

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:  
Acquisition of Property for  
The Gordie Howe International Bridge  
Detroit, Wayne County, Michigan  
By the Michigan Department of Transportation

MDEQ Reference No.: CNTS-RRD-16-001

Proceeding under MCL 324.20133 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and MCL 324.21323h of Part 213, Leaking Underground Storage Tanks, of NREPA

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**ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE**

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## **ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE**

This Administrative Agreement and Covenant Not to Sue is executed by and between the State of Michigan, through the Department of Attorney General and the Department of Environmental Quality, and the Department of Transportation. Upon execution, this Agreement shall apply and be binding upon the Parties and their respective successor entities.

### **I. DEFINITIONS**

The terms used in this Agreement shall have the following meanings:

1.1 “Administrative Agreement and Covenant Not to Sue” or “Agreement” means this document, its attachments, and any Submissions made pursuant to this document.

1.2 “Assignee” means the MDEQ-approved recipient of an Assignment of Administrative Agreement and Covenant Not to Sue pursuant to Section XVIII of the Agreement.

1.3 “Day” means a calendar day, unless otherwise noted.

1.4 “Documentation of Due Care Compliance” or “DDCC” means a plan which documents the use(s) of the Property by Respondent and defines the measures which shall be taken to assure activities conducted on the Property are carried out in a manner designed to assure compliance with the provisions of MCL 324.20107a or 324.21304c and administrative rules R299.51001 through 299.51021 and the validity of the MDEQ’s determination pursuant to MCL 324.20133(1)(d) and 324.21323h with respect to Existing Contamination.

1.5 “Exacerbation” means as defined in MCL 324.20101(1)(r).

1.6 “Existing Contamination” means hazardous substances or regulated substances, in concentrations that constitute a facility under Part 201 or property under Part 213, which regardless of its location is attributable to releases or threat of releases, known and unknown, that occurred on a Parcel or group of Parcels prior to the date of ownership, acquisition or control by Respondent of said Parcel or group of Parcels. For the purpose of further defining Existing Contamination, the Parties agree that all data and technical reports for a Parcel or group of Parcels available in MDEQ records or produced by Respondent or Respondent’s consultants and provided to the MDEQ pursuant to Section V of this Agreement are probative evidence of the nature and extent of Existing Contamination for purposes of this Agreement and shall be admissible as evidence in any proceeding involving a dispute over the same, without precluding the offering of additional evidence in any proceeding.

1.7 “MDEQ” means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

1.8 “Non-Analyzed Parcels” means those parcels identified in Appendix A of the Presumptive Environmental Risk Management Process and Preventative Measures Plan (PERM-PMP) dated April 27, 2016, attached here as Attachment C. Respondent has assigned a low level of risk to these parcels based on the Project Area Contamination Surveys (PACS) conducted for those parcels.

1.9 “Part 201” means Part 201, Environmental Remediation, of NREPA, MCL 324.20101 *et seq*, and its administrative rules.

1.10 “Part 213” means Part 213, Leaking Underground Storage Tanks, of NREPA, MCL 324.21301 *et seq*, as amended.

1.11 “Parties” means the MDEQ, Respondent and Michigan Department of Attorney General.

1.12 “Parcel” means a specific area of land with a defined, continuous boundary acquired, owned or controlled by the Respondent within the Property and identified by: (a) a tax identification or ward-item number; (b) a roadway not otherwise included within the specific area of land identified by a tax identification or ward-item number; or (c) a legal description and scaled map or survey depicting the specific area of land.

1.13 “Preliminary Site Investigation” or “PSI” means the collection and chemical analysis of soil or groundwater samples from Parcels identified as potential sites of environmental contamination by a Project Area Contamination Survey report to confirm the presence of environmental contamination and to identify measures required to comply and maintain compliance with MCL 324.20107a or 324.21304c, as appropriate.

1.14 “Project Area Contamination Survey” or “PACS” means the investigation of a Parcel to identify whether environmental contamination may exist at levels that constitute a Part 201 facility or Part 213 property.

1.15 “Property” means the real property and improvements located in Detroit, Michigan and largely bound by Clark Street on the east, West End/Springwells on the west, the Detroit River on the south and I-75 south bound service drive on the north, as generally depicted in Attachment A and shown on the vicinity sheet included in Attachment B.

1.16 “Respondent” means the Michigan Department of Transportation, its successor entities, and those authorized persons or entities acting on its behalf.

1.17 “RRD” means the Remediation and Redevelopment Division of the MDEQ, its successor entities, and authorized persons acting on its behalf.

1.18 “State” means the Michigan Department of Attorney General and the MDEQ.

1.19 Unless otherwise defined herein, all terms used in this Agreement which are defined in Part 3 of the NREPA, MCL 324.301, Part 201, or Part 213 shall have the same meaning in this Agreement as in Parts 3, 201 and Part 213.

## **II. STATEMENT OF PURPOSE**

In entering into this Agreement, it is the mutual intent of the Parties: (a) to yield new resources to facilitate implementation of response activities or corrective actions that address Existing Contamination at the Property; (b) to expedite response activities or corrective actions at the Property, when appropriate; (c) to provide a mechanism for Respondent to purchase the Property and transfer, lease or operate the Property without incurring liability for Existing Contamination; (d) to require Respondent to exercise due care to mitigate unacceptable exposure to hazardous substances or regulated substances and otherwise comply with obligations under MCL 324.20107a or 324.21304c; and (e) to provide for the reuse or redevelopment of the Property in a manner that is in the public interest.

## **III. AUTHORITY**

The State is authorized under MCL 324.20133 and 324.21323h to enter into this Agreement.

## **IV. BACKGROUND INFORMATION CONCERNING THE PROPERTY**

4.1 Respondent is purchasing the Property, which is located in Detroit and more specifically depicted in Attachments A and B of this Order, from various sellers for future construction of the Gordie Howe International Bridge. Specifically, Respondent intends to use the Property for a bridge landing and approach, a bridge plaza, and a border services plaza for customs, immigration, agricultural inspections, and other international border-related services performed by any governmental authority, and a connection to I-75 along with additional road improvements. Additional uses may include, without limitation, administrative buildings, maintenance yards, duty-free stores, fiber optic cables and related improvements, and customs brokerages.

4.2 The Property is presently owned by various owners and has been or is presently being used as residential, commercial, industrial and vacant property.

4.3 Portions of the Property have been used for a variety of industrial purposes, where releases of hazardous substances and regulated substances have likely occurred, causing Existing Contamination. These releases may include, without limitation, petroleum hydrocarbons, chlorinated hydrocarbons and other solvents, fuel oil, cutting oils, lubricating oils, polychlorinated biphenyls, lead and other heavy metals, coal tars, ammonia and high chlorides. The releases are likely from commercial and industrial uses dating back decades, including but not limited to underground storage tanks, dry cleaning facilities, metal fabricating facilities, auto repair facilities, coal and coke operations, and electrical utility operations.

4.4 Hazardous substances are present in soil, groundwater, or surface water at the Property in concentrations which constitute a facility pursuant to Section 20101(1)(s) of the NREPA. Respondent will provide the State with access to all information available to Respondent regarding hazardous substances that are present in soil, groundwater, or surface water at the Property, documenting when a Parcel is a facility as defined in MCL 324.20101(1)(s) or property as defined in MCL 324.21303(d).

4.5 Respondent has conducted Project Area Contamination Surveys (PACS) on each Parcel to ascertain whether a Preliminary Site Investigation (PSI) should be conducted to further identify Existing Contamination at the Property. Respondent will perform PSIs on parcels of property identified by the PACS as having a medium or high level of potential environmental risk. Respondent will not conduct a PSI on Parcels where Respondent identified a low level of environmental risk based on the PACS. For Parcels that Respondent identifies as low-level environmental risk, Respondent may opt not to conduct a PSI and instead rely on the Presumptive Environmental Risk Management Process and Preventative Measures Plan (Attachment C to this Agreement). Respondent will conduct additional remedial investigation or undertake interim response activities, when necessary, to comply with MCL 324.20107a or



324.21304c, and Respondent will conduct otherwise appropriate response activities or corrective actions to prepare the Property for construction of the Gordie Howe International Bridge.

4.6 At the time of execution of this Agreement, further investigation at the Property is needed to ascertain and characterize the source, nature, and impact of Existing Contamination associated with the Property. These investigations may indicate that Respondent must perform response activities or corrective actions at the Property to prevent an unacceptable exposure to hazardous substances or regulated substances from occurring at the Property, including DDCC.

#### **V. IMPLEMENTATION OF RESPONSE ACTIVITIES OR CORRECTIVE ACTIONS**

5.1 Respondent shall hold monthly meetings with the MDEQ to provide status updates relating to Parcel acquisition, ownership or control and response activities or corrective actions performed at the Property. At these meetings, Respondent will provide the MDEQ the information required in the Property Transaction and Submission Tracking Log, Attachment D of this Order, for the Parcels acquired since the last meeting. The first meeting shall be held within thirty (30) days of the Effective Date of this Agreement. Respondent and MDEQ may modify this requirement upon mutual agreement in writing, signed by the Project Coordinators identified in Section XV of this Agreement.

5.2 Respondent shall make readily available to the MDEQ, the following information in an expeditious manner and at a frequency and schedule agreed upon by the parties' Project Coordinators:

- (a) All environmental data generated or acquired by Respondent related to the Property;
- (b) All Project Area Contamination Surveys prepared by Respondent for each Parcel or group of Parcels;
- (c) All Preliminary Site Investigation reports prepared by Respondent for each Parcel or group of Parcels;

- (d) Any other data or reports generated by Respondent regarding response activities or corrective actions performed at the Property;
- (e) Location and date of acquisition of each Parcel or group of Parcels;
- (f) Description of data collection and activities anticipated or scheduled for the following month, or other mutually agreed upon time frame.

All of the information described in this Paragraph 5.2 shall be provided by Respondent to MDEQ according to the Project Coordinators' agreed-upon schedule until six (6) months after the date that the Gordie Howe International Bridge opens to regular traffic, or such other date as the Project Coordinators agree to in writing.

5.3 Respondent may perform response activities or corrective actions at a Parcel or group of Parcels to, at a minimum, comply with MCL 324.20107a and 324.21304c, as applicable. Any documentation of response activities or corrective actions Respondent implements, including any data generated, shall be made available to the MDEQ as provided in Paragraph 5.2.

5.4 Respondent shall prepare one or more DDCC that addresses each Parcel or group of Parcels upon Respondent's acquisition, ownership or control of said Parcel or group of Parcels that were identified by the PACS for a Preliminary Site Investigation, according to the Parties' agreed-upon frequency and schedule for providing information to MDEQ referenced in Paragraph 5.2. A DDCC under this Paragraph shall include, but not be limited to:

- (a) A legal description and either a scaled map or a survey depicting the Parcel or group of Parcels as described in Paragraph 1.11;
- (b) Identification and analysis of exposure pathways which are complete, or are likely to become complete, in light of the intended use of the Parcel or group of Parcels and the features of the Parcel or group of Parcels, including existing exposure barriers such as structures or pavement;
- (c) Information about the concentrations of hazardous substances and regulated substances to which persons may be exposed in each pathway identified

through the analysis described in (b) above, unless a reasonable evaluation of environmental conditions supports the conclusion that quantification of hazardous substance or regulated substance exposures is not necessary to determine that there is not unacceptable exposure;

(d) Description of any response activities, corrective actions, or other measures that are or may be required to mitigate any unacceptable exposures.

5.5 In the event the DDCC prepared pursuant to Paragraph 5.4 does not meet the definition provided in Paragraph 1.4 of this Agreement, MDEQ shall notify Respondent. Respondent shall revise the DDCC, modify the use of the Parcel or group of Parcels, or implement any necessary response activities or corrective actions to achieve and document compliance with MCL 324.20107a or 324.21304c and administrative rules R299.51001 through 299.51021 and assure the validity of the MDEQ's determination pursuant to MCL 324.20133(1)(d) and 324.21323h(1)(d). Upon the MDEQ's request, Respondent shall provide such documentation in accordance with Section VIII (Record Retention/Access to Information).

5.6 For Non-Analyzed Parcels, Respondent shall comply with the PERM-PMP provided in Attachment C of this Agreement. The PERM-PMP serves as the DDCC for the Non-Analyzed Parcels, until such time that a modified DDCC is prepared for one or more of the Non-Analyzed Parcels as provided in Paragraph 5.8 of this Order.

5.7 Upon MDEQ request, Respondent shall be able to demonstrate compliance with its DDCC and MCL 324.20107a, 324.21304c, 324.20133 and 324.21323h for any activities conducted at a Parcel or group of Parcels as long as Respondent has an ownership interest in all or a portion of the Parcel or group of Parcels.

5.8 If, after a DDCC has been submitted to the MDEQ, additional information becomes available, previously unknown conditions become known or the use of the Parcel or group of Parcels is changed, Respondent shall evaluate whether the DDCC previously submitted to MDEQ meets the definition provided in Paragraph 1.4.

Additional response activities or corrective actions may be necessary to demonstrate compliance with MCL 324.2017a or 324.21304c.

5.9 Respondent agrees to develop and perform sampling and analytical activities in accordance with the United States Environmental Protection Agency's, "EPA Requirements for Quality Assurance Project Plans," EPA QA/R 5, March 2001; "Guidance for Quality Assurance Project Plans," EPA QA/G 5, December 2002; and "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," American National Standard ANSI/ASQC E4 1994. Respondent agrees to utilize recommended sampling methods, analytical methods, and analytical detection levels specified in the RRD Operational Memorandum No. 2, "Sampling and Analysis Guidance", dated October 22, 2004, including all applicable attachments. For any Part 201 facility, Respondent agrees to utilize the MDEQ's 2002 "Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria" to determine the number of samples required to verify the cleanup and to determine sampling strategy. Respondent agrees to comply with the above documents or documents that supersede or amend these documents, and may utilize other methods demonstrated by Respondent to be appropriate as approved by the MDEQ.

5.10 Informal advice, guidance, suggestions, or comments by the MDEQ shall not be construed as relieving Respondent of its obligation to obtain any formal approval required under this Agreement.

5.11 Respondent expressly acknowledges that it will comply with all state and federal law, including, but not limited to, Part 211, Underground Storage Tanks, of the NREPA; MCL 324.20120c and 324.21304b; and Part 201 or Part 213 regarding contamination that is not Existing Contamination as defined herein.

## **VI. SAMPLING AND ANALYSIS**

6.1 All sampling and analysis conducted pursuant to this Order shall be in accordance with Quality Assurance Requirements specified in Paragraph 5.8.

6.2 Respondent shall provide the MDEQ with the results of all environmental sampling, and other analytical data generated relating to the Property in the performance or monitoring of any requirement under this Agreement.

6.3 For the purpose of quality assurance monitoring, Respondent shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory used by Respondent in implementing this Agreement.

## **VII. ACCESS TO PROPERTY**

7.1 For the purposes listed in MCL 324.20117(3)(a)-(e) or 324.21326(1) and for the purpose of monitoring compliance with this Agreement, the MDEQ, its authorized employees, agents, representatives, contractors and consultants, and other persons performing response activities or corrective actions related to Existing Contamination, shall have an irrevocable right of access to the Property and to the remainder of the facility as defined in Part 201 or property as defined in Part 213 to the extent it is owned, controlled by, or available to Respondent and allowable by law.

7.2 The access authorized by this Section shall be subject to the following conditions and understandings:

- (a) Reasonable notice shall be provided to Respondent.
- (b) Upon request, any party granted access pursuant to this Agreement shall provide proper identification to the person in charge of the Property.
- (c) Access granted pursuant to this Agreement shall be during reasonable times.
- (d) All parties granted access pursuant to this Agreement shall comply with all applicable health and safety laws and regulations.

(e) Access granted pursuant to this Agreement shall be limited to those areas of the Property and the remainder of the facility as defined in Part 201 or property as defined in Part 213 to the extent it is owned, controlled by, or available to Respondent where access is reasonably required to conduct the activities outlined in Paragraph 7.1.

(f) Any party granted access pursuant to this Agreement shall coordinate its activities with Respondent and shall use its best efforts to minimize interference with Respondent's operation or activities.

(g) Notwithstanding Paragraphs 7.2(e) and (f), parties granted access pursuant to this section shall not be required to take any action that would result in incurring any material cost increases in performing response activities. In addition, Respondent shall not interfere with the MDEQ, its contractors, or other persons conducting response activities approved by the MDEQ.

7.3 Respondent shall reserve for the MDEQ and persons implementing response activities or corrective actions approved by the MDEQ and their authorized representatives the access provided under this Agreement in any lease, purchase, contract or other agreement entered into by Respondent which transfers to another party a right of control over the Property or a portion of the Property.

## **VIII. RECORD RETENTION/ACCESS TO INFORMATION**

8.1 Respondent and its representatives, consultants, and contractors shall preserve and retain, during the pendency of this Agreement, all records, sampling or test results, charts and other documents relating to releases of hazardous substances or regulated substances, and response activities or corrective actions, including, but not limited to, demolition conducted at the Property, or that are maintained or generated pursuant to any requirement of this Agreement.

8.2 Upon request, Respondent shall provide to the MDEQ copies of all documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives, relating to the performance of response activities, corrective actions or other requirements of this Agreement,

including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, or other correspondence, documents, or information related to response activities or corrective actions. Upon request, Respondent shall also make available to the MDEQ, upon reasonable notice, Respondent's employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities or corrective actions.

**IX. AFFIRMATIVE COVENANTS, CERTIFICATIONS  
AND ADDITIONAL OBLIGATIONS BY RESPONDENT**

9.1 Respondent hereby certifies the following, that prior to the effective date of this Agreement and through the pendency of this Agreement:

(a) all information known to Respondent has been fully disclosed or made available to the MDEQ relating to: (i) the nature and extent of Existing Contamination associated with the Property; (ii) any other environmental conditions relating to the Property that may present a risk of harm to the public health, safety, or welfare or the environment; (iii) the age, location, and historic contents of all underground storage tank systems known to exist on the Property; and (iv) discarded or abandoned containers at the Property that contain a quantity of hazardous substance which is or may become injurious to the public health, safety, welfare, or environment. For purposes of this paragraph, "container" means a barrel, drum, tank, vessel, surface impoundment, pipeline, or other receptacle regardless of size that contains a hazardous substance.

(b) That it is not responsible for an activity that has caused a release or threat of release at the Property;

(c) That it is not affiliated in a manner which results in liability with any person that is liable under MCL 324.20126 or 324.21323a for a release or threat of release at the Property;

(d) That it will comply with any land use or resource use restrictions or other institutional control to which any portion of the Property is subject and the DDCC(s) at the Property;

- (e) That its use of the Property is not likely to:
  - (i) Exacerbate or contribute to any existing release or threat of release;
  - (ii) Interfere with the implementation of response activities or corrective actions;
  - (iii) Pose health risks related to a release or threat of release to persons who may be present at or in the vicinity of the Property.
- (f) That it is financially capable of redeveloping and reusing the Property in accordance with this Agreement.

#### **X. COVENANTS NOT TO SUE**

10.1 Subject to Section XVI (Reservation of Rights) and Section XXIII (Effective Date) of this Agreement, the State hereby covenants not to sue or take any civil, judicial, or administrative action against Respondent (excluding any officers, directors, or employees formerly employed by a person liable under MCL 324.20126 or 324.21323a) for any claims arising from Respondent's ownership or operation at the Property for:

- (a) Existing Contamination associated with a Parcel or group of Parcels within the Property;
- (b) The acts or omissions of any owner or operator of the Parcel or group of Parcels prior to Respondent's acquisition of the Parcel or group of Parcels, that may have exacerbated or contributed to Existing Contamination at the Parcel or group of Parcels;
- (c) Any release, threat of release, or exacerbation of Existing Contamination resulting from the implementation of MDEQ-approved response activities or corrective actions designed to address Existing Contamination by any person other than Respondent.

10.2 The covenant not to sue is effective on the Effective Date of this Agreement and applies to a Parcel or group of Parcels within the Property owned by the Respondent on the Effective Date and applies to Parcels or groups of Parcels



immediately upon Respondent's ownership, acquisition or control of said Parcel or group of Parcels.

10.3 The parties agree that it is their mutual intention that Respondent shall be afforded contribution protection for Existing Contamination pursuant to MCL 324.20129(5), MCL 324.21323d(5) and Section 113(f)(2) of the CERCLA, 42 USC 9613(f), to the extent provided by law.

10.4 Respondent hereby covenants not to sue or take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives for any claims with respect to the Property arising from:

- (a) The Existing Contamination associated with the Property;
- (b) Any acts or omissions of the State or its authorized representatives prior to the Effective Date of this Agreement related to the Existing Contamination;
- (c) Off-site disposal, remediation, recycling or reclamation of hazardous substances or regulated substances associated with the Property.

#### **XI. VOIDANCE OF THE AGREEMENT AND REMEDIES FOR BREACH OF THE AGREEMENT**

11.1 This Agreement may be voided by the State if it is determined that Respondent has materially misrepresented any of its certifications set forth in Section IX (Affirmative Covenants, Certifications and Additional Obligations by Respondent).

11.2 Except as provided in Paragraph 11.1 of this Section and Section XIV (Dispute Resolution), in the event that a party to this Agreement believes that the other party has not materially complied with the terms of this Agreement, or has otherwise not materially fulfilled its obligations under this Agreement, that party may pursue any remedies available by law.

## **XII. RESERVATION OF RIGHTS**

12.1 Except as provided therein, the covenant stated in Paragraph 10.1 shall apply to only Existing Contamination. The State reserves the right to take independent judicial or administrative actions against Respondent for any of the following:

- (a) To enforce the provisions of this Agreement;
- (b) Contamination other than Existing Contamination associated with the Property for which Respondent is liable pursuant to the NREPA;
- (c) Failure by Respondent to comply with the land use or resource restrictions specified in this Agreement;
- (d) Respondent's interference with or failure to cooperate with the MDEQ, its contractors, or other persons conducting MDEQ-approved response activities or corrective actions;
- (e) Failure by Respondent to comply with MCL 324.20107a and associated Part 201 rules, and MCL 324.21304c;
- (f) Failure by Respondent to own or operate the Property in such a manner to maintain the validity of the MDEQ's determination pursuant to MCL 324.20133(1)(d) and 324.21323h;
- (g) For property, and any facility attributable to such property, that is owned or operated by Respondent currently or in the future that is not defined in Paragraph 1.14 of this Agreement and for which Respondent has liability under state and federal law; or
- (h) Any other violations of law not relating to the Existing Contamination.

12.2 The parties agree that nothing in this Agreement shall be construed as a statement, representation, finding, or warranty by the State that the Property is fit for any particular use.

12.3 Nothing in this Agreement shall in any way limit the power and authority of the State to take appropriate action to: (a) protect public health, safety, or welfare or the environment; or (b) prevent, abate, or minimize a release or threatened release

associated with the Property, including the authority to undertake response activities or corrective actions or to otherwise address contamination, whether Existing Contamination or otherwise.

12.4 Nothing in this Agreement shall in any way limit or affect the State's right to take judicial or administrative action against any other person(s) who may be liable under MCL 324.20126 or 324.21323a. Furthermore, this Agreement shall not be construed as discharging the liability of any other person or entity.

12.5 Nothing in this Agreement shall affect the duties and obligations that Respondent may have with respect to permits or other governmental approval or waive Respondent's duties and obligations under applicable federal or State law.

12.6 Nothing herein shall be construed as a waiver or modification of MCL 324.20137(6) and 20137(7), as those sections may relate to contamination, whether Existing Contamination or otherwise.

12.7 Notwithstanding any other provision of this Agreement, the State shall retain all of their information gathering, inspection, access, and enforcement authorities and rights under Part 201 and Part 213 and any other applicable statutes or regulations.

### **XIII. INSURANCE**

Respondent will require that MDEQ be named as an additional insured on any and all policies where Respondent is named as an insured.

### **XIV. DISPUTE RESOLUTION**

14.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising between the Parties under this Agreement, except for Section XVI (Release, Threat of Release, and Imminent and Substantial Endangerment Actions and Notification) which shall not be subject to dispute resolution.

All disputes under this Agreement shall initially be subject to informal dispute resolution as follows:

(a) Respondent shall notify the MDEQ Project Coordinator, in writing, of Respondent's objection to an MDEQ decision concerning a requirement of this Agreement within ten (10) days of receipt of the notice of that decision.

(b) The MDEQ and Respondent shall have ten (10) days from the receipt by the MDEQ of the notification of objection to resolve the dispute.

(c) If resolution cannot be reached on any matter within this ten (10) day period, the MDEQ shall provide a written statement of its decision to Respondent. In the absence of initiation of formal dispute resolution by Respondent under Paragraphs 14.2 or 14.3 of this Agreement, the MDEQ position shall be binding on the parties.

14.2 If Respondent seeks to formally challenge any decision or determination under this Agreement, Respondent may file an action for resolution of the dispute in a court of competent jurisdiction within twenty (20) days after receipt of the MDEQ's position. The action for resolution of the dispute shall be limited to those disputed issues expressly raised in Respondent's and the MDEQ's statements of position.

14.3 Invoking dispute resolution shall not of itself extend or postpone any obligation of Respondent under this Agreement.

14.4 Notwithstanding this Section of this Agreement, in the event that any dispute arises between the State and Respondent concerning contamination that is not Existing Contamination or any of the matters set forth in MCL 324.20133(3) or 324.21323h(3), the burden of proof in such a dispute shall be borne by the parties in accordance with the NREPA and the administrative rules promulgated thereunder.

14.5 With respect to the selection or approval of a response activity or corrective action, no action or decision of the MDEQ or the Department of Attorney General shall constitute final agency action giving rise to any rights of judicial review,

prior to the Attorney General's initiation of judicial action to compel Respondent to comply with this Agreement to enforce a term, condition, or other action required by this Agreement in accordance with MCL 324.20137 or 324.21323. Nothing in this Agreement shall expand Respondent's ability to obtain pre-enforcement review of this Agreement.

#### **XV. PROJECT COORDINATORS AND COMMUNICATIONS**

15.1 Each party shall designate a Project Coordinator. The MDEQ's Project Coordinator is Karen Williams. Respondent's Project Coordinator is the MDOT Environmental Section Manager, Harold Zweng. Whenever a notice is required to be given or a communication, report, sampling data, analysis of data, or other technical document is required to be forwarded by one party to the other party under this Agreement, such communication shall be directed to the parties at the below listed addresses and shall reference this Agreement. If any party changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to the other party, in writing, as soon as practicable.

As to MDEQ:

Karen Williams, Project Coordinator  
Remediation and Redevelopment Division  
Southeast Michigan District Office  
Michigan Department of Environmental Quality  
27700 Donald Ct., Warren MI 48092  
Telephone: 586-753-3884  
Email: williamsk5@michigan.gov

As to Respondent:

Environmental Section Head Manager  
Harold Zweng  
Michigan Department of Transportation  
425 West Ottawa Street  
Lansing, MI 48933  
Telephone: 517-335-2171  
Email: zwengh@michigan.gov

15.2 Respondent's Project Coordinator shall have primary responsibility for overseeing the implementation of the response activities, corrective actions and other requirements specified in this Agreement.

15.3 In addition to its Project Coordinator, the MDEQ may designate other MDEQ employees or other authorized representatives, employees, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Agreement. In such event, the names of those MDEQ authorized representatives shall be provided to Respondent.

**XVI. RELEASE, THREAT OF RELEASE, AND IMMINENT AND SUBSTANTIAL ENDANGERMENT ACTIONS AND NOTIFICATION**

16.1 Respondent shall take immediate action upon:

- (a) The occurrence of any event that causes a release or threat of release of a hazardous substance or regulated substance at or from the Property;
- (b) Respondent's knowledge of or obtaining any information that Existing Contamination or conditions at the Property which were previously unknown may present an imminent and substantial endangerment to on-site personnel, public health, safety or welfare, or the environment; or
- (c) Respondent's knowledge of or obtaining any information that may adversely affect the determinations required to be made by the MDEQ for the entry of this Agreement pursuant to MCL 324.20133 or 324.21323h.

Respondent shall immediately undertake all appropriate actions pursuant to all applicable laws and regulations to prevent, abate or mitigate such release, threat of release, or endangerment. Any action undertaken by Respondent shall be in accordance with all applicable health and safety laws and regulations.

16.2 Upon the occurrence of an event subject to Paragraph 16.1 of this Agreement, Respondent shall: (a) immediately notify the MDEQ's project coordinator

or, in his or her unavailability the Pollution Emergency Alerting System (PEAS, 1-800-292-4706); and (b) within ten (10) days of notifying the MDEQ of such an occurrence Respondent shall submit to the MDEQ project coordinator a report setting forth the events that occurred and the measures taken and to be taken to abate and mitigate the release, threat of release, or endangerment. Respondent shall further comply with all notification or reporting requirements under applicable State or federal laws and regulations.

16.3 Upon a release, threat of release, or circumstances that constitute an imminent and substantial endangerment, regardless of whether Respondent notifies the MDEQ pursuant to Paragraph 16.2 of this Agreement, the MDEQ may:

(a) Require Respondent to stop or modify redevelopment activities for such period of time as may be needed to prevent or abate any release, threat of release, or endangerment;

(b) Require Respondent to stop implementation of response activities or corrective actions required under Section V (Implementation of Response Activities or Corrective Actions) of this Agreement for such period of time as may be needed to prevent or abate any release, threat of release, or endangerment;

(c) Require Respondent to undertake any such activities that the MDEQ determines necessary to prevent or abate such release, threat of release, or endangerment for which Respondent has liability under Part 201 or Part 213 or other applicable law; and/or

(d) Undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or endangerment.

16.4 The obligations, decisions, and actions taken under this Section are not subject to Section XIV (Dispute Resolution) of this Agreement.

## **XVII. MODIFICATIONS**

This Agreement may only be modified according to the terms of this Section. The procedure for modifying this Agreement shall be as follows:

(a) Modification of any response activities, corrective actions or schedules under the Agreement are upon written agreement of Respondent's and the MDEQ's Project Coordinators.

(b) Modification of any other provision of this Agreement is upon written agreement between Respondent and the State.

#### **XVIII. ASSIGNMENT OF AGREEMENT**

18.1 Respondent shall not assign this Agreement or any of its rights or responsibilities under this Agreement except as provided in this Section. This Agreement permits assignment of the benefits of this Agreement only from Respondent to the MDEQ-approved Assignee, as specified in this Section, and does not authorize or allow assignment of its benefits to any other entity. The extension of the benefits under this Agreement to the MDEQ-approved assignee, as specified in this Section, shall have no effect on Respondent's benefits under this Agreement.

18.2 With respect to any given Parcel or group of Parcels, the benefits of this Agreement may be extended by Respondent to the MDEQ-approved Assignee in the form of an Assignment of Administrative Agreement and Covenant Not to Sue (Assignment) as approved by the State. MDEQ may require additional response actions or corrective actions in the Assignment based on changes in the use of the Property or any portion of the Property.

18.3 The Assignment shall be executed by the Respondent, the Assignee and the State prior to transfer of ownership or control to the Assignee of any portion of the Property.

#### **XIX. TERMINATION OF OBLIGATIONS**

19.1 Upon mutual written consent of the Project Coordinators, the monthly status meetings required by Paragraph 5.1 of this Agreement may be terminated.



19.2 The obligations pursuant to this Agreement with respect to a Parcel or group of Parcels regarding Existing Contamination shall terminate when Respondent no longer has an ownership interest in a specific Parcel or group of Parcels and notifies the State, to its satisfaction, that Respondent is no longer an owner of a specific Parcel or group of Parcels. The termination of any obligations of the Respondent or the Assignee has no effect on the obligations that any future owner, operator, lessee, or occupant of the Property or any portion of the Property may have under the law.

#### **XX. APPLICABLE LAW**

All actions, including, but not limited to, response activities and corrective actions, required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable State and federal laws and regulations relating to occupational safety and health, and other federal and State environmental laws.

#### **XXI. APPLICATION**

This Agreement shall apply to and be binding on Respondent, Assignees, if applicable, and the State. This Agreement is only for the benefit of the parties to this Agreement.

#### **XXII. SEVERABILITY**

The provisions of this Agreement shall be severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or State law, and therefore unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

#### **XXIII. EFFECTIVE DATE**

This Agreement shall become effective upon the latest date of execution of Section XXV (Signatories).

#### **XXIV. SEPARATE DOCUMENTS**

This Agreement will be executed in two (2) duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

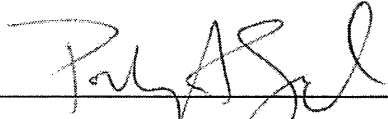
## **XXV. SIGNATORIES**

Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Agreement and to legally bind such party to the terms and conditions of this Agreement.

THE STATE AND RESPONDENT AGREE TO ALL TERMS AND CONDITIONS HERETOFORE SET FORTH.

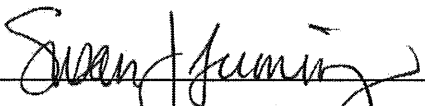
**IT IS SO STIPULATED:**

**MICHIGAN DEPARTMENT OF ATTORNEY GENERAL**

By:   
Polly A. Synk (P63473)  
Assistant Attorney General  
Natural Resources Division  
Department of Attorney General

9-14-2016  
Date

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

By:   
Susan Leeming, Acting Chief  
Remediation and Redevelopment Division  
Department of Environmental Quality

Sept 19, 2016  
Date

**IT IS SO STIPULATED:**

Respondent

By: 

Kirk T. Steudle  
Director, Michigan Department  
of Transportation

6-10-2016  
Date

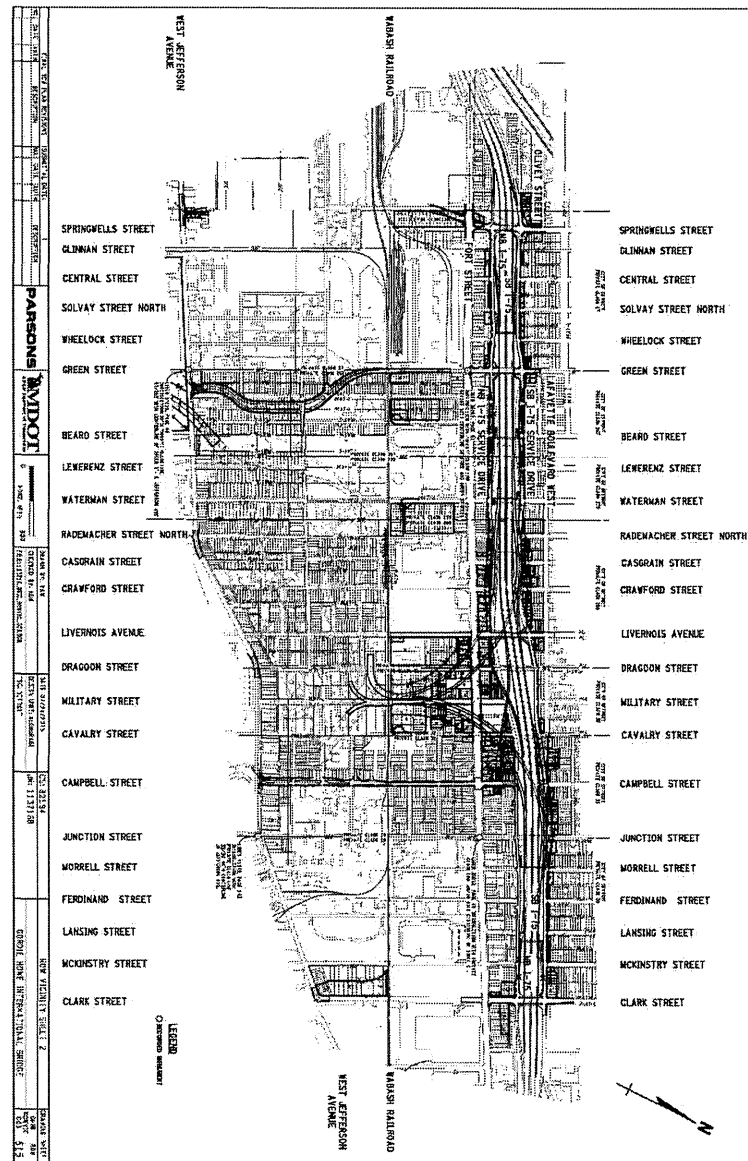
## ATTACHMENT A – MAP OF PROPERTY BOUNDARY



## **ATTACHMENT B – VICINITY SHEETS**







## ATTACHMENT C

### Presumptive Environmental Risk Management Process and Preventative Measures Plan

## THE PROPERTY TRANSACTION AND SUBMISSION TRACKING LOG

[illegible]