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PREAMBLE

It is agreed to by the Parties hereto as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to Browning-Ferris Industries of Ohio, Inc., ("Work Respondent") George and Patricia M. Kyprianou, and the Arthur A. and Margaret Catherine Horvath Revocable Trust (collectively, "Landowner Respondents"), pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03, and 3745.01. This Administrative and Cost Recovery Settlement Agreement is entered into by the Parties pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9607, and ORC §3745.01. Respondents consent to and agree not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondents where required in the Orders for the individual requirements of the Work Respondent and individual requirements of the Landowner Respondents, and their successors in interest liable under Ohio law.

3. No change in ownership or legal status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in any way alter Respondents' obligations under these Orders.

4. Work Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the Work performed pursuant to these Orders, within fourteen (14) days of the effective date of these Orders or upon date of retention. Work Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform the Work pursuant to these Orders also comply with the applicable provisions of these Orders.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111, CERCLA, and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

- a. "1990 Orders" means the Director's Final Findings and Orders entered into by Ohio EPA, General Motors Corporation, General Electric Company, and George Kyprianou on September 7, 1990 for the purpose of conducting an investigation and implementing interim corrective measures to mitigate leachate discharge from the facility to surface waters of the State.
- b. "2010 Orders" means the Director's Final Findings and Orders entered into by Browning-Ferris Industries of Ohio, Inc., George and Patricia M. Kyprianou, and the Arthur A. and Margaret Catherine Horvath Revocable Trust on April 15, 2010 for purposes of conducting a remedial investigation and feasibility study.
- c. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.
- d. "Contaminant" and "Contamination" mean (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC § 6111.01(C); and/or (3) any "other wastes" under ORC § 6111.01(D), including any release of one or more of the same.
- e. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.
- f. "Decision Document" means the document detailing the remedial action selected by Ohio EPA for the Site as set forth in the document attached to these Orders as Appendix A.
- g. "Environmental Covenant" means a servitude arising under an environmental response project that imposes activity and use limitations and that meets the requirements established in ORC § 5301.82.
- h. "Feasibility Study" ("FS") means a study undertaken to develop and evaluate options for remedial action. The FS is generally performed concurrently and in an interactive fashion with the Remedial Investigation. The term also refers to a report that describes the results of the study.
- i. "Landowner Respondents" mean George and Patricia M. Kyprianou (Kyprianous), and the Arthur A. and Margaret Catherine Horvath Revocable Trust (Horvath Trust).
- j. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

- k. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- l. "Orders" means these Director's Final Findings and Orders and all appendices hereto.
- m. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- n. "Parties" means Respondents and Ohio EPA.
- o. "Remedial Action" ("RA") means those activities to be undertaken in order to implement and maintain the effectiveness of the final plans and specifications pursuant to the Remedial Design and Remedial Action Work Plan.
- p. "Remedial Design" ("RD") means those activities to be undertaken by the Work Respondent to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.
- q. "Remedial Design Work Plan" ("RD Work Plan") means the document submitted by the Work Respondent and approved by Ohio EPA pursuant to the Performance of Work Section of these Orders.
- r. "Remedial Investigation" ("RI") means a process undertaken to determine the nature and extent of the Contamination at the Site. The RI emphasizes data collection and Site Characterization, and is generally performed concurrently and in an interactive fashion with the Feasibility Study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives. The term also refers to a report that describes the results of the investigation.
- s. "Respondents" means Work Respondent and Landowner Respondents.
- t. "Response Costs" means all costs incurred by Ohio EPA including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
- u. "Section" means a portion of these Orders identified by a roman numeral.
- v. "Site" means the former Hilltop Landfill, aka Old Toth Landfill, located off of Akron Canfield Road in Canfield, Ellsworth Township, Mahoning County, Ohio where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge

to waters of the State of industrial waste or other wastes have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

- w. "Statement of Work" ("SOW") means the "Statement of Work for Conducting Remedial Design at the Site, as set forth in Appendix B of these Orders.
- x. "Supporting Documents" means the field sampling plan ("FSP"), quality assurance project plan ("QAPP") and health and safety plan ("HASP") developed concurrently with the RD Work Plan pursuant to these Orders and Section 4 of the SOW.
- y. "Transferee" means any future owner of any interest in the Site, including but not limited to, owners of an interest in fee simple, mortgagors, easement holders, and lessees.
- z. "Work" means all activities Work Respondent is required to perform under the Performance of the Work by Work Respondent and Additional Work Sections of these Orders.
- aa. "Work Respondent" means Browning-Ferris Industries of Ohio, Inc.

IV. FINDINGS

- 6. The Director of Ohio EPA has made the following findings:
 - a. Hilltop Landfill, a.k.a. Old Toth Landfill, is located in Canfield, Ellsworth Township, Mahoning County, on approximately twenty acres of land covering portions of two Mahoning County parcels. Parcel number 25-044-0-011.00-0 totals 23.714 acres and is located on Akron Canfield Road in Canfield, Ohio, according to the Mahoning County Auditor. Parcel number 25-044-0-014.02-0 is approximately 21.176 acres and is located on W. Akron Canfield Road, Canfield, Ohio, according to the Mahoning County Auditor.
 - b. The Hilltop Landfill property was leased to Toth and Company, Inc., by Maurice Jones and Steven Jasecko. Upon Mr. Jasecko's death, the land was divided and sold.
 - c. Arthur A. and Margaret C. Horvath, currently residing at 1257 Marywood Lane #315 in Richmond, Virginia, purchased property including parcel 25-044-0-014.01-0 on March 3, 1971. The Horvath's transferred the property via quit-claim deed on February 13, 2003 to the Arthur A. and Margaret Catherine Horvath Revocable Trust, with Arthur Horvath serving as trustee. Parcel 25-044-0-014.01-0 was replatted on July 13, 2009 to exclude the landfill area. A new parcel number, 25-044-0-014.02-0, was assigned to the parcel that includes the

landfill portion of the property¹. Parcel 25-044-0-011.00-0² was sold on June 3, 1977 to George and Patricia M. Kyprianou, currently residing at 210 Glenview Road in Canfield, Ohio. Based on data gathered during the remedial investigations, Parcel number 26-010-0-001.03.0, owned by the Arthur A. and Margaret Catherine Horvath Revocable Trust, is not considered part of the Hilltop Landfill Site and is not subject to these Orders.

- d. Purchase of the land owned by Mr. Horvath was made while the landfill was in operation. At the time Mr. Horvath purchased the land, it was subject to a pre-existing lease with Toth and Company, Inc. executed by Maurice Jones and Steven Jasecko. Mr. Horvath retained the lease agreement with Toth and Company, Inc. until it expired in 1972, and declined requests from Toth and Company, Inc. to renew the lease. The land presently owned by Mr. and Mrs. Kyprianou was purchased subsequent to the closing of the Hilltop Landfill.
- e. The Hilltop Landfill was first licensed in 1969 by the Mahoning County Board of Health and ceased acceptance of waste before July 29, 1976; therefore, it is governed under applicable solid waste laws and regulations prior to July 29, 1976. The landfill was formerly a coal strip mine and was mined to a depth of approximately sixty (60) feet.
- f. The Hilltop Landfill is a facility as the term is defined in Ohio Revised Code (ORC) Section 3734.01(N).
- g. From 1969 until before July 29, 1976, the landfill accepted dead animals, household, commercial, agricultural, industrial, institutional, and construction waste. Inspection reports completed by the Mahoning County Board of Health in the late 1960's and early 1970's indicated the presence of water in the landfill pit. These same reports indicated a lack of daily cover.
- h. In addition to the materials stated above, reports and documents written during the time the landfill was licensed to operate indicated that paint sludge, draining's from paint pits, polychlorinated biphenyls (PCBs), and other solid and liquid hazardous wastes may have been accepted and/or disposed of at the Hilltop Landfill.
- i. Based on site observations in 1990, the landfill appeared to have a cover comprised of silty clays to clayey sand, which supported grassy vegetation. Several areas were however, non-vegetated, indicating the possible migration of landfill gas through the cap. No access restrictions were in place. The landfill surface was used for the grazing of livestock.

¹ The landfill area is only a portion of parcel 25-044-0-014.02-0. See Appendix E (Site Map).

² The Kyprianou property that was the subject of the 1997 sale was a larger property with a parcel number of 25-044-011.00-0. The property was subdivided in 2010 and a parcel number of 25-044-0-011.00-0 was assigned to the parcel containing the landfill area.

- j. Located along the east/northeast border of the Site is an unnamed tributary which flows north into a private pond, then owned by Mr. Mark Yelic, 8677 Palmyra Road, Canfield, Ohio. The pond is located approximately $\frac{3}{4}$ of a mile downstream of the landfill. From the pond, water flows into Palmyra Lake. Approximately two (2) river miles downstream from the landfill is Meander Creek reservoir, the water supply source for neighboring communities.
- k. On August 2, 1985, Ohio EPA investigated a water pollution complaint from Mr. Yelic. Ohio EPA sampled a leachate outbreak from the northeast corner of the landfill, on Mr. Horvath's property. The leachate was black and foul smelling and covered an area about 15 feet wide. High levels of phenolics (8360 ug/L) and ammonia (170 mg/L) were detected in the leachate.
- l. Leachate samples were collected by Ohio EPA on February 23, 1990. Several chemicals, including ethylbenzene, toluene, xylenes, diethylphthalate, barium and zinc were detected above surface water quality standards.
- m. Director's Final Findings and Orders ("1990 Orders") were issued on September 7, 1990 pursuant to Sections 3734.13, 3734.20 and 6111.03 of the Ohio Revised Code (ORC). General Motors (GM), General Electric Company (GE) and Mr. George Kyprianou entered into the 1990 Orders to investigate and implement interim corrective measures to mitigate leachate discharge from the facility to surface waters of the State.
- n. In November 1992, Ohio EPA approved the (October 1992) Interim Corrective Measures, Phase I — Additional Investigations Work Plan to install a temporary leachate collection system, two point source leachate collection systems at the major visual seeps and a holding tank. Test trenches were also excavated to delineate the areal limits of landfill waste. These activities were conducted from 1992 to 1993.
- o. In subsequent site visits in 1993, Ohio EPA noted extensive leachate outbreaks on and emanating from the landfill and ponding on the landfill. Leachate spillage was noted where tank piping was coupled and/ or uncoupled to pump leachate. GM and GE installed an additional collection trench between the two point source leachate systems and repaired the south point source leachate collection system to address leachate seeps and outbreaks in the area.
- p. In October 1993, a temporary gravel access road was constructed from U.S. Route 224 to the two point source leachate collection systems at the north end of the landfill, to eliminate the need to pump leachate to the highway for pickup. The road was constructed directly on the surface of the landfill, on a compacted fill base overlain by geotextile filter fabric.
- q. During a site visit by Ohio EPA on April 15, 1994, leachate outbreaks were observed along the western, eastern and northern boundaries of the landfill

perimeter. Leachate was also observed flowing into the unnamed tributary along the northern side.

- r. In a letter dated June 12, 1995, from BFIOH to Ohio EPA, BFIOH stated, "BFIOH's investigation indicates that the entity allegedly involved at the Site is a transporter called Trumbull Sanitary Land Fill, Inc. (Trumbull). Browning-Ferris Industries, Inc. acquired all of the outstanding stock of Trumbull on February 23, 1973. On October 1, 1973, Trumbull was merged into BFIOH." Previously, in a letter dated August 6, 1998, Michael L. Miller, Director of CERCLA Activities for BFI stated in response to a letter from Ohio EPA, "...BFIOH is willing to participate in Consent Order negotiations regarding a remedial action for the Hilltop Landfill." Trumbull was one of several transporters that carried waste to the Site. Neither Trumbull nor BFIOH ever owned or operated the Site.
- s. Ground water samples collected in 1996, 2001 and 2002 documented the presence of volatile organic compounds (VOCs) above the maximum contaminant levels (MCLs). Contamination above the water quality criteria (WQC) was documented in leachate samples periodically collected from 1992 to 2010 from the holding tank and the north and south tanks in proximity to the unnamed creek.
- t. As of 2002, leachate generated from the Site is being shipped to the city of Alliance waste water treatment plant for disposal.
- u. In September 2002, the Mahoning County Health Department, with assistance from Ohio EPA, sampled surface water and sediment in the unnamed tributary adjacent to the landfill. Ammonia was detected at 14.6 mg/L, above site-specific water quality criteria, in the surface water sample closest to the leachate collection system area.
- v. In May 2004, wet areas were sampled by Ohio EPA on the surface of and along the eastern and western edges of the landfill. Organic chemicals detected in the wet areas were similar to those that had been detected in the leachate.
- w. In November 2004 GM proposed to fill low areas on the existing cover and re-grade as necessary to promote positive drainage off and away from the landfill. In October 2005, CRA submitted a Soil Cover Enhancements Work Plan behalf of GM, supported by a Storm Water Pollution Prevention Plan to perform this task. The Work Plan was approved by Ohio EPA on October 25, 2005, and was completed in December 2006.
- x. In June 2006 CRA submitted and Ohio EPA approved a MW-17 Groundwater Investigation Work Plan to install additional wells to investigate the potential for contaminant migration in the overburden ground water in the vicinity of monitoring well MW-17 in proximity to the north-west property boundary. The wells were sampled in July to August 2006 and again in June 2007. VOCs

detected in ground water were below site screening standards except in MW-17. Trichloroethylene and vinyl chloride were detected at concentrations above MCLs in MW-17 in the July-August 2006 sampling event; vinyl chloride was also above the MCL in the June 2007 sampling event.

- y. Leachate and surface water samples were collected in October 2006 and June 2007, respectively. Leachate data from the south and north tanks indicated that certain VOCs and pesticides including ethylbenzene, xylenes, isopropylbenzene, 4, 4-DDE, heptachlor, and beta-BHC were above WQC. Ammonia was detected at 68 mg/L and 72 mg/L, above the site-specific standard of 1.1 to 5.6 mg/L, developed by CRA and the contractors to GM to support discussions on the remedy.
- z. Over the years, spills and releases from the leachate collection system have been noted including but not limited to: a January 12-13, 1994 spill from the south point source leachate collection system; a July 3, 2003 leak from the north storage tank; and a release from Tank 1 in October 2007.
- aa. Ohio EPA completed a review of the project file in March 2008 and provided a letter to GM dated April 8, 2008, which outlined a list of data that needed to be addressed in order to complete the remedial investigation/feasibility study (RI/FS) process. CRA, GM's consultant, responded to the April 8, 2008 letter from Ohio EPA with a letter dated April 30, 2008. In that letter, CRA provided a summary of the planned work activities to address the data gaps identified by Ohio EPA. In correspondence dated May 13, 2008, Ohio EPA acknowledged receipt of additional information provided by CRA to address the data gaps identified in earlier correspondence.
- bb. On April 8, 2009, CRA submitted the Pre-Investigation Evaluation Report (PER) for the Site. The PER summarized work completed and the planned work to address the data gaps identified by Ohio EPA, and formed the basis for the RI/FS Work Plan as required under the Orders. Ohio EPA reviewed and commented on the PER, and the PER was updated and provided to Ohio EPA on June 3, 2009. It was agreed upon that the PER would be subject to approval by Ohio EPA once it had been incorporated into the RI/FS Work Plan.
- cc. On June 1, 2009, General Motors Corporation filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. After the filing of the bankruptcy action, GM ceased to participate in the negotiation of the 2010 RI/FS Orders.
- dd. On September 1, 2009, Motors Liquidation Company issued a notice to Ohio EPA that GM was no longer capable of collecting and disposing leachate generated at the Site, as required by the 1990 Orders. Since September 30, 2009, GE has been collecting and appropriately disposing of leachate generated at the Site as per the provisions of the 1990 Orders.

- ee. On April 15, 2010, the Director of Ohio EPA issued Director's Final Findings and Orders to BFIOH as the only Work Respondent to perform a remedial investigation and feasibility study (RI/FS) at the Site to address the data gaps identified by Ohio EPA, and based on the RI conclusions, to develop remedial alternatives.
- ff. On May 28, 2010, CRA on behalf of BFIOH, submitted an RI/FS Work Plan. Ohio EPA reviewed and commented on the Work Plan, which was revised in response to the comments. The final RI/FS Work Plan, which incorporated the PER, was submitted on September 3, 2010 and approved by the Agency on September 13, 2010.
- gg. The State of Ohio ("State") and Motors Liquidation Company (fka General Motors Corporation) reached a settlement on March 12, 2012, of the State's bankruptcy claim in the MLC bankruptcy. The *Stipulation and Settlement Resolving Certain Claims Filed on Behalf of the Ohio EPA* included an allowed general unsecured claim of \$1,601,565 for the Hilltop Landfill site, pursuant to the approved reorganization plan. After the reduction of the payout percentage and the subsequent receipt and sale of stock, Ohio EPA received a payment of \$366,426.26, designated for implementation of future cleanup activities. \$100,000 of this funding will be made available to Work Respondent for Work performed pursuant to these Orders, pursuant to the Reimbursement from Motors Liquidation Company Fund Section of these Orders. \$60,131.58 of this funding will also be used to pay RD response costs incurred by Ohio EPA through and including March 31, 2015. The remainder of this designated funding will be reserved for the RA portion of remediation at the Site.
- hh. The remedial investigations conducted under the RI/FS Work Plan concluded that the source of contamination at the Site is the landfilled waste and leachate. The RI documented that leachate outbreaks and/ or seeps have been detected on the landfill cover and are emanating from the landfill. Leachate seeps were also documented entering surface waters of the State in at least one location (i.e., the unnamed creek on the north end of the landfill). Site-related contamination has been documented in ground water in the unconsolidated material and bedrock; ground water in the unconsolidated material in the north-west corner of the Site is above potable use standards such as the maximum contaminant levels (MCLs) in a limited area in at least one monitoring well. Areas of the landfill also lack 2 feet of soil cover. The RI was approved by Ohio EPA on March 22, 2012.
- ii. Based on the conclusions of the RI, potential remedial alternatives were evaluated in the FS, submitted by CRA on behalf of BFIOH to Ohio EPA on October 31, 2012. The FS was revised in response to the Agency's comments and the final FS was approved by Ohio EPA on December 5, 2013.

- jj. On May 6, 2014, Ohio EPA notified the public of its Preferred Plan for remediation of the Site and solicited public comments. The Preferred Plan summarizes the information presented in the RI and FS prepared by CRA on behalf of BFIOH and identifies and explains Ohio EPA's preferred alternative for the remedial action at the Site.
- kk. The preferred remedial alternative will protect human health and the environment by preventing direct-contact exposures to waste and waste products such as leachate; contaminated ground water; and potentially contaminated soil gas. Remedy components include the following elements:
 - a. Landfill cover improvements and packing of leachate seep/ breakouts;
 - b. Expansion of the leachate collection system to capture leachate emanating from the landfill;
 - c. Treatment of the leachate, via an engineered wetland supplemented by a phytocap, to standards that will permit discharge to the creek;
 - d. Restrictions on ground water use unless it can be demonstrated that ground water meets potable use standards;
 - e. Restrictions on the construction of occupied structures unless it can be demonstrated that soil gas does not pose a risk above acceptable levels; and
 - f. Institutional controls memorialized in an environmental covenant.
- ll. On May 29, 2014, Ohio EPA held a public meeting and hearing on the Preferred Plan. The public comment period ended on June 6, 2014. Ohio EPA responded to the public comments in a responsiveness summary dated September 10, 2014.
- mm. On September 10, 2014, Ohio EPA issued a Decision Document, which selected the remedy for the Site. The Decision Document is attached hereto as Appendix A, and incorporated by reference herein. Ohio EPA's response to public comments is included in the Decision Document (Section 8).
- nn. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.
- oo. Barium; Cadmium; Nickel; Lead; Zinc; Phenol; Vinyl Chloride; 1,1 Dichloroethane; 1,2 Dichloroethane; Trichloroethane; Benzene; Tetrachloroethane; Toluene; Ethylbenzene; and Xylenes, among other substances found at the Site, are "Contaminants" or "Contamination."
- pp. The discharge, deposit, injection, dumping, leaking, spilling, or placing of Barium; Cadmium; Nickel; Lead; Zinc; Phenol; Vinyl Chloride; 1,1 Dichloroethane; 1,2 Dichloroethane; Trichloroethane; Benzene; Tetrachloroethane; Toluene; Ethyl Benzene; Xylenes and/or other substances into or onto the soil, ground water,

and surface water at or from the Hilltop Landfill constitutes “disposal” of hazardous waste as defined in ORC Section 3734.01(F).

- qq. Because of their quantity, concentration, physical or chemical characteristics, the Contaminants found at the Site are “hazardous waste” as defined under ORC § 3734.01(J).
- rr. The Contaminants found at the Site are “industrial waste” or “other wastes” as defined under ORC §§ 6111.01(C) and (D).
- ss. The ground and surface waters at the Site are “waters of the state” as defined in ORC § 6111.01(H).
- tt. As of March 31, 2015 Ohio EPA has incurred \$60,131.58 in Response Costs. All Response Costs associated with this Site after March 31, 2015 will be deferred to a future RA Order.
- uu. Work Respondent is a “person” as defined under ORC §§ 3734.01(G) and 6111.01(I).
- vv. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC § 3734.20(B).
- ww. The migration and threatened migration of Contaminants to ground water, or surface water at or from the Site constitute a discharge to “waters of the State,” as defined in ORC § 6111.01(H).
- xx. The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of Contaminants to waters of the State.
- yy. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the state to be derived from such compliance.
- zz. The actions to be taken pursuant to these Orders are reasonable and necessary to protect the public health or safety or the environment as provided in ORC § 3734.20.

V. GENERAL PROVISIONS

7. Objectives of the Parties

The objectives of the Parties in entering into these Orders are to protect public health and safety and the environment from the disposal, discharge, or release of Contaminants through design of the remedy by the Work Respondent as set forth in the Decision Document, and in accordance with these Orders.

8. Commitment of Work Respondent

Work Respondent agrees to perform the Work in accordance with these Orders including but not limited to the SOW, all relevant guidance documents, and all standards, specifications, and schedules as approved by Ohio EPA pursuant to these Orders.

9. Compliance With Law

- a. All activities undertaken by the Work Respondent pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations, and in a manner consistent with the NCP.
- b. Ohio EPA expects that activities conducted pursuant to these Orders, if approved by Ohio EPA, would be considered necessary and consistent with the NCP.
- c. Where any portion of the Work requires a permit, license or other authorization from Ohio EPA or any other state, federal or local government agency, the Work Respondent shall submit applications in a timely manner and take all other actions necessary to obtain such permit, license or other authorization. These Orders are not, and shall not be construed to be a permit, license or other authorization issued pursuant to any statute or regulation.

VI. PERFORMANCE OF THE WORK BY WORK RESPONDENT

10. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation and remediation. Prior to the initiation of the Work, Work Respondent shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in performing the Work under these Orders.

11. Remedial Design

a. RD project initiation meeting. Within fourteen (14) days of the effective date of these Orders, unless otherwise mutually agreed to by the Parties, Work Respondent shall meet with Ohio EPA to discuss the requirements of the RD Work Plan.

b. Submission of RD Work Plan. Within sixty (60) days after the effective date of these Orders, unless otherwise mutually agreed to by the Parties, Work Respondent shall submit to Ohio EPA a RD Work Plan and a schedule for implementation of the Work required under this Section of these Orders. The RD Work Plan shall provide for the design, construction, and operation and maintenance of the remedy as set forth in the Decision Document. A Pre-Design Studies Plan for additional studies to support the RD Work Plan may also be submitted prior to the RD Work Plan or as an appendix to the RD Work Plan. If the Pre-Design Studies Plan is submitted prior to the RD Work Plan, the Pre-Design Studies Plan shall include a schedule for conducting the Pre-Design Studies and submitting the RD Work Plan, in which case the RD Work Plan may be submitted more than sixty (60) days after the effective date of these Orders.

c. Criteria for RD Work Plan development. The RD Work Plan, Supporting Documents, and any other deliverables required under the approved RD Work Plan shall be developed in conformance with the RD SOW contained in Appendix B of these Orders, and the relevant/appropriate guidance documents listed in Appendix C of these Orders. The RD Work Plan shall include a proposed schedule that includes a completion date for each task. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the RD, Ohio EPA will notify Work Respondent, and the RD Work Plan and other affected documents shall be modified accordingly.

d. Handling any inconsistencies. Should Work Respondent identify any inconsistency between any of the laws and regulations and guidance documents that Work Respondent is required to follow by these Orders; Work Respondent shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistency upon the Work to be performed. Work Respondent shall also recommend, along with a supportable rationale justifying each recommendation, the law, regulation, or guidance that Work Respondent believes should be followed. Work Respondent shall implement the affected Work as directed in writing by Ohio EPA.

e. Review of RD Work Plan. Ohio EPA will review the RD Work Plan and Supporting Documents³ pursuant to the procedures set forth in the Review of Submissions Section of these Orders.

f. Implementation of the RD Work Plan. Upon Ohio EPA's approval of the RD Work Plan, Work Respondent shall implement the RD Work Plan as approved. Work Respondent shall submit all plans, reports, or other deliverables required under the

³ The Health and Safety Plan is a Supporting Document.

approved RD Work Plan, in accordance with the approved schedule, for Ohio EPA's review and approval pursuant to the Review of Submissions Section of these Orders.

VII. LAND USE AND CONVEYANCE OF TITLE

12. Deed Notices

Within thirty (30) days after the effective date of these Orders, the Landowner Respondents shall record with the County Recorder's Office for Mahoning County, Ohio, deed notices for the real property owned by the Landowner Respondents that is subject to these Orders. The deed notices shall be consistent with the template contained in Appendix D and shall be approved by Ohio EPA. The deed notices shall reference the existence of these Orders and the need to contact Respondents before any construction or excavation is undertaken at the Property. A copy of the recorded deed notices shall be submitted to Ohio EPA within thirty (30) days of recording the notices. Thereafter, if Landowner Respondents convey any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the property is subject to these Orders and shall reference the potential for any security, monitoring, treatment, or containment systems present on the property as a result of these Orders. Landowner Respondents shall record new deed notices for the property to reflect the subsequent construction of any security, monitoring, treatment or containment systems at the property.

13. Land Use Self-Reporting Requirement

Landowner Respondents shall take all reasonable efforts to ensure that no portion of the Landowner Respondent's property subject to these Orders will be used in any manner that would adversely affect the integrity of any security, containment, treatment, or monitoring systems at the Site. Each Landowner Respondent shall submit, on an annual basis, written documentation verifying that, to the best of the Landowner Respondent's knowledge, there has been no interference with any security, containment, treatment, or monitoring systems located on the Landowner Respondent's property subject to these Orders.

14. Notice of Intention to Transfer Property

Prior to each conveyance by Landowner Respondents of an interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Landowner Respondents shall notify Transferee of the existence of any security, containment, treatment, or monitoring systems and/or activity and use limitations, and shall provide a copy of these Orders to Transferee. Landowner Respondents shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Site that is owned by Landowner Respondents. Landowner Respondents' notice shall include the name and address of the Transferee and a description of the provisions made for the continued access to, and maintenance of, any security, containment, treatment, and monitoring systems.

15. Instrument and Confirmation of Conveyance

Upon each conveyance by Landowner Respondents of an interest in any portion of the Site that is owned by Landowner Respondents, including but not limited to easements, deeds, leases and mortgages, Landowner Respondents shall include a reference to these Orders in the instrument of conveyance. Within forty five (45) days after each conveyance of an interest in any portion of the Site that is owned by Landowner Respondents, Landowner Respondents shall submit to Ohio EPA, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance;
- b. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;
- c. A legal description of the property, or the portion of the property, being transferred;
- d. A survey map of the property, or the portion of the property, being transferred; and
- e. The closing date of the transfer of ownership of the property, or portion of the property.

VIII. ADDITIONAL WORK

16. Ohio EPA or Work Respondent may determine that in addition to the tasks defined in the approved RD Work Plan, additional Work may be necessary to accomplish the Objectives of the Parties as provided in the General Provisions Section of these Orders. Additional Work may also include, pursuant to ORC § 3734.20 or other applicable law, the implementation of interim actions to address substantial threats to public health or safety or the environment should such threats be identified during the conduct of the RD. Additional Work may also include voluntary actions to improve Site conditions.

17. Within forty-five (45) days of receipt of written notice from Ohio EPA that Additional Work is necessary, unless otherwise specified in writing by Ohio EPA, Work Respondent shall submit a proposed addendum to the RD Work Plan ("RD Work Plan Addendum, which contains (a) a work plan for the implementation of the Additional Work, (b) any revisions to the Supporting Documents and other RD deliverables, as appropriate, (c) a schedule for the performance of the Additional Work, and (d) revisions to other schedules impacted by the Additional Work, if any. If Work Respondent disputes the necessity of Additional Work, Work Respondent shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders within fourteen (14) days after receipt of Ohio EPA's notification of the need for

additional Work. The RD Work Plan Addendum shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C (RD SOW and List of Relevant Guidance Documents). Upon approval of the RD Work Plan Addendum by Ohio EPA pursuant to the Review of Submissions Section of these Orders, Work Respondent shall perform the approved Additional Work in accordance with the schedules contained therein.

18.If Work Respondent determines that Additional Work is necessary, Work Respondent shall submit a proposal to Ohio EPA to explain what the Additional Work is, why the Additional Work is necessary, and what impact, if any, the Additional Work will have on the RD Work Plan and schedule. If Ohio EPA concurs with the request to perform Additional Work, Work Respondent shall submit a RD Work Plan Addendum, as described above, for the performance of additional Work. The RD Work Plan Addendum shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C. Upon approval of the RD Work Plan Addendum by Ohio EPA pursuant to the Review of Submissions Section of these Orders, Work Respondent shall implement the approved RD Work Plan Addendum in accordance with the schedules contained therein. Additional Work does not include any activity performed in response to an emergency at the Site for which Work Respondent submits to Ohio EPA written notice of the performed activity.

IX. SAMPLING AND DATA AVAILABILITY

19. Unless otherwise agreed to by the Site Coordinators, Work Respondent shall notify Ohio EPA not less than ten (10) days in advance of all sample collection activity. Upon request, the Work Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA or its designated contractor. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow the Work Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Work Respondent's performance of the Work.

20. Within seven (7) days of Work Respondent's receipt of a request by Ohio EPA, Work Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Work Respondent with respect to the Site and/or the implementation of these Orders. An electronic copy may be provided in a format approved by Ohio EPA instead of a paper copy. Work Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Work Respondent subsequently discover an error in any report or raw data, Work Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

X. ACCESS

21. Ohio EPA and its contractors and Work Respondent shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Landowner Respondents and is subject to these Orders. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling, including background monitoring wells;
- c. Inspecting and copying records, operating logs, contracts, and other documents related to the implementation of these Orders;
- d. Conducting investigations, tests, and other activities associated with the implementation of these Orders; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

22. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Landowner Respondents, Work Respondent shall use its best efforts to secure from such persons access for Work Respondent and Ohio EPA and its contractors, as necessary, to effectuate these Orders. Copies of each access agreement obtained by Work Respondent shall be provided to Ohio EPA upon execution of the access agreement. If any access required to implement these Orders is not obtained prior to Work Respondent's submission of the RD Work Plan unless otherwise agreed to in writing by Ohio EPA, Work Respondent shall promptly notify Ohio EPA in writing of the steps Work Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Work Respondent in obtaining access.

23. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to ORC §§ 3734.20 and 6111.05.

XI. DESIGNATED SITE COORDINATORS

24. Within seven (7) days of the effective date of these Orders, Work Respondent shall notify Ohio EPA, in writing, of the name, address, telephone number and email address of its designated Site Coordinator and Alternate Site Coordinator.

25. As used in these Orders, the term "Site Coordinator" refers interchangeably to the Site Coordinator and the Alternate Site Coordinator designated for a named party. If

any designated Site Coordinator is changed, the identity of the successor will be given to the other Party at least seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

26. To the maximum extent practicable, except as specifically provided in these Orders, communications between Work Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Work Respondent's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for ensuring that all communications from the other Party are appropriately disseminated and processed. Work Respondent's Site Coordinator shall be present on the Site or on call during all hours of Work at the Site.

27. Without limitation of any authority conferred on Ohio EPA by statute or regulation, Ohio EPA's Site Coordinator's authority includes but is not limited to the following:

- a. Directing the type, quantity and location of samples to be collected by the Work Respondent pursuant to an approved Work Plan and/ or Studies Plan;
- b. Collecting samples;
- c. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- d. Directing that the Work stop whenever Ohio EPA's Site Coordinator determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- e. Conducting investigations and tests related to the implementation of these Orders;
- f. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
- g. Assessing the Work Respondent's compliance with these Orders.

XII. PROGRESS REPORTS AND NOTICE

28. Unless otherwise directed by Ohio EPA, Work Respondent shall submit a written progress report to the Ohio EPA by the tenth (10) day of every month. At a minimum, the progress reports shall include that information designated in Section 10 of the SOW. Monthly reports may not be used to propose modifications to approved plans; rather, Work Respondent shall submit such requests to Ohio EPA in a separate written

correspondence. The frequency of progress reports may be reduced with concurrence from Ohio EPA.

29. Progress reports (one copy only) shall be sent either by e-mail with confirmed receipt or by hard copy to the address listed below. All other documents (two copies) required to be submitted pursuant to these Orders to Ohio EPA shall be sent to the following agency address(s):

Sheila Abraham, or her successor
Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087

Email address: *sheila.abraham@epa.ohio.gov*

And (as alternative site coordinator)

Mike Eberle, or his successor
Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087

Email address: *mike.eberle@epa.ohio.gov*

All written (including electronic) correspondence to Work Respondent shall be directed to:

Joe Montello
Republic Services, Inc.
190 Chadwick Drive
Aurora, OH 44202

Email address: *JMontello@republicservices.com*

Submittals will be in the form of at least one hard copy along with an electronic copy. With concurrence from Ohio EPA, any hard copy documents required to be submitted to Ohio EPA may be submitted electronically with confirmed receipt instead of paper copies.

A Party may designate an alternative contact name or address upon written notification to the other Party and in accordance with the Designated Site Coordinators Section of these Orders, as applicable.

XIII. REVIEW OF SUBMISSIONS

30. Ohio EPA shall review any work plans, studies plan, report, or other item required to be submitted pursuant to these Orders⁴.

31. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission with specified conditions; (c) modify or, modify and approve, the submission; (d) disapprove the submission in whole or in part; or (e) any combination of the above. The results of Ohio EPA's review shall be detailed in writing and shall identify any conditions, modifications and/or deficiencies. Excluded from Ohio EPA approval pursuant to this Section, are the health and safety plan (HASP) and progress reports.

32. In the event that Ohio EPA approves an initial submission, Work Respondent shall proceed to take such action as required by Ohio EPA. In the event that Ohio EPA approves with conditions or modification an initial submission, Work Respondent shall either (a) proceed to take such action as required by Ohio EPA, or (b) initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders, within fourteen (14) days of receipt of Ohio EPA's written response to Work Respondent's submission. Work Respondent shall proceed to take any action required by an unmodified or unconditioned portion of the submission, as those portions are considered approved.

33. In the event that Ohio EPA disapproves an initial submission in whole or in part, and notifies Work Respondent in writing of the deficiencies, Work Respondent shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies, and/or incorporate the conditions, and submit a revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the appropriate changes, additions, and/or deletions specified by Ohio EPA in its notice of disapproval. Revised submissions shall be accompanied by a letter indicating how and where each of Ohio EPA's comments was incorporated into the revised submission. To facilitate review of the revised submission, those portions of the document not affected by the Ohio EPA comments should remain unchanged. The letter accompanying the submission should indicate, however, any indirect changes necessitated by Ohio EPA's comments.

34. To the extent that Work Respondent disputes any of Ohio EPA's changes, additions, and/or deletions to an initial submission, the Work Respondent shall negotiate appropriate changes with Ohio EPA or initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders, within fourteen (14) days after receipt of Ohio EPA's written notice of disapproval. Notwithstanding the disapproval,

⁴ Ohio EPA's review of a HASP focuses on whether the HASP appears protective of human health based on Site conditions. The agency's review does not, by law, encompass matters that are subject to OSHA's oversight or approval. For example, Ohio EPA's comments may address whether the HASP appears (a) comprehensive based on Site conditions, (b) understandable to Site workers, (c) consistent with the RD/RA process, and (d) protective of public health and safety.

Work Respondent shall proceed to take any action required by a portion of the submission that is not specified as disapproved in the notice of disapproval.

35. In the event that Ohio EPA disapproves or modifies a revised submission, in whole or in part, and notifies Work Respondent in writing of the deficiencies, Work Respondent shall within thirty (30) days, or such longer period of time as specified in writing by Ohio EPA, correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval. If Work Respondent fails to submit a revised submission incorporating all changes, additions, modifications and/or deletions within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, Work Respondent shall be considered in breach and/or violation of these Orders. If the Work Respondent is in breach and/or violation of these Orders, Ohio EPA retains the right to perform any additional remediation, conduct a complete or partial Remedial Investigation or Feasibility Study, conduct a complete or partial Remedial Design ; and/or enforce the terms of these Orders as provided in the Reservation of Rights Section of these Orders.

36. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to be incorporated in, and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders.

XIV. DISPUTE RESOLUTION

37. The Site Coordinators shall, whenever possible, operate by consensus.

38. In the event of disapproval, or an approval with condition(s) or modification(s) by Ohio EPA of a submission by Work Respondent, or a disagreement regarding the Work performed under these Orders, Work Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing that Work Respondent wishes to invoke an informal dispute pursuant to this Section. The notification to invoke an informal dispute shall occur prior to the submission deadline.

39. The Parties shall have ten (10) days from the date written notice of the informal dispute is received by Ohio EPA's Site Coordinator to negotiate in good faith to resolve the dispute. This informal dispute resolution period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

40. In the event that the dispute is not resolved during the informal dispute resolution period, the Work Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the informal dispute resolution period that Work Respondent wishes to invoke a formal dispute pursuant to this Section. This notice shall include a brief description of the item(s) in dispute. Within twenty (20) days of receipt of the written notice invoking the formal dispute resolution procedure, the Site Coordinators shall exchange written positions, including technical rationale supporting

their positions. The Site Coordinators shall have ten (10) days from the date they have exchanged written positions to negotiate in good faith to resolve the formal dispute. This formal dispute period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

41. In the event the dispute is not resolved in the formal dispute resolution period, Work Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the formal dispute resolution period whether Work Respondent wishes to submit final written positions to a third-party, independent mediator who has been mutually selected by Work Respondent and Ohio EPA for review and resolution. The Site Coordinators shall have ten (10) days from the end of the formal dispute resolution period to submit their written positions. The third-party mediator will attempt to resolve the dispute based upon and consistent with these Orders, the SOW, the RD Work Plan, and applicable or relevant and appropriate federal and state laws. In the event the dispute is not resolved through the third-party mediation, the Site Coordinators shall submit their final written positions to the DERR Manager for review and resolution. The DERR Manager will resolve the dispute based upon and consistent with these Orders, the SOW, the RD Work Plan, and applicable or relevant and appropriate federal and state laws. The decision of the DERR Manager is considered final for the purposes of these Orders.

42. The pendency of a dispute under this Section shall extend only the time period for completion of the item(s) in dispute, except that upon mutual agreement of the Site Coordinators, any time period may be extended as is deemed appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with the applicable schedules and time frames.

43. This Section does not apply to the Reimbursement of Costs Section of these Orders.

XV. MEDIATION

44. The Parties agree to be bound by the provisions of this Section and to cooperate with one another to effectuate the purpose of the Mediation. This Mediation is for the exclusive benefit of the Parties to effectuate the purpose stated herein and shall not be deemed to give or imply any legal or equitable right, interest, remedy, benefit or claim to any other entity or person. The Mediation shall not be binding and shall not impede Ohio EPA's authority to enforce these Orders or exercise any other legal authority. The Parties may modify the procedures of this Section by mutual written agreement.

45. The purpose of the Mediation is as follows:

- a. to provide a formal, voluntary and non-binding mechanism involving the services of an independent third-party neutral person to expedite free discussion of the issues set forth herein;
- b. to freely discuss, without prejudice, any issues related to the approval of the Work Plan or Study under these Orders; and

- c. to freely exchange ideas relative to the issues subject to mediation.

46. Within thirty (30) days of the journalization date of these Orders, Work Respondent shall provide a list of three (3) Mediator candidates to Ohio EPA, along with resumes, background material, curricula vitae and/or other appropriate information relevant to a Mediator's qualifications as described in this Section. The Mediator candidates shall have experience and/or education relevant to RD/RA-type work. Upon written notification from Ohio EPA that one or more of the Mediator candidates has been rejected, prior to the occurrence of any dispute in which Mediation is invoked Ohio EPA may request Work Respondent to provide additional names of Mediator candidates equal to the number rejected, and Work Respondent shall comply with any such request from Ohio EPA within a reasonable period of time not to exceed thirty (30) days. Work Respondent may propose a longer period of time if more than one Mediator candidate is involved and Ohio EPA approval will not be unreasonably withheld. In the event that the provisions of this Section are invoked by Work Respondent, Ohio EPA shall select the Mediator from the list of candidates provided by Work Respondent. The Mediator shall be an independent and impartial individual, experienced in mediation techniques and preferably knowledgeable in the subject matter of the dispute, who shall perform the functions stated as follows in this Section and incidental actions necessary for carrying out these functions:

- a. Working with the Parties to establish reasonable procedures necessary to carry out the purposes of this Section, including successfully meeting established deadlines.
- b. Gathering and/or disseminating information from the Parties as needed to clarify issues raised during the process of mediation.
- c. Meeting with any or all of the Parties or their counsel, or their experts in joint or individual meetings as he or she deems appropriate in order to further mutual understanding of the issues.
- d. Facilitating discussions among the Parties in a manner which encourages open and productive sharing of ideas.
- e. Taking appropriate measures to discourage counterproductive "behaviors such as positioning or posturing.
- f. Preparing written meeting agendas and summary notes, upon mutual request of the Parties.

47. The Mediator may retain an assistant as required to facilitate the Mediation.

48. The Parties and the candidates for Mediator shall immediately disclose to each other any circumstances which may cause justifiable doubt as to the independence or impartiality of any individual or firm under consideration. Following the selection, the

Parties and the Mediator shall have a continuing duty to disclose to each other immediately any circumstances which may cause justifiable doubt as to the independence or impartiality of the selected Mediator. These same conflict of interest rules shall apply to any assistant retained by the Mediator for this Mediation.

49. Upon selection of the Mediator by Ohio EPA, Work Respondent shall enter into a contract which outlines the agreements between the Parties and the Mediator as to fees, schedules, duties, and payments. The Mediation contract shall reflect that the party invoking the Mediation shall bear responsibility for payment of all Mediation costs, and each Party, with the exception of Ohio EPA, shall bear the costs of its own attorney fees related to the Mediation. The participation of Ohio EPA and any contractors hired by Ohio EPA in the Mediation is a Response Cost. The Mediator shall not be liable for any act or omission in connection with his or her role in the Mediation process.

50. The selection of the Mediator by the Ohio EPA and the Mediation shall be conducted in accordance with the following schedule:

- a. Within five (5) days after the date Ohio EPA receives notice from Work Respondent invoking the provisions of the Section, Ohio EPA shall select a Mediator from the list provided by Work Respondent and will notify Work Respondent of the selection in writing.
- b. Within ten (10) days of the date Ohio EPA notifies the Work Respondent of the name of the Mediator, Work Respondent will act, as necessary, to obtain a signed Mediation Contract for the services of the selected Mediator as described in paragraph 48, above. This time period may be extended upon mutual agreement of the Parties.
- c. The Parties shall have thirty (30) days from the time the Mediation Contract is entered in to resolve the dispute through Mediation. This time period may be extended upon mutual agreement of the Parties. During this time period, documents may be exchanged by the Parties indicating issues upon which consensus has been reached.

51. Upon completion of the Mediation, Ohio EPA will issue a written document summarizing any consensus reached through the Mediation and resolving the dispute.

52. Mediation sessions will be held in Columbus, Ohio unless otherwise agreed by all Parties.

XVI. UNAVOIDABLE DELAYS

53. Work Respondent shall cause all Work to be performed in accordance with applicable schedules and time frames set forth in these Orders or any approved work plan unless any such performance is prevented or delayed by an event that constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall

mean an event beyond the control of Work Respondent that prevents or delays performance of any obligation required by these Orders and that could not be overcome by due diligence on the part of Work Respondent. Increased cost of compliance, among other circumstances, shall not be considered an event beyond the control of Work Respondent for the purposes of these Orders.

54. Work Respondent shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event that Work Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Work Respondent to minimize the delay, and the timetable under which these measures will be implemented. Work Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

55. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify Work Respondent in writing of that finding and of the noncompliance with these Orders. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Work Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

XVII. REIMBURSEMENT OF COSTS

56. Ohio EPA has incurred Response Costs in connection with the Site. Response Costs incurred prior to March 31, 2015 will be reimbursed to Ohio EPA directly from the MLC bankruptcy fund. Any Response Costs incurred after March 31, 2015 will be deferred to a future RA Order.

XVIII. REIMBURSEMENT FROM MOTORS LIQUIDATION COMPANY FUND

57. Provided that Work Respondent is in compliance with these Orders, Work Respondent shall be entitled to reimbursement by Ohio EPA from the MLC Funds for any properly invoiced costs incurred by Work Respondent consistent with an approved work plan to complete Work under these Orders, up to and including \$100,000 in aggregate reimbursements.

58. Work Respondent may submit an itemized invoice of its costs incurred under these Orders to: Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, Attn: Steven Snyder, or his successor; and to the Ohio EPA Site Coordinator. An invoice shall include: (a) Work Respondent's name and federal employer identification number (or other identification as appropriate); (b) the address to which payment is best to be sent; (c) a reference to these Orders and date of issuance of these Orders; and (d) an itemized description of costs incurred and the Work performed by Work Respondent. An invoice is not proper if it contains a defect or impropriety. Ohio EPA shall notify Work Respondent, in writing, of any defect or impropriety within thirty (30) days of receipt of an invoice, and provide any information explaining the defect or impropriety. In response to such a notice, Work Respondent shall submit a revised

invoice and/or invoke dispute resolution in accordance with Section XIV of these Orders. Within thirty (30) days after receipt of a proper invoice and appropriation approval by the Ohio Controlling Board, Ohio EPA shall remit payment to Work Respondent for such invoiced costs from the MLC funds.

59. Thereafter, Work Respondent may submit an itemized invoice of additional costs incurred under these Orders no more frequently than semi-annually to Ohio EPA in accordance with this Section of these Orders. Within thirty (30) days after Ohio EPA's receipt of a proper invoice and appropriation approval by the Ohio Controlling Board, Ohio EPA shall remit payment to Work Respondent for such invoiced costs from the MLC Funds.

60. Ohio EPA shall promptly notify Work Respondent in writing when the \$100,000 of MLC Funds designated for the RD are depleted.

61. Provided that Work Respondent is in compliance with these Orders, Ohio EPA agrees that Ohio EPA will not expend the MLC Funds designated for this Site on costs related to the investigation or remediation of other sites.

XIX. ACCESS TO INFORMATION

62. Upon request, Work Respondent shall provide to Ohio EPA within fourteen (14) days, copies of all documents and information within its possession or control or that of its contractors or agents relating to events or conditions at the Site including but not limited to manifests, reports, correspondence, or other documents or information related to the Work. This provision shall not be a limitation on any request for information to Work Respondent by Ohio EPA made under state or federal law for information relating to events or conditions at the Site.

63. Work Respondent may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC 3745-50-30(A), OAC 3745-49-03, or ORC § 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Work Respondent.

64. Work Respondent may assert that certain documents or other information are privileged under the attorney-client privilege or any other privilege recognized by state law. If Work Respondent makes such an assertion, it shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Work Respondent.

65. No claim of confidentiality shall be made with respect to any data or reports, including but not limited to laboratory or interpretive reports, and all sampling, analytical,

and monitoring data.

66. Work Respondent shall preserve for the duration of these Orders and for a minimum of ten (10) years after termination of these Orders, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Work Respondent may preserve such documents by microfiche or other electronic or photographic device. At the conclusion of this document retention period, Work Respondent shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

XX. MODIFICATIONS

67. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representatives of Respondents and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

XXI. INDEMNITY

68. Work Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Work Respondent, and its successors in interest. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Work Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Work Respondent within thirty (30) days after receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Work Respondent in the defense of any such claim or action against Ohio EPA.

XXII. CONTRIBUTION AND AGREEMENT NOT TO REFER

69. With respect to matters addressed in these Orders, the Parties hereto agree that these Orders constitute an administrative settlement for purposes of CERCLA sections 113(f)(2) and 113 (f)(3)(B), 42 U.S.C. § 9613(f)(2) and § 9613(f)(3)(B), pursuant to which the Respondents have resolved their liability to the State, and that the Respondents are entitled to contribution protection and contribution rights as of the effective date of these Orders as to any liable persons who are not parties to these Orders, as provided by CERCLA section 113(f)(2) and (f)(3)(B), 42 U.S.C. § 9613(f)(2) and (f)(3)(B), provided that the Respondents comply with these Orders. The "matters addressed" in these Orders are the Work and Response Costs.

70. During the implementation of these Orders, and provided Respondents are considered by Ohio EPA to be in compliance with these Orders, Ohio EPA agrees not to refer Respondents to the Ohio Attorney General's Office for enforcement, or take administrative enforcement action against Respondents, or their successors in interest liable under Ohio law for Work required under these Orders at the Site. Upon termination of these Orders pursuant to the Termination Section, Ohio EPA agrees to not refer Respondents to the Ohio Attorney General's Office for enforcement, or take administrative enforcement action against Respondents and their successors in interest liable under Ohio law for Work required under these Orders at the Site.

XXIII. OTHER CLAIMS

71. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a Party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

XXIV. RESERVATION OF RIGHTS

72. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondents for noncompliance with these Orders. Except as provided herein, Respondents reserve any rights they may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

73. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

74. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, or action to recover costs pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Upon termination pursuant to the Termination Section of these Orders, Work Respondent shall have resolved its liability to Ohio EPA only for the Work performed pursuant to these Orders.

XXV. TERMINATION

75. Respondents' obligations under these Orders shall terminate upon Ohio EPA's written approval of Work Respondent's written certification to Ohio EPA that all Work required to be performed under these Orders has been completed, or upon the effective date of the Remedial Action order for the Site, whichever is earlier. Work Respondent's certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." This

certification shall be submitted by Work Respondent to Ohio EPA and shall be signed by a responsible official of Work Respondent. The termination of Respondents' obligations under these Orders shall not terminate Respondents' obligations under the Reservation of Rights, Access to Information, Indemnity, Other Claims, Contribution and Agreement Not to Refer, and Land Use and Conveyance of Title Sections of these Orders.

XXVI. WAIVER AND AGREEMENT

76. In order to resolve disputed claims, without admission of any fact, violation, or liability, Respondents consent to the issuance of these Orders, and agree to comply with these Orders.

77. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and Respondents hereby waive any and all rights that they may have to seek administrative or judicial review of these Orders either in law or equity.

78. Notwithstanding the waiver herein of Respondents' right to appeal or seek administrative or judicial review, Ohio EPA and Respondents agree if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XXVII. EFFECTIVE DATE

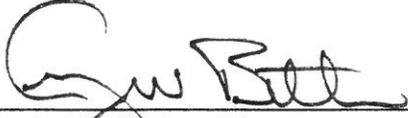
79. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

XXVIII. SIGNATORY AUTHORITY

80. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY



Craig W. Butler, Director
Ohio Environmental Protection Agency

OCT 05 2015

Date

IT IS SO AGREED:

Browning-Ferris Industries of Ohio, Inc.

BY:

Signature

Date

Printed Name & Title

George and Patricia M. Kyprianou

BY:

Signature

Date

Printed Name & Title

Arthur A. and Margaret Catherine Horvath Revocable Trust

BY:

Signature

Date

Printed Name & Title

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Director
Ohio Environmental Protection Agency

Date

IT IS SO AGREED:

Browning-Ferris Industries of Ohio, Inc.

BY: 

Signature

9/2/2015

Date

Tim M. Benter, Vice President

Printed Name & Title

George and Patricia M. Kyprianou

BY:

Signature

Date

Printed Name & Title

Arthur A. and Margaret Catherine Horvath Revocable Trust

BY:

Signature

Date

Printed Name & Title

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Director
Ohio Environmental Protection Agency

Date

IT IS SO AGREED:

Browning-Ferris Industries of Ohio, Inc.

BY:

Signature

Date

Printed Name & Title

George and Patricia M. Kyprianou

BY:

George Kyprianou

Signature *Patricia M. Kyprianou*

Aug. 24, 2015

Date

George and Patricia M. Kyprianou LANDOWNER RESPONDENTS

Printed Name & Title

Arthur A. and Margaret Catherine Horvath Revocable Trust

BY:

Signature

Date

Printed Name & Title

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler, Director
Ohio Environmental Protection Agency

Date

IT IS SO AGREED:

Browning-Ferris Industries of Ohio, Inc.

BY:

Signature

Date

Printed Name & Title

George and Patricia M. Kyprianou

BY:

Signature

Date

Printed Name & Title

Arthur A. and Margaret Catherine Horvath Revocable Trust

BY: Margaret Catherine Horvath
Signature

Sept 14, '13
Date

MARGARET CATHERINE HORVATH
Printed Name & Title

APPENDIX A

DECISION DOCUMENT

APPENDIX B

RD SOW

APPENDIX C

LIST OF RELEVANT GUIDANCE DOCUMENTS

APPENDIX D

DEED NOTICE TEMPLATE

APPENDIX E

SITE MAP