SETTLEMENT AND CONSENT DECREE
BETWEEN THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; EACH MEMBER OF THE PHILIP SERVICES SITE PRP GROUP; THE UNITED STATES OF AMERICA; AND CERTAIN ADDITIONAL SETTLING PRPS

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SETTLEMENT AND CONSENT DECREE
BETWEEN THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; EACH MEMBER OF THE PHILIP SERVICES SITE PRP GROUP; THE UNITED STATES OF AMERICA, AND CERTAIN ADDITIONAL SETTLING PRPS

This Settlement and Consent Decree ("Consent Decree") is between:

A. The South Carolina Department of Health and Environmental Control (the "Department" or "DHEC"):

i. In its capacity as Plaintiff in the Action, pursuant to the Department's authority under the South Carolina Hazardous Waste Management Act ("HWMA"), S.C. Code Ann. § 44-56-200, as amended, the South Carolina Pollution Control Act ("PCA"), S.C. Code Ann. §§ 48-1-10, *et seq.*, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), §§ 101, *et seq.*, 42 U.S.C. §§ 9601, *et seq.*, as amended, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et seq.*, as amended;

ii. As the South Carolina State Agency which is authorized and empowered to implement CERCLA pursuant to HWMA § 44-56-200 and to bring this Action pursuant to CERCLA and HWMA § 44-56-200, as amended, and pursuant to a Memorandum of Understanding by and between the Department and the United States Environmental Protection Agency ("EPA") indicating the Department as the lead agency in this matter; and

iii. Which is a "State" within the meaning of CERCLA §§ 101(27) and 107(a)(4)(A) and HWMA § 44-56-200; and

B. The Philip Services Site PRP Group ("PRP Group"), an unincorporated association of Potentially Responsible Parties ("PRPs") that allegedly contributed Hazardous Substances to the Site. The PRP Group is made up of three different subgroups:

i. The Work Parties listed in **Appendix 1** to this Consent Decree (collectively, the "Work Parties");

ii. The Cash Out Settlors listed in **Appendix 2** to this Consent Decree (collectively, the "Cash Out Settlors"); and

iii. The Re-Opener Settlors listed in **Appendix 3** to this Consent Decree (collectively, the "Re-Opener Settlors").

C. The United States of America, including all federal agencies, departments, and instrumentalities that allegedly disposed of or contributed Hazardous Substances to the Site (the "United States" or "Federal PRPs").

Collectively, the Department and the members of the PRP Group and the United States shall be identified herein as the "Parties" and each as a "Party."

Collectively, the members of the PRP Group and the United States shall be identified jointly herein as "Settling PRPs" and individually as "Settling PRP."

The Parties present this Consent Decree to the United States District Court for the District of South Carolina (the "Court") for approval and entry as an order. Unless otherwise expressly provided herein, terms used in this Consent Decree shall have the meaning assigned to them in CERCLA § 101, 42 U.S.C. §§ 9601, *et seq.*, as amended and the regulations promulgated under CERCLA.

BACKGROUND STATEMENT

A. On _____, 2022, the Department filed its Complaint in this Court against the Settling PRPs pursuant to CERCLA, HWMA, PCA, and RCRA relating to the release and threatened release of Hazardous Substances at the Site. In its Complaint, the Department sought, among other things:

i. the reimbursement of the Department's Past and Future Response Costs incurred and to be incurred for Response Actions funded and performed at the Site, together with accrued Interest;

ii. the funding and performance of Response Actions by the Settling PRPs, that are consistent with the NCP, 40 C.F.R. Part 300; and

iii. the approval of this Consent Decree by the Court.

B. The Parties agree that the Settling PRPs need not file an answer except as set forth in **Paragraph 97**. The Parties agree that they may respond jointly to any counterclaims or cross-claims if the need arises or to expedite responses or to save litigation costs.

C. The objectives of the Parties in entering into this Consent Decree are to protect the public health, welfare and the environment by the design and implementation of Response Actions at the Site by the Work Parties, to reimburse certain of the Department's Past Response Costs, to resolve the Department's Future Response Costs, and except as expressly provided herein, to resolve claims that any of the Parties may have or could have against any other Party with regard to Matters Addressed. Once signed by the Court, this Consent Decree will constitute a judicially-approved, complete, and final settlement of all of the Department's past, present, and future claims against the Settling PRPs relating to Matters Addressed, including but not limited to, any and all claims for Matters Addressed arising under CERCLA, 42 U.S.C. §§ 9601, *et seq.*, as amended,

RCRA, 42 U.S.C. §§ 6901, *et seq.*, as amended; HWMA, S.C. Code Ann. §§ 44-56-10, *et seq.*, as amended, and PCA, S.C. Code Ann. §§ 48-1-10, *et seq.*, as amended. The Parties enter into this Consent Decree under authority of CERCLA, including but not limited to, CERCLA §§ 104, 107, 113, and 122; RCRA; HWMA; and PCA.

D. On June 2, 2003, Philip Services Corporation and its related Debtors ("PSC Debtors") filed Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, under bankruptcy case number 03-37718-H2-11. The related PSC Debtors included Philip Services Corporation, then-owner of the facility by way of its acquiring Stablex South Carolina, Inc., and then-operator of the facility, Petro-Chem SC.

E. On December 22, 2003, the United States Bankruptcy Court issued an Order approving a Settlement Agreement ("PSC Settlement Agreement") between the Department, the PSC Debtors, and EPA. On December 31, 2003, the Department, the PSC Debtors, and Restoration & Redevelopment Solutions, LLC ("Trustee") entered into a Custodial Trust Agreement, establishing the Trustee for the purpose of (a) owning the Facility Property and carrying out administrative functions related to the Facility Property, (b) managing and/or funding implementation of Response Actions, and restoration actions selected by the Department with respect to the Site, and (c) ultimately selling, if possible, the Facility Property with the Department's approval. The Trustee's payment of the Department's Response Costs after appointment and the use of available funds to perform the purposes of the Custodial Trust Agreement as approved by the Department are governed by the Custodial Trust Agreement. Pursuant to the PSC Settlement Agreement, the PSC Debtors resolved their CERCLA liability and have contribution protection against any claims for contribution for releases or threatened releases of Hazardous Substances at the Site. The beneficial interests in the Custodial Trust established by

the Custodial Trust Agreement are held by the Department and EPA (with the Department being the lead governmental agency).

F. In May 2004, the Department and EPA entered a Memorandum of Understanding ("MOU") regarding the implementation of the PSC Settlement Agreement and the Custodial Trust Agreement and management of the Site.

G. In early 2004, the Trustee began reimbursing the Department's Response Costs and on February 12, 2004, the Trustee became the record title owner of the Facility Property pursuant to the Custodial Trust Agreement.

H. On November 4, 2004 (and other times thereafter), the Department provided general and special notice of potential liability to certain PRPs. As part of the November 4, 2004 notice, the Department provided a moratorium under Section 122 of CERCLA to formally negotiate a settlement between the Department and PRPs to fund and perform the Remedial Investigation ("RI") and Feasibility Study ("FS") (the RI and FS, collectively, "RI/FS") and to reimburse the Department's Response Costs. The Department periodically extended the moratorium until June 10, 2005, when the PRP Group submitted to the Department a good faith offer to perform the RI/FS. Thereafter, the Department evaluated the good faith offer and made a decision to perform the RI/FS and began that process. As a courtesy, the Department accepted input from the PRP Group on these Response Actions. The PRP Group and the Department continued the pursuit of other PRPs to participate in this settlement. All of these actions ultimately lead to this present Consent Decree.

I. In response to the release and threat of releases of Hazardous Substances at or from the Site, the Department issued a notification of site work to its contractor to begin activities associated with conducting an RI/FS on December 20, 2005, pursuant to 40 C.F.R. § 300.430, to

characterize the sources, nature and extent of the Hazardous Substances, and to evaluate alternatives for Site cleanup. The Department completed the RI Report in September 2008. The RI found Hazardous Substances in soil and groundwater at the Site. The Department completed the FS Report on July 1, 2011.

J. On May 12, 2006, the Department drafted and released a fact sheet directed to, among others, the residents near the Site and then-identified PRPs. The fact sheet announced the planned public meeting in which the Department would discuss the Site's conditions, the Department's past Response Actions, and its plans to conduct the RI and FS Response Actions. It also included the announcement of the establishment of the Administrative Record. At the Department's May 25, 2006 public meeting, the Department further explained the information provided in the May 12, 2006 fact sheet.

K. As of June 30, 2014, the Trustee had reimbursed a portion of the Department's Past Response Costs in the amount of Three Million, One Hundred Forty-four Thousand, Four Hundred Thirty-four Dollars and Thirteen Cents ($3,144,434.13). Another Twenty-one Dollars and Twenty-three Cents ($21.23) was disbursed to the Department upon liquidating the bankruptcy trust. As of the filing of the Complaint, the Facility Property has not been sold.

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the Department completed its Proposed Plan for remedial action on August 1, 2014. On August 12, 2014, the Department provided notice to the residents near the Site and then-known PRPs, among others, and published notice of its Proposed Plan on August 24, 2014, in Rock Hill's The Herald, a major local newspaper of general circulation in the Site's area. The Department also announced the August 26, 2014, public meeting to discuss the findings of the RI/FS, the Department's Proposed Plan, and to further announce that the Administrative Record would be updated by August 26, 2014. In addition, the

Department posted the notice, the RI Report, the FS Report, and the Proposed Plan, among other information, on the Department's website.

M. The PRP Group prepared the Waste-In Database and on two occasions delivered to the Department, for its review and use, reports of transactions derived from the Waste-In Database reflecting the names of all then-identified PRPs that allegedly arranged for the disposal of Hazardous Substances at the Site, the last known address for each of those PRPs, and information establishing a nexus between each such PRP and the Site. The Department used the Waste-In Database to identify then-known PRPs receiving notices regarding the Site, fact sheets, and the Proposed Plan.

N. On August 5, 2014, the Department provided general notice of potential liability letters (which also included notice of the Proposed Plan activities) to numerous PRPs.

O. At the Department's August 26, 2014 Proposed Plan public meeting, the Department discussed its Response Actions and responded to questions from the attendees. The Department also provided an opportunity for written and oral comments on its Proposed Plan for remedial action and extended the comment period to November 26, 2014. The Department received no written comments. A copy of the transcript of the August 26, 2014 public meeting was available to the public as part of the Administrative Record and on the Department's website.

P. The Department's decision on the remedial action to be implemented is embodied in its Record of Decision ("ROD"), issued on June 22, 2016, which was made available in the Administrative Record at the Repository, posted on the Department's website, and is attached here as **Appendix 4**.

Q. On May 17, 2017, the Department provided special notice of the ROD to all then-known, viable PRPs.

R. Prior to entering into this Consent Decree, the PRP Group conducted several Response Actions at the Site, the results of which were delivered to the Department. These Response Actions include, but are not limited to, Environmental Data Review and Current Environmental Conditions (URS: March 2006); Preliminary Design Investigation Work Plan (URS: September 20, 2012); Preliminary Design Investigation Quality Assurance Project Plan (URS: May 2014); Preliminary Design Investigation Report (URS: June 2015); Revised Preliminary Design Investigation Report (AECOM: March 31, 2017); and Additional Soil and Groundwater Assessment Report (Hart & Hickman: August 7, 2018).

S. Based on the information presently available to the Department, the Department believes that the Work will be properly and timely conducted by the Work Parties if conducted in accordance with the requirements of this Consent Decree and its Appendices and with the Department's oversight.

T. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work outlined in this Consent Decree that has been or will be performed and/or funded by the Settling PRPs shall constitute a Response Action for which judicial review shall be limited to the Administrative Record maintained by the Department's Bureau of Land & Waste Management. The Parties agree the copy of the Administrative Record maintained at the York County Public Library is not in the Department's control and therefore cannot be relied upon for such purposes. Instead, the copy maintained in the Department's custody will be used for this purpose.

U. As outlined in the Complaint, the Department estimates its Past Response Costs as of November 30, 2021, to be approximately Eight Million, Six Hundred Sixty-five Thousand, Nine Hundred Sixty-one Dollars and Eighty-seven Cents ($8,665,961.87), with approximately Five Million, Five Hundred Sixteen Thousand, Three Hundred Forty-one Dollars and Ninety Cents ($5,516,341.90) in unrecovered costs, as more fully detailed in **Paragraphs 54** and **55**.

V. The Work Parties estimate their Response Costs incurred as of November 30, 2021 to be approximately Four Million, Two Hundred Eighty-six Thousand, Five Hundred Thirteen Dollars and Forty-four Cents ($4,286,513.44), as more fully detailed in **Paragraph 56**.

W. The Parties agree that the Department and the Work Parties have each incurred, and continue to incur, direct and indirect Response Costs at the Site in the form of investigation, monitoring, surveying, testing, and gathering information to identify the existence and extent of the release, or threatened release, of Hazardous Substances, the sources and nature of the Hazardous Substances involved, and the extent of any danger to the public health, welfare, or the environment from such Hazardous Substances, attorneys' fees, PRP search activities, settlement negotiations, and other Response Costs.

X. This Consent Decree is intended to constitute a complete and final settlement of all of the Department's past, present, and future claims against the Settling PRPs relating to the contamination at the Site as detailed in the ROD, including all claims under CERCLA, RCRA, HWMA, and PCA, as specifically detailed herein; however, this settlement does not include any matter that is addressed in **Paragraph 81(e)** below.

Y. The Parties agree that nothing in this Consent Decree constitutes an admission of any liability by the Settling PRPs to the Department or to any other person or entity, or an

admission of any liability by the Department relating to Matters Addressed or arising out of the transactions or occurrences alleged in the Complaint or in this Consent Decree.

Z. The Parties recognize, and the Court finds by entering this Consent Decree, that this Consent Decree has been negotiated by the Parties in good faith, and that implementation of this Consent Decree will expedite the remediation of the Site, avoid protracted, complex, and costly litigation among the Parties, and resolve any known existing and/or potential claims between them. The Parties also recognize, and the Court also finds in its approval and execution, that this Consent Decree is fair, reasonable, in the public interest, and is expected to address the objective of protecting public health, welfare, and the environment.

AA. Various factors were taken into account by the Parties in negotiating the settlement reflected in this Consent Decree, including: (1) the Settling PRPs' and the PSC bankruptcy estate's relationship to the conditions at the Site; (2) the risks and costs associated with the litigation of this case; and (3) other equitable factors.

BB. Upon judicial approval and entry of this Consent Decree, the Settling PRPs and the Department will be entitled to contribution protection and shall have certain contribution rights against Non-Settlors as provided under CERCLA, applicable state and federal law, and as set forth herein.

The Parties agree as follows:

ARTICLE I

DEFINITIONS

1. Defined Terms. The following terms shall have the meanings as detailed in CERCLA and/or as indicated below, or as defined within the body of this Consent Decree. Unless

otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or Appendices, the following definitions shall apply solely for purposes of this Consent Decree:

"Action" means that certain Civil Action No. _____ brought in this Court by the Department against the Settling PRPs to recover the Department's Response Costs incurred or to be incurred in responding to a release of Hazardous Substances, and to obtain funding from the PRP Group to implement the remedy outlined in the ROD, with the oversight of the Department, at the Site pursuant to CERCLA, RCRA, HWMA, and PCA.

"Additional Settling PRP" or "Additional Settling PRPs" has the meaning set forth in **Paragraph 5** of this Consent Decree.

"Additional Settling PRP Consent Decree Acknowledgment" means an acknowledgment in the form of **Appendix 7** executed by an Additional Settling PRP pursuant to **Paragraph 5** of this Consent Decree.

"Administrative Record" means the administrative record for the Site established by the Department and maintained by the Department's Bureau of Land and Waste Management, a copy of which is publicly available at the Repository.

"Cash Out Settlors" has the meaning set forth in the introductory paragraph of this Consent Decree. (*See also*, **Appendix 2**.)

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended.

"Certification of Active RA Completion" means the Department's written certification to the Work Parties that an individual active remedy component of the Remedial Action is complete, issued in accordance with Section 4.6 of the SOW.

"Certification of Work Completion" means the Department's written certification to the Work Parties that the Work is complete, issued in accordance with Section 4.8 of the SOW.

"Community Involvement Plan" means a community involvement plan developed by the Department pursuant to Section 2.1 of the SOW that is not inconsistent with the NCP and the Department's guidance and practices.

"Complaint" means the complaint filed by the Department in the Action.

"Consent Decree" has the meaning set forth in the introductory paragraph of this Consent Decree and includes all amendments, Appendices, and future Appendices to this Consent Decree. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Court" means the United States District Court for the District of South Carolina.

"CQAP" means a Construction Quality Assurance Plan for the Site.

"Custodial Trust Agreement" has the meaning set forth in **Paragraphs E** and **G** of the Background Statement of this Consent Decree.

"Department" means the South Carolina Department of Health and Environmental Control, its successor departments, agencies, and instrumentalities and has the meaning set forth in Introductory **Paragraph A** of this Consent Decree.

"Department's Covenant Not to Sue and Release" has the meaning set forth in **Paragraph 81** of this Consent Decree.

"Department's Future Response Costs" means all Response Costs incurred by the Department after November 30, 2021, including but not limited to direct and indirect Response Costs. The Department's Future Response Costs includes, but is not limited to, the following Response Costs to the extent incurred by the Department after November 30, 2021: payroll costs, legal services and litigation costs, contractor costs, travel costs, laboratory costs, public participation/outreach costs, and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls, including the amount of just compensation, all costs related to Dispute Resolution under this Consent Decree, costs arising from Identification and Pursuit of PRPs and other PRP search activities and providing notice to PRPs as necessary, costs of legal services relating to this Action and to any other legal action to recover the Department's Response Costs for this Site, any costs associated with the ongoing operation and maintenance of the existing groundwater extraction and treatment system, damages, penalties, attorneys' fees and other Response Costs.

"Department's Oversight Costs" are a subset of the Department's Future Response Costs. Department's Oversight Costs means the Department's Future Response Costs incurred in monitoring and supervising the performance of the Work to be performed by any Party pursuant to this Consent Decree. These costs include both direct and indirect costs (including costs of the Department's third party contractors) incurred in reviewing plans, reports, and other deliverables submitted pursuant to this Consent Decree, as well as direct and indirect costs (including costs of third party contractors) incurred in overseeing implementation of the Work, including O&M. Further, the Department's Oversight Costs include but are not limited to payroll costs, personnel costs, legal services related to the Department's Oversight Costs, contractor costs, travel costs, laboratory costs, and public participation activities after November 30, 2021.

"Department's Past Response Costs" means all Response Costs incurred by the Department through and including November 30, 2021, including but not limited to direct and indirect Response Costs. The Department's Past Response Costs includes, but is not limited to, the following Response Costs to the extent incurred by the Department on or before November 30, 2021: personnel costs, contractor costs, public participation activities, Identification and Pursuit of PRPs, and other PRP search activities and providing notice to PRPs as necessary, payments made to the Trustee, settlement negotiation, legal services relating to this Action, direct and indirect costs, and to any other legal services to recover the Department's Response Costs for this Site and to engage the PRPs to perform the future Response Actions at the Site, damages, penalties, attorneys' fees, and other Response Costs.

"Department's Project Manager" means the individual(s) selected by the Department as its Project Manager pursuant to **Paragraph 42** of this Consent Decree.

"Department's Reimbursable Future Costs" means that portion of the Department's Future Response Costs consisting solely of direct and indirect Response Costs incurred by the Department after November 30, 2021 with respect to (i) continuing the operation and maintenance of the existing groundwater extraction and treatment system, but only to the extent such costs are not paid from the Performance Trust Account and are not Department's Oversight Costs, (ii) assisting the Work Parties in obtaining access to the Site, (iii) assisting with the execution, recordation or enforcement of Institutional Controls, including the cost of any just compensation paid to third parties, (iv) conducting response activities under a Work Takeover, but only to the extent such costs are not paid from the Performance Trust Account and are not Department's Oversight Costs, (v) any actions taken by the Department pursuant to **Paragraph 10** in the event the Work Parties fail to take appropriate Response Action under Section 4.3 of the SOW, (vi) Dispute Resolution

pursuant to this Consent Decree, but only as against the parties to the dispute and Non-Settlors and to the extent the Department is successful in such Dispute Resolution, (vii) assisting the Work Parties with Identification and Pursuit of PRPs, including providing notice to PRPs as necessary and adding any Additional Settling PRPs to this Consent Decree pursuant to **Paragraphs 5** and **101**, but only as against the Work Parties and Non-Settlors, and (viii) all costs associated with the filing of this Action, including any amendments thereto, and negotiating and entering this Consent Decree, and including legal services associated with this Action and any other legal action seeking enforcement of this Consent Decree as against the party or parties subject to such enforcement, but only to the extent the Department is successful in such enforcement action. The Department's Reimbursable Future Costs do not include any of the Department's Oversight Costs or any costs that do not qualify as Federal Future Response Costs.

"Effective Date" means the date on which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

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

"EPCRA" means the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 1101, *et seq.*, as amended.

"Facility Property" means all property listed on **Appendix 5**.

"Federal Contract" means any prime contract, subcontract, or any other agreement transferring value between, the Settling PRPs and any department, agency, or instrumentality of the United States, including but not limited to, contracts for goods or services, grants, and cooperative agreements. The term "Federal Contract" does not include this Consent Decree.

"Federal Future Response Costs" means, and shall be limited to, those necessary costs of response, as defined in 42 U.S.C. § 9601(25), that are consistent with the NCP and within the meaning of 42 U.S.C. § 9607(a)(4)(B), and arise out of any releases or threatened releases of CERCLA hazardous substances at or emanating from the Site that are: (i) attributable to the former operations at the Site, (ii) paid by the PRP Group or the Department after November 30, 2021, and (iii) were not received by the PRP Group or the Department, as applicable, through a prior claim or demand to the United States or other party, so as to avoid a double recovery by the PRP Group or the Department. For the avoidance of doubt, performance of the remedy set forth in the ROD and SOW for the Site, in accordance with a work plan approved by the Department, are activities included in the definition of Federal Future Response Costs.

"Federal PRPs" has the meaning set forth in Introductory **Paragraph C** of this Consent Decree.

"Federal PRP Share" has the meaning set forth in **Paragraph ARTICLE XV59(c)(ii)** of this Consent Decree.

"Financial Assurance Mechanism" has the meaning set forth in **Article XII** of this Consent Decree.

"FS" or "Feasibility Study" means the feasibility study report dated July 2011 conducted by the Department with respect to the Site.

"Hazardous Substance" means (1) any "hazardous substance" under CERCLA § 101(14), 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under CERCLA § 101(33), 42 U.S.C. § 9601(33); (3) any "hazardous waste" under RCRA § 1004(5), 42 U.S.C. § 6903(5); (4) any "hazardous material" under the HWMA; and (5) any petroleum product or compound.

"Health and Safety Plan" means a health and safety plan for field activities which conforms to the applicable Occupational Safety and Health Administration and Department requirements, including, but not limited to, 29 C.F.R. § 1910.120, and the Department's requirements, if any.

"HWMA" means the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10, *et seq.*, as amended.

"Identification and Pursuit of PRPs" has the meaning set forth in **Paragraph 4** of this Consent Decree.

"Institutional Controls" means any non-engineered instruments, such as administrative and legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of the remedy, including state and/or local laws, regulations, ordinances, zoning restrictions, or other government controls or notices that: (a) limit land, water and/or resources use to minimize the potential for human exposure to Hazardous Substances at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interest" means interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under 42 U.S.C. § 9507(a), compounded on July 1 of each year. 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 July 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"Matters Addressed" has the meaning set forth in **Paragraph 81** of this Consent Decree.

"Mutual Covenant Not to Sue and Release" has the meaning set forth in **Paragraph 87(a)** of this Consent Decree.

"Mutually Released Parties" has the meaning set forth in **Paragraph 87(a)** of this Consent Decree.

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

"Non-Settlors" means those PRPs that are not Parties to this Consent Decree.

"O&M" or "Operation and Maintenance" means all activities required to operate, maintain, and monitor the effectiveness of the remedy selected in the ROD, ensuring it continues to perform as intended and remains protective of human health and the environment as specified in the SOW or any DHEC-approved O&M Plan.

"Parties" has the meaning set forth in the introductory paragraph of this Consent Decree.

"PCA" means the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*, as amended.

"Performance Standards" means the cleanup levels and other measures of achievement of the Remedial Action objectives as set forth in Section 8.0 of the ROD (and corresponding Tables 3-4 and 3-5) and the SOW.

"Performance Trust Account" has the meaning set forth in **Paragraph 47** of this Consent Decree. The Performance Trust Account is an interest-bearing account and is intended to be treated as a qualified settlement fund in accordance with Treasury Regulations Section 1.468B-l, or any successor provision thereto.

"PRP", "PRPs" or "Potentially Responsible Party/ies" means any person or entity alleged to have or which may have potential liability for the release or threatened release of Hazardous Substances at the Site.

"PRP Group" means the Philip Services Site PRP Group and has the meaning set forth in Introductory **Paragraph B** of this Consent Decree.

"QAPP" means a Quality Assurance Project Plan and has the meaning set forth in **Paragraph 23(b)** of this Consent Decree.

"QMP" means a Quality Management Plan and has the meaning set forth in **Paragraph 11(d)** of this Consent Decree.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq*., as amended.

"Record" or "Records" has the meaning set forth in **Paragraph 39** of this Consent Decree.

"Released Parties" has the meaning set forth in **Paragraph 81(b)** of this Consent Decree.

"Remedial Action" or "RA" means the remedial action selected in the ROD, with such modification as may be approved by the Department, to be implemented in accordance with the SOW.

"Remedial Design" or "RD" means those activities to be undertaken by the Work Parties to develop the final plans and specifications for the Remedial Action as stated in the SOW.

"Re-Opener Settlors" has the meaning set forth in the introductory paragraph of this Consent Decree. (*See also* **Appendix 3**)

"Repository" means the York County Public Library located at 138 East Black Street, Rock Hill, South Carolina 29730.

"Response Actions" are those actions undertaken at any time before or after the Effective Date by any Party (other than EPA) to respond to the actual, threatened, or suspected release prior to the Effective Date of Hazardous Substances at the Site. Response Actions specifically include

but are not limited to removal, remedial, and other response actions, as those terms are used in CERCLA § 101(23), (24), and (25).

"Response Costs" or "Costs of Response" are those costs, direct and indirect, incurred or to be incurred by any Party (other than EPA) or its contractors conducting Response Actions at the Site, including, but not limited to, the costs set forth in **Article XIV** (Response Costs) of this Consent Decree.

"RI" or "Remedial Investigation" means the remedial investigation conducted by the Department with respect to the Site documented in a report dated September 2008.

"ROD" or "Record of Decision" shall mean the Record of Decision relating to the Site issued by the Department on June 22, 2016, and all Appendices thereto. The ROD is attached hereto as **Appendix 4**.

"Settling PRPs" means the Work Parties, the Cash Out Settlors, the Re-Opener Settlors, and the United States, and includes any Additional Settling PRP(s) that, after the approval of this Consent Order by the Court, may be added by addendum to this Consent Decree. The Trustee is the custodial trustee appointed by the bankruptcy court for the last owner and operator at the Facility Property and therefore is not a PRP at the Site.

"Site" means Tracts 1, 2, and 3 on **Appendix 5**, including generally all industrial acres of real property and improvements thereon located generally at 2324 Vernsdale Road, Rock Hill, South Carolina, and all areas where Hazardous Substances originally released on the real properties as described on **Appendix 5** have come to be located.

"SOW" or "Statement of Work" means the document describing the activities the Work Parties must perform to implement the Remedial Design, Remedial Action, and O&M at the Site,

which is attached as **Appendix 6** to this Consent Decree and any modifications to the SOW made in accordance with this Consent Decree.

"Supervising Contractor" means the principal contractor engaged by the Work Parties pursuant to **Paragraph 11** of this Consent Decree to implement the Work under this Consent Decree.

"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.

"Trustee" means Restoration & Redevelopment Solutions, LLC and has the meaning set forth in **Paragraph E** of the Background Statement of this Consent Decree. The Trustee was appointed as a custodial trustee by the United States Bankruptcy Court in the Philip Services Corporation bankruptcy action to manage the custodial trust established on December 6, 2003, to provide, *inter alia*, partial funding for any Response Actions performed at the Site by the Department or EPA.

"United States" means the United States of America, and all agencies, departments, and instrumentalities of the United States, including, but not limited to, EPA, the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Department of Defense, the Defense Logistics Agency, or any other federal agency, department, or instrumentality that is alleged to have disposed, arranged to dispose, or transported hazardous substances at or to the Site, as well as any of their predecessors or successors. The term "United States" shall also include all employees, attorneys, or agents of the United States, to the extent that such parties directed, conducted, supervised, participated in, or otherwise were involved with any disposal at the Site while acting on behalf of the United States.

"United States Bankruptcy Code" means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

"Waste-In Database" means the searchable electronic database created and/or funded by the PRP Group containing coded digital information from hazardous and non-hazardous waste manifests, quarterly reports and other reliable records kept in the ordinary course of regularly conducted business that describe shipments to the Site of Hazardous Substances, as modified from time to time.

"Work" means all Response Actions the Work Parties are required to perform under this Consent Decree and as outlined in the SOW, with the oversight of the Department.

"Work Parties" has the meaning set forth in the introductory paragraph of this Consent Decree. *See also* **Appendix 1**.

"Work Parties Escrow Account" has the meaning set forth in **Paragraph 58** of this Consent Decree. The Work Parties Escrow Account is an interest-bearing account and is intended to be treated as a qualified settlement fund in accordance with Treasury Regulations Section 1.468B-l, or any successor provision thereto.

"Work Parties' Project Coordinator" means the individual or individuals selected by the Work Parties as their project coordinator or coordinators pursuant to **Paragraph 43** of this Consent Decree.

"Work Party Share" has the meaning set forth in **Paragraph ARTICLE XV59(c)(i)** of this Consent Decree.

"Work Takeover" has the meaning set forth in **Paragraph 16(b)** of this Consent Decree.

"Work Takeover Notice" has the meaning set forth in **Paragraph 16(a)** of this Consent Decree.

ARTICLE II

JURISDICTION

2. Jurisdiction; Mutual Enforcement. The Court has jurisdiction over the subject matter of this Action and over the Parties pursuant to CERCLA §§ 107, 113(b), and 122(d), and pursuant to 28 U.S.C. §§ 1331 and 1367. Solely for the purposes of this Consent Decree and the underlying Complaint, the Parties waive all objections and defenses that they may have to personal jurisdiction of the Court or to venue in this District. The Parties shall not challenge the Court's jurisdiction to enter and enforce this Consent Decree or any part of its accompanying Order. The terms of this Consent Decree are mutually enforceable by all signatories to this Consent Decree.

ARTICLE III

WASTE-IN DATABASE AND IDENTIFICATION OF PRPS

3. Waste-In Database. The Work Parties shall maintain the Waste-In Database, at their sole expense, on a secure access server until the date that is three years after the date the Department issues a Certification of Work Completion. The PRP Group has granted to the Department, and shall not revoke, a license for access providing that the Department will have complete and continuing access to all fields of the Waste-In Database by means of a secured password until the date that is three years after the Department issues a Certification of Work Completion. The Work Parties and certain other parties assert the coding of hazardous waste manifests for the Waste-In Database involved collating and compiling the Waste-In Database in a confidential manner, and that the search mechanism for the Waste-In Database is a confidential process that is the trade secret and work product of the Work Parties and certain other parties. The Work Parties and certain other parties further assert that access to the Waste-In Database and the search process are made in the context of settlement negotiations and will not be prepared, owned,

in the possession of or retained by a public body, nor accessed by any public body other than the Department through the license for access and for the purpose of recovery of Response Costs; therefore, neither the Waste-In Database, the secured password, nor the search process will be subject to disclosure under the Freedom of Information Act, 5 U.S.C. § 552, or the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.*

4. Identification and Pursuit of PRPs. The Work Parties and the Department shall mutually cooperate throughout the term of this Consent Decree to identify and pursue Non-Settlors. The Work Parties will assist the Department in, and the Department will assist the Work Parties in:

(a) Identifying Non-Settlors by using the Waste-In Database and other available information;

(b) Locating contact information for Non-Settlors and their successors;

(c) Communicating with Non-Settlors to urge contribution toward Response Costs at the Site by joining the PRP Group as an Additional Settling PRP (either as a Work Party, Cash Out Settlor or Re-Opener Settlor) pursuant to terms mutually agreed upon by the Work Parties and the Non-Settlor; and

(d) Bringing one or more actions as necessary and appropriate against any Non-Settlors that choose not to contribute toward Response Costs at and for the Site. ((a) through (d), collectively, "Identification and Pursuit of PRPs"). As part of this cooperation, the Department has provided, and shall continue to provide, the Work Parties with regular access, without substantial delay, to all records and documents relating to the Site within the Department's control. The Department's obligation to participate in the Identification and Pursuit of PRPs shall be contingent upon necessary and sufficient funding of the

Department and any extant staffing constraints. The sufficiency of funding, and the degree to which staffing constraints affect the Department's ability to perform, shall be determined by the Department in its sole but reasonable discretion. Nothing in this Paragraph will preclude the Work Parties (or any one or more of them) from undertaking the Identification and Pursuit of PRPs. The Department shall not enter into any agreement with a Non-Settlor except in conformity with this Consent Decree.

5. Additional Settling PRPs. The Work Parties and the Department may approach Non-Settlors and offer to settle their potential liability for Matters Addressed. In the event such Non-Settlor chooses to settle its potential or alleged liability with the Work Parties and the Department consistent with the terms of this Consent Decree, the Parties agree to allow such Non-Settlor (an "Additional Settling PRP") to settle such claim or claims, provided the Work Parties and the Additional Settling PRP agree on the terms, financial and otherwise, of such a settlement. The Additional Settling PRP shall be designated as either a Work Party, Cash Out Settlor, or Re-Opener Settlor, according to the financial terms set forth by the Work Parties in a separate confidential agreement between the Work Parties and such Additional Settling PRP, by executing an Additional Settling PRP Consent Decree Acknowledgement in the form attached hereto as **Appendix 7**. The Additional Settling PRP Consent Decree Acknowledgement shall be executed by an authorized representative of each of the Additional Settling PRP, the Department, and the Work Parties, and shall become effective upon filing with the Court, at which time such Additional Settling PRP shall be subject to all terms of this Consent Decree (including, by way of example, financial assurance requirements applicable to Work Parties), and such Additional Settling PRP Consent Decree Acknowledgement shall become part of this Consent Decree as if the Additional Settling PRP had executed the Consent Decree prior to the Court approval and execution. As

between the Department and the Work Parties, the Work Parties shall be entitled to retain the entirety of all funds recovered from Additional Settling PRPs.

6. Costs for Identification and Pursuit of PRPs and Inclusion of Additional Settling PRPs. All costs incurred by any Party to this Consent Decree in connection with the Identification and Pursuit of PRPs and in all activities associated with including the Additional Settling PRPs in this Consent Decree pursuant to **Paragraphs 5** and **101** will be considered Response Costs solely for purposes of settlement in this Consent Decree. As provided elsewhere in this Consent Decree, such costs may be pursued from Additional Settling PRPs or other Non-Settlors.

ARTICLE IV

OBLIGATIONS FOR THE PERFORMANCE OF THE WORK

7. Work Parties' Obligations to Perform Work.

(a) The Parties agree that the Work Parties shall finance and perform the Work in accordance with this Consent Decree, the ROD, and the SOW using funding from the Work Parties' Escrow Account, from the Performance Trust Account, from the Work Parties and/or from settlements with Additional Settling PRPs and other parties. The Cash Out Settlors and Re-Opener Settlors shall have no obligation to perform the Work and shall be required to make only the payments described in **Paragraph 60**.

(b) The Work Parties shall: (i) develop the Remedial Design; (ii) perform the Remedial Action; (iii) operate, maintain, and monitor the effectiveness of the Remedial Action; and (iv) perform and/or fund the O&M activities; all in accordance with the SOW and all Department-approved, conditionally-approved, or modified deliverables as required by the SOW.

8. Deliverables. All deliverables required to be submitted for approval under the Consent Decree or SOW shall be subject to approval by the Department in accordance with Section 6.5 of the SOW. Subject to **Paragraph 113(b)**, the obligations of the Work Parties to finance and to implement the remedy described in the ROD until the Performance Standards are achieved, and until the Department issues a Certification of Work Completion, including the obligations to pay amounts due under this Consent Decree, are joint and several.

9. Insolvency of a Work Party. In the event of the insolvency of any Work Party or the failure by any Work Party to implement any requirement or obligation of this Consent Decree, the remaining Work Parties shall complete all such requirements and obligations. The Department and any or all of the Work Parties, or any combination of them, may file a claim jointly or individually against any Work Party's bankruptcy estate.

10. Emergencies and Releases. The Work Parties shall comply with the emergency and release response and reporting requirements under Section 4.3 of the SOW. Subject to the covenants and reservations expressly provided in this Consent Decree, nothing in this Consent Decree, including the provisions of the SOW, limits any authority of the Department: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Hazardous Substances on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Hazardous Substances on, at, or from the Site. If, due to the Work Parties' failure to take appropriate Response Action under Section 4.3 of the SOW, the Department takes such action instead, all costs incurred by the Department in taking such action shall be considered the

Department's Reimbursable Future Costs and the Work Parties shall reimburse the Department for such costs as provided in this Consent Decree.

11. Engagement of Contractors; Approval of Supervising Contractor.

(a) Notwithstanding any other provision herein to the contrary, all aspects of the Work to be performed by Work Parties pursuant to this Consent Decree shall be under the direction, supervision, and oversight of the Department's Project Manager.

(b) The Work Parties may hire one or more contractors to perform the Work. All contractors (but not subcontractors or sub-subcontractors) selected by the Work Parties to perform the Work related to this Consent Decree, the ROD, and the SOW shall be subject to approval by the Department. At the request of the Work Parties and with the Trustee's agreement and the Department's approval, the Work Parties may hire the Trustee or some other entity to perform or oversee the Work Parties' Operation and Maintenance activities, at the sole expense and obligation of the Work Parties. Such agreement shall be outlined in a separate agreement that does not require approval of the Court.

(c) The Work Parties shall provide a copy of this Consent Decree to the Work Parties' Project Coordinator and the Supervising Contractor, as well as each other contractor hired by the Work Parties to perform the Work required by this Consent Decree, and shall condition all contracts entered into with such contractors upon performance of the Work in conformity with the terms of this Consent Decree and the SOW. The Work Parties or their Project Coordinator or the Supervising Contractor shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The Work Parties shall nonetheless be responsible for ensuring that their Supervising Contractor performs the Work in accordance with the terms

of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, the Supervising Contractor shall be deemed to be in a contractual relationship with the Work Parties within the meaning of CERCLA § 107(b)(3), 42 U.S.C. § 9607(b)(3).

(d) Within 90 days after the Effective Date, the Work Parties shall notify the Department, in writing, of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor to be the Work Parties' Supervising Contractor, the Work Parties shall demonstrate that the proposed contractor has a quality assurance system by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with EPA's Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by the Department. The Department will issue a written notice of disapproval or written authorization to proceed regarding hiring by the Work Parties of the proposed Supervising Contractor. If at any time thereafter, the Work Parties propose to change the Supervising Contractor, the Work Parties shall give such written notice to the Department and must obtain a written authorization to proceed from the Department before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. Authorization to proceed, in any event, shall not be unreasonably delayed or withheld.

(e) If the Department disapproves a proposed Supervising Contractor, the Department will notify the Work Parties in writing. The Work Parties shall submit to the Department a list of contractors, including the qualifications of each contractor, that would be acceptable to the Work Parties within 30 days after receipt of the Department's written disapproval of the contractor previously proposed. The Department will provide written

notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. The Work Parties may select any contractor from that list that is not disapproved by the Department and shall notify the Department of the name of the selected contractor within 21 days after the Department's authorization to proceed.

(f) The Department may extend any deadlines in a plan approved pursuant to this Consent Decree and the SOW. The failure of the Department to timely provide any disapproval or authorization required by this Paragraph which would cause the Work Parties to fail to timely meet a milestone or deadline required by this Consent Decree, SOW or any document required to be prepared by this Consent Decree shall excuse the Work Parties from performance of such activity until a reasonable time after the receipt by the Work Parties of such required disapproval or authorization.

12. Modification of SOW or Related Work Plans, Reports, or other Deliverables.

(a) If the Department determines that it is necessary to modify the work specified in the SOW and/or in work plans, reports, and other deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the "Scope of the RA" set forth in Section 1.3 of the SOW, then the Department may notify the Work Parties of such modification. If Work Parties object to the modification they may, within 30 days after actual receipt of the Department's modification, seek dispute resolution provided in this Consent Decree.

(b) The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by the Department; or (2) if the Work Parties invoke dispute

resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under the Consent Decree, and the Work Parties shall implement all Work required by the modification. The Work Parties shall incorporate the modification into the deliverables required under the SOW, as appropriate.

(c) The Department's Project Manager may approve extensions to any schedule in the SOW or any work plan approved by the Department under the SOW without signatures of the Parties or approval of this Court. All requests for extension and every decision of the Department's Project Manager with regard to such requests shall be made in writing.

(d) Nothing in this Paragraph shall be construed to limit the Department's authority to require performance of further Response Actions as otherwise provided in this Consent Decree.

13. No Representations or Warranties. Nothing in this Consent Decree or any deliverable required under the SOW constitutes a warranty or representation of any kind by the Department that compliance with the Work requirements set forth in the ROD and SOW or related deliverable will achieve the Performance Standards.

14. Off-Site Shipment of Hazardous Substances. The Work Parties may ship Hazardous Substances from the Site to an off-site facility only in accordance with Section 4.4 of the SOW.

15. Permits.

(a) As provided in CERCLA § 121(e), 42 U.S.C. § 9621(e), and NCP § 300.400(e), no permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the

contamination and necessary for implementation of the Work). In order to demonstrate compliance with the substantive provisions of permitting regulations, the Work Parties may be required to submit applications, work plans, and other information to the Department. Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, the Work Parties shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. To the extent any required state permit or approval must be issued by the Department, the Department will not unreasonably deny the issuance of, and shall promptly issue, such state permits or approvals.

(b) The Work Parties may seek relief under the *force majeure* provisions of this Consent Decree for any delay in the performance of the Work resulting from failure to obtain, or a delay in obtaining, any permit or approval referenced in this Paragraph and required for the Work, provided that the Work Parties have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

(c) This Consent Decree is not and shall not be construed to be a permit issued pursuant to any federal or state statute or regulations.

16. Work Takeover.

(a) Work Takeover Notice. In the event the Department determines that the Work Parties have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly and materially deficient or unjustifiably late in their performance of the Work, the Department may issue a written notice ("Work Takeover Notice") to the Work Parties. Any Work Takeover Notice issued by the Department will specify the grounds upon which such notice was issued and will provide the Work Parties a period of

10 days within which to remedy the circumstances giving rise to the Department's issuance of such notice.

(b) Work Takeover. If at any time the Department determines that the performance of the Work, or lack thereof, presents an immediate endangerment to human health or the environment, or if after expiration of the 10-day notice provision in the paragraph above, the Work Parties have not remedied to the Department's satisfaction the circumstances giving rise to the Department's issuance of the relevant Work Takeover Notice, the Department may at any time thereafter assume the performance of all or any portion(s) of the Work as the Department deems necessary ("Work Takeover"). The Department will notify the Work Parties in writing (which writing may be electronic) if the Department determines that implementation of the Work Takeover is warranted.

(c) Disputes. The Work Parties may invoke the dispute resolution procedures set forth in this Consent Decree to dispute the Department's implementation of a Work Takeover under this Paragraph. However, notwithstanding the Work Parties' invocation of such dispute resolution procedures, and during the pendency of any such dispute, the Department may in its sole discretion commence and continue the Work Takeover until the earlier of: (i) the date that the Work Parties remedy, to the Department's satisfaction, the circumstances giving rise to the Department's issuance of the relevant Work Takeover Notice, or (ii) the date that a final decision is rendered in accordance with the dispute resolution provisions requiring the Department to terminate such Work Takeover.

(d) Reservation of Rights. Notwithstanding any other provision of this Consent Decree, the Department retains all authority and reserves all rights to take any and all Response Actions authorized by law.

ARTICLE V

REMEDY REVIEW; FURTHER RESPONSE ACTIONS

17. Periodic Review. The Work Parties shall conduct, in accordance with the Periodic Review Support Plan developed pursuant to Section 4.7 of the SOW, studies and investigations to support the Department's reviews under CERCLA § 121(c), 42 U.S.C. § 9621(c) and any applicable regulations, of whether the Remedial Action is protective of human health and the environment until the Department issues a Certification of Work Completion.

18. Department's Selection of Further Response Actions. If the Department determines, at any time, that the Remedial Action is not protective of human health and the environment, the Department may select further Response Actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity to Comment. The Work Parties, all PRPs, and, if required by CERCLA §§ 113(k)(2) or 117, 42 U.S.C. §§ 9613(k)(2) or 9617, the public, will be provided an opportunity to comment on any further Response Actions proposed by the Department as a result of the review conducted pursuant to CERCLA § 121(c) and to submit written comments for the record during the comment period. The Department will consider and respond to all public comments and determine if any changes or modifications are warranted on further Response Actions proposed.

20. Work Parties' Obligation to Perform Further Response Actions. If the Department selects further Response Actions relating to the Site consistent with the ROD and the "Scope of the RA" set forth in Section 1.3 of the SOW, the Department may require the Work Parties to perform such further Response Actions, but only to the extent the reopener conditions are satisfied or the Remedial Action is not protective of human health and the environment. The Work Parties may invoke the Dispute Resolution procedures set forth in this Consent Decree to dispute (a) the

Department's determination that the reopener conditions are satisfied, (b) the Department's determination that the Remedial Action is not protective of human health and the environment, or (c) the Department's selection of the further Response Actions.

21. Submission of Plans. If the Work Parties are required to perform further Response Actions, they shall submit a plan for such Response Actions to the Department for approval in accordance with Section 6.5 of the SOW. The Work Parties shall implement the approved plan in accordance with this Consent Decree.

22. Costs of Further Response Actions. Nothing in this Agreement precludes any Party from incurring costs associated with the further Response Actions and pursuing such Response Costs from Non-Settlors.

ARTICLE VI

QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

23. Quality Assurance Project Plan.

(a) The Work Parties shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples, and subsequent amendments to such procedures upon notification by the Department to the Work Parties of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

(b) The Work Parties shall submit to the Department for approval a Quality Assurance Project Plan ("QAPP") in accordance with the SOW, which QAPP shall be consistent with the NCP and meet the requirements set forth in Section 6.6(d) of the SOW. If relevant to the proceeding, the Work Parties and the Department agree that validated sampling data generated in accordance with the QAPP and reviewed and approved by the

Department will be admissible as evidence in any proceeding under this Consent Decree, without objection as to data quality; however, such data is subject to objection as to the usefulness of the data for any specific purpose.

24. Laboratories, Data Collection and Analytical Methods.

(a) The Work Parties shall ensure that the Department or its representatives are allowed access to all laboratories utilized by the Work Parties in implementing this Consent Decree, which laboratories will obtain all relevant certification from the Department. In addition, the Work Parties shall ensure that such laboratories shall analyze all samples submitted by the Department pursuant to the QAPP for quality assurance purposes.

(b) The Work Parties shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analysis according to the accepted EPA methods, and any amendments made thereto, during the course of the implementation of this Consent Decree. The Work Parties shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality assurance/quality control ("QA/QC") program. The Work Parties shall ensure that all such analyses are performed by a DHEC-certified laboratory for all analytical methods being used.

(c) The Work Parties shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP.

25. Duplicate Samples. Upon request, the Work Parties shall allow split or duplicate samples to be collected by the Department. The Work Parties shall notify the Department not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by the

Department. In addition, the Department will have the right to collect any additional samples that the Department deems necessary. Upon request, the Department will allow the Work Parties to take split or duplicate samples of any samples the Department collects. Any split or duplicate samples collected by the Department shall be considered the Department's Oversight Costs.

26. Submission of Sample Results. The Work Parties shall submit to the Department one hard copy and one electronic searchable PDF copy on electronic media of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Work Parties with respect to the Site and/or the implementation of this Consent Decree unless the Department agrees otherwise.

27. Department's and EPA's Retention of Authority. Except as specifically set forth in this Consent Decree, the Department and EPA (subject to the terms and conditions of the MOU) retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, HWMA, PCA, and other applicable statutes or regulations.

ARTICLE VII

ACCESS AND INSTITUTIONAL CONTROLS

28. Access to Site.

(a) The Work Parties will seek from the Trustee, and the Department shall support the efforts of the Work Parties, commencing on the Effective Date, to provide the Work Parties' Project Coordinator, Supervising Contractor, representatives of the Work Parties' Technical Committee and/or liaison counsel for the Work Parties, and their representatives, contractors, and subcontractors, access at all reasonable times to the Site,

to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

(i) Monitoring the Work;

(ii) Verifying any data or information submitted to the Department;

(iii) Conducting investigations regarding contamination at or near the Site;

(iv) Obtaining samples;

(v) Assessing the need for, planning, or implementing Response Actions at or near the Site;

(vi) Implementing the Work;

(vii) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the CQAP and the SOW;

(viii) Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

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

The Department will assist the Work Parties in obtaining access to the Site, including the exercise of legal authority to compel access, and in the event the Work Parties are still unable to obtain access using reasonable means, the Department agrees to either (i) treat any resulting delay as a *force majeure* event pursuant to this Consent Decree or (ii) obtain access on its own and conduct

necessary Work as may be required, in which case the Work Parties shall reimburse the Department for all costs related to such action.

(b) Commencing on the Effective Date, the Work Parties shall not use the Site in any manner that the Department determines will pose an unacceptable risk to human health or to the environment due to exposure to Hazardous Substances or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action or O&M. The restrictions shall include, but not be limited to:

(i) Prohibition on the use of groundwater for any purpose without the express written approval of the Department;

(ii) Restricting land use to commercial, office, retail, and industrial uses; and

(iii) Such other restrictions as the Department deems necessary and proper for the protection of human health and the environment.

Notwithstanding any other provision of this Consent Decree to the contrary, no restriction shall prevent or restrict the sampling or treatment of soil or groundwater pursuant to the ROD or SOW.

29. Access to and Institutional Controls at Property Not Owned by Trustee. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than the Trustee:

(a) The Work Parties shall make reasonable efforts to gain access to any real property not owned by the Trustee necessary to perform the Work and any other activities under this Consent Decree. The Department will assist the Work Parties in obtaining access to such real property, including the exercise of legal authority to compel access, and in the event the Work Parties are still unable to obtain access using reasonable means, the

Department agrees to either (i) treat any resulting delay as a *force majeure* event under this Consent Decree or (ii) obtain access on its own and conduct necessary Work as may be required, in which case the Work Parties shall reimburse the Department for all reasonable costs related to such action.

(b) The Work Parties shall use reasonable efforts to secure from the owner of any such real property:

(i) an agreement to provide access thereto for the Department and the Work Parties, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree;

(ii) an agreement, enforceable by the Work Parties and the Department, to refrain from using the Site in any manner that the Department reasonably determines will pose an unacceptable risk to human health or to the environment due to exposure to Hazardous Substances or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action or O&M. The agreement shall include, but not be limited to, the land/water use restrictions required under this Consent Decree; and

(iii) the execution and recordation in the appropriate land records office of Institutional Controls, that (A) grant a right of access to conduct any activity regarding the Consent Decree, and (B) grant the right to enforce the land/water use restrictions established in this Consent Decree. The Institutional Controls shall be granted to one or more of the following persons, as determined by the Department: (i) the Department and its representatives, (ii) Work Parties and their representatives, (iii) the Trustee and its representatives, and/or (iv) other

appropriate grantees. The Institutional Controls, other than those granted to the Department, shall include a designation that the Department is a third-party beneficiary, allowing the Department to maintain the right to enforce the Institutional Controls without acquiring an interest in real property.

30. Institutional Controls. The Parties agree that Institutional Controls, consistent with the SOW and the ROD, are appropriate for ensuring protection of public health and welfare and the environment. The Work Parties shall submit to the Department for review and approval draft Institutional Controls in accordance with the approved Institutional Controls Implementation and Assurance Plan prepared pursuant to Sections 3.4(k) and 6.6(i) of the SOW. The Department will review the Institutional Controls and either approve, conditionally approve, or disapprove them. The Department may conditionally approve or disapprove them if such a course of action is warranted in the sole discretion of the Department. Any disapproval or conditional approval of the Institutional Control shall be in writing and shall state with specificity the reasons for such disapproval or conditional approval. Within 15 days following the Department's written approval and acceptance of the Institutional Controls, the Work Parties shall request the Trustee (or subsequent property owner) to record the Institutional Controls with the appropriate land records office at the Work Parties' expense.

31. Department's and EPA's Retention of Authority. Notwithstanding any provision of the Consent Decree, the Department and EPA (subject to the terms and conditions of the MOU) retain all of their access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

32. Best Efforts. As used in this Consent Decree, "best efforts" means the efforts that a reasonable person in the position of Work Parties would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. If Work Parties are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the Department, and include a description of the steps taken to comply with the requirements. If the Department deems it appropriate, it may assist Work Parties, or take independent action, in obtaining such access and/or use restrictions. All reasonable costs incurred by the Department in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, shall be reimbursed by the Work Parties.

33. Governmental Controls. If the Department determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, the Work Parties shall cooperate with the Department's efforts to secure and ensure compliance with such Institutional Controls.

ARTICLE VIII

REPORTING REQUIREMENTS

34. Progress Reports. The Work Parties shall submit to the Department written progress reports in accordance with Sections 5.1 and 5.2 of the SOW.

35. Emergency Response and Reporting of Releases. The Work Parties shall comply with the reporting obligations set forth in Section 4.3 of the SOW.

36. Submission Criteria for Reports and Deliverables. Unless otherwise agreed by the Department and the Work Parties or required under this Consent Decree, the Work Parties shall submit all deliverables in accordance with the Section 6 of the SOW.

ARTICLE IX

DEPARTMENT'S APPROVAL OF PLANS, REPORTS AND OTHER DELIVERABLES

37. Review and Approval Procedure. The Department will review and approve any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree in accordance with the procedure set forth in Section 6.5 of the SOW.

38. Implementation. The Work Parties shall implement approved deliverables, or any approved portions thereof, in accordance with Section 6.5 of the SOW.

ARTICLE X

ACCESS TO INFORMATION

39. Records. The Work Parties shall provide to the Department upon request, subject to **Paragraph 40**, copies of all relevant records, reports, documents, and any other information (including those in electronic form) within their possession, custody, or control (including that of their contractors or agents) relating to the activities at the Site or to the implementation of this Consent Decree, 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 (collectively, "Records" and each, a "Record"). The Work Parties shall also reasonably make available to the Department for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of Work.

(a) Retention of Records. Until 10 years after the Department's Certification of Work Completion under Section 4.8 of the SOW, each Work Party shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession, custody or control or that come into its possession, custody or control that relate in any manner to its liability under CERCLA with respect to the Site. Each Work Party must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the final version or, in the absence of a final version, the last draft, of any Records (including Records in electronic form) now in its possession, custody or control or that come into its possession, custody or control that relate in any manner to the performance of the Work, provided, however, that each Work Party (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

(b) At the conclusion of this record retention period, the Work Parties shall notify the Department at least 90 days prior to the destruction of any such Records, and, upon request by the Department, and except as provided in **Paragraph 40** (Business Confidential and Privileged Documents), the Work Parties shall deliver any such Records to the Department at the Work Parties' expense.

(c) Each Work Party certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not deliberately altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the

Department, and that it has fully complied with any and all Department requests for information regarding the Site pursuant to CERCLA §§ 104(e) and 122(e)(3)(B), 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and RCRA § 3007, 42 U.S.C. § 6927, and state law.

40. Business Confidential and Privileged Documents.

(a) Any Settling PRP may assert business confidentiality claims covering part or all of the Records submitted to the Department under this Consent Decree to the extent permitted by and in accordance with CERCLA § 104(e)(7), 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential under applicable laws 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 the Department or if the Department has notified Settling PRPs that the Records are not confidential under the standards of CERCLA § 104(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling PRPs. The Settling PRP may submit two copies with one redacted copy as necessary to protect confidential information and one unredacted but marked with the appropriate claim of confidentiality. Notwithstanding any other provision herein to the contrary, all submissions, and access thereto, shall comply with the S.C. Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.*

(b) Any Settling PRP may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling PRPs assert such a privilege in *lieu* of providing Records, they shall, upon written request, provide the Department with a privilege log which details the following: (1) title of the Record; (2) the date of the Record; (3) the name, title, affiliation (*e.g.*, company or

firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by the Settling PRPs. If a claim of privilege applies only to a portion of the Record, the Record shall be provided to the Department in redacted form to mask the privileged portion only. Settling PRPs shall retain all Records that they claim to be privileged until the date that is three years after the Department has issued a Certification of Work Completion.

(c) Notwithstanding any other provision herein to the contrary, no claim of confidentiality or privilege shall be made with respect to any data created or generated in satisfaction of the requirements of this Consent Decree, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data; provided, however, that any Settling PRP may assert a claim of confidentiality or privilege in accordance with this **Paragraph 40** with respect to analysis, evaluation or interpretation of such data by such Settling PRP or its attorneys, consultants, employees or other advisors. This provision does not limit EPA's rights to preserve or protect enforcement-related material and work product that EPA generates regarding the Site, as EPA's data and analysis is not considered to be "in satisfaction of the requirements of the Consent Decree."

ARTICLE XI

PROJECT MANAGER/COORDINATORS

41. Deliverables and Notices. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Consent Decree must be in writing unless otherwise specified. Whenever, under this Consent Decree, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below as the Department's Project Manager or the

Work Parties' Project Coordinator, as applicable, at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to the Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Except as otherwise provided, notice to a Party by e-mail (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

42. Designation of Department's Project Manager. The Department's Project Manager is:

Carol Crooks, Project Manager
South Carolina Department of Health & Environmental Control
2600 Bull St.
Columbia, SC 29201
Office: 803-898-0810
E-mail: crookscl@dhec.sc.gov

43. Designation of Work Parties' Project Coordinator.

(a) Within 10 days after the Effective Date, the Work Parties shall notify the Department, in writing, of the name, address, e-mail, and telephone number of the Work Parties' designated Project Coordinator or Coordinators.

(b) If a Work Parties' Project Coordinator initially designated is changed, the identity of the successor will be given to the Department at least 5 working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Work Parties' Project Coordinator(s) may assign other representatives, including other contractors, to assist in coordinating the Remedial Action.

44. Authority of Department's Project Manager. The Department may designate other representatives, including, but not limited to, Department employees, contractors, and consultants, to oversee the Remedial Action. The Department's Project Manager will have the authority

lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. The Department's Project Manager will have authority, consistent with the NCP, to halt any Work and to take any necessary Response Action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health, welfare or the environment due to release or threatened release of Hazardous Substances.

45. Meetings of Project Manager and Project Coordinator(s). The Department's Project Manager and the Work Parties' Project Coordinator will hold periodic meetings in accordance with Section 4.2 of the SOW.

ARTICLE XII

FINANCIAL ASSURANCE, PAYMENT AND PERFORMANCE GUARANTEE

46. Required Financial Assurance for Payment and Performance. In order to ensure completion of the Work, the Work Parties shall secure, in accordance with this Paragraph, financial assurance in an amount equal to the estimated cost of implementing the remedy selected in the ROD and as further refined in the SOW, as adjusted from time to time pursuant to this Article (as adjusted, the "Estimated Cost of the Work"), which Estimated Cost of the Work is initially Twenty-four Million Dollars and No Cents ($24,000,000.00), for the benefit of the Department. The Work Parties shall meet their financial assurance obligations pursuant to this Paragraph by funding the Financial Assurance Mechanism with at least Twenty-four Million Dollars and No Cents ($24,000,000.00) within 90 days after the Effective Date. The Financial Assurance Mechanism, which must be satisfactory in form and substance to the Department, must be one or more of the following mechanisms (or any combination thereof) in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance –

Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/. The Work Parties may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, escrow accounts, and insurance policies:

(a) A surety bond unconditionally 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) One or more irrevocable letters of credit, payable to or at the direction of the Department, that is issued by one or more entities (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a federal or state agency;

(c) A trust fund or escrow account established for the benefit of the Department that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a federal or state agency;

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

(e) A demonstration by one or more Work Parties that it meets the relevant test criteria of **Paragraph 48**, which obligates the affected Work Party to pay funds to or at the direction of the Department, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

(f) A guarantee to fund or perform the Work executed in favor of the Department by a company: (1) that is a direct or indirect parent company of a Work Party or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Work Party and (2) can demonstrate to the Department's satisfaction that it meets the financial test criteria of **Paragraph 48**.

47. Selection of Initial Financial Assurance Mechanism. The Work Parties have selected, and the Department has found satisfactory, as an initial Financial Assurance Mechanism pursuant to **Paragraph 46**, a trust fund/escrow account ("Performance Trust Account") held in trust pursuant to a Guarantee of Payment and Performance Trust Agreement substantially in the form attached hereto as **Appendix 8**. Within 30 days after the Effective Date, the Work Parties shall execute or otherwise finalize all instruments or other documents required in order to make the selected Financial Assurance Mechanism legally binding in a form substantially identical to the document attached hereto as **Appendix 8**, and such Financial Assurance Mechanism shall thereupon be fully effective. Within 60 days after the Effective Date, the Work Parties shall submit to the Department copies and/or originals of all executed and/or otherwise finalized instruments or other documents required in order to make the selected Financial Assurance Mechanism legally binding. The Work Parties may use the funds in the Performance Trust Account to perform the Work, and the Estimated Cost of the Work, and amount of financial assurance required pursuant to **Paragraph 46**, shall be automatically adjusted downward as such funds are used to perform the Work.

48. Requirements for Demonstration or Guarantee. If, at any time after the Effective Date and before issuance of the Certification of Work Completion pursuant to Section 4.8 of the SOW, the Work Parties provide a payment and performance guarantee as part of a Financial

Assurance Mechanism for completion of the Work by means of a demonstration or guarantee, the relevant Work Party shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms, unless otherwise provided in this Consent Decree, including but not limited to:

(a) the initial submission of required financial reports and statements from the relevant Work Party's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at:

https://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf

(b) the annual resubmission of such reports and statements within 90 days after the close of each such Work Party's fiscal year; and

(c) the prompt notification of the Department after each such Work Party determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such Work Party no longer satisfies such financial test requirements.

For purposes of the performance guarantee mechanisms specified in this Paragraph, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

49. Inadequate Financial Assurance Mechanism. In the event that the Department determines at any time that a Financial Assurance Mechanism provided by any Work Party

pursuant to this Article is inadequate due to a material increase in the estimated cost of completing the Work or because it otherwise no longer satisfies the requirements set forth in this Article for any other reason, or in the event that the Work Parties become aware of information indicating that a Financial Assurance Mechanism provided pursuant to this Article is inadequate due to an increase in the estimated cost of completing the Work or otherwise no longer satisfies the requirements set forth in this Article for any other reason, the Work Parties, within 30 days after receipt of written notice of the Department's determination or, as the case may be, within 30 days after the Work Parties become aware of such information, shall obtain and present to the Department for approval a proposal for a revised or alternative form of financial assurance listed in **Paragraph 46** that satisfies all requirements set forth in this Article and that will provide for payment and performance of all obligations hereunder; provided, however, that if any Work Party cannot obtain such revised or alternative form of Financial Assurance Mechanism within such 30-day period, and provided further that the Work Party shall have commenced to obtain such revised or alternative form of Financial Assurance Mechanism within such 30-day period, and thereafter diligently proceeds to obtain the same, the Department may extend such period for such time as is reasonably necessary for the Work Party in the exercise of due diligence to obtain such revised or alternative form of Financial Assurance Mechanism. The Work Parties' inability to provide an adequate Financial Assurance Mechanism for completion of the Work shall in no way excuse payment for or performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Work Parties to complete the Work in strict accordance with the terms of this Consent Decree.

50. Funding for Work Takeover. The commencement of any Work Takeover that is not the subject of a pending dispute being resolved pursuant the Dispute Resolution provisions of

this Consent Decree shall trigger the Department's right to receive the benefit of any payment or performance guarantee(s) and/or Financial Assurance Mechanism, and at such time the Department will have immediate access to resources guaranteed under any such Financial Assurance Mechanism, whether in cash or in kind, as needed to continue and complete the Work, and compensate the Department for all costs related thereto assumed by the Department under the Work Takeover. In addition, if at any time the Department is notified by the issuer of a Financial Assurance Mechanism that such issuer intends to cancel the Financial Assurance Mechanism it has issued then, unless the Work Parties provide a substitute Financial Assurance Mechanism in accordance with this Article no later than 30 days prior to the impending cancellation date, the Department will be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing Financial Assurance Mechanism. Any Department costs incurred pursuant to this Article shall be included in the Department's Reimbursable Future Costs and shall be reimbursed by the Work Parties.

51. Modification of Amount and/or Form of Financial Assurance Mechanism.

(a) Reduction of Amount of Financial Assurance Mechanism. If the Work Parties believe that the estimated cost of completing the Work has diminished below the Estimated Cost of the Work (as automatically adjusted pursuant to **Paragraph 47**), the Work Parties may, no more than once during each calendar year after the first anniversary of the Effective Date, or at any other sooner time agreed to by the Department and the Work Parties, petition the Department in writing to request a reduction in the amount of the Financial Assurance Mechanism provided pursuant to this Article so that the amount of the Financial Assurance Mechanism is equal to the estimated cost of completing the Work as of such date. The Work Parties shall submit a written proposal for such reduction

to the Department that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the Financial Assurance Mechanism, the Work Parties shall follow the procedures set forth in **Paragraph 51(b)** for requesting a revised or alternative form of Financial Assurance Mechanism, except as specifically provided in this **Paragraph 51(a)**. If the Department decides to accept the Work Parties' proposal for a reduction in the amount of the Financial Assurance Mechanism, either to the amount set forth in Work Parties' written proposal or to some other amount as selected by the Department, the Department will notify the petitioning Work Parties of such decision in writing. Upon the Department's acceptance of a reduction in the amount of the Financial Assurance Mechanism, the Estimated Cost of the Work shall be deemed to be the revised estimated cost of completing the Work set forth in the Department's written decision. After receiving the Department's written decision, the Work Parties may reduce the amount of the Financial Assurance Mechanism in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected Financial Assurance Mechanism legally binding. In the event of a dispute, the Work Parties may reduce the amount of the Financial Assurance Mechanism required hereunder only in accordance with an agreement or a final administrative or judicial decision resolving such dispute pursuant to the Dispute Resolution provisions of this Consent Decree. No change to the form or terms of any Financial Assurance Mechanism provided under this Article, other than a reduction in amount, is authorized except as specifically approved by the Department.

(b) Change of Form of Financial Assurance Mechanism.

(i) If, after the Effective Date, the Work Parties desire to change the form or terms of any Financial Assurance Mechanism provided pursuant to this Article, the Work Parties may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition the Department in writing to request a change in the form or terms of the Financial Assurance Mechanism provided hereunder. Any decision made by the Department on a petition submitted under this Paragraph shall be made in the Department's sole and unreviewable discretion, and such decision shall not be subject to challenge by the Work Parties pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(ii) The Work Parties shall submit to the Department a written proposal for a revised or alternative Financial Assurance Mechanism that shall specify, at a minimum, a detailed breakdown of the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised Financial Assurance Mechanism, including all proposed instruments or other documents required in order to make the proposed Financial Assurance Mechanism legally binding. The proposed revised or alternative Financial Assurance Mechanism must satisfy all requirements set forth or incorporated by reference in this Article. The Department will notify the Work Parties in writing of its decision to accept or reject a revised or alternative Financial Assurance Mechanism submitted pursuant to this Paragraph. Within 10 days after receiving a written decision approving the proposed revised or alternative Financial Assurance Mechanism, the Work Parties shall execute and/or otherwise finalize all instruments or other documents required

in order to make the selected Financial Assurance Mechanism legally binding in a form substantially identical to the documents submitted to the Department as part of the proposal, and such Financial Assurance Mechanism shall thereupon be fully effective. The Work Parties shall submit to the Department copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected Financial Assurance Mechanism legally binding within 30 days after receiving a written decision approving the proposed revised or alternative Financial Assurance Mechanism.

52. Release of Financial Assurance Mechanism. The Work Parties shall not release, cancel, or discontinue any Financial Assurance Mechanism provided pursuant to this Article except as provided in this Paragraph. If the Work Parties receive from the Department a Certification of Work Completion, or if the Department otherwise so notifies the Work Parties in writing, the Work Parties may thereafter release, cancel, or discontinue the Financial Assurance Mechanism provided pursuant to this Article. In the event of a dispute, the Work Parties may release, cancel, or discontinue the Financial Assurance Mechanism required hereunder only in accordance with an agreement or a final administrative or judicial decision resolving such dispute.

ARTICLE XIII

COMPLETION OF REMEDIAL ACTION AND CERTIFICATION OF WORK COMPLETION

53. Completion of the Active Remedial Action and the Work.

(a) The Work Parties may submit to the Department one or more requests for Certification of Active RA Completion, and the Department shall review, and then either approve or reject such requests, in accordance with Section 4.6 of the SOW.

(b) After the Performance Standards have been achieved, the Work Parties shall submit to the Department a final monitoring report, the Work Parties and the Department shall conduct a pre-certification inspection and the Work Parties shall submit to the Department a request for Certification of Work Completion, and the Department shall review and approve or reject such request, in accordance with Section 4.8 of the SOW.

ARTICLE XIV

RESPONSE COSTS

54. Department's Response Costs. The Department's Past Response Costs incurred through November 30, 2021, which predate the lodging of the Complaint in this Action and the Court's approval of this Consent Decree, are in the approximate amount of Eight Million, Six Hundred Sixty-five Thousand, Nine Hundred Sixty-one Dollars and Eighty-seven Cents ($8,665,961.87) and the Department continues to incur Response Costs at the Site. The Department's Response Costs include, but are not limited to, past and future costs incurred by the Department, including associated attorneys' and outside contractors' costs, for any and all of the following:

(a) The investigation, monitoring, surveying, testing, and gathering of information to identify the existence and extent of the release, or threatened release, of Hazardous Substances, the sources and nature of the Hazardous Substances involved, and the extent of any danger to the public health or welfare or the environment;

(b) Participation in the Philip Services Corporation's bankruptcy matter, case number 03-37718-H2-11, United States Bankruptcy Court for the Southern District of Texas, Houston Division;

(c) Performing of an electromagnetic survey;

(d) Development of a Health and Safety Plan;

(e) Test trenching;

(f) Stream and groundwater sampling;

(g) Removal of the former incinerator building after snow storm damage;

(h) O&M, including but not limited to O&M relating to the existing groundwater extraction system;

(i) Conducting a Remedial Investigation to characterize the sources, nature and extent of contamination at the Site, including, but not limited to, investigating potential sources; defining the extent and nature of groundwater contamination; preparing a Baseline Risk Assessment; and preparing a Remedial Investigation Report;

(j) Developing the Feasibility Study to evaluate cleanup alternatives and preparing the Feasibility Report;

(k) Developing and issuing a Proposed Plan addressing the contamination;

(l) Preparing and issuing the ROD;

(m) Preparing and issuing the SOW;

(n) Performing public participation activities, including, but not limited to, publishing notice of and hosting the May 25, 2006 and August 26, 2014 public meetings, as well as any future community involvement activities in accordance with the Community Involvement Plan;

(o) Performing PRP searches and the Identification and Pursuit of PRPs, notifying parties of their potential liability;

(p) Negotiating settlements with PRPs and filing Proof of Claims in PRPs' bankruptcy actions;

(q) Negotiating this Consent Decree between the Parties, presentation of motions to the Court, publication of notices of the proposed settlement and entering into this Consent Decree;

(r) Payments made to the Trustee for performance of the Trustee's obligations as Custodial Trustee;

(s) Department's costs of overseeing its own contractor in performance of the tasks related to the Department's past Response Actions;

(t) Overseeing the Work Parties' performance of Work outlined in this Consent Decree;

(u) Other activities necessary and appropriate to direct Response Actions and for enforcement purposes; and

(v) Any other obligation of the Department under this Consent Decree.

55. Recovery of Portion of the Department's Past Response Costs. The Department has recovered a portion of its Past Response Costs, totaling Three Million, One Hundred Forty-nine Thousand, Six Hundred Nineteen Dollars and Ninety-seven Cents ($3,149,619.97), as follows:

(a) As of January 11, 2012, the Trustee had reimbursed the Department's Past Response Costs in the amount of Three Million, One Hundred Forty-four Thousand, Four Hundred Thirty-four Dollars and Thirteen Cents ($3,144,434.13) for certain costs associated with the Department's onsite contractor's performance of Response Actions. Another Twenty-one Dollars and Twenty-three Cents ($21.23) was received upon liquidating the bankruptcy trust. These reimbursement funds were deposited in the

Hazardous Waste Contingency Fund. There have been no additional reimbursements from the Trustee.

(b) On November 24, 2008, the Department recovered Four Hundred Eighty-five Dollars and Fifty-six Cents ($485.56) through PRP Dana Holding Corporation's bankruptcy action. These funds were deposited in Philip Services Dana Corp. Fund (SCEIS #39317001/Grant #J0403NS32000 also known as R-025).

(c) The Department recovered One Thousand, Six Hundred Eighty Dollars and No Cents ($1,680.00) from the Work Parties for charges relating to a Freedom of Information Request. These reimbursement funds were deposited in the Hazardous Waste Contingency Fund.

(d) To date, the Department recovered Nine Hundred Ninety Dollars and Forty Cents ($990.40) through PRP American Airlines' bankruptcy action. These funds were deposited into the Hazardous Waste Contingency Fund.

(e) To date, the Department recovered Two Hundred Eighty-one Dollars and Forty-seven Cents ($281.47) through PRP Eastman Kodak's bankruptcy action. These funds were deposited into the Hazardous Waste Contingency Fund.

(f) To date, the Department recovered One Thousand, Seven Hundred Twenty-seven Dollars and Eighteen Cents ($1,727.18) from PRPs, Cenveo, Inc. (and its subsidiaries, Madison-Graham Colorgraphics and Nashua Corporation) bankruptcy action. This reimbursement was deposited in the Hazardous Waste Contingency Fund.

56. The PRP Group's Response Costs. The PRP Group's Past Response Costs incurred and invoiced through November 30, 2021, which predate the lodging of the Complaint in this Action and the Court's approval of this Consent Decree, are in the approximate amount of Four

Million, Two Hundred Eighty-six Thousand, Five Hundred Thirteen Dollars and Forty-four Cents ($4,286,513.44) and the PRP Group continues to incur Response Costs at the Site. The PRP Group's Response Costs include, but are not limited to, costs incurred and to be incurred by the Work Parties, including associated attorneys' and outside consultant fees, for any and all of the following:

(a) The coding and evaluation of hazardous waste manifests, quarterly reports and other reliable records kept in the ordinary course of regularly conducted business that detail shipments to the Site of Hazardous Substances, and other activities necessary to create the Waste-In Database associated with developing and forming a PRP Group to fund and perform the expected Response Action;

(b) The PRP Group's administrative costs such as, but not limited to: (i) costs of duplicating and distributing correspondence, records, notices, reports, and other documents; (ii) developing and maintaining a website; (iii) costs of meetings, telephone calls and teleconferences; (iv) expenses incurred by paralegals and other employees on work relating to administrative matters connected to Work; and (v) other non-attorney administrative expenses incurred on behalf of the Work Parties;

(c) The Identification and Pursuit of PRPs, performing PRP searches, notifying PRPs of their potential liability, and negotiating settlements, except to the extent such costs are incurred in connection with litigation that has been filed in a court of law;

(d) Past Response Actions performed in connection with the Site, including a preliminary design investigation, additional assessment work and any suggested comments or revisions to any reports describing or relating to Response Actions;

(e) Survey of the Site;

(f) Development of a conceptual site model, including collection of data;

(g) Preparation and submission of work plans for Response Actions, including any comments or revisions thereto;

(h) The implementation of the work plans and performance of any Work as required in this Consent Decree, the ROD, and the SOW;

(i) Preparation of the Remedial Design including any investigation, comments or revisions thereto as required in this Consent Decree, the ROD, and the SOW;

(j) Preparation of the Progress Reports, including any comments or revisions thereto as required in this Consent Decree, the ROD, and the SOW;

(k) Costs associated with public involvement pursuant to the Community Involvement Plan and as requested by the Department as required in this Consent Decree, the ROD, and the SOW;

(l) The reimbursement of a portion of the Department's Past Response Costs and payment of the Department's Reimbursable Future Costs as required in this Consent Decree;

(m) O&M, including but not limited to, O&M relating to the existing groundwater extraction system, and reimbursement of costs associated with O&M as required in this Consent Decree, the ROD, and the SOW;

(n) Negotiating this Consent Decree, including the SOW, between the Parties, presentation of motions to the Court, publication of notices to the PRP Group of the settlement and entering into this Consent Decree; and

(o) Any other obligation required under this Consent Decree, the ROD, and the SOW.

57. Approval of Response Costs.

(a) The Parties agree that the Department has incurred Response Costs and will incur Response Costs that are necessary costs of response pursuant to 42 U.S.C. § 9601(25). These Response Costs are not inconsistent with the NCP, are in substantial compliance with applicable requirements of the NCP, and are expected to result in a CERCLA-quality cleanup. The amount of such recoverable past costs is not stipulated or admitted or determined by this Consent Decree except as a basis for a compromise settlement among the Parties and will be the subject of proof against Non-Settlors.

(b) The PRP Group asserts that the PRP Group has incurred Response Costs and will incur Response Costs that are necessary costs of response pursuant to 42 U.S.C. § 9601(25), are consistent with the NCP, are in substantial compliance with applicable requirements of the NCP, and are expected to result in a CERCLA-quality cleanup.

(c) By entering this Consent Decree, this Court also finds that the Department and the PRP Group have incurred some necessary Response Costs pursuant to 42 U.S.C. § 9601(25) as required to maintain a claim for recovery under CERCLA. The actual amount of recoverable past costs is not stipulated or admitted as between the Settling PRPs or determined by this Consent Decree except as a basis for a compromise settlement among the Parties, and the recovery of the Parties' respective alleged costs would be subject to proof by the Party seeking reimbursement in a subsequent action against Non-Settlors.

ARTICLE XV

PAYMENTS

58. Work Parties Escrow Account. The PRP Group has established an escrow account ("Work Parties Escrow Account") administered by the Work Parties to fund the performance of

the Work and other costs of the PRP Group associated with the Site. The Work Parties Escrow Account is an interest-bearing account and is intended to be treated as a qualified settlement fund as described in Treasury Regulations Section l.468B-l. Accordingly, all taxes due and owing on interest earned by the Work Parties Escrow Account shall be paid by the Work Parties Escrow Account. The principal of the Work Parties Escrow Account, together with any interest accrued thereon, shall be distributed for the payment of Response Costs of the Work Parties, including the costs of performing the Work and other Response Costs, taxes on the Work Parties Escrow Account and costs of administering the Work Parties Escrow Account, and reimbursement of the Department's Response Costs as provided in this Consent Decree.

59. Payments by the Work Parties and United States to the Department.

(a) Payment of Department's Past Response Costs.

(i) Within 30 days of the Effective Date, the Work Parties shall pay to the Department Four Million, One Hundred Forty-seven Thousand, Four Hundred Sixty-nine Dollars and Fifty Cents ($4,147,469.50), as a negotiated settlement payment, for the PRP Group's share of the unrecovered Department's Past Response Costs. The Work Parties' obligation to make the payment required by this subsection is a joint and several obligation of the Work Parties.

(ii) Within 60 days of the Effective Date, and provided any appeals of the final judgment have been concluded, the United States shall pay to the Department Two Hundred Forty-nine Thousand, Three Hundred Sixty Dollars and Twenty-two Cents ($249,360.22), as a negotiated settlement payment, for the Federal PRPs' share of the unrecovered Department's Past Response Costs. The

United States may make this payment by Automated Clearing House (ACH) Electronic Funds Transfer.

(iii) The Department waives all claims that the Department may have against any Settling PRP for the Department's Past Costs in excess of the negotiated settlement payments to be paid to the Department pursuant to this Paragraph.

(b) Waiver of Portion of Department's Future Response Costs. Except for the Department's Reimbursable Future Costs that are payable pursuant to subparagraph (c) below, neither the Work Parties nor the United States shall be obligated to reimburse any of the Department's Future Response Costs, and the Department waives all claims it may have against any Settling PRP for the Department's Future Response Costs, other than the Department's Reimbursable Future Costs. The Cash Out Settlors and Re-Opener Settlors shall have no obligation to reimburse the Department for any of the Department's Reimbursable Future Costs.

(c) Payment of Department's Reimbursable Future Costs.

(i) The Work Parties shall pay 94.35% ("Work Party Share") of the Department's Reimbursable Future Costs. Except upon objection to an invoice pursuant to this subparagraph, payments pursuant to this subparagraph will be due within 60 days of the Department's invoice date, which invoices shall be issued to the Work Parties by the Department no more frequently than quarterly. The Department will provide with each invoice documentation of the total Department's Reimbursable Future Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs, as well as documentation to support the claim that all such costs qualify as

Federal Future Response Costs. Each invoice will state the amount due from the Work Parties based on the Work Party Share of the total Department's Reimbursable Future Costs for the period covered by the invoice. The Department's first invoice to the Work Parties will include the reimbursement of the Work Party Share of the Department's Reimbursable Future Costs incurred after November 30, 2021 and through the Effective Date of this Consent Decree, or as close to such date as possibly can be ascertained, including any costs incurred for services before November 30, 2021 but not yet invoiced and/or paid by the Department as of such date. The Work Parties may object to any invoice for the Department's Reimbursable Future Costs within 60 days after receipt of the invoice and the dispute resolution procedure in **Article XXII** will apply. The Work Parties shall have no obligation to reimburse the Department for the Federal PRP Share of the Department's Reimbursable Future Costs.

(ii) The United States shall pay 5.65% ("Federal PRP Share") of the Department's Reimbursable Future Costs. Except upon objection to an invoice pursuant to this subparagraph, payments pursuant to this subparagraph will be due within 60 days of the Department's invoice date, which invoices shall be issued to the United States by the Department no more frequently than quarterly. The Department will provide with each invoice documentation of the total Department's Reimbursable Future Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs, as well as documentation to support a claim that all such costs qualify as Federal Future Response Costs. Each invoice will state the amount due from the

United States based on the Federal PRP Share of the total Department's Reimbursable Future Costs for the period covered by the invoice. The Department's first invoice to the United States will include the reimbursement of the Federal PRP Share of the Department's Reimbursable Future Costs incurred after November 30, 2021 and through the Effective Date of this Consent Decree, or as close to such date as possibly can be ascertained, including any costs incurred for services before November 30, 2021 but not yet invoiced and/or paid by the Department as of such date. The United States may object to any invoice for the Department's Reimbursable Future Costs within 60 days after receipt of the invoice and the dispute resolution procedure in **Paragraph 61(c)** will apply. The United States shall have no obligation to reimburse the Department for the Work Party Share of the Department's Reimbursable Future Costs.

(d) Method of Payment. All payments to the Department pursuant to this Paragraph should reference this Consent Decree and be made payable to the South Carolina Department of Health & Environmental Control. Payments may be made by Automated Clearing House (ACH) Electronic Funds Transfer. The Department's invoices for the Department's Reimbursable Future Costs shall be submitted to:

For invoices to the Work Parties:

Work Parties' Project Coordinator:

Marc Ferries, P.E.
Project Navigator, Ltd.
15990 N. Barkers Landing Rd, Suite 325
Houston, TX 77079
E-mail: mferries@projectnavigator.com

With a copy to:

Emily S. Sherlock
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon St, Suite 1900
Charlotte, NC 28246
E-mail: esherlock@robinsonbradshaw.com

For invoices to the United States:

Section Chief, Environmental Defense Section
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
DJ# 90-11-6-17481
c/o Michael C. Augustini
E-mail: michael.augustini@usdoj.gov

The funds shall be placed in a separate interest-bearing account or fund (the "PSC PRP Group Settlement Site Fund") to be controlled by the Department, and which shall be directed to remediation of the Site and reimbursement of the South Carolina Hazardous Waste Contingency Fund.

60. Payments by Cash Out Settlors and Re-opener Settlors to Work Parties. In consideration of the terms of this Consent Decree, each Cash Out Settlor and Re-Opener Settlor has made or is contractually obligated to make certain payments into the Work Parties Escrow Account pursuant to a separate confidential settlement agreement with the Work Parties. The amounts paid by each Cash Out Settlor and Re-Opener Settlor include an amount for:

(a) certain past Response Costs incurred by the Work Parties at or in connection with the Site;

(b) certain projected future Response Costs to be incurred by the Work Parties at or in connection with the Site; and

(c) (i) in the case of each Cash Out Settlor, a premium to cover certain risks and uncertainties associated with this Consent Decree, including but not limited to the risk that total Response Costs incurred by the Work Parties or to be incurred at or in connection with the Site will exceed the estimated total Response Costs upon which the Cash Out Settlors' payments are based or (ii) in the case of each Re-Opener Settlor, a premium to cover certain risks and uncertainties associated with this Consent Decree, including but not limited to, the risk that total Response Costs incurred or to be incurred at or in connection with the Site will exceed the estimated total Response Costs upon which the Re-Opener Settlors' payments are based, up to a forty million dollar ($40,000,000.00) reopener.

61. Payments by the United States to PRP Group. Payment of PRP Group's Past Response Costs. Within 60 days of the Effective Date, and provided any appeals of the final judgment have been concluded, the United States shall pay the PRP Group One Hundred Sixty-eight Thousand, Three Hundred Seventy-one Dollars and Twenty-two Cents ($168,371.22), as a negotiated settlement payment, to fully satisfy the United States' fair share of the PRP Group's Past Response Costs. The United States may make such payment by Automated Clearing House (ACH) Electronic Funds Transfer to an account or accounts as instructed in writing by the Work Parties' Project Coordinator or the PRP Group's common counsel. Any disbursement of such funds to individual members of the PRP Group shall be solely in the discretion of the PRP Group, pursuant to its PRP Group Organization Agreement.

(b) Payment of PRP Group's Future Response Costs. The following process shall apply for the PRP Group to claim, and the United States to reimburse, the Federal PRP Share of the PRP Group's Future Response Costs, excluding all payments by the Work Parties to the Department for the Work Party Share of the Department's Reimbursable

Future Costs pursuant to **Paragraph 59(c)(i)**, under this Consent Decree once there is a final judgment and any appeals have concluded in this matter.

(i) On or before February 15 of each calendar year, and beginning after the Effective Date, the PRP Group will send the United States an accounting of the Federal Future Response Costs it paid from July 1 through December 31 of the preceding calendar year (each bi-annual accounting is referred to hereafter as a "Statement"). On or before August 15 of each calendar year after the Effective Date, the PRP Group will send the United States a Statement that includes an accounting of Federal Future Response Costs it paid from January 1 through June 30 of that calendar year.

(ii) Included with each Statement shall be copies of invoices included in the Statement, a brief description of the work underlying such invoices, copies of relevant reports or orders and directives from the Department or other regulatory agencies issued during the relevant time period covered by the Statement, information about any insurance claims or recoveries from insurance policies of Non-Settlors by the PRP Group during the relevant time period covered by the Statement, and any other documents reasonably requested by the United States to support the recoverability of the Federal Future Response Costs under CERCLA, including proof of payment by the PRP Group. Each Statement shall contain a certification by a representative for the PRP Group, under penalty of perjury, that each cost qualifies as a Federal Future Response Cost under CERCLA and was paid by the PRP Group. The PRP Group's representative shall also certify that the PRP Group has not previously recovered the claimed Federal Future Response Costs

included in the Statement, and if the Federal Future Response Costs are reimbursed under this Consent Decree by the United States, the PRP Group will not separately seek to recover from another source any amount of Federal Future Response Costs that is actually reimbursed by the United States under this Consent Decree. To the extent that the PRP Group seeks to recover, or actually recovers, a Federal Future Response Cost from any source after a Statement is submitted to the United States, the PRP Group shall promptly correct the certification for the prior Statement and notify the United States.

(iii) Within 90 days of the United States' receipt of each Statement, the United States shall reimburse the PRP Group for the Federal PRP Share of the Federal Future Response Costs contained in a Statement, except as otherwise provided in this Consent Decree. The United States may make these payments by Electronic Funds Transfer to an account or accounts as instructed in writing by the Work Parties' Project Coordinator or the PRP Group's common counsel. Any disbursement of such funds to individual members of the PRP Group shall be solely in the discretion of the PRP Group, pursuant to its PRP Group Organization Agreement.

(iv) If the PRP Group has not submitted the documents required in **Paragraph 61(b)(ii)**, or they otherwise fail to demonstrate through the submitted documents that a cost is properly reimbursable under CERCLA, the United States may object, in writing, within 60 days of receipt of the Statement, and such objection shall be sent to the PRP Group pursuant to the notice provisions in this Consent Decree. Any such objection shall identify the contested Federal Future

Response Cost and the basis for the United States' objection. In the event of an objection, the United States shall, within the 90-day period, remit its share of any uncontested Federal Future Response Costs to the PRP Group. The transmission of an objection pursuant to this Paragraph shall trigger the dispute resolution procedures provided in this Paragraph.

(v) If any payments required to be made by this Paragraph are not made in accordance with the time prescribed, interest on the unpaid balance shall accrue from the date on which the payment was due, at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the United States Code.

(vi) The Parties recognize and acknowledge that payments of the Past Response Costs, the Department's Reimbursable Future Costs, and Federal Future Response Costs by the United States can only be made from appropriated funds legally available for such purpose. Nothing in this Agreement shall be interpreted or construed as a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-42 and 1511-19, or any other applicable provision of law.

(vii) If the United States determines with good cause that a Federal Future Response Cost it paid to the PRP Group pursuant to this Agreement was not properly subject to reimbursement, the United States may demand credit of the reimbursement made to the PRP Group, which credit shall be applied to the PRP Group's subsequent demands for Federal Future Response Costs. In the event that the PRP Group makes no subsequent claims for reimbursement exceeding the

credit, then the PRP Group shall refund any remaining credit to the United States. Within 90 days of receiving such a demand, the PRP Group shall credit or refund such prior reimbursement to the United States, unless the PRP Group provides written notice contesting the United States' demand for credit within 60 days, in which case the dispute provisions of this Paragraph shall take effect.

(viii) The Work Parties hereby agree and expressly acknowledge that they are prohibited from including any portion of their Response Costs that have been or will be paid/reimbursed by the United States as either direct or indirect costs in any invoice, claim, or demand associated with any Federal Contract.

(ix) A determination by the United States not to object to a Federal Future Response Cost shall not constitute an admission, agreement, understanding, or other indication by the United States that any such cost is a Federal Future Response Cost within the scope of this Agreement, that such cost was necessary or incurred consistent with the NCP, or that such cost is otherwise reimbursable or will be accepted in the future under this Consent Decree or under any statute, regulation, or other provision or law or equity.

(c) Dispute Resolution Process Applicable to United States. Any dispute between the United States and the PRP Group or the Department regarding the reimbursement of Federal Future Response Costs by the United States under this Consent Decree shall in the first instance be the subject of informal negotiations between the United States and such other Party to the dispute. During informal negotiations, each participant shall in good faith exchange all relevant information reasonably necessary to support each Party's respective position. The period for informal negotiations shall last 60 days from

the initiation of the dispute resolution procedures unless this period is extended by written agreement of the United States and the other Party to the dispute. If the dispute is not resolved by the end of the period for informal negotiations, the next step in the dispute resolution process shall be mediation, if demanded within the 60-day informal negotiation period. If either Party to the dispute timely invokes mediation by notifying the other Party that it would like the assistance of a mediator to resolve the dispute, the United States and the other Party to the dispute shall cooperate to select a mutually acceptable single mediator and thereafter participate in mediation in good faith to resolve the dispute, if possible. The Parties will attempt in good faith to locate and utilize a mediator with knowledge and experience regarding the subject matter in dispute. If the United States and the other Party to the dispute cannot agree upon a mediator after diligent efforts to do so, they may petition the Court to appoint a mediator. Unless a different time is selected, the United States and the other Party to the dispute shall endeavor to complete the mediation process within 90 days after selecting a mediator. If the United States and the other Party to the dispute are unable to reach a resolution of the dispute by the end of the mediation process, either Party may notify the Court of the dispute and pursue a judicial resolution. If a reimbursement is determined to be due pursuant to **Paragraph 59(c)(ii)** or **Paragraph 61(b)**, the United States shall pay the sum determined to be due within 60 days of the resolution of the dispute. If a credit is determined to be due pursuant to **Paragraph 59(c)(ii)** or **Paragraph 61(b)**, then the United States shall apply such credit to the PRP Group's or the Department's, as applicable, subsequent claims for reimbursement. In the event that the PRP Group or Department, as applicable, makes no subsequent claims for reimbursement

exceeding the credit, then the PRP Group or Department, as applicable, shall refund any remaining credit to the United States.

ARTICLE XVI

FAILURE TO MAKE REQUIRED PAYMENTS

62. Failure to Make Payments. If any Settling PRP fails to make full payment within the times required by this Consent Decree, that Settling PRP shall pay Interest on the unpaid balance from the date the payment was due, unless the Party to whom payment is owed grants an extension based on circumstances beyond the paying Settling PRP's control. In addition, if any Settling PRP fails to make full payment as required by this Consent Order, the Party to whom payment is owed may, in addition to any other available remedies or sanctions, bring an action against that Settling PRP seeking injunctive relief to compel payment, plus costs of enforcement (including, but not limited to reasonable attorneys' fees to the extent such costs would be recoverable under the applicable law). This provision does not authorize any claim or remedy not otherwise available under law.

ARTICLE XVII

ASSIGNMENT OF CERTAIN RIGHTS TO WORK PARTIES

63. Assignment of Contribution Rights. Each of the Cash Out Settlors and the Re-Opener Settlors hereby assigns to the Work Parties all rights of contribution and cost recovery that any of them may have arising out of this Consent Decree or otherwise.

ARTICLE XVIII

STANDARDS OF PERFORMANCE

64. Consistency with the NCP. By the Work Parties performing and funding the Work in accordance with the terms of this Consent Decree and with the oversight and approval of the

Department, the Department and the Work Parties solely for purposes of this Consent Decree shall be deemed to have prepared all plans and performed all prior activities consistently with the NCP, in substantial compliance with applicable requirements of the NCP, and in a manner that will result in a CERCLA-quality cleanup. This Consent Decree does not determine any issues regarding consistency with the NCP for any other purposes, including other litigation, or dispense with any party's burden to prove its claims against Non-Settlors.

65. Time for Performance.

(a) Date Counting. Where this Consent Decree or any work plan states that an action shall be completed within a set number of days after an event: (i) such days shall be calendar days, not business days, unless expressly provided to the contrary; (ii) the day of the event from which the designated period of time begins to run shall not be included; and (iii) the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday in the State of South Carolina, in which event the period of time shall run until the end of the next day which is not one of the aforementioned days.

(b) Modification of Dates. Where this Consent Decree or any work plan specifies that the Work Parties shall conduct an act within a specified period of time, that period of time may be modified only by mutual agreement of the Work Parties and the Department and memorialized by a letter or an e-mail.

ARTICLE XIX

FORCE MAJEURE AND EXTENSIONS

66. *Force majeure*. "*Force majeure*," for purposes of this Consent Decree is defined as any event arising from causes beyond the control of such Party, of any entity controlled by such Party, or of such Party's contractors, that delays or prevents the performance of any obligation of

such Party under this Consent Decree despite such Party's best efforts to fulfill the obligation. The requirement that a Party exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* and 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. The term "*force majeure*" includes, but is not limited to, the following events: (i) acts of God, fire, war, insurrection, civil disturbance and explosion; (ii) adverse weather conditions that could not be reasonably anticipated that cause unusual delay in transportation and/or field work activities; (iii) restraint by court order or order of public authority; (iv) the inability of the Work Parties to obtain, after exercise of reasonable diligence and timely submission of all required applications, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority or third-party necessary to perform the Work; and (v) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures despite the exercise of reasonable diligence by the Party. "*Force majeure*" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

67. Notice and Request for Extension. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which the Work Parties intend or may intend to assert a claim of *force majeure*, the Work Parties shall notify the Department's Project Manager orally and then follow up in writing promptly when the Work Parties first know that the event might cause a delay and, to the extent possible, at least 3 days before the scheduled date on which the obligation is due. Within seven days thereafter, the Work Parties shall provide in writing to the Department an explanation and description of the reasons

for the delay, the anticipated duration of the delay, the proximate cause or causes of delay (if ascertainable), the actions taken or to be taken to prevent or mitigate the delay, the schedule for implementation of any measures to be taken, the Work Parties' rationale for attributing such delay to a *force majeure*, and a statement as to whether, in the opinion of the Work Parties, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Work Parties shall include with any notice all available documentation supporting their claim that the delay was attributable to a *force majeure*. The Work Parties shall be deemed to know any circumstance of which the Work Parties, any entity controlled by the Work Parties, or the Work Parties' contractors or subcontractors, knew or should have known. As soon as is practicable, the Department will provide written notice to the Work Parties that a specific extension of time has been granted or that no extension has been granted. Failure to comply with the above requirements regarding an event shall preclude Work Parties from asserting any claim of *force majeure* regarding that event; provided, however, that if the Department, despite the late notice or incomplete notice, is able to assess to its satisfaction whether the event is a *force majeure* and whether the Work Parties, as applicable, have exercised their best efforts under **Paragraph 32**, the Department may, in its unreviewable discretion, excuse in writing the Work Parties' failure to submit timely or complete notices under this Paragraph.

68. Extension of Time for Performance. If the Department agrees that the delay or anticipated delay is attributable to a *force majeure*, the time for performance of the obligations under this Consent Decree that are affected by the *force majeure* will be extended by the Department 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 the Department does not agree that the delay or

anticipated delay has been or will be caused by a *force majeure*, the Department will notify Work Parties in writing of its decision. If the Department agrees that the delay is attributable to a *force majeure*, the Department will notify the Work Parties, in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure*.

69. Disputes Regarding Requests for Extension. If the Work Parties elect to invoke the Dispute Resolution procedures set forth herein, they shall do so no later than 15 days after receipt of the Department's notice. In any such proceeding, Work Parties 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. If the Work Parties carry this burden, the delay at issue shall be deemed not to be a violation by Work Parties of the affected obligation of this Consent Decree identified to the Department and the Court.

ARTICLE XX

COMMUNITY INVOLVEMENT

70. Community Involvement. As part of the implementation of the Work, the Work Parties and/or the Department will provide public notice of their actions and provide an opportunity for public comments as required under CERCLA and the NCP. All community involvement activities will be conducted in accordance with Section 2.1 of the SOW.

71. Costs for Community Involvement. Costs incurred by any Party under this **Article XX**, including the costs of any technical assistance, shall be considered Response Costs.

ARTICLE XXI

INDEMNIFICATION AND INSURANCE

72. Work Parties' Indemnification of the Department.

(a) The Department does not assume any liability by entering into this Consent Decree. The Work Parties shall indemnify, save, and hold harmless the Department and 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 the Work Parties, their officers, directors, employees, agents, contractors subcontractors, and any person acting on the Work Parties' behalf or under their control, in carrying out activities pursuant to this Consent Decree, except to the extent caused by the negligence or willful misconduct of the Department, its officials, agents, employees, contractors, subcontractors, or representatives. Further, the Work Parties agree to pay the Department 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 Department based on negligent or other wrongful acts or omissions of the Work Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, except to the extent caused by the negligence or willful misconduct of the Department, its officials, agents, employees, contractors, subcontractors, or representatives. The Department will not be held out as a party to any contract entered into by or on behalf of the Work Parties in carrying out activities pursuant to this Consent Decree. Neither the Work Parties nor any such contractor shall be considered an agent of the Department.

(b) The Department will give the Work Parties prompt written notice of any claim for which the Department plans to seek indemnification pursuant to this Paragraph. After notice from the Work Parties to the Department of their election to assume the defense of such claim, the Work Parties shall, so long as they diligently conduct such defense, have control over the conduct of such proceeding. The Department will be entitled to employ separate counsel (who may be selected by the Department in its sole discretion) and to participate in the defense by the Work Parties of any such claim, and all fees and expenses of such counsel shall be paid by the Department. If the Work Parties assume the defense of a claim pursuant to this Paragraph, no compromise or settlement of such claim may be effected by the Work Parties without the Department's written consent unless (i) there is no finding or admission of any violation of law or any violation of the rights of any person or entity; (ii) the sole relief provided is monetary damages that are paid in full by the Work Parties; and (iii) the Department will have no liability or obligation (including without limitation any obligation to take or to refrain from taking any action) with respect thereto.

73. Insurance. No later than 15 days before commencing any on-site Work, the Work Parties, or their contractors or subcontractors, shall secure, and shall maintain until the first anniversary after issuance of the Department's Certification of Work Completion, commercial general liability insurance with limits of not less than one million dollars ($1,000,000.00) per occurrence, automobile liability insurance with limits of not less than one million dollars ($1,000,000.00), combined single limit per accident, and umbrella liability insurance with limits of liability of five million dollars ($5,000,000.00) in excess of the required commercial general liability and automobile liability limits, naming the Department as an additional insured with

respect to all liability arising out of the activities performed by or on behalf of the Work Parties pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, the Work Parties shall satisfy, or shall ensure that their 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 the Work Parties in furtherance of this Consent Decree. Prior to commencement of on-site Work under this Consent Decree, Work Parties shall maintain certificates of such insurance and a copy of each insurance policy. The Work Parties shall continue maintaining such certificates and copies of policies each year on the anniversary of the Effective Date. If Work Parties demonstrate by evidence satisfactory to the Department that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Work Parties need only to maintain that portion of the insurance described above that is not maintained by the contractor or subcontractor. The Work Parties shall ensure that all submittals to the Department under this Paragraph identify the Site: Philip Services Corporation (ThermalKEM) Site and the civil action number of this case.

ARTICLE XXII

DISPUTE RESOLUTION

74. Informal Dispute Resolution. If the Work Parties disagree in whole or in part with any invoice or decision of the Department, the Work Parties shall notify the Department within 30 days of receipt of the invoice, disapproval or other decision. The Department and Work Parties shall have an additional 30 days to resolve the dispute informally, and shall diligently make efforts to do so. If agreement is reached, the resolution shall be reduced to writing and signed by each Party to the dispute.

75. Mediation. If agreement is not reached pursuant to the informal dispute resolution procedures outlined in **Paragraph 74**, the Department and Work Parties agree to engage in mediation using a mediator mutually agreed upon by the Parties to the dispute. Such mediator shall have knowledge and experience regarding the subject matter in dispute. If the Parties to the dispute cannot agree upon a mediator after diligent efforts to do so, the disagreeing Work Party shall have the right to petition this Court to appoint a mediator. If agreement cannot be reached through mediation, the Department will issue a final decision on the dispute, in writing, to inform the Work Parties of the decision by the Department.

76. Judicial Dispute Resolution. The Work Parties may, within 30 days of service by the Department of its final decision or the conclusion of the mediation process, whichever is later, seek judicial resolution of the dispute in this Court. The Department may respond by filing the administrative record of the dispute and any responsive argument within 30 days of service of the petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Department's written summary of its position, the Work Parties' petition and the Department's response to the petition. This Court shall make its decision based upon the administrative record of the dispute and additional evidence permitted by the Court, and shall not draw any inferences or establish any presumptions adverse to any Party as a result of the invocation of this section or the inability of the Parties to reach agreement with regard to the disputed issue.

77. Extension of Deadlines. The dates or deadlines related to the dispute resolution may be extended by agreement of the Department and Work Parties, by order of this Court, or automatically in circumstances where either Party in good faith seeks resolution of any dispute

arising in connection with this Consent Decree. Such extensions shall be for such period of time as shall be reasonably necessary to engage in meaningful dispute resolution.

78. Modification of Schedules. The invocation of formal dispute resolution procedures under this Article shall not automatically extend, postpone, or affect in any way any obligation of the Work Parties under this Consent Decree not directly in dispute, unless the Department or the Court agrees otherwise. As part of the resolution of any dispute, the Department and the Work Parties, by agreement, or by order of this Court, may in appropriate circumstances extend or modify the schedule for completion of tasks under this Consent Decree to account for the delay in the task that occurred as a result of following this dispute resolution process.

79. Sole Resolution Process. This dispute resolution process shall be the sole process available for resolving disputes between the Department and the Work Parties arising in connection with this Consent Decree.

80. Costs of Dispute. All costs incurred by the Department or the Work Parties in connection with dispute resolution pursuant to this Article shall be considered Response Costs as between the Department and the PRP Group. Any disputes involving the United States and the Work Parties or the Department are governed by **Paragraph 61(c)**.

ARTICLE XXIII

COVENANTS NOT TO SUE AND RELEASES

81. Department's Covenant Not to Sue and Release.

(a) In consideration of the actions that will be performed by the Work Parties and the payments that will be made by the Settling PRPs under the terms of this Consent Decree, contingent upon actual performance and payment as described herein, and except as specifically provided in this Article, the Department releases each Settling PRP and

covenants not to sue or take any other civil or administrative action against any Settling PRP or any other Released Parties under any statute or theory of law, including without limitation CERCLA, RCRA, common law, HWMA, and PCA, for claims arising out of:

(i) Any obligations, costs, or expenses required under this Consent Decree;

(ii) Any process, action, event, cost or expense identified in this Consent Decree, whether prior to or during the implementation of this Consent Decree; and

(iii) All Response Actions taken or to be taken and all Response Costs incurred or to be incurred, at or in connection with the Site, by any person, insofar as such actions and costs relate to contamination at or emanating from the Site. This subsection, however, does not apply to any claims or potential claims that EPA and natural resources trustees may have with respect to the Site.

Items (i) through (iii) above may be referred to collectively herein as "Matters Addressed," and the foregoing covenant and release may be referred to herein as the "Department's Covenant Not to Sue and Release."

(b) Released Parties. The Department's Covenant Not to Sue and Release extends only to the Settling PRPs and any Additional Settling PRPs, and any of their past, present and future officers, directors and representatives, predecessors, successors, assigns, past and present affiliates, and past and present subsidiaries (collectively, "Released Parties"), except to the extent such entities in the future become affiliated with entities that are independently Non-Settlor PRPs for this Site, and these covenants do not extend to any other person.

(c) Effectiveness of Covenant Not to Sue and Release. With respect to liability for the Department's Past Response Costs, the Department's Covenant Not to Sue and Release shall take effect (i) with respect to the Cash Out Settlors and Re-Opener Settlors, upon the Effective Date (ii) with respect to the Work Parties, upon the receipt by the Department of the payment from the Work Parties required in **Paragraph 59(a)(i)**, and (iii) with respect to the United States, upon the receipt by the Department of the payment from the United States required in **Paragraph 59(a)(ii)**. With respect to all other liability, the Department's Covenant Not to Sue and Release shall take effect (i) with respect to the Cash Out Settlors and Re-Opener Settlors, upon the Effective Date and (ii) with respect to the Work Parties and the United States, upon Certification of Work Completion by the Department.

(d) The Department's Covenant Not to Sue and Release extends to only the Released Parties, does not extend to any other person or entity, and does not pertain to any matters other than those expressly specified in this Consent Decree.

(e) General Reservations of Rights; Exclusions. The Department reserves, and this Consent Decree is without prejudice to, all rights against the Settling PRPs with respect to all matters not expressly included within the Department's Covenant Not to Sue and Release. Notwithstanding any other provision of this Consent Decree, the Department's Covenant Not to Sue and Release excludes, and the Department reserves all rights against the Settling PRPs and the Trustee with respect to:

(i) Liability for failure of a Settling PRP to meet a requirement of this Consent Decree;

(ii) Liability arising from the past, present, or future disposal, release, or threat of release of Hazardous Substances outside the Site;

(iii) Liability based on the operation of the Site by any Work Party when such operation commences after the Effective Date of this Consent Decree and does not arise solely from the Work Party's performance of the Work or other obligations under this Consent Decree;

(iv) Liability based on any Work Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Hazardous Substances at or in connection with the Site, other than as provided in the ROD, the SOW, the Work, or otherwise ordered by the Department, after the Effective Date of this Consent Decree;

(v) Criminal liability;

(vi) Liability for violations of federal or state law that occur during or after the implementation of the Work;

(vii) Any claim for recovery of the Department's Response Costs that are not Matters Addressed or Response Costs under this Consent Decree; and

(viii) Any claim against any party who is not a Released Party, including a Non-Settlor who becomes affiliated with a Settling PRP after the date hereof by reason of merger, acquisition, or otherwise and which party has not resolved its liability to the Department and/or the Work Parties.

82. The Department's Reservations Prior to Certification of Work Completion. Notwithstanding any other provision of this Consent Decree, the Department reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this Action or in a new

action, and/or to issue an administrative order, seeking to compel the Work Parties to perform further Response Actions relating to the Site and/or to pay the Department for additional costs of response if, (a) prior to Certification of Work Completion, (i) conditions at the Site previously unknown to the Department are discovered or (ii) information previously unknown to the Department is received, in whole or in part, and (b) the Department determines that these previously unknown conditions or this information together with other relevant information indicate that the completion of the Work will not be protective of human health or the environment. The Work Parties reserve the right to challenge such determination of the Department.

83. Resolution of Liability. The Department agrees that, upon fulfillment of the terms and obligations of this Consent Decree applicable to a particular Settling PRP, any liability of such Settling PRP for Matters Addressed shall be deemed resolved between such Settling PRP and the Department, and the Department will subsequently make no claims against such Settling PRP for Matters Addressed, except for any currently unaffiliated Non-Settlor that is independently a PRP that becomes affiliated with a Settling PRP in the future. Nothing in this Consent Decree shall prohibit the Department or EPA from bringing or taking future Response Actions or remedial actions that may be required at the Site or from seeking any relief in law or equity from any and all responsible parties (as defined by CERCLA) for matters other than Matters Addressed. Except as otherwise expressly provided in this Consent Decree, nothing in this Consent Decree shall require the Settling PRPs to perform or fund any such actions or provide any such relief other than Matters Addressed.

84. Covenant Not to Sue from the Settling PRPs to the Department. In consideration of the Department's Covenant Not to Sue and Release, the Settling PRPs agree not to assert any claims or causes of action against the Department with respect to the Site and this Consent Decree,

including but not limited to: (a) any direct or indirect claim for reimbursement from the Department's Hazardous Waste Contingency Fund through CERCLA §§ 107, 111, 112, 113, or HWMA §§ 44-56-10 *et seq*., or any other provision of law, (b) any claims under CERCLA §§ 107 or 113, RCRA § 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site, past Response Actions regarding the Site, the Department's Past Response Costs, the Department's Future Response Costs, the Work Parties' past and future Response Costs and this Consent Decree, or (c) any claims arising out of Response Actions at or in connection with the Site; provided, however, that this covenant not to sue shall not bar the Work Parties from challenging the validity of any Future Response Cost claimed by the Department. Notwithstanding this Paragraph, the United States reserves its independent regulatory and enforcement authority with respect to the Site, and reserves its rights under the MOU between the Department and EPA, or other agreements with the Department.

85. Reservation of Rights Against Non-Settlors. The Department and the Settling PRPs reserve all rights against Non-Settlors.

86. Reservation of Rights Against Department. The Settling PRPs reserve, and this Consent Decree is without prejudice to, claims against the Department, 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 Department, while acting within the scope of his or her office or employment under circumstances where the Department, 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 the Department's selection of Response Actions, or the oversight or approval of the Work Parties' deliverables or activities.

87. Covenant Not to Sue Among Settling PRPs.

(a) Mutual Covenant Not to Sue and Release. Except as specifically provided in subsections of this Paragraph or as provided in the separate confidential settlement agreements by and between the Settling PRPs, each of the Settling PRPs mutually releases and covenants not to sue any other Settling PRP or to take any other civil or administrative action against any other Settling PRP or such other Settling PRP's members or managers; past, present or future officers, directors, predecessors, successors, assigns, past or present affiliates, or past or present subsidiaries, or attorneys (collectively, "Mutually Released Parties") for Matters Addressed (the foregoing covenant and release, "Mutual Covenant Not to Sue and Release"). The Mutual Covenant Not to Sue and Release is conditioned and shall take effect upon the performance of all of the relevant terms and obligations of this Consent Decree by each Settling PRP, respectively.

(b) Exclusions. The Mutual Covenant Not to Sue and Release shall not include:

(i) Claims based on the failure of any Settling PRP to comply with the requirements of this Consent Decree;

(ii) Any claim for recovery of response costs that are not Matters Addressed;

(iii) Criminal actions or liabilities;

(iv) Any claim against any party that is not a Settling PRP;

(v) Claims by any Work Party against any other Work Party relating to the internal allocation of costs among Work Parties;

(vi) Claims by any Work Party, Cash Out Settlor, Re-Opener Settlor or any other Party for breach of the separate confidential settlement agreement between the Work Parties and such Cash Out or Re-Opener Settlor or other Party;

(vii) Any claims by EPA or natural resources trustees; and

(viii) Solely with regard to the Re-Opener Settlors, any claim by the Work Parties for Response Costs to the extent the total Response Costs exceed forty million dollars ($40,000,000.00).

(c) Scope. The Mutual Covenant Not to Sue and Release extends to only the Mutually Released Parties and does not extend to any other person and does not pertain to any matters other than those expressly specified in this Consent Decree. Each of the Settling PRPs reserves, and this Consent Decree is without prejudice to, all rights against other Settling PRPs with respect to all other matters.

(d) Nothing in this Consent Decree 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).

(e) Certification by Settling PRPs. By signing this Consent Decree, each Settling PRP (except the United States as separately provided in (iv)) certifies, individually, that to the best of its knowledge and belief, it:

(i) has conducted a thorough, comprehensive, good faith search for documents and has fully and accurately disclosed to the Work Parties all information currently in its possession, or in the possession of its officers, directors, employees, contractors, or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation,

treatment, transportation, storage, or disposal of Hazardous Substance(s) at or in connection with the Site;

(ii) has not altered or deliberately mutilated, discarded, destroyed, or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

(iii) has and will comply fully with all Department or Work Party requests for information regarding the Site; and

(iv) the United States certifies, to the best of undersigned counsel's knowledge and belief, that it has not altered or deliberately mutilated, discarded, destroyed, or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site after notification of potential liability, and that it has searched for and complied in good faith with all Department or Work Party requests for information made to it relating the Site. Each of the Work Parties, to the best of its knowledge and belief, similarly certifies that it has complied in good faith with all requests for information made by the United States relating to the Site.

ARTICLE XXIV

EFFECT OF SETTLEMENT/CONTRIBUTION

88. Claims Against Non-Settlors. Except as expressly provided in this Consent Decree, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as expressly provided in this Consent Decree, 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 in this Consent Decree diminishes the right of the Department, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2), (3), to pursue any such persons to obtain additional response costs or Response Action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) and that are consistent with **Paragraphs 4** and **5**. Nor shall anything in this Consent Decree diminish the rights and authority of EPA or natural resources trustees to pursue any claims relating to the Site.

89. Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds:

(a) This Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling PRP has, as of the Effective Date (or, in the case of an Additional Settling PRP, as of filing with the Court the Consent Decree Acknowledgement as to such Additional Settling PRP), resolved liability to the Department within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "Matters Addressed" in this Consent Decree. The "Matters Addressed" in this Consent Decree are all Response Actions taken or to be taken and all Response Costs incurred or to be incurred, at or in connection with the Site, by the Department or any other person; provided, however, that if the Department exercises rights against Settling Parties under the reservations contained elsewhere in this Consent Decree, the "Matters Addressed" in this Consent Decree will no

longer include those Response Costs or Response Actions. The "Matters Addressed" also do not include any claims or potential claims by EPA or natural resources trustees.

(b) This Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Settling PRPs have, as of the Effective Date, resolved their liability to the Department for the Matters Addressed in this Consent Decree, provided the obligations of the Parties under this Consent Decree are met.

(c) The complaint filed by the Department in this Action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling PRP as of the Effective Date, resolved liability to the Department within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

90. Claims by Settling PRPs. Each Settling PRP shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the Department in writing no later than 60 days prior to the initiation of such suit or claim. This provision shall not apply to the EPA acting under its own federal regulatory oversight authority.

91. Claims Against Settling PRPs. Each Settling PRP (other than the United States) shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the Department within 10 days after service of the complaint on such Settling PRP. In addition, such Settling PRP shall notify the Department 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.

(a) Upon approval of this Consent Decree by the Court and so long as the Settling PRPs remain in compliance with this Consent Decree, the Settling PRPs shall not be liable to each other or any other person or entity for any claims, including claims for contribution, relating to the Matters Addressed herein of whatever kind and nature, including claims under §§ 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and non-CERCLA claims seeking, under other theories, responses or costs for Matters Addressed, except that the Work Parties may be liable to each other for claims arising from the internal allocation of costs among Work Parties.

(b) Each Settling PRP is entitled to, as of the Effective Date, protection from contribution actions or claims regarding Matters Addressed in this Consent Decree as provided in CERCLA §§ 113(f)(2) and 122(h), 42 U.S.C. §§ 9613(f)(2) and 9622(h), common law, and the HWMA, S.C. Code Ann. § 44-56-200.

Notwithstanding the foregoing, the Parties recognize and agree, and the Court finds, that this Consent Decree provides no release, discharge or contribution protection from (i) claims by the Parties against each other based on non-performance of any obligation arising under this Consent Decree or (ii) claims by the Department or any Work Party against any PRP that is not a party to this Consent Decree.

92. Representations as to CERCLA § 113(f)(3)(B) Contribution Right and § 107(a) Cost Recovery Right. The Department represents that:

(a) This Consent Decree is a judicially-approved resolution of liability under CERCLA § 113(f)(3)(B);

(b) The Department has authority to enforce HWMA and CERCLA and recover its Response Costs under CERCLA;

(c) In this Consent Decree, the Settling PRPs have agreed to undertake "some or all of the response actions," as that term is used in CERCLA § 113(f)(3)(B), by performing the Work and other activities described in this Consent Decree, the ROD, and the SOW;

(d) Upon execution and entry by the Court of this Consent Decree, the Settling PRPs are entitled to seek contribution from Non-Settlors pursuant to CERCLA §§ 113(f)(3)(B) for the Response Costs incurred in performing the Work and other activities described in this Consent Decree;

(e) In this Consent Decree, the Settling PRPs have agreed to pay "some or all of the costs" of a "response action," as those terms are used in CERCLA § 113(f)(3)(B), by making the payments called for by this Consent Decree;

(f) Upon execution and entry by the Court of this Consent Decree, the Settling PRPs and the Trustee are entitled to seek contribution or cost recovery from Non-Settlors pursuant to CERCLA §§ 113(f)(3)(B) or 107(a) for such payments made pursuant to this Consent Decree; the Department refrains from opining on whether all the costs incurred by the Settling PRPs meet the definition of Response Costs pursuant to CERCLA §§ 113(f)(3)(B) and 107(a);

(g) These causes of action are in addition to all other contribution causes of action provided under law, including the right granted by CERCLA § 113(f)(1); and

(h) The Settling PRPs are entitled under law to bring a claim of contribution and the Department is entitled under law to file a claim for cost recovery for its Response Costs against Non-Settlors.

93. Finding by the Court as to Contribution Rights. In addition to the Department, the Court finds that upon execution and entry by the Court of this Consent Decree, and so long as they each remain in compliance with the terms and obligations hereof, the Settling PRPs are entitled to seek contribution from Non-Settlors, pursuant to CERCLA §§ 113(f)(3)(B) for the Response Costs they have respectively incurred and will incur, including but not limited to (a) their costs incurred in fulfilling the obligations to perform and/or fund the Work and (b) their payments made pursuant to this Consent Decree to compensate other Parties in part for those other Parties' Response Costs. Furthermore, during or following this Action, the Settling PRPs are entitled to seek contribution from any other Non-Settlors pursuant to CERCLA § 113(f)(1).

94. Result of Limitation of Contribution and Cost Recovery Rights. The Parties acknowledge that the rights and remedies described in **Paragraphs 89**, **91**, **92** and **93** of this Consent Decree were a significant inducement for the Settling PRPs to enter into this Consent Decree. If any right or remedy under **Paragraphs 89**, **91**, **92** or **93** is substantively modified or limited, or declared void as to one or more Settling PRP by the Court in connection with its approval of this Consent Decree, then, at the option of such Settling PRP, this Consent Decree shall become null and void as to such Settling PRP and such Settling PRP shall be relieved of all obligations, release or assignments made under this Consent Decree and also will forfeit the corresponding benefits of the settlement.

ARTICLE XXV

NATURE OF THE SETTLEMENT

95. Result of Challenge to Consent Decree on Appeal. Notwithstanding any other provision of this Consent Decree, this Consent Decree shall be held in abeyance during the term of any appeal of this Consent Decree or the accompanying Order in the United States courts.

96. No Admission of Liability. The Settling PRPs specifically reserve the right to contest the Findings of Fact and Conclusions of Law set forth in the Court's Order accompanying this Consent Decree in any subsequent proceeding brought by a third-party regarding the Site or brought by the Department or the EPA not concerning enforcement of this Consent Decree. This Consent Decree shall be admissible in any enforcement action brought by any Party to enforce the terms of this Consent Decree, but may not be utilized by third-parties against any Party as proof of any allegations, findings, or conclusions contained herein. The Parties agree that nothing in this Consent Decree constitutes an admission of liability by any Settling PRP to the Department or any other person or entity or an admission as the recoverability of any alleged costs.

97. No Need to Answer Complaint. The Settling PRPs do not need to file an answer to the Complaint in the Action unless or until the Court expressly declines to enter this Consent Decree or the Court otherwise directs the Parties or certain Parties to answer the Complaint, or if the Parties or certain Parties determine it is in their best interest to respond to any claims, cross-claims, counterclaims, and/or motions.

98. Costs of Restitution and Compliance. The Work Parties assert the Work Parties' Response Costs associated with the Work Parties' remediation and reimbursement of the Department's Response Costs are costs of restitution and compliance under 26 U.S.C. § 162(f). By joining the Consent Decree, the United States does not admit and does not take a position on this issue with respect to any particular costs, which is a matter of federal law within the purview of the Internal Revenue Service.

ARTICLE XXVI

NECESSARY APPROVALS, LODGING, AND PUBLIC COMMENT

99. Public Comment; Approval by the Department. Consistent with CERCLA § 122(d), 42 U.S.C. § 9622(d), this Consent Decree shall be lodged with the Court and subject to a 30-day public comment period before it is entered into by the Department and entered into force as a Consent Decree by the Court. The Department reserves its rights to withdraw from the Consent Decree if comments regarding the Consent Decree made during such comment period disclose facts or considerations that indicate that this Consent Decree is not protective of the public health, welfare or the environment, inappropriate, improper, or inadequate. The Settling PRPs and the Trustee consent to the entry of this Consent Decree without further notice.

100. Result of Failure to Obtain Approval of Consent Decree; No Severability. The provisions of this Consent Decree are not severable. Notwithstanding any other provision of this Consent Decree, if

(a) the Court refuses to enter or materially alters the Parties' proposed Consent Decree;

(b) the Work Parties or the Department rejects this Consent Decree after public comment as contemplated in **Paragraph 99**;

(c) this Consent Decree or the accompanying Order are materially altered or reversed as a result of an appeal in the United States courts, or

(d) any material provision of this Consent Decree is found by a court of competent jurisdiction to be illegal, invalid or unenforceable,

this Consent Decree, at the option of any Party, shall become null and void as to such Party on such issue, and such Party shall be relieved of all obligations, releases or assignments made under

this Consent Decree, and the terms of this Consent Decree may not be used as evidence in any litigation between the Parties.

ARTICLE XXVII

AMENDMENT

101. Amendment.

(a) Amendment of Consent Decree Terms. Except as otherwise provided herein, this Consent Decree may be amended or modified only by the mutual consent of all the affected Parties and, if the amendment or modification is material, by all Parties. Any amendment of this Consent Decree shall be in writing, signed by counsel for the Department, counsel or liaison counsel for the Work Parties and, to the extent an affected party, by an authorized representative of each of the Cash Out Settlors and the Re-Opener Settlors, and shall have the effective date on which the last Party signed such amendment.

(b) Amendments as to Cash Out Settlors and Re-Opener Settlors. Notwithstanding the foregoing, amendments or modifications (whether material or nonmaterial) that do not affect the obligations of or the protections afforded to Cash Out Settlors and Re-Opener Settlors may be executed without the signatures of the Cash Out Settlors and Re-Opener Settlors.

(c) Filing of Consent Decree Acknowledgement; Additional Settling PRPs. Any Additional Settling PRP Consent Decree Acknowledgment executed by an Additional Settling PRP, the Department, and liaison counsel for the Work Parties, shall be submitted to the Court, along with a request by the Department and the Work Parties that this Consent Decree be modified through judicial approval to reflect the participation of such Additional Settling PRP as a Settling PRP under this Consent Decree. Such request will identify each

Additional Settling PRP as a Work Party, Cash Out Settlor, or Re-Opener Settlor. Upon approval of the Additional Settling PRP Consent Decree Acknowledgement, the Additional Settling PRP shall be added to the appropriate Appendix.

ARTICLE XXVIII

MISCELLANEOUS TERMS

102. Successors and Assigns.

(a) As to Settling PRPs. This Consent Decree shall be binding upon and inure to the benefit of the Settling PRPs, their parents, subsidiaries and affiliated corporations, successors, predecessors, and assigns (that are not otherwise independently liable as a Non-Settlor for the conditions at the Site). Any change in ownership or corporate status of a Settling PRP, including, but not limited to, any Transfer of assets or real or personal property, shall in no way alter such Settling PRP's responsibilities under this Consent Decree. Except as specifically provided herein, the Settling PRPs may not assign their rights or obligations under this Consent Decree without the prior written consent of the Department, which shall not be unreasonably withheld.

(b) As to the Department. This Consent Decree shall be binding upon and inure to the benefit of the Department, and each department, agency, and instrumentality of the South Carolina Department of Health and Environmental Control and each successor entity as to the Matters Addressed in this Consent Decree.

(c) As to the United States. This Consent Decree shall be binding upon and inure to the benefit of the United States, and each department, agency, and instrumentality of the United States and each successor entity as to the Matters Addressed in this Consent Decree.

103. Interpretation and Construction. No Party shall be considered to be the drafter of this Consent Decree or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Consent Decree.

104. Notice. Where this Consent Decree requires any Party to provide notice or any other communication or document to any other Party, such notice, communication, or document shall be provided by regular mail, by electronic mail (if followed by regular mail), or overnight delivery delivered to the following addresses (or at such other address for a Party as shall be specified by like notice):

(a) For the Department:

R. Gary Stewart, Section Manager
SC DHEC-BLWM
State Remediation Section
2600 Bull Street
Columbia, SC 29201
E-mail: stewarrg@dhec.sc.gov

Carol Crooks, Project Manager
SC DHEC-BLWM
State Remediation Section
2600 Bull Street
Columbia, SC 29201
E-mail: crookscl@dhec.sc.gov

With a copy to:

Jacquelyn S. Dickman, Esquire
SC DHEC
Office of General Counsel
2600 Bull Street
Columbia, SC 29201
E-mail: dickmajs@dhec.sc.gov

Kelly D. H. Lowry, Esquire
753 E. Main St, Suite 7
Spartanburg, SC 29302
(864) 921-8915
E-mail: kelly@kellydhlowry.com

(b) For the PRP Group, including the Work Parties, the Cash Out Settlors and the Re-Opener Settlors:

Emily S. Sherlock, Esquire
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon St, Suite 1900
Charlotte, NC 28246
E-mail: esherlock@robinsonbradshaw.com

(c) For the United States, including the Federal PRPs:

Section Chief, Environmental Defense Section
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
DJ # 90-11-6-17481
c/o Michael C. Augustini
E-mail: michael.augustini@usdoj.gov

For information purposes only, the Trustee's contact information is:

Robert A. Kerr, Jr., Esquire
Restoration & Redevelopment Solutions, LLC
Kerr Law Group, LLC
496 Bramson Court, Suite 100
Mount Pleasant, SC 29464
E-mail: robkerr@kerrlawsc.com

105. Governing Law. This Consent Decree shall be governed by and interpreted according to federal law, including CERCLA. The laws of the State of South Carolina, including HWMA, apply with respect to any claims based on State law.

106. Compliance with Applicable Law. All activities undertaken by Settling PRPs pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling PRPs must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW.

107. Entire Agreement. This Consent Decree constitutes the entire agreement between the Parties with respect to the resolution and settlement of the Matters Addressed. The Parties are not relying upon any representations, promises, understandings, or agreements except as expressly set forth within this Consent Decree. Any confidential settlement agreements between the Work Parties and any of the Cash Out Settlors, Re-Opener Settlors, Additional Settling PRPs, and any other Parties settling claims for Matters Addressed also are to be considered part of the settlement and this Consent Decree as between those parties.

108. Counterparts. This Consent Decree may be executed in multiple counterparts by the Parties and by the Court, and a facsimile signature or an electronically transmitted PDF image of a signature shall be deemed an original signature for purposes of executing this Consent Decree.

ARTICLE XXIX

SIGNATORIES, SERVICE, AND ENFORCEMENT

109. Authorized Representatives. Each undersigned representative of each Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and obligations of this Consent Decree and to execute and legally bind such Party to this document. Each Work Party as of the Effective Date has executed a Work Party Consent Decree Acknowledgement, which lists its affiliates that are PRPs and included in this Consent Decree as Settling PRPs. The Work Party Consent Decree Acknowledgements for all Work Parties as of the Effective Date are attached to this Consent Decree in **Appendix 1** and shall serve as such Work Parties' signature pages to this Consent Decree.

110. Signatures of Cash Out Settlors and Re-Opener Settlors. The Parties agree that the Cash Out Settlors and Re-Opener Settlors will not be required to execute this Consent Decree individually. Liaison counsel for the PRP Group will execute a certification that as of the Effective Date (a) the Parties listed on **Appendix 2** are Cash Out Settlors, (b) the Parties listed on **Appendix 3** are Re-Opener Settlors and (c) each such Cash Out Settlor and Re-Opener Settlor has entered a separate confidential settlement agreement with the Work Parties. Each of the Cash Out Settlors and Re-Opener Settlors shall be considered a Party to this Consent Decree and shall have all of the rights and privileges of such persons under this Consent Decree as if each had executed it individually.

111. No Opposition to Entry. Except as otherwise expressly provided herein, each Settling PRP agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the Department has notified the Settling PRPs in writing that it no longer supports entry of the Consent Decree.

112. Agent for Service of Process. Liaison counsel for the PRP Group shall be the agent for service of process for all Settling PRPs except for the United States. The Settling PRPs, other than the United States, agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The United States may be served in accordance with the Federal Rules of Civil Procedure and applicable law.

113. Enforcement of Consent Decree.

(a) Retention of Jurisdiction. The United States District Court for the District of South Carolina shall retain jurisdiction, and no other court shall have jurisdiction over the subject matter of this Action, the Consent Decree, and the Settling PRPs and as to the Trustee this Court and the United States Bankruptcy Court for the duration of the performance of the terms, provisions, and obligations of this Consent Decree for the purpose of issuing such further orders or directions as may be necessary or appropriate to construe, implement or enforce the terms and obligations of this Consent Decree or to resolve formal disputes in accordance with the Dispute Resolution provisions of this Consent Decree.

(b) Obligations of Work Parties. The obligations of the Work Parties to finance and perform the Work pursuant to this Consent Decree, the ROD, and the SOW, are joint and several. Notwithstanding the foregoing, the Department agrees to seek the fulfillment

of the promises and obligations made by the Work Parties in this Consent Decree first from the Work Parties as a group, and then from individual Work Parties only if the Work Parties as a group do not perform; provided, however, in the event a Work Party files for protection under the United States Bankruptcy Code, then the Department will have the right to seek injunctive relief against such Work Party to enforce the terms of this Consent Decree, and the Department will have no right or obligation to seek monetary relief against such Work Party.

(c) Final Judgment. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties. The Parties acknowledge that there are no representations, agreements, or understanding relating to the settlement other than those expressly contained in this Consent Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Parties. Each Settling Party shall bear its own litigation and administrative costs and expenses, including attorneys' fees. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

AND IT IS SO ORDERED.

This ____ day of _____, 2022.

_____

_____
United States District Court Judge

[*Separate signature pages for each of the Parties follow*.]

THE DEPARTMENT:

South Carolina Department of Health and Environmental Control

By:_____
Name:_____
Title:_____

THE UNITED STATES OF AMERICA:

By:_____
MICHAEL C. AUGUSTINI
Senior Trial Counsel
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 616-6519
michael.augustini@usdoj.gov

Appendix 1

Work Parties

[Work Party Consent Decree Acknowledgements for all Work Parties as of the Effective Date and a list of such parties attached.]

WORK PARTY CONSENT DECREE ACKNOWLEDGEMENT

The undersigned Work Party wishes to join as a Party to that certain settlement and Consent Decree, to be approved and entered as an order by the United States District Court for the District of South Carolina (as it may be amended from time to time, "Consent Decree"), between the South Carolina Department of Health and Environmental Control, the Philip Services Site PRP Group (consisting of certain Work Parties, certain Cash Out Settlors and certain Re-Opener Settlors) and the United States of America. Capitalized terms not otherwise defined herein have the meanings assigned to such terms in the Consent Decree.

By signing this Work Party Consent Decree Acknowledgement, the undersigned, together with any of its subsidiaries, divisions, sister-companies and other affiliates that are PRPs and identified on the attachment to this Work Party Consent Decree Acknowledgement (its "Affiliates"), shall be deemed a member of the class of Settling PRPs identified as Work Parties for all purposes under the Consent Decree and hereby accepts and agrees on behalf of itself and each of its Affiliates to be a Party to and bound by and to perform all of the terms and provisions of the Consent Decree.

The below signatory is authorized to execute this Work Party Consent Decree Acknowledgement on behalf of the identified Work Party and each of its Affiliates.

Dated this _____ day of _____, 2022.

WORK PARTY:

_____

PRP Name

By: _____

Name: _____

Title: _____

Attachment to Work Party Consent Decree Acknowledgement

List of Affiliates on behalf of which the above-signed Work Party executes this Work Party Consent Decree Acknowledgement:

WORK PARTY:

_____,
[legal name of company]

a _____ _____,
[state of incorporation/ organization] [type of organization]

located at _____
[address]

#	PRP NAME(S) ON MANIFESTS	EPA ID#

Appendix 2

Cash Out Settlors

[List attached]

Appendix 3

Re-Opener Settlors

[List attached]

Appendix 4

ROD

[attached]

Appendix 5

Facility Property Description

Tax Map Serial Numbers 532-01-01-005 (approximately 18 acres), 532-01-01-006 (approximately 2.83 acres), 532-01-01-007 (approximately 25 acres), 603-02-01-003 (approximately 93.7 acres)

TRACT 1. ALL that certain piece, parcel or tract of land lying in the State of South Carolina, County of York, about 3¾ miles southwest of Rock Hill, and being more particularly described as follows: Beginning at a stake in the center of the intersection of Southern Railroad and County Road at Nazarene Church, and running thence with center of the County Road S. 82-08 E. 200 feet, S. 69-12 E. 500 feet, S. 61-15 E. 125 feet and S. 44-34 E. 159 feet to stake in center of bridge over Tool's Fork Creek; thence with Creek as follows: S. 85-30 W. 108 feet, N. 75-30 W. 150 feet, S. 63 W. 175 feet, S. 1-15 W. 129 feet, S. 67-30 W. 87 feet, and S. 72 W. 68 feet; thence with center of Southern Railroad N. 41-30 E. 757 feet to the beginning, containing 18 acres, more or less, and shown on plat of property of Marvin R. Johnson prepared by Leonard H. Patterson, R.L.S. 1 November, 1966.

TRACT 2. ALL that certain piece, parcel or tract of land lying, being and situate in the State of South Carolina, County of York, Catawba Township, located about 4 miles southwest of the City of Rock Hill, and being more particularly described as follows: Beginning at a stake in the center of the Southern Railway tracks, corner of tract recently conveyed to Industrial Chemical Company, Inc., and running thence with the line of said tract S. 48-30 E. 880 feet to center of Tool's Fork Creek; thence with center of Creek S. 84-30 W. 114 feet and S. 81-30 W. 86 feet; thence with new division line N. 48-30 W. 763 feet to stake in center of Railroad; thence with center of Railroad N. 41-30 E. 150 feet to the beginning, containing 2.83 acres, more of less, and being shown on map of property of Marvin R Johnson prepared by Leonard H. Patterson, R.L.S., 15 May, 1967.

TRACT 3. ALL that certain piece, parcel or tract of land situate, lying and being in Bethesda Township, York County, south Carolina, and being more particularly described as follows: BEGINNING at a point in the center of Southern Railway right-of-way, said beginning point being a joint corner of the property herein described and a tract conveyed to Industrial Chemical Company by deed recorded in Book 541, Page 696, running thence with the line dividing the two parcels S. 50 15 E. 763 feet to a point in center of Tool's Fork Creek (Note: this line was given as S. 48 30 E. 880 feet on the above mentioned deed); thence with the centerline of Tool's Fork Creek in a southerly direction and with the meanders of said creek 1,906.5 feet to the point where the centerline of Tool's Fork Creek intersects the centerline of Fishing Creek; thence with the centerline of Fishing Creek in a westerly direction and with the meanders of said creek 1.840 feet to the point where the centerline of said creek intersects the centerline of Southern Railway right-of-way; thence with the centerline of Southern Railway's right-of-way N. 39 45 E. 858 feet to the point of beginning.

Containing 25 acres, more or less, and being more fully shown and designated according to a plat thereof entitled "Property of Star Paper Tube Co., Inc", dated December 26, 1969, drawn by R H. Marrett, RS.

Together with all that piece, parcel, and lot of land lying, and being situate on Robertson Road in Catawba Township, York County, S.C., and being shown on a survey entitled "Piedmont Analytical, Inc." prepared by Hucks and Associates, Inc. Land Surveying and Land Planners dated

August 2, 1990, containing 108.308 acres more or less, recorded in Plat Book 105, at Page 169; reference is made to said plat for a more complete description of the premises. (TMS #603-02-01-003

Derivation: The within parcels were a portion of the real properties conveyed to Restoration & Redevelopment Solutions, LLC by way of Corrective Quit-Claim deed transferring the properties from Thermalkem, Inc., f/k/a Stablex South Carolina, Inc. on December 31, 2003, and recorded in the County of York in Deed Book 6044 at page 223. This Quit-Claim deed corrected the Quit-Claim Deed recorded at Book 5968 at page 145.

Appendix 6

SOW

[attached]

Appendix 7

ADDITIONAL SETTLING PRP CONSENT DECREE ACKNOWLEDGEMENT

The undersigned Additional Settling PRP wishes to join as a Party to that certain judicially-approved settlement and Consent Decree, approved and entered as an order by the United States District Court for the District of South Carolina on _____, 2022 (as it may be amended from time to time, "Consent Decree"), between the South Carolina Department of Health and Environmental Control, the Philip Services Site PRP Group and the United States of America. The Settling PRPs are made up of three different subgroups: Work Parties, Cash Out Settlors, and Re-Opener Settlors. Capitalized terms not otherwise defined herein have the meanings assigned to such terms in the Consent Decree.

By signing this Additional Settling PRP Consent Decree Acknowledgement, the undersigned, together with any of its subsidiaries, divisions, sister-companies and other affiliates that are PRPs and identified on the attachment to this Additional Settling PRP Consent Decree Acknowledgement (its "Affiliates"), shall be deemed a member of the class of Settling PRPs identified below for all purposes under the Consent Decree and hereby accepts and agrees on behalf of itself and each of its Affiliates to be a Party to and bound by and to perform all of the terms and provisions of the Consent Decree.

For purposes of the Consent Decree at **Paragraph 5**, the undersigned Additional Settling PRP, together with its Affiliates, is hereby designated as (check one):

_____ Work Party

_____ Cash Out Settlor

_____ Re-Opener Settlor

The below signatory is authorized to execute this Additional Settling PRP Consent Decree Acknowledgement on behalf of the identified Additional Settling PRP and each of its Affiliates.

Dated this _____ day of _____, 20___.

ADDITIONAL SETTLING PRP:

_____
PRP Name

By:_____

Name:_____

Title:_____

WORK PARTIES:

Philip Services Site PRP Group

By:_____
Name:_____
Title:_____

THE DEPARTMENT:

South Carolina Department of Health and Environmental Control

By:_____
Name:_____
Title:_____

Attachment to Additional Settling PRP Consent Decree Acknowledgement

List of Affiliates on behalf of which the above-signed Additional Settling PRP executes this Additional Settling PRP Consent Decree Acknowledgement:

ADDITIONAL SETTLING PRP:

_____,
[legal name of company]

a _____ _____,
[state of incorporation/ organization] [type of organization]

located at _____
[address]

#	PRP NAME(S) ON MANIFESTS	EPA ID#

Appendix 8

FORM OF
FINANCIAL ASSURANCE MECHANISM
GUARANTEE OF PAYMENT & PERFORMANCE TRUST AGREEMENT