the Release and Waiver of Lien in Section XXIII, Purchaser agrees to comply with all provisions of this Settlement, including, but not limited to, all documents approved under and incorporated by reference into this Settlement.

# **DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, REMEDIAL PROJECT MANAGER AND TCEQ PROJECT MANAGER**

1. Purchaser, with EPA approval, has retained Langan Engineering and Environmental Services to perform the Activities in the Statement of Work. Purchaser shall notify the Agencies of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Activities at least 30 days prior to commencement of such Activities. The Agencies retain the right to disapprove of any or all of the contractors and/or subcontractors retained by Purchaser. If EPA or the TCEQ disapprove of a selected contractor or subcontractor, Purchaser shall retain a different contractor or subcontractor and shall notify the Agencies of that contractor’s or subcontractor’s name, title, contact information, and qualifications within 30 days after EPA’s or TCEQ’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) to the Agencies. 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 Activities for Purchaser shall be subject to EPA and TCEQ’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.
2. Purchaser, with EPA’s approval, has designated Neal Holdridge as Project Coordinator, who shall be responsible for administration of all actions by Purchaser required by this Settlement. If Purchaser designates a different Project Coordinator, Purchaser shall notify the Agencies and submit for the Agencies’ approval the designated Project Coordinator’s name, title, address, telephone number, email address, and qualifications at least 30 days before the Project Coordinator begins work. If EPA or the TCEQ disapproves of the designated Project Coordinator, Purchaser shall retain a different Project Coordinator and shall notify the Agencies of that person’s name, title, contact information, and qualifications within 30 days following EPA or the TCEQ’s disapproval. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during the Activities. Notice or communication relating to this Settlement from EPA or the TCEQ to Purchaser’s Project Coordinator shall constitute notice or communication to Purchaser.
3. EPA has designated Gary Baumgarten of the EPA Region 6 Superfund Division as its Remedial Project Manager (RPM). EPA shall have the right to change its RPM.
4. TCEQ has designated Midori Campbell of the TCEQ Remediation Division as the TCEQ Project Manager. TCEQ shall have the right to change its TCEQ Project Manager.
5. The RPM shall be responsible for overseeing Purchaser’s implementation of this Settlement. The RPM shall have 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 removal action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

# **WORK TO BE PERFORMED**

1. Purchaser shall perform all actions necessary to implement the SOW attached as Appendix 4.
2. Purchaser shall perform all actions required by this Settlement in accordance with all applicable local, state and federal laws and regulations, except as provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.
3. **Work Plan and Implementation**
   1. Within 30 days after the Effective Date, in accordance with Paragraph 36 (Submission of Deliverables) Purchaser shall submit to the Agencies for approval a draft Work Plan to implement the Work in accordance with the SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.
   2. The Agencies may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part within 21 days after receipt of Purchaser’s draft Work Plan. If EPA or the TCEQ requires revisions, Purchaser shall submit a revised draft Work Plan within 14 days of receipt of the Agencies’ notification of the required revisions. Purchaser shall implement the Work Plan as approved in writing by the Agencies in accordance with the schedule approved by the Agencies. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.
   3. Upon approval or approval with modifications of the Work Plan, Purchaser shall commence implementation of the Work in accordance with the schedule included therein. Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement.
   4. Unless otherwise provided in this Settlement, any additional deliverables that require the Agencies’ approval under the SOW shall be reviewed and approved by the Agencies in accordance with this Paragraph.
4. **Submission of Deliverables**
   1. **General Requirements for Deliverables**
5. Except as otherwise provided in this Settlement, Purchaser shall direct all submissions required by this Settlement to the RPM at:

Gary Baumgarten

1201 Elm Street, Suite 500

Dallas, Texas 75270

(214) 665-6749

[baumgarten.gary@epa.gov](mailto:baumgarten.gary@epa.gov)

and to the TCEQ Project Manager at:

Midori Campbell

Superfund Section

Remediation Division

Texas Commission on Environmental Quality

P.O. Box 13087, MC-136

Austin, TX 78711-3087

(512) 239-2077

[midori.campbell@tceq.texas.gov](mailto:midori.campbell@tceq.texas.gov)

Purchaser shall submit all deliverables required by this Settlement, the SOW, or any approved Work Plan to the Agencies in accordance with the schedule set forth in such plan.

1. Purchaser shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36.b. All other deliverables shall be submitted to the Agencies 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 the Agencies with paper copies of such exhibits.
2. The RPM shall consult with the TCEQ Project Manager and provide the TCEQ Project Manager an opportunity for comment on all submissions. The TCEQ Project Manager shall have the right to disapprove of, or require revisions to, all submissions.
   1. **Technical Specifications for Deliverables**
3. 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.
4. 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://edg.epa.gov/EME/>.
5. Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
6. Spatial data submitted by Purchaser does not, and is not intended to, define the boundaries of the Site.
7. **Progress Reports**. Purchaser shall submit a written monthly progress report to the Agencies concerning actions undertaken pursuant to this Settlement, or as otherwise requested by EPA. This requirement shall begin in the first full calendar month following the Effective Date and continue from the date of receipt of the Agencies’ approval of the Work Plan until ending with the month following issuance of the Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the Agencies. These monthly progress reports shall be submitted in Adobe\* PDF electronic format to the EPA and the TCEQ by electronic mail. These reports shall describe all significant developments during the preceding period related to the Activities in the Statement of Work, including the actions performed and any significant problems encountered, completed environmental test reports and accompanying analytical data received by Purchaser during the reporting period, and a list of significant developments anticipated during the next reporting period, including a list of actions to be performed, and planned resolutions of past or anticipated problems (if any).
8. **Final Report.** Within 60 days after completion of the Activities in the Statement Work, Purchaser shall submit for the Agencies’ review and approval a final letter report (Final Report) summarizing the actions taken to comply with this Settlement. EPA will consult with the TCEQ and provide an opportunity for the TCEQ to comment, disapprove, or require revisions before approval. The final letter report shall include a description of the activities conducted to implement the Work Plan, annotated photos depicting the progress of the Work at the Property, statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits). These report elements can be satisfied in the final letter report by cross-references to other previously submitted documents. The final letter report shall also include the following certification signed by a responsible corporate official of Purchaser or Purchaser’s Project Coordinator:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

1. **Off-Site Shipments**
   1. Purchaser may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Purchaser will be deemed to be in compliance with CERCLA section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Purchaser obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
   2. Purchaser may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility’s state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Purchaser also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.
   3. Purchaser may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Purchaser complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

# **PAYMENT OF STATE RESPONSE COSTS**

1. Within ten (10) days of the Effective Date, Purchaser shall make a lump sum payment of One Hundred Eighty Thousand Dollars [$180,000.00] to TCEQ. Purchaser shall pay TCEQ by check or wire transfer. All payments and accompanying letters or documentation should be mailed to Cashier’s Office, MC-214, TCEQ, Re: “Conroe Creosoting Superfund Site,” P.O. Box 13088, Austin, TX, 78711-3088. All checks shall be payable to the “Texas Commission on Environmental Quality,” or “TCEQ.”

# **PROPERTY REQUIREMENTS**

1. **Access and Non-Interference**. Purchaser shall, commencing on the Effective Date: (i) provide EPA, TCEQ, and their representatives, including contractors, and subcontractors with access at all reasonable times to the Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 42 (General Access Requirements); and (ii) refrain from using such Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action.
2. **General Access Requirements.** The following is a list of activities for which access is required regarding the Property:
   * 1. Monitoring the Work;
     2. Verifying any data or information submitted to the United States or TCEQ;
     3. Conducting investigations regarding contamination at or near the Site;
     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 QAPP;
     7. Implementing the Work pursuant to the conditions set forth in Paragraph 79 (Work Takeover);
     8. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Purchaser or its agents consistent with Section XI (Access to Information);
     9. Assessing Purchaser’s compliance with the Settlement;
     10. 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;
     11. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls regarding the Property.
3. Purchaser has granted access to the Property to the TCEQ in accordance with the Consent for Access to Property agreement (Access Agreement), attached hereto as Appendix 6.
4. Purchaser shall comply with any activity and use limitations and Institutional Controls set forth in the Environmental Protection Easement and Declaration of Restrictive Covenants (Appendix 7) recorded on the Property in Montgomery County on March 25, 2011 and shall not contest EPA’s or TCEQ’s authority to enforce any such land use restrictions and Institutional Controls on the Site.
5. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of Proprietary Controls, state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Purchaser shall cooperate with EPA’s and the State’s efforts to secure and ensure compliance with such Institutional Controls.
6. In the event of any Transfer of the Property, or any part thereof, through a sale, assignment, or conveyance, Purchaser may request in writing that its obligations under the Settlement be terminated with respect to the transferred Property, except for its obligations under Record Retention (Section XII) and Access to Information (Section XI). The Agencies, in their sole discretion, may approve or disapprove of all or part of the termination request, which is not subject to judicial review. Unless EPA otherwise consents in writing, Purchaser shall continue to comply with its obligations under this Settlement, including its obligation to secure access and ensure compliance with land, water, or other resource use restrictions regarding the Property and to implement, maintain, monitor, and report on Institutional Controls. If only a part of the Property is Transferred, Purchaser shall continue to comply with the obligations of this Settlement with respect to any portion of the Property that is not Transferred.
7. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA and TCEQ, their authorized officers, employees, representatives, and all other persons performing response actions under EPA or TCEQ oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and Institutional Controls on the Property in connection with a response action, and not contest EPA’s or TCEQ’s authority to enforce any land use restrictions and Institutional Controls on the Property.
8. Purchaser shall provide a copy of this Settlement to any lessee, sublessee, and other party with rights to use the Property as of the Effective Date.
9. Notwithstanding any provision of this Settlement, EPA and TCEQ retain all of their access authorities and rights, as well as all of their 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.

# **ACCESS TO INFORMATION**

1. Purchaser shall provide to EPA and TCEQ, 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 their 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 TCEQ, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
2. **Privileged and Protected Claims**
   1. Purchaser may assert all or part of a Record requested by EPA or TCEQ is privileged or protected as provided under federal law, in lieu of providing the Record, provided Purchaser complies with Paragraph 51.b., and except as provided in Paragraph 51.c.
   2. If Purchaser asserts such a privilege or protection, it shall provide EPA and TCEQ with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Purchaser shall provide the Record to EPA and TCEQ in redacted form to mask the privileged or protected portion only. Purchaser shall retain all Records that they claim to be privileged or protected until EPA and TCEQ have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser’s favor.
   3. 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.
3. **Business Confidential Claims.** Purchaser may assert that all or part of a Record provided to EPA and TCEQ under this Section or Section XII (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 TCEQ, or if EPA 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.
4. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

# **RECORD RETENTION**

1. Until ten (10) years after EPA provides Purchaser with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Purchaser shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its BFPP status under CERCLA with regard to the Site and all Records that relate to the liability of any other person under CERCLA with respect to the Site. Purchaser must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Purchaser (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.
2. At the conclusion of the document retention period, Purchaser shall notify EPA and TCEQ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or TCEQ, and except as provided in Paragraph 51 (Privileged and Protected Claims), Purchaser shall deliver any such Records to EPA or TCEQ.
3. Purchaser certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site and that it has fully complied with any and all EPA and TCEQ requests for information regarding the Site pursuant to sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

# **COMPLIANCE WITH OTHER LAWS**

1. 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) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e).
2. 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 XVI (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.

# **EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

1. **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 the RPM, or, in the event of his/her unavailability, the Regional Duty Officer at (866) 372-7745 of the incident or Site conditions. Purchaser shall also notify the TCEQ Project Manager at (512) 239-2077.
2. **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 (866) 372-7745, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(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.
3. For any event covered under this Section, Purchaser shall submit a written report to EPA and the State within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

# **DISPUTE RESOLUTION**

1. 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. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA or the TCEQ contends that Purchaser is in violation of this Settlement, the relevant agency shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute the agency’s position pursuant to Paragraphs 63 and 64.
2. **Informal Dispute Resolution.** If Purchaser objects to any EPA or TCEQ action taken pursuant to this Settlement, Purchaser shall send the agency a written Notice of Dispute describing the objection(s) within 30 days after such action. The agency and Purchaser shall have 30 days from the agency’s receipt of Purchaser’ 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 agency. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.
3. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Purchaser shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA, in consultation with TCEQ, may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Deputy Division Director level or higher will issue a written decision on the dispute to Purchaser. EPA’s decision shall 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. Except as agreed by EPA, in consultation with TCEQ, 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.

# **FORCE MAJEURE**

1. “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. 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 or increased cost of performance.
2. 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 orally within 7 days of when Purchaser first knew that the event might cause a delay. Within 30 days thereafter, Purchaser shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; 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, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 65 and whether Purchaser has exercised its best efforts under Paragraph 65, EPA may, in its unreviewable discretion, excuse in writing Purchaser’s failure to submit timely or complete notices under this Paragraph.
3. 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.
4. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 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 65 and 66. 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.
5. The failure by EPA or TCEQ 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.

# **CERTIFICATION**

1. By entering into this Settlement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and TCEQ all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. Purchaser also certifies that to the best of its knowledge and belief, that as of the Effective Date, it is a BFPP. Purchaser further certifies to the representations made under Paragraph 5. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Settlement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have. Likewise, if TCEQ determines that information provided by Purchaser is not materially accurate and complete, the Settlement, within the sole discretion of TCEQ, shall be null and void and TCEQ reserves all rights it may have.

# **COVENANTS BY UNITED STATES AND TCEQ**

1. Except as provided in Section XIX (Reservations of Rights by United States and TCEQ), 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) for Existing Contamination and the Work, including future Oversight Costs. This covenant shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to EPA by Purchaser relating to Purchaser’s involvement with the Site and the certification made by Purchaser in Paragraph 70. This covenant extends only to Purchaser and does not extend to any other person.
2. Except as provided in Section XIX (Reservation of Rights by the United States and TCEQ), TCEQ covenants not to sue or take administrative action against Purchaser pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for Existing Contamination and the Work. This covenant shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to EPA and TCEQ by Purchaser relating to Purchaser’s involvement with the Site and the certification made by Purchaser in Paragraph 70. This covenant extends only to Purchaser and does not extend to any other person.
3. Except as provided in Section XIX (Reservation of Rights by the United States and TCEQ), TCEQ covenants not to sue or take administrative action against Purchaser pursuant to the Texas Solid Waste Disposal Act, Tex. Health and Safety Code ch. 361, for Existing Contamination and the Work, including future Oversight Costs. This covenant shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to EPA and TCEQ by Purchaser relating to Purchaser’s involvement with the Site and the certification made by Purchaser in Paragraph 70. This covenant extends only to Purchaser and does not extend to any other person.
4. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State of Texas, including TCEQ, to seek or obtain further relief from Purchaser, if the information provided to EPA and TCEQ by Purchaser relating to Purchaser’s involvement with the Site, or the certification made by Purchaser in Paragraph 70, is false or in any material respect, inaccurate.

# **RESERVATIONS OF RIGHTS BY UNITED STATES AND TCEQ**

1. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States 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.
2. The covenants set forth in Section XVIII (Covenants by United States and TCEQ) do not pertain to any matters other than those expressly identified therein. The United States and State of Texas, including TCEQ reserve, and this Settlement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:
   1. liability for failure by Purchaser to meet a requirement of this Settlement;
   2. liability under CERCLA, including sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, that arises due to failure of Purchaser or assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Property to comply with section 101(40), 42 U.S.C. § 9601(40);
   3. criminal liability;
   4. liability for violations of federal or state law that occur during or after implementation of the Work;
   5. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
   6. liability for damages for any damage, injury to, or destruction of, any monitoring wells resulting from any activities performed by or on behalf of Purchaser;
   7. liability for any monetary or non-monetary relief arising from omissions or activities performed by or on behalf of Purchaser that delay, impair or prevent the EPA or State, or their authorized officers, employees, representatives and all other persons, from performing any response actions at the Site;
   8. 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;
   9. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and
   10. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.
3. With respect to any claim or cause of action asserted by the United States or the State of Texas, including TCEQ, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with the terms of this Settlement and all of the requirements of 42 U.S.C. § 9601(40).
4. **Work Takeover**
   1. In the event EPA or the TCEQ determines that Purchaser: (1) has ceased implementation of any portion of the Activities in the Statement of Work, (2) is seriously or repeatedly deficient or late in its performance of the Activities in the Statement of Work, or (3) is implementing the Activities in the Statement of Work in a manner which may cause an endangerment to human health or the environment, EPA or the TCEQ may issue a written notice (Work Takeover Notice) to Purchaser. Any Work Takeover Notice issued (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Purchaser a period of 3 days within which to remedy the circumstances giving rise to such notice.
   2. If, after expiration of the 3-day notice period specified in Paragraph 78.a., Purchaser has not remedied to EPA’s and the TCEQ’s satisfaction the circumstances giving rise to the relevant Work Takeover Notice, EPA or the TCEQ may at any time thereafter assume the performance of all or any portion(s) of the Activities in the Statement of 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.
   3. Purchaser may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 78.b. 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 78.b. 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 64 (Formal Dispute Resolution).
   4. Notwithstanding any other provision of this Settlement, EPA and the TCEQ retain all authority and reserves all rights to take any and all response actions authorized by law.

# **COVENANTS BY PURCHASER**

1. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, the State of Texas, including TCEQ, or their contractors or employees, with respect to Existing Contamination, the Work, or this Settlement, including, but not limited to:
   1. 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;
   2. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Texas 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
   3. 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.
2. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by United States and TCEQ), other than in Paragraph 76.a. (liability for failure to meet a requirement of the Settlement), 76.c. (criminal liability), or 76.d. (violations of federal/state law during or after implementation of the Work), but only to the extent that Purchasers’ claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.
3. 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).
4. Purchaser reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA’s selection of response actions, or the oversight or approval of Purchaser’s deliverables or activities.

# **OTHER CLAIMS**

1. By issuance of this Settlement, the United States, EPA, TCEQ and the State of Texas assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Purchaser. Neither the United States, EPA, TCEQ nor the State of Texas shall be deemed a party to any contract entered into by Purchaser or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.
2. Except as expressly provided in Section XVIII (Covenant by United States and TCEQ), 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 State of Texas, including TCEQ, for costs, damages, and interest under sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.
3. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

# **EFFECT OF SETTLEMENT/CONTRIBUTION**

1. Nothing in this Settlement precludes the United States, the State of Texas, including TCEQ, or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement. Nothing herein diminishes the right of the United States or the State of Texas, including TCEQ, 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).
2. If a suit or claim for contribution is brought against Purchaser, notwithstanding the provisions of section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement or at the direction of EPA’s RPM), the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States and TCEQ within the meaning of sections 113(f)(2) of CERCLA, 42 U.S.C.§ 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 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 Existing Contamination and the Work. However, if the United States or State of Texas, including TCEQ, exercises rights under the reservations in Section XIX (Reservation of Rights by United States and TCEQ)), other than in Paragraphs 76.a. (claims for failure to meet a requirement of the Settlement Agreement), 76.c. (criminal liability), or 76.d. (violations of federal/state law during Purchaser’s ownership of the Property), 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.
3. If Purchaser is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement or at the direction of EPA’s RPM, the Parties agree that this Settlement shall then constitute 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).
4. Purchaser shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify the Agencies 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 the Agencies in writing within ten (10) days after service of the complaint or claim upon it. In addition, Purchaser shall notify the Agencies 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.

# **RELEASE AND WAIVER OF LIEN**

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

# **INDEMNIFICATION**

1. The United States and the State of Texas, including TCEQ, do not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA’s or TCEQ’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 of Texas, including TCEQ, 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 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 of Texas, including TCEQ, 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 of Texas, including TCEQ, based on negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Settlement. The United States or the State of Texas, including TCEQ, 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 of Texas, including TCEQ.
2. The United States or TCEQ shall give Purchaser notice of any claim for which the United States or TCEQ plan to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim.
3. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State of Texas, including TCEQ, for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State of Texas, including TCEQ, 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 of Texas, including TCEQ, 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 Property, including, but not limited to, claims on account of construction delays.

# **INSURANCE**

1. No later than 30 days before commencing any on-site Work, Purchaser shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of $1 million per occurrence, and automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA and TCEQ as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Purchaser pursuant to this Settlement. In addition, until Purchaser completes all of the Work specified in the SOW and has received the Notice of Completion specified in Section XXVIII, Purchaser shall provide EPA and TCEQ 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, until Purchaser receives the Notice of Completion specified in Section XXVIII, 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 Activities in the Statement of Work on behalf of Purchaser in furtherance of this Settlement. If Purchaser demonstrates by evidence satisfactory to EPA and TCEQ 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 and TCEQ under this Paragraph identify the Conroe Creosoting Superfund Site in Montgomery County, Texas and the EPA docket number for this action.

# **FINANCIAL ASSURANCE**

1. In order to ensure completion of the Work, Purchaser shall secure financial assurance, initially in the amount of $396,450 (hereinafter Estimated Cost of the Activities in the Statement of Work). The financial assurance must be one or more of the mechanisms listed below, each of which must be satisfactory in form and substance to EPA and TCEQ:
   1. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance of the Activities in the Statement of Work in accordance with Paragraph 99 (Access to Financial Assurance);
   2. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 101 (Access to Financial Assurance);
   3. A funded trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Activities in the Statement of Work required by this Settlement; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the RPM advises the trustee in writing that: (A) payments are necessary to fulfill the Purchaser’s obligations under this Settlement; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of the Activities in the Statement of Work in accordance with this Settlement.
2. **Standby Trust**. If Purchaser seeks to establish financial assurance by using a surety bond or letter of credit, Purchaser shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 95.c., and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by the Agencies pursuant to Paragraph 99 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to the Agencies in accordance with Paragraph 99. Until the standby trust fund is funded pursuant to Paragraph 99 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.
3. Within 10 days after the Effective Date of this Settlement, Purchaser shall submit to the Agencies proposed financial assurance mechanisms in draft form in accordance with Paragraph 95 for the Agencies’ review. Within 30 days after the Effective Date, or 30 days after the Agencies’ approval of the form and substance of Purchaser’s financial assurance, whichever is later, Purchaser shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the Agencies-approved form of financial assurance and shall submit such mechanisms and documents to the RPM.
4. 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 the Agencies of such information within 30 days. If the Agencies determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the Agencies will notify Purchaser of such determination. Purchaser shall, within 30 days after notifying the Agencies or receiving notice from the Agencies under this Paragraph, secure and submit to the Agencies for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Purchaser shall follow the procedures of Paragraph 97 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser’s inability to secure and submit to the Agencies financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Purchaser to complete the Work in accordance with the terms of this Settlement.
5. **Access to Financial Assurance**.
   1. If the Agencies determine that Purchaser (1) has ceased implementation of any portion of the Activities in the Statement of Work, (2) are seriously or repeatedly deficient or late in their performance of the Activities in the Statement of Work, or (3) are implementing the Activities in the Statement of Work in a manner that may cause an endangerment to human health or the environment, the Agencies may issue a written notice (“Performance Failure Notice”) to both Purchaser and the financial assurance provider regarding Purchaser’s failure to perform. Any Performance Failure Notice issued by the Agencies will specify the grounds upon which such notice was issued and will provide Purchaser a period of 10 days within which to remedy the circumstances giving rise to the Agencies’ issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Purchaser has not remedied to the Agencies’ satisfaction the circumstances giving rise to the Agencies’ issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, the Agencies may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Activities in the Statement of Work in accordance with this Settlement.
   2. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.
6. **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 Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the Agencies’ individual(s) referenced in Paragraph 36, and must include an estimate of the cost of the remaining Activities in the Statement of Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 95 and 96. The Agencies will notify Purchaser of its decision to approve or disapprove a requested reduction or change. Purchaser may reduce the amount of the financial assurance mechanism only in accordance with the Agencies’ approval. Within 30 days after receipt of the Agencies’ approval of the requested modifications pursuant to this Paragraph, Purchaser shall submit to the Agencies individual(s) referenced in Paragraph 36 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon the Agencies’ approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Activities in the Statement of Work in the approved proposal.
7. **Release, Cancellation, or Discontinuation of Financial Assurance**. Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only (a) after receipt of documentation issued by the Agencies certifying completion of the Activities in Statement of Work; or (b) in accordance with the Agencies’ written approval of such release, cancellation or discontinuation.
8. The commencement of any Work Takeover pursuant to Paragraph 78 of this Settlement (Work Takeover) shall trigger EPA’s and TCEQ’s right to access the financial assurance mechanism(s) provided pursuant to Paragraphs 95.a., 95.b., or 95.c., and at such time EPA and the TCEQ shall have immediate access to resources guaranteed under any such Financial Assurance mechanism(s) as needed to complete the Activities in the Statement of Work.

# **MODIFICATION**

1. After notification to the TCEQ Project Manager and an opportunity to comment, EPA’s RPM may make minor modifications to any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM’s oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.
2. If Purchaser seeks permission to deviate from any approved work plan or schedule or the SOW, Purchaser’s Project Coordinator shall submit a written request to EPA and TCEQ for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from EPA’s RPM and the TCEQ Project Manager pursuant to Paragraph 103.
3. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives or the TCEQ Project Manager or other State of Texas representative 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.

# **NOTICE OF COMPLETION OF WORK**

1. When EPA and TCEQ determine, after their review of the Final Report, that all Work listed in this paragraph has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, such as continued compliance with CERCLA § 101(40) with respect to the Property in accordance with Paragraph 5 of this Settlement, including record retention and compliance with Institutional Controls,EPA will provide written notice to Purchaser. Following is a list of Work requirements that must be completed prior to EPA issuing the Notice of Completion under this Section:
   1. Work to Be Performed (Section VIII)
   2. Payment of State Response Costs (Paragraph 42)
   3. Emergency Response and Notification of Releases (Section XIV)
   4. Insurance (Paragraph 97)
   5. Financial Assurance (Section XXVI)
2. If EPA determines that any Work items listed in the immediately preceding paragraph have not been completed in accordance with this Settlement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Settlement.

# **PUBLIC COMMENT**

1. This Settlement shall be subject to a thirty (30) day public comment period, after which EPA or TCEQ may modify or withdraw its consent to this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

# **EFFECTIVE DATE**

1. The effective date of this Settlement shall be the date upon which EPA issues written notice to Purchaser that EPA and TCEQ have fully executed the Settlement after review of and response to any public comments received, provided that EPA shall not issue such notice, and the Settlement shall not be effective, until EPA and TCEQ receive written notice from Purchaser that the transaction by which the Purchaser is to acquire the Property has closed. Purchaser shall submit an electronic copy of a recorded deed evidencing its ownership of the Property when it provides the EPA and TCEQ written notice that the transaction by which the Purchaser is to acquire the Property has closed.

# **INTEGRATION/APPENDICES**

1. This Settlement and all documents approved under and incorporated by reference into this Settlement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.
   1. Appendix 1 is the Reasonable Steps Regarding Hazardous Substances.
   2. Appendix 2 is a map and legal description of the Property.
   3. Appendix 3 is a map of the Site.
   4. Appendix 4 is the Statement of Work.
   5. Appendix 5 is the Third Five-Year Review for the Site.
   6. Appendix 6 is the Consent for Access to Property
   7. Appendix 7 is the Environmental Protection Easement and Declaration of Restrictive Covenants.

# **DISCLAIMER**

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

# **ENFORCEMENT; PAYMENT OF COSTS**

1. Notwithstanding Paragraph 62 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States or TCEQ may file a lawsuit for breach of this Settlement, or any provision thereof, in the United States District Court for the Southern District of Texas. 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 Southern District of Texas is appropriate and agrees not to raise any challenge on this basis.
2. In the event the United States or TCEQ files a civil action as contemplated by Paragraph 112, above, to remedy breach of this Settlement, the United States or TCEQ 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.
3. Purchaser shall be liable for all litigation and other enforcement costs incurred by the United States and TCEQ to enforce this Settlement or otherwise obtain compliance.

# **NOTICES AND SUBMISSIONS**

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

Submissions to Purchaser shall be addressed to:

Neal Holdridge

Principal

Environmental Manager

Trammell Crow Company

3501 Jamboree Road, Suite 230

Newport Beach, California 92660

NHoldridge@trammellcrow.com

With copies to:

Jeremy Garner  
Principal  
TC Houston Industrial Development, Inc.  
2800 Post Oak Blvd., Ste. 400  
Houston, Texas 77056

jgarner@trammellcrow.com

and

Joseph F. Guida

Guida, Slavich & Flores, P.C.

14679 Midway Road, Suite 115

Addison, Texas 75001

guida@gsfpc.com

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

Gary Baumgarten

1201 Elm Street, Suite 500

Dallas, Texas 75270

[baumgarten.gary@epa.gov](mailto:baumgarten.gary@epa.gov)

All submissions to TCEQ shall be addressed to:

Midori Campbell

Superfund Section

Remediation Division

Texas Commission on Environmental Quality

P.O. Box 13087, MC-136

Austin, TX 78711-3087

[midori.campbell@tceq.texas.gov](mailto:midori.campbell@tceq.texas.gov)

IT IS SO AGREED:

CONROE LOGISTICS CENTER, LLC,

a Delaware limited liability company

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date:

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Regional Administrator Date

Region 6

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Assistant Attorney General Date

Environment and Natural Resources Division

U.S. Department of Justice

IT IS SO AGREED:

Texas Commission on Environmental Quality

by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date