

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

IN THE MATTER OF:

U.S. Steel Corp. MVW Fairless Works  
Fairless Hills, Pennsylvania  
PAD002375376

NP Falls Township Industrial 2, LLC,  
Purchaser

Proceeding Under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-75 and the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, 42 U.S.C §§ 6901 – 6992k

EPA Docket Nos.  
CERCLA-RCRA-03-2021-0051PP

# ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR RESPONSE ACTION BY PROSPECTIVE PURCHASER

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## **I. GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent for Response Action by Prospective Purchaser (“Settlement”) is entered into voluntarily by and between the United States on behalf of the Environmental Protection Agency (EPA) and the prospective purchaser, NP Falls Township Industrial 2, LLC (“Purchaser”) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 - 9675; and the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (RCRA) 42 U.S.C. §§ 6901 – 6992k. Under this Settlement, Purchaser agrees to perform corrective action/response action at or in connection with approximately 342.97 acres (the “Property”) of the 2799-acre facility known as the U.S. Steel Corporation MVW Fairless Works located at S. Pennsylvania Avenue, Fairless Hills, Pennsylvania 19030 (the “Site”).

2. This Settlement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with CERCLA and RCRA. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional Official. This Settlement is also issued under the RCRA authority vested in the President of the United States and delegated to the Administrator of the EPA and redelegated to the undersigned Regional Official.

3. EPA has notified the Commonwealth of Pennsylvania (the “State”) of this action.

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

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

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

## **II. PARTIES BOUND**

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

8. The undersigned representative of Purchaser certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

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

## **III. DEFINITIONS**

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

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

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

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

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

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

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

“PADEP” means the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the State.

“Existing Contamination” means:

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

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

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

“Parties” means the United States and Purchaser.

“PM” means the Project Manager designated by EPA to oversee the Work at the Site.

“Property” means that portion of the Site, encompassing approximately 342.97 acres, to be acquired by Purchaser, which is generally depicted in Appendices 2 and 3 of this Settlement.

“Purchaser” means NP Falls Township Industrial 2, LLC, a Delaware limited liability company, as the prospective purchaser of the Property.

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

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

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

“Site” means the U.S. Steel Corporation MVW Fairless Works located at S. Pennsylvania Avenue, Fairless Hills, Pennsylvania 19030. The Site includes all areas to

which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located and depicted generally on the map attached as Appendix 1.

“State” means the Commonwealth of Pennsylvania.

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

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

“Waste Material” means (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

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

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

11. Operations at the Site began in 1952 and initially consisted of integrated steel-making and finishing. During the construction of the Site, numerous areas were excavated, known as “borrow pits,” to provide fill material to raise the Site above the elevation of the 100-year floodplain. Additional development took place in the 1960s and the early 1970s, including the construction of the electric arc furnace, rod mill, and wire mill.

12. In the early 1980s, the electric arc furnace and several finishing operations (rod, bar, rolling, and wire mills) were shut down. In 1984, the coke and coal chemical plants were shut down. The sinter plant ceased operations in 1990. Steel-making operations ceased in 1991 when the last blast furnace, open hearths, and primary mills were shut down. Currently, only the galvanizing facility is operating.

13. At all times relevant to this Settlement, the Site and Property were owned by USX Corporation (“Owner”) or its successor(s) in interest.

14. On August 18, 1980, the Owner submitted to EPA a Notification of Hazardous Waste Activity for the Site pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, in which the Owner identified itself as, *inter alia*, a generator and transporter of hazardous waste and an operator of a hazardous waste treatment, storage and/or disposal facility. EPA assigned the Site the EPA Identification Number PAD002375376 on October 9, 1980.

15. The Owner submitted to EPA a RCRA Part A permit application on November 19, 1980, in which it indicated that it treated/stored/disposed of the following hazardous wastes at the Site: hazardous waste that exhibits the characteristic of toxicity for chromium (D007) and

hazardous wastes from specific sources identified at 40 C.F.R. § 261.32 (K061, K062, K087 and K060).

16. On August 5, 1981, EPA sent the Owner a letter acknowledging that the Site had qualified for interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e). In a RCRA Facility Assessment dated 1986, EPA identified 48 Solid Waste Management Units (SWMUs) that were owned or controlled by the Owner.

17. These SWMUs included the borrow pits, in which solid wastes, such as slag and other materials, were found. Certain of these wastes were hazardous wastes as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. §§ 260.10 and 261.3. In addition, hazardous constituents listed in 40 C.F.R. Part 261, Appendix VIII were found at the Site.

18. In 1993, EPA and the Owner entered into an order pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h) (“1993 Consent Order”), which requires the Owner to conduct investigations, corrective measures studies, and interim measures at the Site.

19. The Owner’s characterization of the Site included the SWMU areas, the non-SWMU areas, and Site-wide groundwater. The non-SWMU areas were found to be contaminated primarily with inorganic constituents and were generally less contaminated than the SWMU areas. The SWMU areas primarily include filled-in borrow pits with surface material consisting of slag and/or soil. Surface soil at or near the borrow pits was generally found to be contaminated with inorganic constituents, such as lead and iron, and some localized organic contamination, including from dibenzofuran and PCB-Aroclor 1248. Surface water and sediment contamination exists within borrow pits and lagoons that have not been completely filled, which presents a risk to certain ecological receptors. An interim measure from the 1993 Order serves to protect these receptors.

20. Several localized areas throughout the Site were found to be contributing sources of groundwater contaminants, such as trichloroethylene, benzene, dibenzofuran, total petroleum hydrocarbons, and naphthalene, and inorganic constituents such as mercury, manganese, lead, and iron. In 1996, a perimeter monitoring well network of thirty (30) wells was established, which was expanded to forty-nine (49) wells in 2009. Sampling of these wells indicated some exceedances for groundwater criteria inorganic and organic compounds, particularly benzene, manganese, and iron.

21. In 2005, the Owner decided to pursue a Release of Liability (“ROL”) from the State under the Land Recycling and Environmental Remediation Standards Act (“Act 2”) while simultaneously satisfying corrective action obligations under the 1993 Consent Order. The Owner has parceled the Site into fifty-two (52) lots for redevelopment and has sold or leased various lots at the Site. To date, the Owner has sold approximately 945 acres of the Site. On a lot-by-lot basis, the Owner has submitted several Act 2 final reports of investigation and remediation to PADEP with the intent of receiving ROLs. Approximately 665 acres of the Site have received an Act 2 ROL. In addition, approximately 1120 acres at the Site have been investigated, and the Owner is in various stages of submitting Act 2 final reports. In particular, Lots 18-27 have not been remediated under Act 2.

22. On August 30, 2014, the Owner recorded a Site-wide environmental covenant (“2014 Environmental Covenant”). The 2014 Environmental Covenant prohibits the use of groundwater except for the purposes of monitoring and restricts land use to non-residential purposes. As lots have been redeveloped and sold, parcel-specific environmental covenants have also been recorded similarly prohibiting groundwater use and restricting land use to non-residential purposes and adding lot-specific requirements, such as compliance with a Post Remediation Care Plan, as applicable.

23. On December 4, 2020, EPA solicited public comment on a Statement of Basis proposing a remedy for the Site pursuant to the RCRA corrective action program. The proposed remedy consists of Corrective Action Complete with Controls for groundwater along with groundwater monitoring if soil contamination is discovered exceeding selected Corrective Action Objectives (“CAOs”); installation of soil covers where soil contamination exceeds the CAOs; relocation of sensitive species impacted by borrow pit and Terminal Treatment Lagoon sediment and surface water contamination; removal or capping of PCB waste; vapor intrusion assessment and mitigation; compliance with and maintenance of existing land and groundwater use restrictions; and the implementation and maintenance of additional land and groundwater use restrictions.

## **V. DETERMINATIONS**

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

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

b. The Property is a facility that has operated under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

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

d. Purchaser is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

e. The conditions described in Paragraphs 19-20 of the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site and/or the Property as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. Certain wastes and constituents previously found at the Property are Hazardous Wastes pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921.

g. There is or has been a release of Hazardous Wastes into the environment from the Facility.



h. The Work 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 considered consistent with the NCP.

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

25. Purchaser shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 30 days after the Effective Date. Purchaser shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 30 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Purchaser. If EPA disapproves of a selected contractor or subcontractor, Purchaser shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. The qualifications of the persons undertaking the Work for Purchaser are subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

26. Within 30 days after the Effective Date, Purchaser shall designate a Project Coordinator who will be responsible for administration of all actions by Purchaser required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. Purchaser will ensure, to the greatest extent possible, that the Project Coordinator is present on the Property or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 25. If EPA disapproves of the designated Project Coordinator, Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 30 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Purchaser's Project Coordinator constitutes notice or communication to Purchaser. Purchaser has the right, subject to this Paragraph 26, to change its designated Project Coordinator. Purchaser shall notify EPA 30 days before such a change is made. The initial notification by Purchaser may be made orally to EPA but shall be promptly followed by a written notice.

27. EPA has designated Linda Matyskiela of U.S. EPA Region III's Land, Chemicals and Redevelopment Division, as its Project Manager ("PM"). EPA has the right to change its designated PM. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Linda Matyskiela at [matyskiela.linda@epa.gov](mailto:matyskiela.linda@epa.gov).

28. The PM is responsible for overseeing Purchaser's implementation of this Settlement. The PM has the authority vested in an On-Scene Coordinator by the NCP 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 PM from the Property is not cause for stoppage of Work unless specifically directed by the PM.

## **VII. WORK TO BE PERFORMED**

29. Purchaser shall perform, at a minimum, all actions necessary to address certain Corrective Action requirements at the Property under RCRA. The actions to be implemented generally include, but are not limited to, those necessary to implement the remedy to be selected by EPA in the Final Decision and Response to Comments (“FDRTC”) for the Site, as those actions relate to the Property.

30. Purchaser shall develop and perform the Work required by this Settlement to the extent applicable, in accordance with RCRA, its implementing regulations, the relevant Scopes of Work, and relevant EPA guidance documents. EPA’s Scopes of Work and relevant guidance documents are available at: <https://www.epa.gov/hwcorrectiveactionsites/corrective-action-resources-specific-epas-region-3>, which are incorporated herein by reference. For any regulation or guidance referenced in the Settlement, the reference includes any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Purchaser receives notification from EPA of the modification, amendment, or replacement.

31. Purchaser shall perform the following actions in the manner and by the dates specified herein:

### **INTERIM MEASURES**

32. Commencing on the Effective Date of this Settlement and continuing thereafter, if EPA or PADEP identify an Interim Measure that will protect human health and the environment and that is, to the extent practicable, consistent with and integrated into any long-term remediation of the Property, it will notify Purchaser in writing. Within 30 days of receiving written notification, Purchaser shall submit to EPA and PADEP for approval an IM Work Plan in accordance with the IM Scope of Work that identifies an Interim Measure.

### **BORROW PIT MEASURES**

33. To the extent that Borrow Pits 35, 35A, 35B and/or 35C are on the Property (“On-Property Borrow Pits”), within 120 days of the Effective Date, Purchaser shall prepare and submit to EPA, pursuant to Paragraph 36, a plan to: (1) expeditiously assess the On-Property Borrow Pits; and (2) propose appropriate measures to address contamination found at the On-Property Borrow Pits, including but not limited to the construction and maintenance of a cover or cap on the On-Property Borrow Pits, and a schedule to implement these measures (the “Borrow Pit Schedule”). Once approved by EPA, the measures to address the On-Property Borrow Pits is Work for purposes of this Settlement, and Purchaser shall implement this Work in accordance with the requirements of the FDRTC, this Settlement, and the approved Borrow Pit Schedule.

### **CORRECTIVE MEASURES IMPLEMENTATION (“CMI”)**

34. Purchaser shall implement Corrective Measures as follows:

a. Corrective Measures Work Plan and Design(s): EPA acknowledges that the work Purchaser performs under Act 2, including the reports that Purchaser submits under Act

2 consistent with the procedural requirements (including time periods) of Act 2, may be used to meet the requirements of this Settlement upon submission to and formal approval by EPA, as provided in the One Cleanup Program Memorandum of Agreement between EPA Region 3 and PADEP (“One Cleanup Program Memo”), available at:

<http://files.dep.state.pa.us/EnvironmentalCleanupBrownfields/LandRecyclingProgram/LandRecyclingProgramPortalFiles/One%20Cleanup/One%20Cleanup%20Program%20MOA%20w%20EPA.pdf>. EPA acknowledges that the schedule to be included in any required draft CMI Workplan may take into consideration the planned sequence and timing of Purchaser’s development of the various areas of the Property, which is estimated to be completed in 11 years.

- (1) Within 120 days of the issuance of the FDRTC, Purchaser shall submit to EPA for approval a Corrective Measures Implementation Workplan (“CMI Workplan”) for implementation of the corrective measures selected in the FDRTC. The draft CMI Workplan must include a schedule for the submittal of the Soil Cover Workplan, Redevelopment Work Plan, Ecological Risk Assessment Workplan, PCB Remediation Workplan(s), and Vapor Intrusion Evaluation Workplan, as required by the FDRTC. Purchaser shall propose an estimated schedule in the draft CMI Workplan that completes 80% of the Work within 60 months of EPA’s approval of the CMI Workplan. Purchaser shall develop these workplan(s) in accordance with the CMI Scope of Work.
- (2) If corrective measures construction is required for an area of the Property scheduled to be developed, then, consistent with the schedule in the EPA-approved CMI Workplan, Purchaser shall submit to EPA for approval the initial 30% CMI Design Submission(s) (with a list of plans and specifications), which Purchaser shall develop in accordance with the Scope of Work for CMI.
- (3) Within 45 days of receipt of EPA’s comments on a 30% CMI Design Submission(s), Purchaser shall incorporate those comments and submit to EPA for approval a 90% CMI Design Submission (with complete plans and specifications). Purchaser shall develop each 90% CMI Design Submission in accordance with the Scope of Work for CMI.
- (4) In accordance with Paragraph 36.c, upon receipt by Purchaser of EPA’s approval of each 90% CMI Design Submission, said Submission is incorporated into and enforceable under this Settlement, and Purchaser shall implement it in accordance with the schedules and provisions contained therein. The EPA-approved CMI Design Submission(s) will be known as CMI Design Report(s).

b. Corrective Measures Construction and Implementation

- (1) Purchaser shall commence and complete construction or implementation of corrective measures selected in the FDRTC in accordance with the Scope of Work for the CMI and the schedules and specifications set forth in the EPA-approved CMI Workplan and the EPA-approved CMI Design Report(s), as applicable.
- (2) Within 90 days of completing the construction of corrective measures, Purchaser shall submit to EPA for approval a CMI Report. Purchaser shall develop each CMI Report in accordance with the Scope of Work for CMI and shall describe activities performed during construction, provide actual specifications of the implemented remedy, and provide a preliminary assessment of CMI performance.
- (3) EPA will determine, on the basis of the CMI Report and any other relevant information, whether the constructed corrective measures are consistent with the EPA-approved CMI Design Report(s). If EPA determines that the constructed corrective measures are consistent with the EPA-approved CMI Design Report(s) and that the constructed corrective measures have achieved or are achieving all of the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report(s), EPA will approve the CMI Report.
- (4) If EPA determines that the constructed corrective measures are inconsistent with the EPA-approved CMI Design Report(s) and/or that the constructed corrective measures have not achieved or are not achieving all of the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report(s), EPA will notify Purchaser in writing of those activities that must be undertaken to complete the corrective measures requirements, including a schedule for the completion of those activities. Upon receipt of the schedule of activities, Purchaser shall implement it in accordance with its requirements.

c. Corrective Measures Assessment

- (1) No later than five (5) years after the Effective Date of this Settlement and every five (5) years thereafter until Purchaser's

receipt of written notice from EPA that Purchaser has demonstrated, to the satisfaction of EPA, that the terms of this Settlement, including any additional tasks determined by EPA to be required pursuant to this Settlement, have been satisfactorily completed, Purchaser shall submit to EPA a CMI Five-Year Assessment Report. Such Report must contain an evaluation of the past and projected future effectiveness of the corrective measures in achieving the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report(s) or the Act 2 Cleanup Plan or a Demonstration of Attainment submitted under the One Cleanup Program Memo.

d. **Corrective Measures Termination**

- (1) If Purchaser believes that a corrective measure required pursuant to this Settlement has achieved the corrective action objectives set forth in the FDRTC, Purchaser may submit to EPA a request that such corrective measure be discontinued. Upon receipt of EPA's approval of Purchaser's request, Purchaser may discontinue the corrective measure as specified in EPA's approval.
- (2) EPA acknowledges that the work Purchaser performs under the One Cleanup Program Memo may be used to meet the requirements of this Settlement upon submission to, and formal approval by, EPA. Specifically, Purchaser's request to discontinue a corrective measure once the corrective action objectives have been achieved may be included in a Demonstration of Attainment under Act 2.

**35. Review and Approval of Submissions under the One Cleanup Program Memorandum**

EPA acknowledges that documents the Purchaser submits for approval may be reviewed under the existing EPA PADEP One Cleanup Program Memo process. For all submissions requiring EPA and PADEP approval, EPA will make best efforts to provide comments to PADEP with sufficient time to allow PADEP to provide combined comments to the Purchaser within 90 days of EPA's receipt of the document. The absence of a response by EPA within 90 days shall not be deemed approval of a Submission.

**36. Submission and Review of Deliverables**

**a. General Requirements for Deliverables**

- (1) Except as otherwise provided in this Settlement, Purchaser shall direct all deliverables required by this Settlement to the PM at:

Linda Matyskiela, U.S. EPA Project Manager, 3LC20, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-3420, [matyskiela.linda@epa.gov](mailto:matyskiela.linda@epa.gov). Purchaser shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan.

- (2) Purchaser shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 35.b. Purchaser shall submit all other deliverables to EPA in the form specified by the PM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Purchaser shall also provide EPA with paper copies of such exhibits.

**b. Technical Specifications for Deliverables**

- (1) Document submissions (including sampling and monitoring data) must be provided as text-readable PDF. If requested by EPA, sampling and monitoring data may also be submitted as Excel spreadsheet, or other mutually acceptable format.
- (2) If requested by EPA, spatial data, including spatially-referenced data and geospatial data, may be submitted: (a) in the ESRI File Geodatabase format; or (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum; or (c) another mutually acceptable format. Projected coordinates may be provided but must be documented (coordinate system and datum). If applicable, submissions should include the collection method(s).

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

**d.** Purchaser may seek subsequent modifications to approved deliverables in accordance with this Paragraph 36.

**37. Health and Safety Plan.** Within 30 days after the Effective Date, Purchaser shall submit for EPA review and comment, in accordance with Paragraph 36, a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. Purchaser shall prepare the plan in accordance with “OSWER Integrated Health and

Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (November 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at [https://www.epaossc.org/\\_HealthSafetyManual/manual-index.htm](https://www.epaossc.org/_HealthSafetyManual/manual-index.htm). In addition, Purchaser shall ensure that the plan complies with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan must also include contingency planning. Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

### **38. Quality Assurance, Sampling, and Data Analysis**

a. Purchaser shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002) (<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA-50-B-04-900A-900C, DOD-DTIC-ADA-427785 (March 2005).

b. Upon approval by EPA and PADEP Purchaser must use appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the Quality Assurance Project Plan (QAPP), (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, American Society for Testing and Materials (ASTM), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA). Purchaser shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-2-epa-requirements-quality-management-plans>), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Purchaser shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

c. Upon request, Purchaser shall provide split or duplicate samples to EPA and PADEP or their authorized representatives. Purchaser shall notify EPA and PADEP not less than 7 days in advance of any sample collection activity. In addition, EPA and PADEP have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA

and PADEP will provide to Purchaser split or duplicate samples of any samples the agencies take as part of the oversight of Purchaser's implementation of the Work.

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

39. Purchaser waives any objections to any data gathered, generated, or evaluated by EPA, PADEP or Purchaser in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement.

40. **Institutional Controls.**

a. On the Effective Date of this Settlement and thereafter, Purchaser shall comply with the land and groundwater use restrictions established in the Environmental Covenant recorded on the Site on August 30, 2014.

b. On the effective date of the FDRTC and thereafter, Purchaser shall comply with the land and groundwater use restrictions selected in the FDRTC. In selecting the land and groundwater use restrictions, EPA takes into consideration, among other things, the current and reasonably anticipated use of the property, consistent with its guidance entitled *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, U.S. EPA OSWER 9355.0-89 (Dec. 2012).

c. In accordance with the EPA-approved CMI Work Plan schedule, or as otherwise directed by EPA, Purchaser shall submit to EPA for review and approval, in accordance with Paragraph 36, a proposal for the implementation of Institutional Controls (the "Institutional Controls Workplan"), which shall provide a plan and schedule for the implementation of all land use restrictions and/or other Institutional Controls called for in the remedy to be selected by EPA in the FDRTC for the Site, as those land use restrictions and/or other Institutional Controls relate to the Property. Upon EPA approval, and in accordance with the EPA-approved Institutional Controls Workplan and schedule, Purchaser shall institute these land use restrictions and/or other Institutional Control until such time as EPA determines that such land use restrictions and/or other Institutional Controls are no longer necessary.

41. **Progress Reports.** Purchaser shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a quarterly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Work Plan until issuance of Notice of Completion of Work pursuant to Section XXV, unless otherwise directed in writing by the PM. These reports must describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

42. **Off-Site Shipments**



a. 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 § 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).

b. 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 PM. This written notice requirement does 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 PM 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 Work and before the Waste Material is shipped.

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

## VIII. PROPERTY REQUIREMENTS

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

44. **Access, Appropriate Care, and Non-Interference.** Commencing on the Effective Date, Purchaser shall: (i) provide EPA, the State, and their representatives, including contractors, and subcontractors, with full cooperation, assistance, and access to the Property at all reasonable times to conduct any activity regarding the Settlement and to any other persons that are authorized to conduct response actions or natural resource assessment or restoration at the Property, including those activities listed in Paragraph 44.a (Access Requirements); (ii) exercise appropriate care with respect to hazardous substances found at the Property as described in Paragraph 44.b (Appropriate Care), and (iii) 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 corrective action, including the restrictions listed in Paragraph 44.c (Land, Water, or Other Resource Use Restrictions).

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

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Property;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 74 (Work Takeover);
- (8) Implementing a response action by persons performing under EPA oversight;
- (9) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Purchaser or its agents consistent with Section IX (Access to Information);
- (10) Assessing Purchaser's compliance with the Settlement;
- (11) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement or an EPA decision document for the Site;
- (12) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls regarding the Property.

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

c. **Land, Water, or Other Resource Use Restrictions.** Purchaser shall remain in compliance with any land use restrictions established in connection with any response action at the Property; implement, maintain, monitor, and report on institutional controls; and not

impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action.

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

a. Purchaser shall within 15 days after the Effective Date, submit for EPA approval a notice to be filed in the appropriate land records office regarding the Property. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title that: (i) the Property is part of, or related to, the Site, (ii) EPA has selected a remedy for the Site, and (iii) Purchaser has entered into an Administrative Settlement Agreement requiring implementation of this response action and compliance with the property requirements in Section VIII (Property Requirements); and (3) identify the name, CERCLA and RCRA docket numbers, and Effective Date of this Settlement. Purchaser shall record the notice within 10 days after EPA's approval of the notice and Purchaser shall submit a certified copy of the recorded notice to EPA within 10 days of recordation.

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

- (1) Notify the proposed transferee that EPA has selected a remedy for corrective action regarding the Site, that the Purchaser has entered into an Administrative Settlement Agreement requiring implementation of such corrective action and compliance with the property requirements in Section VIII (Property Requirements) (identifying the name, CERCLA and RCRA docket numbers, and the Effective Date of this Settlement); and
- (2) Notify EPA and the State of the name and address of the proposed transferee, provide EPA and the State with a copy of the above notice that it provided to the proposed transferee, and notify EPA if Purchaser seeks termination of its obligations under Paragraph 47.

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

47. Upon sale or other conveyance of the Property or any part thereof, Purchaser shall require that each successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA

oversight. Purchaser shall require that each successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof implements and complies with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property or any part thereof. After EPA's issuance of the Notice of Completion and Purchaser's written demonstration to EPA that a successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof agrees to comply with the requirements of this Paragraph 47, EPA will notify Purchaser that its obligations under the Settlement, except obligations under Record Retention (Section X) and Access to Information (Section IX), are terminated with respect to the Property or any part thereof.

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

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

## **IX. ACCESS TO INFORMATION**

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

51. Purchaser shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Purchaser's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Purchaser shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **52. Privileged and Protected Claims**

a. Purchaser may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Purchaser complies with Paragraph 52.b, and except as provided in Paragraph 52.c.

b. If Purchaser asserts such a privilege or protection, it shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a 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 the State in redacted form to mask the privileged or protected portion only. Purchaser shall retain all Records that it claims to be privileged or protected until EPA and the

State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser's favor.

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

53. **Business Confidential Claims.** Purchaser may assert that all or part of a Record provided to EPA and the State under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Purchaser shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Purchaser asserts business confidentiality claims. Records that Purchaser claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA 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.

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

## **X. RECORD RETENTION**

55. For a period of 10 years following completion of the Work, unless EPA agrees in writing to a shorter time period, Purchaser shall preserve all documents and information relating to the Work and any hazardous substances, pollutants or contaminants found on or released from the Property. At the conclusion of the document retention period, Purchaser shall notify EPA at least 90 days prior to the destruction of any such records, and upon request by EPA, except as provided in Paragraph 52 (Privileged and Protected Claims), Purchaser shall deliver any such records to EPA. These record retention requirements apply regardless of any corporate retention policy to the contrary and is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

## **XI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

56. **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 PM or, in the event of his/her

unavailability, the Regional Duty Officer at (800) 553-2509 of the incident or Property conditions.

57. **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 PM or, in the event of his/her unavailability, the Regional Duty Officer at (800) 553-2509, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

58. For any event covered under this Section, Purchaser shall submit a written report to EPA within seven 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.

## **XII. DISPUTE RESOLUTION**

59. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement, EPA will notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 60 (Informal Dispute Resolution).

60. **Informal Dispute Resolution.** If Purchaser objects to any EPA action taken pursuant to this Settlement, Purchaser shall send the "PM" and EPA counsel a written Notice of Dispute describing the objection(s) within 15 days after such action. EPA and Purchaser shall have 30 days from EPA's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Purchaser pursuant to this Section shall be in writing and approved pursuant to Paragraph 99 (Modification). Upon approval, it is incorporated into and becomes an enforceable part of this Settlement.

61. **Formal Dispute Resolution.** If EPA and Purchaser 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 PM and EPA counsel. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Purchaser, unless the decision would result in a material modification to this Settlement, in which case it must also be approved by DOJ prior to issuance. EPA's or the United States' decision, as applicable, is incorporated into and becomes 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.

62. Except as agreed to by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Purchaser under this Settlement.

### **XIII. FORCE MAJEURE**

63. “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.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Purchaser intends or may intend to assert a claim of force majeure, Purchaser shall notify EPA’s PM orally or, in his or her absence, the alternate EPA PM, or, in the event both of EPA’s designated representatives are unavailable, the Director of the Land, Chemicals and Redevelopment Division, EPA Region III, within 7 days of when Purchaser first knew that the event might cause a delay. Within 10 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 63 and whether Purchaser has exercised best efforts under Paragraph 63, EPA may, in its unreviewable discretion, excuse in writing Purchaser’s failure to submit timely or complete notices under this Paragraph.

65. 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.

66. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XII (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 63 and 64. 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.

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

#### **XIV. CERTIFICATION**

68. By entering into this Settlement, Purchaser certifies under penalty of perjury that to the best of its knowledge and belief it has fully and accurately disclosed to EPA 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 it has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site.

#### **XV. COVENANTS BY UNITED STATES**

69. Except as provided in Section XVI (Reservations of Rights by United States), 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), or for Section 3008 of RCRA, 42 U.S.C. § 6928, for Existing Contamination and the Work. These covenants: (a) take effect upon the Effective Date; (b) are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement; (c) are 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 68; (d) extend to the successors of Purchaser but only to the extent that the alleged liability of the successor is based solely on its status as a successor of the Purchaser; and (e) do not extend to any other person.

70. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States or EPA to seek or obtain further relief from Purchaser if the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in Paragraph 68 is false or in any material respect inaccurate.



## **XVI. RESERVATIONS OF RIGHTS BY UNITED STATES**

71. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States or EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States 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.

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

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

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

### **74. Work Takeover**

a. If EPA determines that Purchaser: (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Purchaser. Any Work Takeover Notice issued by EPA (which writing may be electronic) will

specify the grounds upon which such notice was issued and will provide Purchaser a period of 30 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 74.a, Purchaser has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Purchaser in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 74.b. Funding of Work Takeover costs is addressed under Paragraph 94 (Access to Financial Assurance).

c. Purchaser may invoke the procedures set forth in Paragraph 61 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 74.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 74.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 61 (Formal Dispute Resolution).

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

## **XVII. COVENANTS BY PURCHASER**

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

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

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

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

76. These covenants not to sue shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVI (Reservations of Rights by United States), other than in Paragraph 72.a (liability for failure to meet a requirement of the Settlement), or 72.b (criminal liability), or 72.c (violations of federal/state law during or after implementation of the Work), but only to the extent that Purchaser's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

77. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d), or Section 112 of CERCLA, 42 U.S.C. § 9612, or 40 C.F.R. Part 307.

78. 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.

### **XVIII. OTHER CLAIMS**

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

80. Except as expressly provided in Section XV (Covenants by United States), 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, RCRA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

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

82. Nothing in this Settlement creates any rights in, or grants any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, 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).

83. 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

within the meaning of Sections 113(f)(2) and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States or any other person, except the State. However, if the United States exercises rights under the reservations in Section XVI (Reservations of Rights by United States), other than in Paragraphs 72.a (claims for failure to meet a requirement of the Settlement), 72.b (criminal liability), or 72.c (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

84. 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 within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

## **XX. RELEASE AND WAIVER OF LIEN**

86. Subject to the Reservations of Rights in Section XVI of this Settlement, upon issuance of the Notice of Completion in Section XXV, 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.

## **XXI. INDEMNIFICATION**

87. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA’s authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Purchaser shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of 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 all costs it incurs, including but not limited to attorneys’ fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The

United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

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

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

## **XXII. INSURANCE**

90. 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 XXV (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Purchaser pursuant to this Settlement. In addition, for the duration of the Settlement, Purchaser shall provide EPA with certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Purchaser shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Purchaser in furtherance of this Settlement. If Purchaser demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure that all submittals to EPA under this Paragraph identify the U.S. Steel Corporation MVW Fairless Works located at S. Pennsylvania Avenue, Fairless Hills, Pennsylvania and the CERCLA and RCRA docket numbers for this action.

## **XXIII. FINANCIAL ASSURANCE**

91. In order to ensure completion of the Work, Purchaser shall secure financial assurance, initially in the amount of \$7,500,000.00 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in

a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at , and satisfactory to EPA. Purchaser may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

92. Purchaser shall, within 30 days after the Effective Date, obtain EPA’s approval of the form of Purchaser’s financial assurance. Within 30 days of such approval, Purchaser shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional financial assurance specialist at U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103

93. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Purchaser shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Purchaser of such determination. Purchaser shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Purchaser, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed [60] days. Purchaser shall follow the procedures of Paragraph 95 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser’s inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

94. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 74.a, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 94.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 94.

c. EPA is entitled to require any funds guaranteed to be paid in accordance with Paragraph 94: (1) upon foreclosure on any portion of the Property where Work is required, but not yet completed; or (2) upon Purchaser's initiation of bankruptcy proceedings or the filing of a petition of involuntary bankruptcy against Purchaser.

d. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 74.b, EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Purchaser shall, within 7 days of such demand, pay the amount demanded as directed by EPA.

e. Any amounts required to be paid under this Paragraph 94 must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund.

95. **Modification of Amount, Form, or Terms of Financial Assurance.** Purchaser may submit, on any anniversary of the Effective Date or at any other time agreed to by the EPA and Purchaser, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 107, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Purchaser of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Purchaser may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XII (Dispute Resolution). Purchaser may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism is not subject to challenge by Purchaser pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the

agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Purchaser shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 91.

96. **Release, Cancellation, or Discontinuation of Financial Assurance.** Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a notice of completion of work under Section XXV (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XII (Dispute Resolution).

#### **XXIV. MODIFICATION**

97. If the PM determines a non-material modification to any approved plan or schedule is appropriate, the PM may make such modification in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, but the modification has as its effective date the date of the PM's oral direction, unless otherwise indicated.

98. If Purchaser seeks permission to deviate from any approved work plan or schedule, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with a requested non-material modification under this Paragraph until receiving oral or written approval from the PM pursuant to Paragraph 96. Purchaser may not proceed with a requested material modification under this Paragraph until it has been approved pursuant to Paragraph 98.

99. Except as provided in Paragraphs 97 - 98, non-material modifications to this Settlement must be in writing and are effective when signed by Purchaser and EPA. Material modifications to this Settlement must be in writing and are effective when signed (including electronically signed) by duly authorized representatives.

100. No informal advice, guidance, suggestion, or comment by the PM or other EPA representatives 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.

#### **XXV. NOTICE OF COMPLETION OF WORK**

101. When EPA determines, after EPA's review of the CMI Five-Year Assessment submitted by Purchaser pursuant to Paragraph 34.c(1), that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, such as compliance with the property requirements in Section VIII (Property Requirements), including, but not limited to access, reasonable steps, institutional controls, and record retention, EPA will provide written notice to Purchaser. If EPA determines that any such Work has 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 is a violation of this Settlement.

## **XXVI. INTEGRATION/APPENDICES**

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

- a. Appendix 1 is the description and/or map of the Site.
- b. Appendix 2 is the map of the Property.
- c. Appendix 3 is a description of the Property.

## **XXVII. DISCLAIMER**

103. This Settlement is in no way a finding by EPA as to the risks to human health and the environment that may be posed by contamination at the Property or the Site or a representation by EPA that the Property or the Site is fit for any particular purpose.

## **XXVIII. ENFORCEMENT**

104. The Parties agree that the United States District Court for the Eastern District of Pennsylvania (“Court”) will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for any judicial enforcement action brought with respect to this Settlement.

105. Notwithstanding Paragraph 59 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

106. If the United States files a civil action as contemplated by Paragraph 105, above, to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity.

## **XXIX. NOTICES AND SUBMISSIONS**

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

Address submissions to Purchaser to:

Nathaniel Hagedorn  
4825 NW 41st Street, Suite 500  
Riverside, MO 64150  
D: 816-888-7381  
M: 816-519-5636

E: [nathaniel@northpointkc.com](mailto:nathaniel@northpointkc.com) With copies to:

Seth v.d.H. Cooley  
Duane Morris LLP  
30 S. 17<sup>th</sup> Street  
Philadelphia, PA 19103  
(215) 979-1838  
[scooley@duanemorris.com](mailto:scooley@duanemorris.com)

Address submissions to EPA to:

Linda Matyskiela, Project Manager, 3LC20,  
U.S. EPA, Region III  
1650 Arch Street, Philadelphia, PA 19103  
(215) 814-3420  
[matyskiela.linda@epa.gov](mailto:matyskiela.linda@epa.gov)

and

Meghan Kelley, Assistant Regional Counsel, 3RC10,  
U.S. EPA, Region III  
1650 Arch Street, Philadelphia, PA 19103  
(215) 814-2616  
[kelley.meghan@epa.gov](mailto:kelley.meghan@epa.gov)

Address submissions to DOJ to:

[eescdcopy@enrd@usdoj.gov](mailto:eescdcopy@enrd@usdoj.gov)  
Re: DOJ # 90-11-2-12401/1

### **XXX. PUBLIC COMMENT**

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

### **XXXI. EFFECTIVE DATE**

109. The effective date of this Settlement is the date upon which both of the following have occurred: (a) EPA issues written notice to Purchaser that the United States has fully executed the Settlement after review of and response to any public comments received, and (b) Purchaser acquires the Property. Purchaser shall notify EPA in writing within three days of acquiring the Property.

Signature Page for Administrative Settlement Agreement regarding the U.S. Steel Corp. MVW Fairless Works Site (EPA Docket Numbers: CERCLA-03-2021RCRA-03-2021-0051PP).

IT IS SO AGREED:

BY:

NP Falls Township Industrial 2, LLC,  
a Delaware limited liability company

Purchaser

By: NPD Management, LLC, a Missouri  
limited liability company, its Implementing Member

By:

  
Nathaniel Hagedorn, Manager

Date: 12/18/20

Address:

4825 NW 41<sup>st</sup> Street, Ste. 500  
Riverside, MO 64150

Signature Page for Administrative Settlement Agreement regarding the U.S. Steel Corp. MVW Fairless Works Site (EPA Docket Numbers: CERCLA- RCRA-03-2021-0051PP).

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

**COSMO SERVIDIO** Digitally signed by COSMO  
SERVIDIO  
Date: 2020.12.18 16:30:19 -05'00'

---

Cosmo Servidio  
Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

Date

Signature Page for Administrative Settlement Agreement regarding the U.S. Steel Corp. MVW  
Fairless Works Site (EPA Docket Numbers: CERCLA-03-2021- RCRA-03-2021-0051PP).

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE  
NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

BY:

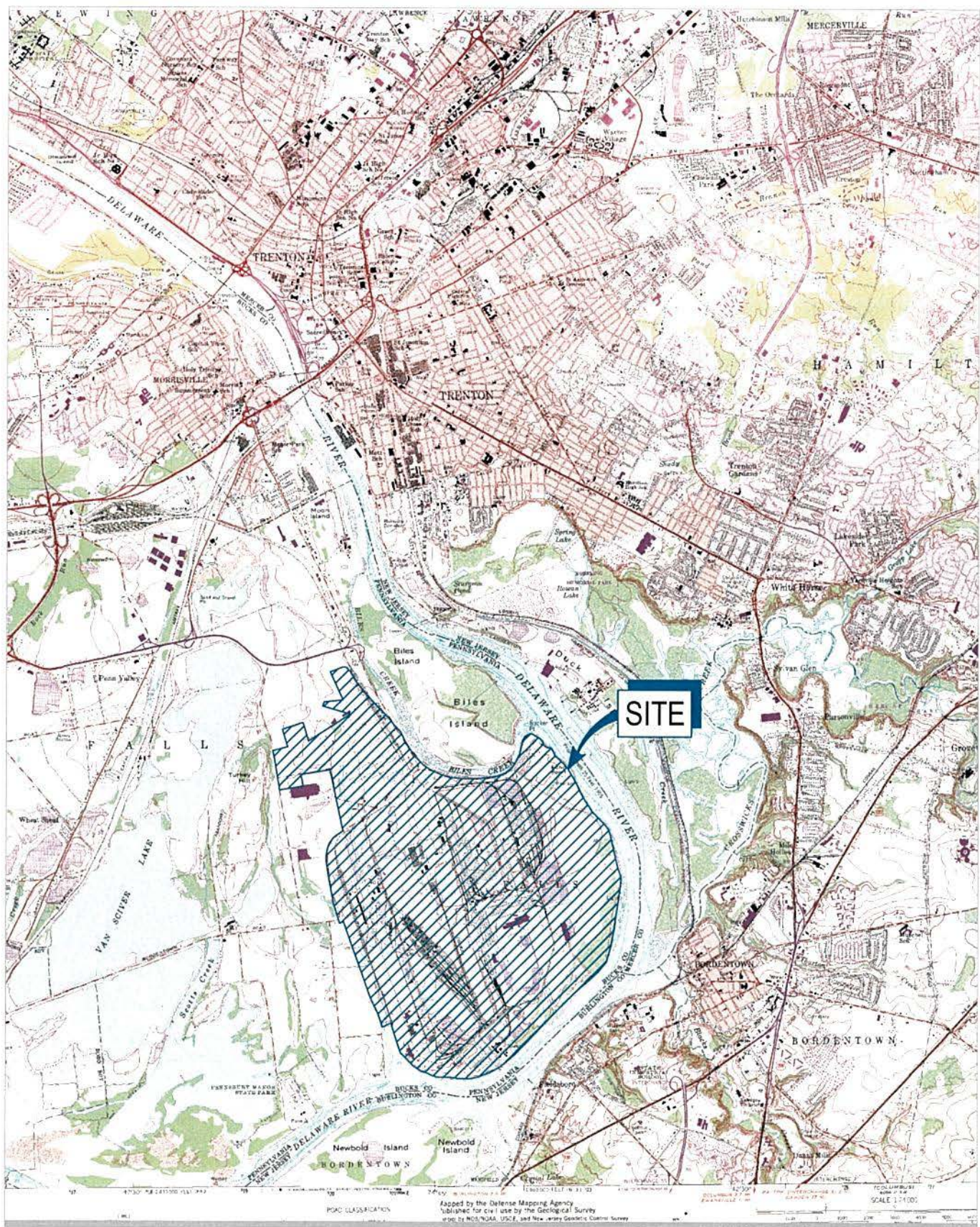
**LESLIE ALLEN** Digitally signed by LESLIE ALLEN  
Date: 2020.12.18 13:37:20 -05'00'

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Leslie Allen	Date
Senior Lawyer	
Environmental Enforcement Section	
Environment and Natural Resources Division	
U.S. Department of Justice	
P.O. Box 7611	
Washington, DC 20044-7611	
202-514-4114	
<a href="mailto:leslie.allen@usdoj.gov">leslie.allen@usdoj.gov</a>	

# **APPENDIX 1**





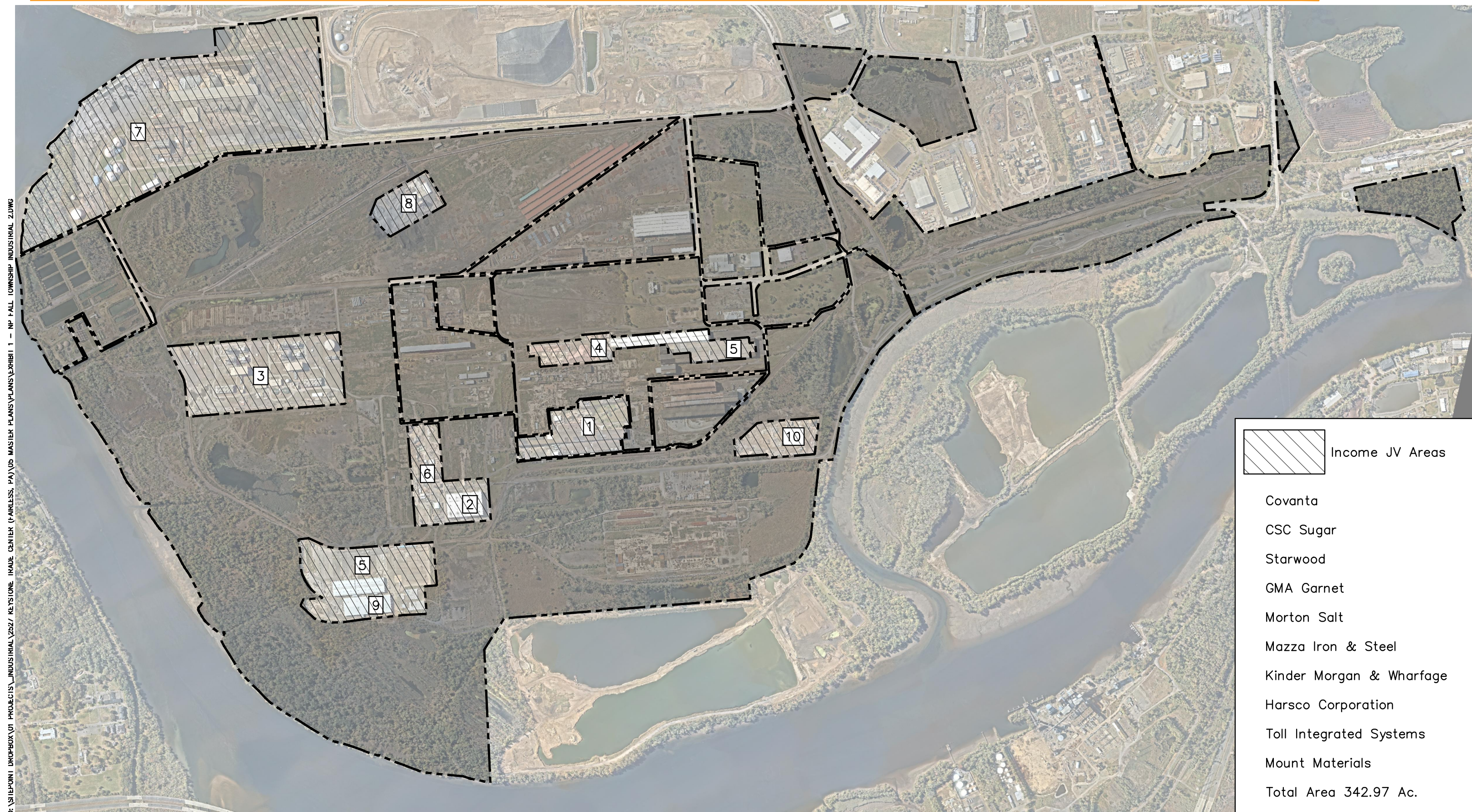


# **APPENDIX 2**





D:\SITEPOINT DROPBOX\01 PROJECTS\INDUSTRIAL\252\KEYSTONE TRADE CENTER (FARLESS, PA)\05 MASTER PLANS\EXHIBIT 1 - NP FALL TOWNSHIP INDUSTRIAL 2.DWG



 Income JV Areas

Covanta

CSC Sugar

Starwood

GMA Garnet

Morton Salt

Mazza Iron & Steel

Kinder Morgan & Wharfage

Harsco Corporation

Toll Integrated Systems

Mount Materials

Total Area 342.97 Ac.



# **APPENDIX 3**

**Metes and Bounds Description  
Unit 2 (Kinder Morgan)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the northeasterly most corner of Unit 2 (Kinder Morgan), and from said Point of Beginning the following courses based on a plan entitled "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020, and described as follows:

The following four (4) courses and distances along the South Port Road:

1. South 19° 43' 44" East, for a distance of 1362.52 feet to the beginning of a curve, thence;
2. Along a curve to the left, having a radius of 317.11 feet, an arc length of 107.98 feet and whose chord bears South 27° 45' 17" East, for a distance of 107.46 feet to a point, thence;
3. South 40° 00' 15" East, for a distance of 179.40 feet to the beginning of a curve, thence;
4. Along a curve to the right, having a radius of 537.24 feet, an arc length of 169.97 feet and whose chord bears South 29° 21' 24" East, for a distance of 169.26 feet to a point on the dividing line between Unit 2 (Kinder Morgan) and TMP 13-50-7, lands N/F United States Steel Corp, thence;

The following nine (9) courses and distances along said dividing line:

5. South 70° 15' 22" West, for a distance of 509.29 feet to a point, thence;
6. South 19° 44' 38" East, for a distance of 176.69 feet to a point, thence;
7. South 70° 15' 22" West, for a distance of 25.00 feet to a point, thence;
8. South 19° 44' 38" East, for a distance of 429.15 feet to a point, thence;
9. North 70° 15' 22" East, for a distance of 105.96 feet to a point, thence;
10. South 19° 44' 38" East, for a distance of 283.87 feet to a point, thence;
11. North 70° 15' 22" West, for a distance of 22.00 feet to the beginning of a curve, thence;
12. Along a curve to the left, having a radius of 50.00 feet, an arc length of 78.54 feet and whose chord bears South 64° 44' 38" East, for a distance of 70.71 feet to a point, thence;
13. North 70° 15' 22" East, for a distance of 313.32 feet to a point, thence;
14. Along the easterly line of said Unit 2, South 22° 08' 50" East, for a distance of 48.64 feet to a point, thence;

The following three (3) courses and distance along South Port Road:

15. North  $69^{\circ} 19' 26''$  East, for a distance of 453.56 feet to the beginning of a curve, thence;
16. Along a curve to the right, having a radius of 46.71 feet, an arc length of 66.63 and whose chord bears South  $77^{\circ} 33' 29''$  East, for a distance of 61.12 feet to a point, thence;
17. South  $41^{\circ} 24' 24''$  East, for a distance of 443.59 feet to a point on the northerly line of Sinter Road, thence;
18. Through Sinter Road, South  $55^{\circ} 14' 29''$  East, for a distance of 61.19 feet to a point, thence;
19. Along the easterly line of said Unit 2, South  $41^{\circ} 31' 12''$  East, for a distance of 1207.71 feet to a point on the southerly line of Unit 2, thence;

The following thirteen (13) courses and distances along said southerly and southwesterly line of Unit 2:

20. South  $64^{\circ} 10' 57''$  West, for a distance of 112.02 feet to a point, thence;
21. South  $68^{\circ} 51' 10''$  West, for a distance of 231.20 feet to a point, thence;
22. South  $75^{\circ} 31' 59''$  West, for a distance of 330.17 feet to a point, thence;
23. South  $86^{\circ} 07' 55''$  West, for a distance of 79.06 feet to a point, thence;
24. North  $74^{\circ} 45' 57''$  West, for a distance of 264.46 feet to a point, thence;
25. North  $51^{\circ} 58' 23''$  West, for a distance of 430.33 feet to a point, thence;
26. South  $88^{\circ} 18' 24''$  West, for a distance of 107.00 feet to a point, thence;
27. South  $36^{\circ} 30' 38''$  West, for a distance of 137.44 feet to a point, thence;
28. South  $89^{\circ} 08' 57''$  West, for a distance of 136.01 feet to a point, thence;
29. North  $56^{\circ} 33' 33''$  West, for a distance of 297.14 feet to a point, thence;
30. North  $76^{\circ} 01' 07''$  West, for a distance of 407.14 feet to a point, thence;
31. North  $41^{\circ} 06' 20''$  West, for a distance of 35.69 feet to a point, thence;
32. North  $49^{\circ} 45' 55''$  West, for a distance of 1002.15 feet to a point on the westerly side of Unit 2, thence;

33. Along said westerly side of Unit 2, North  $19^{\circ} 38' 34''$  West, for a distance of 1055.93 feet to a point, thence;

34. Along a northerly line of Unit 2, South  $70^{\circ} 21' 26''$  West, for a distance of 350.37 feet to a point, thence;

The following five (5) courses and distance along the westerly line of Unit 2:

35. North  $19^{\circ} 30' 33''$  West, for a distance of 300.00 feet to a point, thence;

36. South  $68^{\circ} 26' 04''$  West, for a distance of 36.41 feet to a point, thence;

37. North  $18^{\circ} 26' 07''$  West, for a distance of 385.33 feet to a point, thence;

38. North  $31^{\circ} 57' 16''$  West, for a distance of 136.87 feet to a point, thence;

39. North  $19^{\circ} 06' 36''$  West, for a distance of 612.35 feet to a point on the northerly line of Unit 2, thence;

40. Along said northerly line of Unit 2, North  $70^{\circ} 17' 58''$  East, for a distance of 1749.77 feet to the Point of Beginning.

Containing 6,126,124 square feet, or 140.64 acres, more or less.

Dated: December 11, 2020

File No.: 20-07083

Prepared by: Donald P. Rapsinski, Professional Land Surveyor

Pennsylvania License No. SU043355E

DPR/jm

**Metes and Bounds Description  
Unit 3 (Reed Mineral)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the northerly most corner of Unit 3 (Reed Mineral), and from said Point of Beginning the following courses based on a plan entitled, "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020 and described as follows:

1. Along the easterly side of Unit 3 (Reed Mineral), South 44° 50' 45" West, for a distance of 845.13 feet to a point, thence;
2. Along the southeasterly line of said Unit 3, South 32° 07' 22" West, for a distance of 372.47 feet to a point, thence;
3. Along the southerly line of said Unit 3, North 83° 21' 38" West, for a distance of 216.14 feet to a point, thence;
4. Along the southwesterly line of said Unit 3, North 44° 50' 45" West, a distance of 760.00 feet to a point, thence;
5. Along the northwesterly line of said Unit 3, North 45° 09' 15" East, a distance of 497.47 feet to the Point of Beginning.

Containing 435,590 square feet, or 10.00 acres, more or less.

Dated: December 11, 2020  
File No.: 20-07083  
Prepared by: Donald P. Rapsinski, Professional Land Surveyor  
Pennsylvania License No. SU043355E

**Metes and Bounds Description  
Unit 4 (Starwood Energy)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the northeasterly most corner of Unit 4 (Starwood Energy) and from said Point of Beginning the following courses based on a plan entitled, "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020, and described as follows:

1. South 19° 42' 28" East, for a distance of 2102.18 feet to a point along Sinter Road, thence;

The following three (3) courses and distances along Sinter Road:

2. South 70° 50' 47" West, for a distance of 375.87 feet to the beginning of a curve, thence;
3. Along a curve to the left, having a radius of 416.50 feet, an arc length of 171.10 feet and whose chord bears South 59° 32' 32" West, for a distance of 169.90 feet to a point, thence;
4. South 47° 46' 25" West, for a distance of 401.51 feet to a point, thence;
5. North 19° 42' 28" West, for a distance of 2284.00 feet to a point along Energy Drive, thence;
6. Partially along Energy Drive, North 70° 17' 32" East, for a distance of 913.67 feet to the Point of Beginning.

Containing 1,9599,971 square feet, or 45.00 acres, more or less.

Dated: December 11, 2020

File No.: 20-07083

Prepared by: Donald P. Rapsinski, Professional Land Surveyor

Pennsylvania License No. SU043355E

DPR/jm



**Metes and Bounds Description  
Unit 5 (Mazza Iron and Steel)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the northerly most corner of Unit 5 (Mazza Iron and Steel), and from said Point of Beginning the following courses based on a plan entitled, "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020 and described as follows:

6. Along Solar Drive, South 19° 33' 44" East, for a distance of 388.67 feet to a point, thence;
7. Along the southerly line of Unit 5 (Mazza Iron and Steel), South 70° 26' 16" West, for a distance of 1415.33 feet to a point, thence;
8. Along the southwesterly line of said Unit 5, North 19° 33' 44" West, for a distance of 388.67 feet to a point, thence;
9. Along the northerly line of said Unit 5, North 70° 26' 16" East, a distance of 1415.33 feet to the Point of Beginning.

Containing 550,096 square feet, or 12.63 acres, more or less.

Dated: December 11, 2020

File No.: 20-07083

Prepared by: Donald P. Rapsinski, Professional Land Surveyor  
Pennsylvania License No. SU043355E

*DPR/jm*

**Metes and Bounds Description  
Unit 6 (CSC Sugar)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the southeasterly corner of lands Unit 6 (CSC Sugar), and from said Point of Beginning the following courses based on a plan entitled, "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020, and described as follows:

1. Along the southerly most line of lands N/F Unit 6 (CSC Sugar), South 70° 56' 51" West, for a distance of 547.00 feet to a point, thence;
2. Along the westerly most line of said lands of Unit 6 (CSC Sugar), North 19° 03' 09" West, for a distance of 615.00 feet to a point, thence;
3. Along the northerly most line of said lands of Unit 6 (CSC Sugar), North 70° 56' 51" East, for a distance of 486.00 feet to the beginning of a curve, thence;
4. Along a curve to the right, having a radius of 61.00 feet, an arc length of 95.82 feet and whose chord bears South 64° 03' 09" East, for a distance of 86.27 feet to a point, thence;
5. Along the easterly most line of said lands of Unit 6 (CSC Sugar), South 19° 03' 09" East, for a distance of 554.00 feet to the Point of Beginning.

Containing 335,606 square feet, or 7.70 acres, more or less.

Dated: December 11, 2020  
File No.: 20-07083  
Prepared by: Donald P. Rapsinski, Professional Land Surveyor  
Pennsylvania License No. SU043355E  
*DPR/jm*

**Metes and Bounds Description  
Unit 7 (Morton Salt)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the northeasterly most corner of Unit 7 (Morton Salt), and from said Point of Beginning the following courses based on a plan entitled "Declaration Plat, Keystone Trade Center, A Condominium", prepared by Gilmore and Associates, Inc., dated December 11, 2020, and described as follows:

41. Along the northeasterly line of Unit 7 (Morton Salt), South 19° 37' 09" East, for a distance of 1335.93 feet to a point, thence;
42. Along the same, South 14° 41' 41" East, for a distance of 403.79 feet to a point, thence;
43. Along the southeasterly line of said Unit 7, South 44° 39' 45" West, for a distance of 253.84 feet to a point, thence;
44. Along the southerly line of said Unit 7, South 69° 44' 17" West, for a distance of 888.86 feet to a point, thence;
45. Along the southwesterly line of said Unit 7, North 17° 11' 03" West, for a distance of 181.35 feet to a point, thence;
46. Along the same, North 05° 13' 32" East, for a distance of 445.84 feet to a point, thence;
47. Along the westerly line of said Unit 7, North 19° 43' 20" West, for a distance of 1272.59 feet to a point, thence;
48. Along the northwesterly line of said Unit 7, North 70° 22' 51" East, for a distance of 959.42 feet to the Point of Beginning.

Containing 1,822,231 square feet, or 41.83 acres, more or less.

Dated: December 11, 2020

File No.: 20-07083

Prepared by: Donald P. Rapsinski, Professional Land Surveyor

Pennsylvania License No. SU043355E

DPR/jm

**Metes and Bounds Description  
Unit 8 (Covanta)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the northeasterly most corner of Unit 8 (Covanta), and from said Point of Beginning the following courses based on a plan entitled "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020, and described as follows:

49. Along the easterly line of Unit 8 (Covanta), South 19° 42' 01" East, for a distance of 1681.14 feet to a point, thence;
50. Along the southerly line of said Unit 8, South 70° 24' 06" West, for a distance of 513.98 feet to a point, thence;
51. Along the westerly line of said Unit 8, North 19° 41' 36" West, for a distance of 101.05 feet to a point, thence;
52. Along the southerly line of said Unit 8, South 70° 18' 24" West, for a distance of 254.73 feet to a point, thence;
53. Along the same, South 70° 18' 24" West, for a distance of 113.94 feet to a point, thence;
54. Along the westerly line of said Unit 8, North 19° 41' 36" West, for a distance of 1578.60 feet to a point, thence;
55. Along the northerly line of said Unit 8, North 70° 15' 54" East, for a distance of 882.44 feet to the Point of Beginning.

Containing 1,445,619 square feet, or 33.19 acres, more or less.

Dated: December 11, 2020  
File No.: 20-07083  
Prepared by: Donald P. Rapsinski, Professional Land Surveyor  
Pennsylvania License No. SU043355E  
*DPR/jm*

**Metes and Bounds Description  
Unit 9 (GMA Garnett)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the northeasterly most corner of Unit 9 (GMA Garnett), and from said Point of Beginning the following courses based on a plan entitled "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020, and described as follows:

- 56. Along the easterly line of Unit 9 (GMA Garnett), South 19° 41' 36" East, for a distance of 1472.47 feet to a point, thence;
- 57. Along the southerly line of said Unit 9, South 70° 16' 48" West, for a distance of 303.98 feet to a point, thence;
- 58. Along the easterly line of said Unit 9, South 19° 43' 12" East, for a distance of 1896.95 feet to a point, thence;
- 59. Along the southerly line of said Unit 9, South 70° 18' 40" West, for a distance of 372.06 feet to a point, thence;

The following six (6) courses and distances along the westerly side of said Unit 9:

- 60. North 19° 38' 36" West, for a distance of 443.15 feet to a point, thence;
- 61. North 29° 50' 16" West, for a distance of 182.30 feet to a point, thence;
- 62. North 33° 13' 44" West, for a distance of 167.10 feet to a point, thence;
- 63. North 19° 36' 59" West, for a distance of 728.80 feet to a point, thence;
- 64. North 01° 00' 37" West, for a distance of 215.22 feet to a point, thence;
- 65. North 19° 34' 27" West, for a distance of 1499.32 feet to the beginning of a curve, thence;
- 66. Along a curve to the right, having a radius of 163.60 feet, an arc length of 243.30 feet and whose chord bears North 24° 37' 14" East, for a distance of 221.50 feet to a point on the northerly line of said Unit 9, thence;
- 67. Along said northerly line of Unit 9, North 70° 25' 54" East, for a distance of 496.60 feet to the beginning of a curve, thence;
- 68. Along a curve to the right, having a radius of 123.32 feet, an arc length of 22.19 and whose chord bears North 83° 08' 53" East, for a distance of 22.16 feet to the Point of Beginning.

Containing 1,765,396 square feet, or 40.53 acres, more or less.

Dated: December 11, 2020  
File No.: 20-07083  
Prepared by: Donald P. Rapsinski, Professional Land Surveyor  
Pennsylvania License No. SU043355E  
DPR/jm

**Metes and Bounds Description  
Unit 10 (Mount Materials)  
Falls Township, Bucks County, Pennsylvania**

Beginning at the westerly most corner of Unit 10 (Mount Materials) and from said Point of Beginning the following courses based on a plan entitled, "Declaration Plat, Keystone Trade Center, A Condominium" prepared by Gilmore and Associates, Inc., dated December 11, 2020, and described as follows:

7. North 81° 44' 46" East, for a distance of 503.95 feet to a point, thence;
8. South 19° 41' 12" East, for a distance of 600.60 feet to a point, thence;
9. South 19° 37' 38" East, for a distance of 50.00 feet to a point, thence;
10. South 70° 22' 22" West, for a distance of 50.00 feet to a point, thence;
11. South 19° 37' 38" East, for a distance of 437.50 feet to a point, thence;
12. South 70° 22' 22" West, for a distance of 237.41 feet to a point, thence;
13. North 19° 37' 38" West, for a distance of 45.79 feet to the beginning of a curve,
14. Along a curve to the left, having a radius of 100.00 feet, an arc length of 69.54 feet and whose chord bears North 39° 32' 52" West, for a distance of 68.14 feet to a point of intersection with a non-tangential line, thence;
15. North 57° 36' 15" West, for a distance of 287.94 feet to a point, thence;
16. North 24° 28' 03" West, for a distance of 151.21 feet to a point, thence;
17. North 19° 08' 42" West, a distance of 700.00 feet to the Point of Beginning.

Containing 498,762 square feet, or 11.45 acres, more or less.

Dated: December 11, 2020

File No.: 20-07083

Prepared by: Donald P. Rapsinski, Professional Land Surveyor

Pennsylvania License No. SU043355E

DPR/jm