

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF )  
 )  
MOFFETT FEDERAL AIRFIELD ) Docket No. 2016-09  
 )  
PLANETARY VENTURES, LLC, )  
 )  
Respondent )  
 )  
 )  
PURSUANT TO THE COMPREHENSIVE, )  
ENVIRONMENTAL RESPONSE, )  
COMPENSATION, AND LIABILITY ACT )  
42 U.S.C. §§ 9604, 9606, 9607, 9622 )  
 )

AGREEMENT AND ORDER ON CONSENT FOR CERTAIN CERCLA RESPONSE  
ACTIVITIES BY TENANT AS BONA FIDE PROSPECTIVE PURCHASER

**I. INTRODUCTION**

1. This Agreement and Order on Consent for Certain CERCLA Response Activities by Tenant as Bona Fide Prospective Purchaser (“**Agreement**”) is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency (“**EPA**”) and Planetary Ventures, LLC, a Delaware limited liability company (“**Lessee**”) (collectively, the “**Parties**”) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“**CERCLA**”), 42 U.S.C. § 9601, *et seq.* Under this Agreement, Lessee agrees to perform certain Work, specifically a pilot study (“**Pilot Study**”) for evaluating the feasibility of alternatives for abating the coating and painting presently existing on the superstructure of Hangar One (“**Hangar One**”), and, if selected, a non-time critical removal action at Hangar One. Hangar One is within the Moffett Field Leasehold (the “**Property**”) which is situated within the former NAS Moffett Federal Airfield Superfund Site in Santa Clara County, California, commonly known as the “**MFA Site**” or the “**Site**.”

## II. JURISDICTION AND GENERAL PROVISIONS

2. This Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General to compromise and settle claims of the United States.
3. The Parties agree that the United States District Court for the Northern District of California will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Agreement.
4. EPA has notified the State of California (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
5. The Lessee represents that it is a bona fide prospective purchaser ("BFPP") as described by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40) and EPA's Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision, December 5, 2012 ("Tenant as BFPP Guidance"), that it has and will continue to comply with Section 101(40) during its leasehold interest in the Property, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the Pilot Study and possible removal action(s) at the Site, and the risk of claims under CERCLA being asserted against Lessee notwithstanding Section 107(r)(1) as a consequence of Lessee's activities at the Site pursuant to this Agreement, one of the purposes of this Agreement is to resolve, subject to the reservations and limitations contained in Section XVII (Reservations of Rights by United States), any potential liability of Lessee under CERCLA for the Existing Contamination as defined by Paragraph 12(g) below.
6. The resolution of this potential liability in exchange for Lessee's performance of the Work and reimbursement of certain response costs is in the public interest.
7. NASA has been provided this Agreement for review prior to signature by the United States.
8. EPA and Lessee recognize that this Agreement has been negotiated in good faith. Lessee agrees to comply with and be bound by the terms of this Agreement and further agrees that it will not contest the basis or validity of this Agreement or its terms.
9. This Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement.

### **III. PARTIES BOUND**

10. This Agreement applies to and is binding upon EPA and upon Lessee and its successors and assigns. Any change in ownership or corporate status of Lessee including, but not limited to, any transfer of assets or real or personal property shall not alter Lessee's responsibilities under this Agreement.
11. Lessee shall ensure that its contractors, subcontractors, and representatives comply with this Agreement, and, where appropriate, receive a copy of this Agreement. Lessee shall be responsible for any noncompliance with this Agreement.

### **IV. DEFINITIONS**

12. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.
  - a. **"Agreement"** shall mean this Agreement and Order on Consent for Certain CERCLA Response Activities by Tenant as Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXII). In the event of conflict between this Agreement and any appendix, this Agreement shall control.
  - b. **"BFPP"** shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), and as it applies to a tenant as described in the Tenant as BFPP Guidance.
  - c. **"CERCLA"** shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*
  - d. **"Day"** shall mean a calendar day unless expressly stated to be a working day. **"Working day"** shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
  - e. **"Effective Date"** shall be the effective date of this Agreement as provided in Section XXIV.
  - f. **"EPA"** shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
  - g. **"Existing Contamination"** shall mean:
    - i. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;

- ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- iii. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.
- h. **“Interest”** shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at [http://www.epa.gov/ocfopage/finstatement/superfund/int\\_rate.htm](http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm).
- i. **“Lessee”** shall mean Planetary Ventures, LLC, a Delaware limited liability company.
- j. **“MFA Leasehold”** shall mean the approximately 1,000 acre property, encompassing the NASA Ames Research Center Eastside/Airfield, that is the subject of the long-term lease between NASA and Lessee, as depicted in Appendix A.
- k. **“NASA”** means the National Aeronautics and Space Administration.
- l. **“National Contingency Plan”** or **“NCP”** shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- m. **“OSC”** shall mean the On-Scene Coordinator as defined in 40 C.F.R. § 300.5.
- n. **“Oversight Costs”** shall mean all direct and indirect costs incurred by EPA or the United States after the Effective Date in monitoring and supervising Lessee’s performance of the Work to determine whether such performance is consistent with the requirements of this Agreement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Agreement, as well as costs incurred in overseeing implementation of the Work.
- o. **“Paragraph”** shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.
- p. **“Parties”** shall mean EPA and Lessee.
- q. **“Property”** shall mean that portion of the MFA Site that is subject to the 1,000 acre MFA Leasehold, including the area where Hangar One is situated, as depicted in Appendix A.
- r. **“Section”** shall mean a portion of this Agreement identified by a Roman numeral.

- s. “**RCRA**” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- t. “**Site**” or “**MFA Site**” shall mean the former Naval Air Station (NAS) Moffett Federal Airfield Site encompassing approximately 1,500 acres, adjacent to Mountain View, Santa Clara County, California, and depicted generally on the map attached as Appendix A. The Site includes the Property and all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located.
- u. “**SOW**” shall mean the “Revised Work Plan for the Pilot Scale Abatement Study of Hangar 1,” as amended, as approved by EPA and the State on May 17, 2016, and any modifications or Amendments made in accordance with this Agreement.
- v. “**Supervising Contractor**” shall mean the principal contractor retained by Lessee to supervise and direct the implementation of the Work agreed to in this Agreement and to sign and approve the Final Report submitted concerning such Work.
- w. “**United States**” shall mean the United States of America, its departments, agencies, and instrumentalities.
- x. “**Waste Material**” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material” under California Health and Safety Code § 25260.
- y. “**Work**” shall mean all response-related activities Lessee is required to perform under this Agreement.

## **V. FINDINGS OF FACT**

- 13. This Agreement is entered into on the basis of the Findings of Fact set forth below:
  - a. From 1933 until 1994, Naval Air Station (NAS) Moffett Field, or MFA, was operated by the United States Department of the Navy (“**Navy**”). MFA is located on 1,500 acres approximately 1 mile south of the San Francisco Bay in Santa Clara County, California. Due to contamination at the MFA resulting from various activities, MFA was listed on EPA’s National Priorities List (“**NPL**”) on July 22, 1987. In 1990, EPA, the State, and the Navy entered into a Federal Facility Agreement (“**Navy Moffett FFA**”) to conduct investigation and cleanup of contamination from past Navy operations. Pursuant to the Navy Moffett FFA, the Navy is responsible for investigation and response actions for contamination at the MFA Site. There are currently eight individual areas being addressed under the Navy Moffett FFA as “sites;” Hangar One has been designated as MFA Site 29.

- b. Nearly all of MFA, with the exception of two housing areas, was transferred to NASA in 1994. In accordance with the transfer documents and with a 1994 Amendment to the Navy Moffett FFA, Navy retained all CERCLA response authority for the Site, while NASA became responsible for ongoing environmental operations. Additionally, as the land manager at MFA after 1994, NASA was responsible for implementation of institutional controls for Navy response actions.
- c. In 2003, the Navy implemented a Time-Critical Removal Action at Hangar One (Site 29) to remove contaminated sediments from the storm water collection trench in proximity to the hangar and to coat the corrugated siding of the hangar with an asphalt emulsion to mitigate the migration of polychlorinated biphenyls ("PCBs"), asbestos, and lead from the hangar's exterior surfaces. Following completion of an Engineering Evaluation/Cost Analysis ("EE/CA") in 2008, the Navy implemented a Non-Time-Critical Removal Action ("NTCRA") to fully remove and dispose of the siding from Hangar One and to apply an epoxy coating (Carbomastic® 15) to the hangar's structural steel frame ("CM Coating"). This work was completed in 2013, and a Long Term Management Plan for Non-Time Critical Removal Action for PCB Contamination at Installation Restoration Site 29 (Hangar 1), dated June 2013, was developed to ensure that the NTCRA remains effective.
- d. In 2014, NASA, the State, and EPA entered into a Federal Facility Agreement for Moffett Field ("NASA Moffett FFA"), which set forth NASA's responsibilities at the MFA Site for addressing certain contamination where NASA itself is a source of contamination and for implementing institutional controls for the areas where it has responsibility as the land manager at MFA.
- e. By letters dated October 23, 2015 and December 22, 2015, NASA agreed to take over the Operations and Maintenance ("O&M") of Site 29, Hangar One, from the Navy. NASA further indicated that it would assume the role of the Lead Agency for Hangar One and incorporated its obligations with respect thereto in the NASA Moffett FFA Site Management Plan ("SMP"), dated March 18, 2016. NASA defines Site 29 as including the above-ground frame, including the coating applied by the Navy as part of the NTCRA, surface of the concrete floor of the hangar, concrete masonry unit walls, door mechanisms, soil areas east of the hangar, and the storm drain system around the hangar.
- f. NASA and Lessee entered into an Adaptive Reuse Lease for the MFA Leasehold with an effective date of October 30, 2014 ("Lease"). The Lease is for a sixty-year period with an ability to be extended up to ninety-six years.
- g. The Lease's effectiveness was conditioned upon the issuance by the EPA of a letter setting forth the reasonable steps, as known at that time, which Lessee should take in order not to interfere with ongoing remedies or waste remaining in place at the MFA Site. On March 12, 2015, EPA issued such letter to Lessee ("**BFPP Letter**").

- h. Pursuant to the terms of the Lease, Lessee has agreed to re-skin Hangar One, but only after the Hangar One superstructure has been further remediated.
- i. NASA has determined that the CM-15 Coating and the underlying residual paint materials on the metal of the superstructure should be removed before the re-skinning of the Hangar One superstructure can commence.
- j. Because PCBs, lead, and asbestos remain beneath the CM-15 Coating on the hangar superstructure, release or threat of release of contaminants may present an imminent and substantial endangerment to the public.
- k. Lessee has caused to be prepared that certain "Revised Work Plan for the Pilot Scale Abatement Study of Hangar 1," dated March 11, 2016, as amended, prepared by ACC Environmental Consultants ("**Pilot Study Work Plan**"). The Pilot Study Work Plan is a treatability study to evaluate various options for removing the CM-15 Coating and underlying materials on the Hangar One superstructure. The Pilot Study will require removal of portions of the CM-15 Coating from Hangar One, which is the current response action for the PCBs, lead, and asbestos within the Hangar One superstructure frame. EPA provided review and comment on the Pilot Study Work Plan on April 12, 2016, and May 9, 2016, and approved the Pilot Study Work Plan on May 17, 2016.
- l. Lessee desires to maintain its BFPP protection notwithstanding its implementation of the Work. This Agreement is being entered into in order to provide liability protection to Lessee for implementation of the Pilot Study Work Plan and any further response actions that Lessee undertakes at the Property under EPA oversight, as well as to provide EPA with a mechanism for recovering its Oversight Costs as described herein.

## **VI. DETERMINATIONS**

- 14. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:
  - a. The MFA Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
  - b. The contamination found at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
  - c. Lessee is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
  - d. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

## **VII. AGREEMENT**

- 15. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XVI, Lessee agrees to comply with all provisions of this Agreement, including, but not limited to, all attachments to this Agreement and all documents incorporated by reference into this Agreement.

## **VIII. WORK TO BE PERFORMED**

- 16. Lessee shall perform, at a minimum, all actions necessary to implement the Pilot Study Work Plan.

The actions to be implemented are included in the Pilot Study Work Plan. Should a NTCRA be issued by NASA, a work plan for its implementation will be incorporated into this Agreement as set forth in Paragraph 17.b.

Lessee shall perform all actions required by this Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (“ARARs”) under federal environmental or state environmental or facility siting laws. Lessee shall identify ARARs in the Work Plan subject to EPA approval.

- 17. Work Plan and Implementation.

- a. EPA approved the Pilot Study Work Plan, including its schedule, on May 17, 2016. Lessee shall submit to EPA for approval any proposed changes to the Work Plan.
- b. For any future Work Plans under this Agreement, EPA may approve, disapprove, require revisions to, or modify draft Work Plans in whole or in part. If EPA requires revisions, Lessee shall submit a revised draft Work Plan within 45 days of receipt of EPA’s notification of the required revisions, unless indicated that a shorter or longer time period is allowable under the circumstances. Lessee shall implement Work Plans as approved or modified in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or modified by EPA, the Work Plans, the schedules, and any subsequent modifications shall be incorporated into and become fully enforceable under this Agreement.

- c. Lessee shall not commence any Work except in conformance with the terms of this Agreement. Lessee shall not commence implementation of Work Plans developed hereunder until receiving written EPA approval or modification pursuant to Paragraph 17.b.
18. Health and Safety Plan. Lessee has provided a health and safety plan to EPA, which has been incorporated as Attachment A to the Pilot Study Work Plan.
19. Quality Assurance and Sampling.
  - a. All sampling and analyses performed pursuant to this Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (“QA/QC”), data validation, and chain of custody procedures. Lessee shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Lessee shall follow, as appropriate, “Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Lessee shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans” (QA/R-2) (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements. EPA has approved the QA/QC plan incorporated as Attachment D to the Pilot Study Work Plan.
  - b. Upon request by EPA, Lessee shall have a laboratory that meets the requirements of Paragraph 19.a above analyze samples submitted by EPA for QA monitoring. Lessee shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
  - c. Upon request by EPA, Lessee shall allow EPA or its authorized representatives to take split and/or duplicate samples. Lessee shall notify EPA not less than 7 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Lessee to take split or duplicate samples of any samples it takes as part of its oversight of Lessee’s implementation of the Work.
20. Post-Removal Site Control. If directed by EPA, Lessee shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and considering OSWER Directive No. 9360.2-02. Upon EPA approval, Lessee shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

21. Reporting.

- a. Lessee shall submit a written biweekly progress report to EPA concerning actions undertaken pursuant to this Agreement every 15th day after the commencement of Work under any Work Plans until completion of the Work, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
- b. Lessee shall submit 1 hard copy and 1 electronic copy of all plans, reports or other submissions required by this Agreement, the SOW, or any approved Work Plan. Upon request by EPA, Lessee shall submit such documents in electronic form to be specified by EPA.

22. Final Report. Within 90 days after completion of all Work required by this Agreement, Lessee shall submit for EPA review and approval in accordance with Section XXIII (Notice of Completion) a final report summarizing the actions taken to comply with this Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

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

23. Off-Site Shipments.

- a. Lessee 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. Lessee will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Lessee 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). Lessee may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if

Lessee complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

- i. Lessee shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Lessee shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
  - ii. The identity of the receiving facility and state will be determined by Lessee following the award of the contract for the removal action. Lessee shall provide the information required above as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
  - iii. Lessee represents that, pursuant to its Lease with NASA, Waste Material manifests will be executed by NASA, not by Lessee.
- b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Lessee shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Lessee shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

#### **IX. AUTHORITY OF THE ON-SCENE COORDINATOR**

24. EPA's OSC shall be responsible for overseeing Lessee's implementation of this Agreement. EPA's OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Agreement. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### **X. PAYMENT OF OVERSIGHT COSTS**

25. Payment of Oversight Costs Upon Receipt of Periodic Bills.
- a. Lessee shall pay EPA all Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Lessee a bill requiring payment that includes a SCORPIOS cost summary. Lessee shall make all payments required by this Paragraph by certified or cashier's check made payable to "EPA Hazardous Substance Superfund," referencing the name and address of Lessee, the Site name, EPA Region and Site/Spill ID Number 09C7, and the EPA docket number for this action.

b. Payments shall be made to EPA by one of the following three methods:

- (1) Payment may be made by Fedwire Electronic Funds Transfer (“EFT”) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency”

and shall reference Site/Spill ID Number 09C7 and the EPA docket number for this action.

- (2) Payment by Lessee may be made to EPA by ACH to:

PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548

ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

and shall reference Site/Spill ID Number 09C7 and the EPA docket number for this action.

- (3) Payment by Lessee may be made at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Lessee by EPA.

c. At the time of payment, Lessee shall send notice that payment has been made to Lucrina Jones at [Jones.Lucrina@epa.gov](mailto:Jones.Lucrina@epa.gov), and to the EPA Cincinnati Finance Center by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to:

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

Such notice shall reference Site/Spill ID Number 09C7 and the EPA docket number for this action.

26. In the event that a payment for Oversight Costs is not made within 60 days of Lessee's receipt of a bill, Lessee shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.
27. The total amount to be paid by Lessee pursuant to Paragraph 25 may be deposited by EPA in the MFA Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
28. Pursuant to Section XIII (Dispute Resolution), Lessee may dispute all or part of a bill for Oversight Costs if Lessee determines that EPA has made a mathematical error or included a cost item that is outside the definition of Oversight Costs, or if Lessee believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Lessee shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 25.a on or before the due date. Within the same time period, Lessee shall pay the full amount of the contested costs into an interest-bearing escrow account. Lessee shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 25.c. Lessee shall ensure that the prevailing party in the dispute receives the amount upon which it prevailed from the escrow funds plus any interest accrued within 20 calendar days after the dispute is resolved.

#### **XI. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS**

29. Lessee agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property owned or controlled by Lessee to which access is required for the implementation of response actions at the Site. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and other authorities.
30. Lessee shall implement and comply with any land use restrictions and institutional controls on the Property that are required to be implemented in connection with a response action conducted under this Agreement.
31. For so long as Lessee is the operator of the Property, Lessee shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Lessee shall require that assignees, successors in interest, and any sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property that are required to be implemented in connection with a response action conducted under this Agreement, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

32. Lessee shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.

**XII. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION**

33. Lessee shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, and shall submit them to EPA upon completion of the Work required by this Agreement, or earlier if requested by EPA.
34. Lessee may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Lessee. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Lessee.

**XIII. DISPUTE RESOLUTION**

35. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Agreement. EPA, and Lessee shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally. If EPA contends that Lessee is in violation of this Agreement, that party shall notify Lessee in writing, setting forth the basis for its position. Lessee may dispute EPA's position pursuant to Paragraph 36.
36. If Lessee disputes EPA's position with respect to Lessee's compliance with this Agreement or objects to any EPA action taken pursuant to this Agreement, including billings for Oversight Costs, Lessee shall notify EPA in writing of its position unless the dispute has been resolved informally. EPA may reply, in writing, to Lessee's position within 30 days of receipt of Lessee's notice. EPA and Lessee shall have 45 days from EPA's receipt of Lessee's written statement of position to resolve the dispute through formal negotiations (the "**Negotiation Period**"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.
37. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Director level or higher will review the dispute on the basis of the parties' written statements of position and issue a written decision on the dispute to Lessee. EPA's decision shall be incorporated into and become an enforceable

part of this Agreement. Lessee's obligations under this Agreement shall be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Lessee shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

#### **XIV. FORCE MAJEURE**

38. Lessee agrees to perform all requirements of this Agreement within the time limits established under this Agreement, unless the performance is delayed by a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the control of Lessee, or of any entity controlled by Lessee, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite Lessee's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, increased cost of performance or a failure to attain performance standards/action levels set forth in an approved Work Plan under this Agreement or an Action Memorandum.
39. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a force majeure event, Lessee shall notify EPA orally within thirty (30) days of when Lessee first knew that the event might cause a delay. Within 30 days thereafter, Lessee shall provide to EPA in writing 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; Lessee's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Lessee, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Lessee from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.
40. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Agreement that are affected by the force majeure event 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 event 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 event, EPA will notify Lessee in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Lessee in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
41. If Lessee elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), Lessee shall do so no later than 15 days after receipt of EPA's notice. In any

such proceeding, Lessee 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 event, 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 Lessee complied with the requirements of Paragraphs 39 and 40 above. If Lessee carries this burden, the delay at issue shall be deemed not to be a violation by Lessee of the affected obligation of this Agreement.

## XV. STIPULATED PENALTIES

42. Lessee shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 43 and 44 for failure to comply with the requirements of this Agreement specified below, unless excused under Section XIV (Force Majeure). "Compliance" by Lessee shall include completion of the activities under this Agreement or any work plan or other plan approved under this Agreement identified below in accordance with all applicable requirements of law, this Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Agreement and within the specified time schedules established by and approved under this Agreement.

43. Stipulated Penalty Amounts - Work.

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 43b:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$4,000	31st day and beyond

- b. Compliance Milestones

- i. Submission to EPA of:

- (1) Work Plans
- (2) Quality Assurance Project and Sampling Plans
- (3) Removal Action Work Plans
- (4) Removal Action Completion Reports (After Action Reports)
- (5) Institutional Control Implementation Plans
- (6) Long Term Monitoring Plans

ii. Payment of EPA oversight costs.

44. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents not listed in Paragraph 43.b., and any other violation of this Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

45. In the event that EPA makes a determination that a Work Takeover is necessary pursuant to Paragraph 57 (Work Takeover), Lessee shall be liable for a stipulated penalty in the amount of \$200,000.

46. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Lessee of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Assistant Director level or higher, under Paragraph 37 of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

47. Following EPA's determination that Lessee has failed to comply with a requirement of this Agreement, EPA may give Lessee written notification of the failure and describe the noncompliance. EPA may send Lessee a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Lessee of a violation.

48. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Lessee's receipt from EPA of a demand for payment of the penalties, unless Purchaser invokes the dispute resolution procedures under Section XIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the name and address of Purchaser, the Site name, the EPA Region and Site/Spill

ID Number 09C7, the EPA Docket Number 2016-09. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 78.

49. The payment of penalties shall not alter in any way Lessee's obligation to complete performance of the Work required under this Agreement.
50. Penalties shall continue to accrue during any dispute resolution period, except as provided in Paragraph 46 above, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.
51. If Lessee fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Lessee shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 46. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Agreement.

#### **XV. CERTIFICATION**

52. By entering into this Agreement, Lessee certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Lessee 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 Agreement. Lessee 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 or pollutants or contaminants at the Site. If the United States determines that information provided by Lessee is not materially accurate and complete, the Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

#### **XVI. COVENANT NOT TO SUE BY UNITED STATES**

53. In consideration of the actions that will be performed and the payments that will be made by Lessee under the terms of this Agreement, and except as otherwise specifically provided in this Agreement, the United States covenants not to sue or to take administrative action against Lessee pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the

Effective Date and is conditioned upon the complete and satisfactory performance by Lessee of all obligations under this Agreement, including, but not limited to, payment of Oversight Costs pursuant to Section X. This covenant not to sue extends only to Lessee and does not extend to any other person.

#### **XVII. RESERVATION OF RIGHTS BY UNITED STATES**

54. Except as specifically provided in this Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Agreement, from taking other legal or equitable action as it deems appropriate and necessary.
55. The covenant not to sue set forth in Section XVI above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Agreement is without prejudice to, all rights against Lessee with respect to all other matters, including, but not limited to:
- a. claims based on a failure by Lessee to meet a requirement of this Agreement;
  - b. criminal liability;
  - c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
  - d. liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Pilot Study Work Plan, the Work, or otherwise ordered by EPA;
  - e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
  - f. liability resulting from exacerbation of Existing Contamination by Lessee, its successors, assigns, lessees, or sublessees;
  - g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site; and
  - h. liability arising from Lessee's breach of any of the covenants under the Lease and any failure by Lessee to perform any of its obligations under the Lease.

56. With respect to any claim or cause of action asserted by the United States, Lessee shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Lessee has complied with all of the requirements of 42 U.S.C. § 9601(40).
57. Work Takeover. In the event EPA determines that Lessee has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, the United States may assume the performance of any or all of the Work as EPA deems necessary. Prior to the United States taking over the Work, EPA will issue written notice to Lessee specifying the grounds upon which such notice was issued. EPA will provide Lessee with 21 days within which to remedy the circumstances giving rise to EPA's issuance of the notice. Lessee may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.
58. Nothing in this Agreement shall be construed to alter the Lease and NASA's and Lessee's obligations and responsibilities thereunder.
59. Nothing in this Agreement shall be construed to alter NASA's obligations and responsibilities under the NASA Moffett FFA as the Lead Agency for Hangar One.

#### **XVIII. COVENANT NOT TO SUE BY LESSEE**

60. Subject to paragraph 58, Lessee 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, Oversight Costs, or this Agreement, including, but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
  - b. any claim arising out of response actions, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
  - c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

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

### **XIX. CONTRIBUTION**

62. Nothing in this Agreement precludes the United States or Lessee from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Agreement, including any claim Lessee may have pursuant to Section 107(a)(4)(B). 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).
63. In the event of a suit or claim for contribution brought against Lessee, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Lessee is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Agreement or at the direction of the OSC), the Parties agree that this Agreement shall then constitute an administrative settlement pursuant to which Lessee has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA for the “matters addressed” in this Agreement. The “matters addressed” in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination pursuant to this Agreement.
64. In the event Lessee were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Agreement or at the direction of the OSC, the Parties agree that this Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Lessee has, as of the Effective Date, resolved its liability to the United States.
65. Lessee agrees that with respect to any suit or claim brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.
66. Lessee also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify the United States in writing within 10 days of service of the complaint on it.

## **XX. INDEMNIFICATION**

67. Lessee shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Lessee, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Agreement. In addition, Lessee agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Lessee, Lessee's officers, directors, employees, agents, contractors, subcontractors and any persons acting on Lessee's behalf or under Lessee's control, in carrying out activities pursuant to this Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Lessee in carrying out activities pursuant to this Agreement. Neither Lessee nor any such contractor shall be considered an agent of the United States.
68. The United States shall give Lessee notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Lessee prior to settling such claim.
69. Lessee waives all claims against the United States for damages or reimbursement or for setoff of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Lessee 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, Lessee 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 Lessee and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## **XXI. MODIFICATION**

70. The OSC may make minor modifications to any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Agreement may be modified in writing by mutual agreement of the Parties.
71. If Lessee seeks permission to deviate from any approved work plan, schedule, or SOW, Lessee's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Lessee may not proceed with the requested deviation until receiving oral or written approval from the OSC.
72. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing

submitted by Lessee shall relieve Lessee of its obligation to obtain any formal approval required by this Agreement, or to comply with all requirements of this Agreement, unless it is formally modified.

## **XXII. APPENDICES**

73. The following appendix is attached to and incorporated into this Agreement: Appendix A shall mean the attached map depicting the MFA Site including the MFA Leasehold and Hangar One.

## **XXIII. NOTICE OF COMPLETION**

74. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Agreement, with the exception of any continuing obligations required by this Agreement, EPA will provide written notice to Lessee. If EPA determines that any such Work has not been completed in accordance with this Agreement, EPA will notify Lessee, provide a list of the deficiencies, and require that Lessee modify the Work Plan if appropriate in order to correct such deficiencies. Lessee shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Lessee to implement the approved modified Work Plan shall be a violation of this Agreement.

## **XXIV. EFFECTIVE DATE**

75. The effective date of this Agreement shall be the date upon which EPA issues written notice to Lessee that EPA has fully executed the Agreement after review of and response to any public comments received.

## **XXV. DISCLAIMER**

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

## **XXVI. PAYMENT OF COSTS**

77. If Lessee fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

## **XXVII. NOTICES AND SUBMISSIONS**

78. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Agreement,

shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Lessee shall be addressed to:

Google Inc.  
Planetary Ventures, LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043  
Attention: REWS/Project Manager – MFA Hangar 1

With copies to:

Planetary Ventures, LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043  
Attention: Legal Department – Real Estate Matters

Planetary Ventures, LLC  
1600 Amphitheatre Parkway  
Mountain View, California 94043  
Attention: Lease Administration/REWS Department

Allen Matkins  
1900 Main Street, Suite 500  
Irvine, California 92614  
Attention: Pamela Andes, Esq.

Submissions to U.S. EPA shall be addressed to:

Lucrina Jones  
EPA Remedial Project Manager  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street, SFD-8-3  
San Francisco, CA 94105

David Wood  
Superfund Accounting (PMD)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street, EMD-4-1  
San Francisco, CA 94105

**XXVIII. PUBLIC COMMENT**

79. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

The undersigned representative of Lessee certifies that it is fully authorized to enter into the terms and conditions of this Agreement and to bind the party it represents to this document.



IT IS SO AGREED BY:

*[Handwritten Signature]*  
Planetary Ventures, LLC (Lessee)

8/4/16  
Date

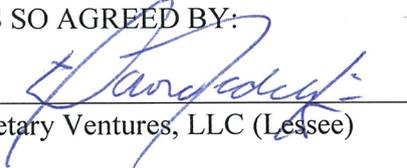
**XXVIII. PUBLIC COMMENT**

79. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

The undersigned representative of Lessee certifies that it is fully authorized to enter into the terms and conditions of this Agreement and to bind the party it represents to this document.

IT IS SO AGREED BY:



  
\_\_\_\_\_  
Planetary Ventures, LLC (Lessee)

8/4/16  
Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BY.



Angeles Herrera, Assistant Director  
Superfund Division, EPA Region IX

Sep 06, 2016  
Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE  
BY.



Ellen M. Mahan  
Deputy Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice

11/21/16  
Date