

**PERRINE DUPONT SETTLEMENT  
SPELTER VOLUNTEER FIRE DEPARTMENT CLAIMS OFFICE  
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SPELTER, WV 26438  
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February 11, 2016

The Honorable Thomas A. Bedell  
Circuit Judge of Harrison County  
301 West Main Street, Room 321  
Clarksburg, West Virginia 26301

**Re: The Perrine DuPont Settlement; Civil Action No. 04-C-296-2 (Circuit Court of Harrison County, West Virginia) - Proposed Order implementing the Road Re-Paving/Repair portion of the Road Repair and Improvement Plan approved by the Court on April 15, 2014; Our File No. 4609-1 {DD-47}**

Dear Judge Bedell:

I hope that you are well.

This Report requests relief from the Court in connection with the Road Repair and Improvement Program.

### I. INTRODUCTION

As the Court will recall, on April 15, 2014, the Order in Attachment A to this Report was entered approving the Settlement Road Repair and Improvement Program.

The program has three components: (i) road re-paving/repairs, (ii) alleys and (iii) drainage. With this Report, we address the first component of the program, road re-paving repairs. Claimants' Committee Meetings were held on October 28, 2015 and January 14, 2016, and a meeting with the West Virginia Department of Highways was held on January 21, 2016, also attended by members of the Claimants' Committee, to obtain consensus on the roads needing repairs, with the resulting map of the roads to be so re-paved and repaired being Exhibit A to the enclosed, proposed approval Order<sup>1</sup>. The proposed list of the roads to be repaired was finalized, vetted, and approved by the Finance Committee, the Claimants' Committee, and the West Virginia Department of Highways without any changes or objections.

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<sup>1</sup>This description varies slightly from the one in the April 15, 2014 Order.

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## II. REQUESTED RELIEF

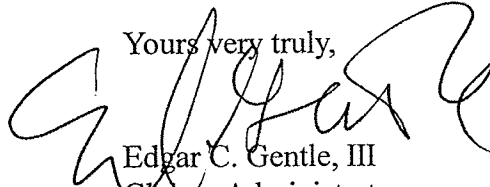
With this Report, we ask the Court to consider finalizing the description of the roads to be repaired, approve the Bidder List<sup>2</sup> for the work contained in Exhibit B to the proposed Order, the Request for Proposals to obtain the lowest qualified bidder in Exhibit C to the proposed Order, and the proposed Agreement with the successful bidder in Exhibit D to the proposed Order.

This Report has been vetted with the Finance Committee, the Claimants' Committee, and the West Virginia Department of Highways, and it reflects all comments and suggested edits we received from them.

An agreed proposed Order is submitted herewith for the Court's consideration.

Thank you for the Court's consideration.

Yours very truly,



Edgar C. Gentle, III  
Claims Administrator

ECGIII/kbs  
Attachments:

1. **Attachment A to Report:** April 15, 2014 Court Order approving the Settlement Road Repair and Improvement Program
2. **Proposed Order**
  - Exhibit A to Order:** Maps of Roads Subject to the Road Re-paving/Repair Portion of the Settlement Road Repair and Improvement Program
  - Exhibit B to Order:** Road Re-paving/Repair Portion of the Settlement Road Repair and Improvement Program Bidder List
  - Exhibit C to Order:** Road Re-paving/Repair Portion of the Settlement Road Repair and Improvement Program Request for Proposals
  - Exhibit D to Order:** Road Re-paving/Repair Portion of the Settlement Road Repair and Improvement Program Agreement

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<sup>2</sup> The Bidder List was developed by obtaining a list of local paving contractors from the Claimants' Committee. Calls were then made to those on the list to determine if they were interested. We also confirmed that the contractors on the list are approved by the West Virginia Department of Highways.

February 11, 2016

Page -3-

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cc: (with attachments)(by e-mail)

James S. Arnold, Esq.,  
DuPont Representative on the Settlement Finance Committee

Virginia Buchanan, Esq.,  
Plaintiff Class Representative on the Settlement Finance Committee

Meredith H. McCarthy, Esq.,  
Guardian Ad Litem for Children

Clerk of Court of Harrison County,  
West Virginia, for filing (via hand delivery)

Mr. Paul Emerson

Ms. Sarah Cayton

Ms. Christy Mullins

# **ATTACHMENT A TO REPORT:**

**April 15, 2014 Court Order approving the Settlement  
Road Repair and Improvement Program**



Administrator. A total of 28 Claimants attended the three meetings. The meetings provided an overview of the Plan, which involves piping under roads and underground, repairing alleyways and resurfacing roads.

A Hearing was held on April 2, 2014. All Zone 1A Property Claimants were provided due and proper notice of the Hearing. Three Zone 1A Claimants attended the hearing, but none had any objections to the Plan.

Appearing before the Court in person were Edgar C. Gentle, III, Esq., the Claims Administrator; Michael A. Jacks, Esq., the Spelter Settlement Claims Office Executive Director; Meredith McCarthy, Esq., as *guardian ad litem* and proxy for Class Counsel; and Jim Arnold, Esq., on behalf of DuPont; and telephonically, Virginia Buchanan, Class Counsel.

The hearing was also attended by George Hilton and Stan Keifer of NCM, the Settlement Remediation Contractor; by Billy Sublett and Paul Emerson, who are members of the Claims Administrator remediation staff, and by Charles Douglas Forni, PE.

The Court considered the submissions of the Claims Administrator, the Finance Committee, the *Guardian ad litem*, and NCM, and no Zone 1A Class Members submitted any concerns or objections.

After careful review of the Claims Administrator's Report and Supplement, and in consideration of applicable law, the Court makes the following findings and decisions:

1. The Court finds the February 27, 2014 Zone 1A Road Improvement and Repair Plan Report and March 31, 2014 Supplement to be fair and reasonable and hereby approves them;

2. The Court hereby authorizes, empowers, and directs the Claims Administrator to execute the December 20, 2013, Letter Agreement with the WVDOH in EXHIBIT B on behalf of the Settlement;
3. The proposed improvements and repairs to Fourth Street, Spelter, West Virginia as detailed in the Zone 1A Road Improvement and Repair Plan Report, the March 31, 2014 Supplement, and the December 20, 2013, Letter Agreement with the WVDOH attached thereto, are to commence as soon as practicable; and
4. Provided that the Claims Administrator and his staff carry out the Zone 1A Road Improvement and Repair Plan Report and March 31, 2014 Supplement substantially in accordance with EXHIBIT A and EXHIBIT B, the Claims Administrator and his staff are granted judicial immunity.

**IT IS SO ORDERED.**

The Clerk of this Court shall provide certified copies of this Order to the following:


David B. Thomas, Esq.  
James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P. O. Box 3824  
Charleston, WV 25338  
*DuPont's Finance Committee Representative*

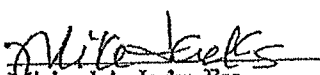
Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
*Plaintiffs' Class Finance Committee  
Representative*

Meredith McCarthy, Esq.  
901 West Main Street  
Bridgeport, WV 26330  
*Plaintiffs' Class Finance Committee Proxy*

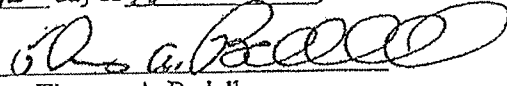
Edgar C. Gentle, III, Esq.  
Michael A. Jacks, Esq.  
Settlement Claims Office  
P.O. Box 257  
Spelter, WV 26438  
*Claims Administrator*

This Order Prepared By:

  
Date: 4/14/2014  
Edgar C. Gentle, III, Esq.  
Gentle, Turner, Sexton, Debrosse & Harbison  
P.O. Box 257  
Spelter, WV 26438

  
Date: 4/14/2014  
Michael A. Jacks, Esq.  
W. Va. Bar. No. 11044  
Gentle, Turner, Sexton, Debrosse & Harbison  
P. O. Box 257  
Spelter, WV 26438

ENTER this 15<sup>TH</sup> day of APRIL, 2014.

  
Hon. Thomas A. Bedell  
Circuit Judge of Harrison County,  
West Virginia



STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
Family Court Circuit of Harrison County, West Virginia, hereby certify the  
foregoing to be a true copy of the ORDER entered in the above styled action  
on the 15 day of April, 2014.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix  
the Seal of the Court this 16 day of April, 2014.

Donald L Kopp II  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia

EXHIBIT A

PERRINE DUPONT SETTLEMENT  
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March 31, 2014

VIA HAND DELIVERY

The Honorable Thomas A. Bedell  
Circuit Judge of Harrison County  
301 West Main Street, Room 321  
Clarksburg, West Virginia 26301

Re: Perrine, et al v. DuPont, et al;  
Civil Action No. 04-C-296-2 (Circuit Court of Harrison County, West Virginia);  
Settlement Property Remediation Program - Update on the Zone 1A Proposed  
Road Repair and Improvement Plan; Our File No. 4609-1 (DD-48).

Dear Judge Bedell:

In accordance with the Court's March 3, 2014, Order Setting Hearing Regarding Proposed Zone 1A Road Improvement and Repair Plan, your Claims Administrator held a town meeting to allow Zone 1A Claimants to provide feedback on the February 27, 2014 Report respecting this matter.

The original Report is attached to this letter as Attachment A.

This Supplemental Letter will follow the same format as the attached Report.

I. OVERVIEW - ZONE 1A ROAD REPAIR AND IMPROVEMENT PLAN ("PLAN")

Three separate town meetings were held on March 21, 2014. Attending each meeting were representatives of NCM, the remediation contractor, Mr. Doug Forni of Thrasher Engineering, the Settlement's outside engineering expert, Mr. Marc Glass, the Settlement's remediation consultant, Mr. Chuck Richards of the Harrison County Highway Department, and the Settlement's staff, including Mike Jacks, the Executive Director of the Claims Office, Billy Sublett, the Construction Supervisor, and your undersigned Claims Administrator. A total of 28 Claimants attended the three meetings. At the beginning of each meeting, we provided an overview of the Plan, which involves

March 31, 2014

Page 2

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pipng under roads and underground, repairing alleyways and resurfacing roads. Each component of the Plan will be carried out after a given road or alley is no longer needed for the clean-up.

Below is a summary of the comments and suggestions that we received from the Claimants with respect to the Plan.

II. PROPOSED ZONE 1A DRAIN REPAIRS AND INSTALLATION

A. Fourth Street Drain Repair and Installation.

One Claimant expressed concerns that drains to his back alley may be blocked off through the related construction process. It is a drain separate from the one being repaired on 4<sup>th</sup> Street. We agreed to locate his drain and make sure it is not harmed.

B. Repair and Improve Second Street Drains and Alley Between "A" Street and "B" Street.

This is the alley behind the churches. A draft proposal agreed to by Spelter residents after two previous town meetings is in Attachment B. A claimant expressed concern that the drop boxes in the plan will have to be serviced, by cleaning out silt and other materials collected from time to time. Additional erosion protection will be installed at the bottom of the alley to prevent erosion, possibly with riffraff. There is an issue with water on the south side of the road, which is flooding some neighboring properties, which will be addressed by the final design.

C. Repair the drain at the corner of "A" Street and Third Street.

No additional comments.

D. Clean and Repair the drains at the corner of "C" Street and Third Street.

The inlet boxes are higher than the road, which will be corrected with the proposal.

E. Install Drain Under "B" Street.

No additional comments.

F. Repair Drain Under Sixth Street and "B" Street Intersection.

No additional comments.

G. Install Drain Under Seventh Street in Intersection with "B" Street.

No additional comments.

H. Install Drain Upper "B" Street.

No additional comments.

I. Install Additional Drain On Lower "A" Street

It was agreed that we need a drain bigger than 6 inches here.

III. PROPOSED ZONELIA ALLEY REPAIRS AND DRAINAGE CONCERNS

A. The alley extending from "B" Street.

One Claimant wants a hard surface instead of gravel. Doug Fomi suggested that this is not necessary.

B. The Second Street Alley.

See above comments for Part II. B, above; which is part of the same project.

C. 3 1/2 Street Alley South.

One Claimant wants more gravel behind her house, which we will install.

D. 3 1/2 Street Alley North.

Additional gravel will be installed here also.

E. 4 1/2 Street Alley South.

We received complaints about the fill rocks, and will grade them down.

F. 4 1/2 Street Alley North.

No additional comments.

March 31, 2014

Page 4

G. Alley in Erie.

This alley has a drain that does not work installed by the Hepzibah PSD. We will try to repair the drain prior to resurfacing the alley.

H. Second Street Alley.

No additional comments.

IV. PROPOSED ZONE 1A MAIN ROADWAY RESURFACING.

Under this part of the proposal, a wear surface of 2 inches will be installed on the roads after they are used, which will include the plugging of potholes. It was suggested that the two dips in the road at the bottom of the alley between "A" Street and "B" Street be fixed. Chuck Richards suggested that this may be caused by a sinking sewer line, which may have to be repaired by the Hepzibah PSD. The Settlement will try to resolve how to fix this problem. It was also suggested that brush sweeping of cinders on Zone 1A roads be done in the near future. Stan Keifer of NCM indicated that this will be done in the spring when soil remediation begins again.

A. "B" Street.

No additional comments.

B. First Street.

No additional comments.

C. Second Street.

No additional comments.

D. "A" Street.

No additional comments.

E. Fourth Street.

No additional comments.

F. Third Street.

No additional comments.

G. Sixth Street.

No additional comments.

H. Maple Avenue.

No additional comments.

I. River Road.


This is the same road in Fire, referenced in Part III. G, above. A Claimant reiterated the suggestion that the drain be fixed before the road is resurfaced.

J. Paving Materials.

No additional comments.

Many Claimants expressed an interest in attending the April 2 hearing, which was announced at each of the town meeting sessions.

Thank you for the Court's consideration.



Robert C. Goble, III  
Claims Administrator

ECCID/kah  
Attachments:

1. ATTACHMENT A: February 27, 2014 Settlement Property Remediation Program - Update on the Zone 1A Proposed Road Repair and Improvement Plan
2. ATTACHMENT B: Proposal to Repair and Enlarge Second Street Drains and Alley Between "A" Street and "B" Street

March 31, 2014  
Page 6

cc: (with attachments)(by e-mail)

David B. Thomas, Esq.  
James S. Arnold, Esq.  
DuPont Representatives on the Settlement Finance Committee

Virginia Buchanan, Esq.  
Plaintiff Class Representative on the Settlement Finance Committee

Margaret McCarthy, Esq.  
Guardian ad Litem

Terry L. Turner, Jr., Esq.  
Michael A. Jacey, Esq.  
Mr. Billy Sublett  
Mr. Sam Keifer, NCM

Clerk of Court of Harrison County  
West Virginia, for filing (via hand-delivery)



ATTACHMENT A

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February 27, 2014

VIA HAND DELIVERY

The Honorable Thomas A. Bedell  
Circuit Judge of Harrison County  
301 West Main Street, Room 321  
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Re: Perrine, et al. v. DuPont, et al.;  
Civil Action No. 04-C-296-2 (Circuit Court of Harrison County, West Virginia) -  
Settlement Property Remediation Program - Update on the Zone 1A Proposed  
Road Repair and Improvement Plan; Our File No. 4609-1. (DD-48)

Dear Judge Bedell:

We hope this letter finds the Court well.

I. OVERVIEW - ZONE 1A ROAD REPAIR AND IMPROVEMENT PLAN

I am writing to provide the Court with an updated Report regarding the Zone 1A Proposed Road Repair and Improvement Program, which will be paid for by the Road Repair line item in the Settlement Property Remediation Program's Court-approved budget.

During our soil remediation process in Spelter and in the rest of Zone 1A, some damages have occurred to road surfaces due to the use of heavy equipment. We have had concerns about water drainage and road damages raised by some area residents.

To respond to these concerns, we have worked with the West Virginia Department of Highways (the "WVDOH"), regarding the following list of proposed repairs and improvements to existing roadways in Zone 1A. The WVDOH has jurisdiction over all of the public roads in Zone 1A, with the exception of the alleys.

Our plan below, subject to Court approval, is to conduct the majority of these repairs and improvements at the conclusion of the Settlement Property Remediation Program in Zone 1A, with repairs to Fourth Street to begin as soon as possible. Thereafter, once we have completed remediation in an area we will work on road, drain, and alley repairs in that area. Once all of the remediation is complete in Zone 1A, we will resurface the roads, as described below.

We are currently scheduled to continue soil remediation in Zone 1A during the spring, summer, and possibly fall, depending on circumstances, of 2014.

The following is a proposed list of storm drains, alleys, and roads that could be included in the Zone 1A Road Repair and Improvement Program, pending Court approval.

## II. PROPOSED ZONE 1A DRAIN REPAIRS AND INSTALLATION

The first projects to be completed under the Road Repair and Improvement Program would be underground and roadside storm drain systems, with our recommending that repairs to Fourth Street to begin as soon as possible.

- A. Fourth Street Drain Repair and Installation. Your Claims Administrator proposes and recommends that improvements and repairs to Fourth Street be completed first, as soon as possible. On Fourth Street, there are two clogged drains near the middle of the street. Because the drains do not function, the street floods during heavy precipitation and standing water lasts for several days. It is proposed that the collapsed and/or clogged drainage system below Fourth Street be replaced and additional drainage system installed to run to the North under "B" Street and down the hill in the ravine between Third Street and Fourth Street, County Route 19/9.

The Settlement proposes to pay for the materials for this task, with the WVDOH to perform the work and provide the inspection services. Please find attached correspondence with the WVDOH outlining the proposed scope of repairs in ATTACHMENT A. The WVDOH has surveyed this area and drawn up plans for the work. Accordingly, please find attached a Letter Agreement with the WVDOH in ATTACHMENT B, which outlines the responsibilities of both the Settlement and the WVDOH, and includes an estimated amount of \$9,773.41 for materials to be paid by the Settlement, should the Court approve the proposed Fourth Street repairs. Based on the Letter Agreement, the WVDOH will be responsible for the labor and management costs, as well as any unforeseen costs.

- B. Repair and Enlarge Second Street Drains and Alley Between "A" Street and "B" Street. The Second Street Alley storm drain would be enlarged and repaired and an additional drain will be installed across the street. The WVDOH is planning to work with the Settlement to correct the drainage. Pending Court approval, the Settlement would agree to purchase the materials and assist the WVDOH due to the extent of the damage caused to the existing drain by the delivery and shipping of soil remediation materials. The estimated cost for the drain repairs to the Settlement is \$12,000.
- C. Repair the drain at the corner of "A" Street and Third Street. This trench drain has suffered some damage in the inside of the curve due to the weight of passing heavy-load vehicles. Pipe replacement and proper end basins would be required to repair the drain. The estimated cost for pipe replacement and end caps is estimated at \$7,000, which the Settlement proposes to pay subject to Court approval. The WVDOH would perform the work because the drain is in a street over which they have jurisdiction.
- D. Clean and Repair the drain at the corner of "C" Street and Third Street. This drain has also suffered some damage in the inside of the curve. The replacement of the drain intake on the inside of the curve should solve the issue and is estimated to cost \$2,000, which the Settlement proposes to pay, subject to Court approval. The WVDOH would perform the work because the drain is in a street over which they have jurisdiction.
- E. Install Drain Under "B" Street. Water is crossing "B" Street at the intersection of the alley between Fourth Street and Fifth Street and appears to be originating on the southwest side of the intersection and crossing the street diagonally toward Sixth Street. This water is of unknown origin and flows most of the year across "B" Street causing a dangerous condition during periods of freezing temperatures. There is no apparent connection between this issue and the Settlement remediation efforts, but concern has been voiced by some of our claimants. This issue appears to have predated Settlement presence in the area. No formal estimate has been prepared on this issue; however, the solution should be similar to others in the area costing the Settlement approximately \$4,000, including the installation of a drain under "B" Street by the WVDOH.
- F. Repair Drain Under Sixth Street and "B" Street Intersection. The large drain crossing "B" Street near Sixth Street purportedly has been damaged by the remediation efforts. Repairs to this large drain system could cost the Settlement as much as \$50,000 or more. Inspection of this drain by an engineer has not yet been performed and allegations of damages have not yet been verified by Settlement Staff.

The drain appears to be functioning as intended at this time, and does not appear to be damaged, but some claimants have voiced concerns about the drain.

- G. Install Drain Under Seventh Street intersection with "B" Street. Water traveling down the graveled road identified as Seventh Street is passing water across "B" Street and resulting in water damage in one claimant's basement. No Settlement remediation has been performed in this area yet, but the complaint has been placed with the Settlement Office. A rough estimated cost would be \$8,000, although this drainage issue clearly pre-dated Settlement remediation efforts.
- H. Install Drain Upper "B" Street. Water is crossing upper "B" Street, similar to the issue discussed in paragraph G above, at the Seventh Street intersection. No Settlement remediation has been performed in this area yet. A rough estimated cost would be placed at \$8,000, although this concern clearly pre-dated Settlement remediation efforts.
- I. Install Additional Drain On Lower "A" Street. There is one existing drain across lower "A" Street which is not functioning as intentioned where new sod placement near "A" Street has been blamed for redirecting the flow of drainage. The complaint alleges that the water that would have entered the existing drain on the north side of the road is being redirected by the new sod to follow the south edge of the road and is causing erosion in the area near the area where a claimant parks vehicles and further down the road past the gate and near the sewage plant. No investigations have been performed by a licensed West Virginia engineer on this site. The potential solution requested by the claimant is the addition of a storm water inlet drain on the south side of "A" Street to be connected to the existing storm drain pipe. The estimated cost for this repair is \$2,000. Soil remediation is not yet complete in this area so this repair would be conducted in 2014.

### III. PROPOSED ZONE 1A ALLEY REPAIRS AND DRAINAGE CONCERNS

The alleys in Spelter are covered in gravel. Most have already had grading performed and gravel installed by NCM after remediation efforts were performed on properties adjacent to the alleys. The alleys are public right of ways, but are considered "orphan roads," per Terri Schulte of the Harrison County Planning Commission, and the County and State will not expend funds to work on orphan roads. Therefore there are no public funds for maintenance of the alleys, and they are normally not maintained, unless area residents do so on their own. The Settlement and NCM have replaced and installed additional gravel on all of the alleys where work has been performed. Additional gravel has been installed in some alleys on multiple occasions as needed for continued maintenance.

- A. The alley extending from "B" Street. This alley has been resurfaced with gravel by NCM after the last remediation work was performed in 2012. The only current rough area is where cars enter "B" Street, where there is a rough gravel to asphalt meeting. Estimated cost to smooth intersection is \$300.
- B. The Second Street Alley. A request has been made to install underground drainage to better control water flow and provide good access to home owners. An engineered solution has been provided to the Settlement Office for consideration by Doug Forni of Thrasher Engineering. The estimated cost to install the proposed drain system is \$30,000. This repair cannot be completed until the Second Street drains, mentioned above, are enlarged and repaired on the downhill end of the alley.
- C. 3½ Street Alley South. 3½ Street Alley South has been resurfaced and is considered complete. Additional concerns may involve drainage along the alley but appear to involve continued maintenance and are not related to remediation efforts.
- D. 3½ Street Alley North. Complaints have been received by the Settlement Office concerning additional traffic and rough surface conditions on the north end and drainage issues toward the south end of 3½ Street Alley North. This alley is behind the old Spelter Fire Department Building, which NCM rents from the Fire Department and uses as its office. NCM has been providing continued maintenance of this alley because they continue to use it, and NCM has provided additional gravel on an as-needed basis, which should continue.
- E. 4½ Street Alley South. The "B" Street end of the 4½ Street Alley South allows gravel to migrate into the road with normal usage. The south end has large stone that at least one claimant has complained damaged his car. The Settlement's position is that the stone size is appropriate for traffic conditions and to control erosion. Accordingly, the Settlement does not recommend any further work on this alley at this time.
- F. 4½ Street Alley North. 4½ Street Alley North was recently used for remediation and has received a surface coating of crushed stone. No further efforts are planned because remediation has been completed on the properties adjacent to this alley.
- G. Alley in Erie. One alley in Erie may have been damaged during the soil remediation process. We plan to resurface it when we finish work in that area during the summer of 2014.
- H. Second Street Alley. Additional grading and correction of drainage was performed by NCM during 2012 and 2013. New gravel has been installed on multiple

occasions. No further actions are planned, although installation of the drainage system in the Second Street Alley will be adjacent to this alley.

#### IV. PROPOSED ZONE 1A MAIN ROADWAY RESURFACING

Some Claimants have brought concerns to the Settlement staff about damages to the roads throughout Zone 1A, which can be remedied by resurfacing and will prevent later development of potholes or more significant cracks or road damages. Below are estimated tonnage values for resurfacing the main streets in Zone 1A with two inches of asphalt. Our estimated installation cost is \$80 per ton, which is based on the WVDOH's estimates. The WVDOH has agreed to inspect the work and to provide contractors to do the work under existing WVDOH contracts, although the Settlement will pay for the work unless otherwise noted herein.

- A. "B" Street. "B" Street, in Spelter, a.k.a. County Route 19/33, with 50', 24', and 15' pavement widths, will require approximately 1,300 tons of paving material, or \$104,000. "B" Street runs from Route 19 across the bridge into Spelter and up on to the hill above Spelter, where it dead ends.
- B. First Street. First Street, in Spelter, a.k.a. County Route 19/90, with a 14' pavement width, will require approximately 90 tons of paving material, or \$7,200. First Street is immediately on your left when entering Spelter on "B" Street from Route 19.
- C. Second Street. Second Street, in Spelter, a.k.a. County Route 119/91, with a 17' pavement width, will require approximately 70 tons of paving material, or \$5,600. Second Street is the second left when entering Spelter on "B" Street from Route 19, and it runs to "A" Street.
- D. "A" Street. "A" Street, and Third Street between "A" Street and "B" Street, in Spelter, a.k.a. County Route 119/11, with a 16' pavement width, will require approximately 300 tons of paving material, or \$24,000. This County Route runs from the West end of "A" Street through the intersection of "A" Street and Third Street, along Third Street to the intersection of Third and "B" Street.
- E. Fourth Street. Fourth Street, in Spelter, a.k.a. County Route 119/9, with a 16' pavement width will require approximately 130 tons of paving material, or \$10,400. Fourth Street intersects with "B" Street in the middle of Spelter.
- F. Third Street. Third Street, "C" Street, and Fifth Street, in Spelter, a.k.a. County Route 119/10, with a 17' pavement width, will require approximately 300 tons of paving material, or \$24,000. This County Route runs from the intersection of "B" and Third Street along Third Street to the intersection of Third and "C" Street,

continuing along "C" Street through the intersection of "C" and Fifth Street, then along Fifth Street to the intersection of Fifth Street and "B" Street.

- G. Sixth Street. Sixth Street in Spelter, a.k.a. County Route 24/12, with a 15' pavement width, will require approximately 150 tons of paving material, or \$12,000. Sixth Street runs from "B" Street to the North down the hill towards New Quarters.
- H. Maple Avenue. Maple Avenue, in Eire, a.k.a. County Route 19/32, with a 15' pavement width, will require approximately 150 tons of paving material, or \$12,000.
- I. River Road. River Road, in Eire, a.k.a. County Route 19/34, with a 12' pavement width, will require approximately 150 tons of paving material, or \$12,000.
- J. Paving Materials. The total estimated amount of paving material needed is: approximately 2,640 tons of paving material, or \$211,200. We have asked the WVDOH to provide inspection services for the entire paving and resurfacing operation to insure that it is done to their standards and in accordance with applicable law and regulations. The cost estimates provided herein are based on estimates provided by the WVDOH based on using their normal contractors who install similar materials for other WVDOH projects.

**V. REQUEST FOR HEARING REGARDING PROPOSED  
ZONE 1A ROAD REPAIR AND IMPLEMENTATION PLAN  
AND REQUESTED AUTHORITY TO BEGIN REPAIRS ON FOURTH STREET**

With this Report, we request that the Court set a hearing regarding the above proposed Zone 1A Plan in full, with Settlement Property Remediation Program Zone 1A residents being given prior notice thereof, and allowing your Claims Administrator to execute the Letter Agreement with the WVDOH with respect to the repairs and improvements to Fourth Street, to commence as soon as possible.

Two proposed Orders are attached: (i) one setting the requested hearing in ATTACHMENT C, and (ii) one approving the proposed Zone 1A Road Improvement and Repair Plan in ATTACHMENT D.

The proposed Order setting a hearing contemplates inviting the Zone 1A claimants, as some claimants have expressed a concern that road repair monies may be paid in a inequitable manner by favoring some roads or alleys over others in the community. With respect to notification to Zone 1A claimants, we request the Court's input on whether the hearing notice should apply to all property claimants, or only the Zone 1A property claimants, as the Final Order Establishing Property Remediation (Cleaned-Up) Program entered on June 27, 2011 (the "Property Remediation Order"),



provides that any "extra remediation funds shall be distributed equally to all participants," following the completion of all remediation.

Our recommendation is that the hearing notice apply only to the Zone 1A participating Settlement Remediation Program Class Members as the only damaged roads and alleys are located in Zone 1A.

Prior to the hearing, we will hold a Zone 1A Claimant town meeting to obtain input on this Report, and we will update the Court at the hearing.

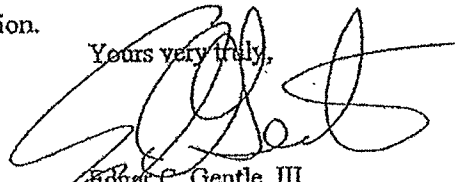
**VI. DESCRIPTION OF COURT-APPROVED ROAD IMPROVEMENT  
AND REPAIR BUDGET**

For the Court's convenience, please find attached the Court's April 22, 2013 Order Providing Guidance Respecting Property Remediation Program Issues (the "April 2013 Order"), and your Claims Administrator's Report (the "March 2013 Report") regarding same are attached in ATTACHMENT E.

According to page 7 of the March 2013 Report, the total estimated cost of the Road Improvement and Repair Program is \$500,000. We believe that this budget is adequate to fund the execution of the above Plan.

Thank you for the Court's consideration.

Yours very truly,



Edgar C. Gentle, III  
Claims Administrator

ECGIII/maj  
Enclosures:

1. ATTACHMENT A: Correspondence with the WVDOH
2. ATTACHMENT B: Letter Agreement with the WVDOH
3. ATTACHMENT C: Proposed Order Setting Hearing
4. ATTACHMENT D: Proposed Order Approving Proposed Road Improvement and Repair Plan
5. ATTACHMENT E: April 2013 Order

February 27, 2014  
Page 9 of 9

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cc: (with enclosures)(by e-mail)

David B. Thomas, Esq.  
James S. Arnold, Esq  
DuPont Representatives on the Settlement Finance Committee

Virginia Buchanan, Esq.  
Plaintiff Class Representative on the Settlement Finance Committee

Meredith McCarthy, Esq.  
Guardian ad Litem

Terry D. Turner, Jr., Esq.  
Michael A. Jacks, Esq.  
Mr. Billy Sublett  
Mr. Stan Keifer, NCM

Clerk of Court of Harrison County,  
West Virginia, for filing (via hand delivery)

ATTACHMENT A:  
Correspondence with the  
WVDOH

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
[www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)

December 20, 2013

Mr. Greg Phillips  
West Virginia Division of Highways  
P.O. Box 4220  
Clarksburg, WV 26302

Re: Perrine DuPont Settlement - Installation of 4<sup>th</sup> Street (CO 119/9)  
Drains in Spelter; Our File No. 4609-1 {DD-62}  
Revised Proposed Letter Agreement

In order to perform a storm water management improvement project in Spelter to convey storm water from 4<sup>th</sup> St. (CO 119/9) to an unnamed tributary of Simpson Creek ("the 4<sup>th</sup> Street Drainage System,"), upon Court approval, the Perrine DuPont Settlement will work with the West Virginia Division of Highways (WVDOH) to assist in facilitation of the following by paying for the below materials totaling \$9,773.41:

- A. Installation of 6 Type B inlets with urban grates (\$4,228.78 delivered),
- B. Installation of approximately 480 LF of 15 IN smooth lined corrugated polyethylene pipe (\$2,620.63, based on per foot price and band price, as shown on attached Design Plan).
- C. Disposal of material, and backfill of material for the pipe (\$2,924.00, based on a 4 FT deep trench, 2.5 FT wide and 170 TONS at \$17.20 per TON delivered, as shown on attached Design Plan).

1. **Indemnification.** The first term which we would like to add to the letter agreement is indemnification. The purpose of requesting this term is to ensure that the Claims Administrator and the Perrine DuPont Settlement do not end up paying for damages or losses which arise out of the installation of the 4<sup>th</sup> Street Drainage System. For example, if a buried utility line is damaged during the installation of the 4<sup>th</sup> Street Drainage System, the West Virginia Division of Highways will be responsible for the cost to repair the damages. The proposed term follows:

The West Virginia Division of Highways agrees to indemnify and hold harmless the Claims Administrator, the Perrine DuPont Settlement, and/or any of its officers, employees, and contractors from any and all losses, liabilities, damages, expenses and/or other costs or obligations, resulting from or arising out of claims, demands, lawsuits, or judgements brought against the West Virginia Division of Highways and/or the Claims Administrator, the Perrine DuPont Settlement, and/or any of its officers, employees, and independent contractors as a result of, or arising out of, the West Virginia Division of Highways' performance of the installation of the 4<sup>th</sup> Street Drainage System.

2. **Materials Cost Cap.** The second term which we would like to add to the letter agreement states that the cost quoted for materials in the Letter Agreement is not to be exceeded absent extraordinary circumstances. The proposed term follows:

The Perrine DuPont Settlement, upon approval of this Letter Agreement by the Circuit Court of Harrison County and the signature of the Claims Administrator, hereby agrees to provide materials funding in the not-to-be-exceeded amount of \$9,773.41. Barring a showing of extraordinary circumstances, the Perrine DuPont Settlement will not be responsible for any greater cost than \$9,773.41 for the installation of the 4<sup>th</sup> Street Drainage System. Extraordinary circumstances may only be found by the Hon. Thomas A. Bedell after a presentation of the request for additional funds by the West Virginia Division of Highways to the Circuit Court of Harrison County.

3. **Standard of Professional Workmanship.** The third term which we would like to add relates to the professional standards to which the 4<sup>th</sup> Street Drain Installation shall be completed. The West Virginia Division of Highways agrees to provide the labor, equipment, and supervision necessary to install the 4<sup>th</sup> Street Drainage System to a professional standard in compliance with industry standards and in compliance with all applicable local, state and federal laws, rules, and regulations.

I have prepared a revised proposed Letter Agreement, which is attached for your review.

After we reach an agreement with the West Virginia Division of Highways about the terms of the Letter Agreement, we will provide the proposal to the affected area property owners and request a hearing before Judge Bedell to request approval of the project.

December 20, 2013

Page -3-

We request that a representative of the West Virginia Division of Highways attend the hearing to answer any questions that may asked by residents or the Court.

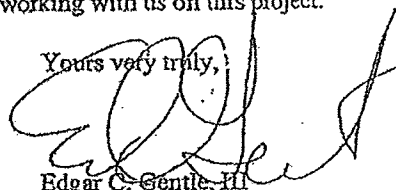
Upon approval of the project by the Court, we will issue payment to the West Virginia Division of Highways in the amount of \$9,773.41.

We request that the work begin within thirty (30) days of the issuance of payment, absent extraordinary circumstances and/ or inclement weather.

Please let us know if you have any questions.

We greatly appreciate your assistance in working with us on this project.

Yours very truly,



Edgar C. Gentle, III  
Claims Administrator

ECG/maj

- Enclosures: 1. Your Proposed Letter Agreement from WVDOH dated 11-6-13  
2. Your Proposed Design of the 4<sup>th</sup> Street Drainage System  
3. Our Proposed Revised Letter Agreement from the Claims Administrator.

cc: (via email)(w/enclosures)(confidential)  
Michael A. Jacks, Esq.  
Mr. Billy Sublett

ENCLOSURE 1

Your Proposed Letter Agreement from  
WVDOH dated 11-6-13

Perrine Dupont Settlement Claims Office  
P.O. Box 257  
Spelter, WV 26438

November 7, 2013

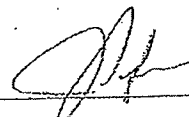
Mr. Greg Phillips  
West Virginia Division of Highways  
P.O. Box 4220  
Clarksburg, WV 26302

In order to perform a stormwater improvement project in Spelter and to convey stormwater from 4<sup>th</sup> St. (CO 119/9) to an unnamed tributary of Simpson Creek, Perrine Dupont Settlement Claims Office (PDSCO) is willing to participate with the West Virginia Division of Highways (WVDOH) to assist in facilitation of the following: installation of 6 Type B inlets with urban grates (\$4,228.78 delivered), installation of approximately 480 LF of 15 IN smooth lined corrugated polyethylene pipe (\$2,620.63, based on per foot price and band price, as shown on attached sheet), disposal of material, and backfill of material for the pipe (\$2,924.00, based on a 4 FT deep trench, 2.5 FT wide and 170 TONS at \$17.20 per TON delivered, as shown on attached sheet). WVDOH will provide all labor, equipment and any materials in addition to those previously listed that are required to complete this project.

Prior to commencement of the above described work, PDSCO shall provide WVDOH with a lump sum donation in the amount of Nine Thousand Seven Hundred Seventy Three Dollars and Forty One Cents (\$9773.41) to facilitate implementation of the project. Work shall proceed at a timeline set by WVDOH.

  
1-9-2014

By: Bill Sublett  
Title: Remediation Site Superintendent

  
By: Bryan Radabaugh JEFF PIFER  
Title: D4 Design Engineer MAINTENANCE  
ENGINEER



ENCLOSURE 2

Your Proposed Design of the 4<sup>th</sup> Street  
Drainage System



ENCLOSURE 3

Our Proposed Revised Letter Agreement  
from the Claims Administrator

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
www.perrinedupont.com  
[perrinedupont@standslaw.com](mailto:perrinedupont@standslaw.com)

December 20, 2013



Mr. Greg Phillips  
West Virginia Division of Highways  
P.O. Box 4220  
Clarksburg, WV 26302

Re: Perrine DuPont Settlement - Installation of 4<sup>th</sup> Street (CO 119/9) Drains in  
Spelter; Our File No. 4609-1 {DD-62}

Dear Mr. Phillips:

I hope that you are well.

I am writing to acknowledge receipt of your November 7, 2013 letter about the installation of a new drainage system on 4<sup>th</sup> Street (CO 119/9) in Spelter, which we received on December 6, 2013. A copy of the letter is attached for your reference.

We have reviewed both the proposed design of the drainage system and the materials cost of \$9,773.41 discussed in the letter.

Subject to Court approval, described below, we are in agreement with both the design and the cost of materials, which, if approved by the Court, we will provide to the West Virginia Division of Highways prior to the commencement of work on the drain installation.

We need to take some preliminary actions before we can proceed with this project.

We need to provide the design plan of the drainage system to affected area residents, and we need to have a hearing before the Hon. Thomas A. Bedell to allow comment on the drainage system.

At the hearing, we will ask for Judge Bedell to approve the expenditure and design of the drainage system by Court Order.

Additionally, there are three terms that we would like to add to the letter agreement before it can be reviewed by the Court and approved.

Additional Terms

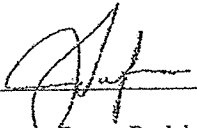
1. Indemnification. The West Virginia Division of Highways agrees to indemnify and hold harmless the Claims Administrator, the Perrine DuPont Settlement, and/ or any of its officers, employees, and contractors from any and all losses, liabilities, damages, expenses and/ or other costs or obligations, resulting from or arising out of claims, demands, lawsuits, or judgments brought against the West Virginia Division of Highways and/ or the Claims Administrator, the Perrine DuPont Settlement, and/ or any of its officers, employees, and independent contractors as a result of, or arising out of, the West Virginia Division of Highways' performance of the installation of the 4<sup>th</sup> Street Drainage System.

2. Materials Cost. The Perrine DuPont Settlement, as indicated by the approval of this Letter Agreement by the Circuit Court of Harrison County and the signature of the Claims Administrator, hereby agrees to provide materials funding prior to the commencement of the project in the not-to-be-exceeded amount of \$9,773.41. Barring a showing of extraordinary circumstances, the Perrine DuPont Settlement will not be responsible for any greater cost than \$9,773.41 for the installation of the 4<sup>th</sup> Street Drainage System. Extraordinary circumstances may only be found by the Hon. Thomas A. Bedell after a presentation of the request for additional funds by the West Virginia Division of Highways to the Circuit Court of Harrison County.

3. Standard of Professional Workmanship. The West Virginia Division of Highways agrees to provide the labor, equipment, and supervision necessary to install the 4<sup>th</sup> Street Drainage System to a professional standard in compliance with industry standards and in compliance with all applicable local, state and federal laws, rules, and regulations.

By: Edgar C. Gentle, III, Esq.  
Title: Claims Administrator

AGREED BY THE WEST VIRGINIA DEPARTMENT OF HIGHWAYS

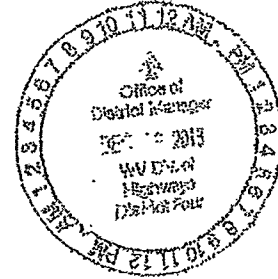
  
By: ~~Bryan Radabaugh~~ JEFF PIFER  
Title: ~~D4 Design Engineer~~ MAINTENANCE  
ENGINEER

ATTACHMENT B:  
Letter Agreement with the  
WVDOH

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
www.perrinedupont.com  
[perrinedupont@gfandslaw.com](mailto:perrinedupont@gfandslaw.com)

December 20, 2013



Mr. Greg Phillips  
West Virginia Division of Highways  
P.O. Box 4220  
Clarksburg, WV 26302

Re: Perrine DuPont Settlement - Installation of 4<sup>th</sup> Street (CO 119/9) Drains in  
Spelter; Our File No. 4609-1 (DD-62)

Dear Mr. Phillips:

I hope that you are well.

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We have reviewed both the proposed design of the drainage system and the materials cost of \$9,773.41 discussed in the letter.

Subject to Court approval, described below, we are in agreement with both the design and the cost of materials, which, if approved by the Court, we will provide to the West Virginia Division of Highways prior to the commencement of work on the drain installation.

We need to take some preliminary actions before we can proceed with this project.

We need to provide the design plan of the drainage system to affected area residents, and we need to have a hearing before the Hon. Thomas A. Bedell to allow comment on the drainage system.

At the hearing, we will ask for Judge Bedell to approve the expenditure and design of the drainage system by Court Order.

Additionally, there are three terms that we would like to add to the letter agreement before it can be reviewed by the Court and approved.

### Additional Terms

1. **Indemnification.** The West Virginia Division of Highways agrees to indemnify and hold harmless the Claims Administrator, the Perrine DuPont Settlement, and/ or any of its officers, employees, and contractors from any and all losses, liabilities, damages, expenses and/ or other costs or obligations, resulting from or arising out of claims, demands, lawsuits, or judgments brought against the West Virginia Division of Highways and/ or the Claims Administrator, the Perrine DuPont Settlement, and/ or any of its officers, employees, and independent contractors as a result of, or arising out of, the West Virginia Division of Highways' performance of the installation of the 4<sup>th</sup> Street Drainage System.

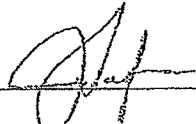
2. **Materials Cost.** The Perrine DuPont Settlement, as indicated by the approval of this Letter Agreement by the Circuit Court of Harrison County and the signature of the Claims Administrator, hereby agrees to provide materials funding prior to the commencement of the project in the not-to-be-exceeded amount of \$9,773.41. Barring a showing of extraordinary circumstances, the Perrine DuPont Settlement will not be responsible for any greater cost than \$9,773.41 for the installation of the 4<sup>th</sup> Street Drainage System. Extraordinary circumstances may only be found by the Hon. Thomas A. Bedell after a presentation of the request for additional funds by the West Virginia Division of Highways to the Circuit Court of Harrison County.

3. **Standard of Professional Workmanship.** The West Virginia Division of Highways agrees to provide the labor, equipment, and supervision necessary to install the 4<sup>th</sup> Street Drainage System to a professional standard in compliance with industry standards and in compliance with all applicable local, state and federal laws, rules, and regulations.

---

By: Edgar C. Gentle, III, Esq.  
Title: Claims Administrator

AGREED BY THE WEST VIRGINIA DEPARTMENT OF HIGHWAYS

  
By: ~~Bryan Radabaugh~~ JEFF PIFER  
Title: ~~D4 Design Engineer~~ MAINTENANCE  
ENGINEER



ATTACHMENT C:  
Proposed Order Setting Hearing



On February 27, 2014, Edgar C. Gentle, III, the Claims Administrator previously appointed by the Court for the Settlement established herein, submitted to the Court and the Finance Committee a Report describing a proposed Zone 1A Road Improvement and Repair Plan and requesting a hearing for the approval of same.

IT IS SO ORDERED.

The Clerk of this Court shall provide certified copies of this Order to the following:

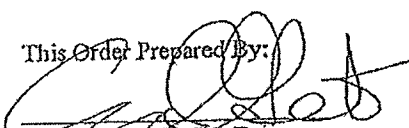
David B. Thomas, Esq.  
James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P. O. Box 3824  
Charleston, WV 25338  
*DuPont's Finance Committee Representative*

Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
*Plaintiffs' Class Finance Committee Representative*

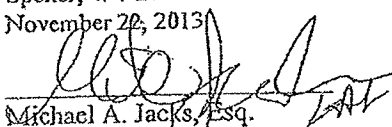
Meredith McCarthy, Esq.  
901 West Main Street  
Bridgeport, WV 26330  
*Plaintiffs' Class Finance Committee Proxy*

Edgar C. Gentle, III, Esq.  
Michael A. Jacks, Esq.  
Settlement Claims Office  
P.O. Box 257  
Spelter, WV 26438  
*Claims Administrator*

This Order Prepared By:

  
Edgar C. Gentle, III, Esq.  
Gentle, Turner, Sexton, Debrosse & Harbison  
P.O. Box 257  
Spelter, WV 26438  
November 20, 2013

Date: 2-27-14

  
Michael A. Jacks, Esq.  
W. Va. Bar. No. 11044  
Gentle, Turner, Sexton, Debrosse & Harbison  
P. O. Box 257  
Spelter, WV 26438

Date: 2-27-14

ENTER this \_\_\_\_ day of \_\_\_\_\_, 2014.

---

Hon. Thomas A. Bedell  
Circuit Judge of Harrison County,  
West Virginia

ATTACHMENT D:  
Proposed Order Approving  
Proposed Zone 1A Road  
Improvement and Repair Plan



The Court considered the submissions of the Claims Administrator, the Finance Committee, the Guardian *ad litem*, and NCM, and the concerns and submissions of Appearing Zone 1A Class Members, and took such testimony as the Court deemed to be appropriate. Following the Hearing, the Claims Administrator modified the Zone 1A Road Improvement and Repair Plan to accommodate the concerns, submissions and testimony presented at the Hearing, with the so-modified Report being referred to hereafter as the Zone 1A Modified Road Improvement and Repair Plan.

After careful review of the Claims Administrator's report, and in consideration of applicable law, the Court makes the following findings and decisions:

1. The Court finds the Zone 1A Modified Road Improvement and Repair Plan to be fair and reasonable and hereby approves it;
2. The Court hereby authorizes, empowers, and directs the Claims Administrator to execute the December 20, 2013, Letter Agreement with the West Virginia Department of Highways (the "WVDOH") on behalf of the Settlement;
3. The proposed improvements and repairs to Fourth Street, Spelter, West Virginia as detailed in the Zone 1A Modified Road Improvement and Repair Plan and the December 20, 2013, Letter Agreement with the WVDOH attached thereto, are to commence as soon as practicable; and
4. Provided that the Claims Administrator and his staff carry out the Zone 1A Modified Road Improvement and Repair Plan substantially in accordance with EXHIBIT A, the Claims Administrator and his staff are granted judicial immunity.

IT IS SO ORDERED.

The Clerk of this Court shall provide certified copies of this Order to the following:

David B. Thomas, Esq.  
James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P. O. Box 3824  
Charleston, WV 25338  
*DuPont's Finance Committee Representative*

Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
*Plaintiffs' Class Finance Committee  
Representative*

Meredith McCarthy, Esq.  
901 West Main Street  
Bridgeport, WV 26330  
*Plaintiffs' Class Finance Committee Proxy*

Edgar C. Gentle, III, Esq.  
Michael A. Jacks, Esq.  
Settlement Claims Office  
P.O. Box 257  
Spelter, WV 26438  
*Claims Administrator*

[ALL ZONE 1A PROPERTY CLAIMANTS]

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Hon. Thomas A. Bedell  
Circuit Judge of Harrison County,  
West Virginia



ATTACHMENT E:  
April 22, 2013 Order

Mail  
RECEIVED  
APR 25 2013

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al., individuals  
residing in West Virginia, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

Case No. 04-C-296-2  
Thomas A. Bedell, Circuit Judge

E.I. DU PONT DE NEMOURS AND COMPANY, et al.,

Defendants.

ORDER PROVIDING GUIDANCE RESPECTING  
PROPERTY REMEDIATION PROGRAM ISSUES

Presently before the Court is the Claims Administrator's March 26, 2013, Report, which seeks the Court's guidance concerning three issues respecting the Property Remediation Program (the "Program").

The three matters requiring the Court's guidance are (i) a requested adjustment to the previous Court-approved April 9, 2012 Working Budget for the Program based upon an increase in the number of houses and commercial structures to be remediated and an increase in soil remediation costs; (ii) proposed Program road repairs and improvements; and (iii) proposed 2012 Replacement Soil Enhancement Procedures and proposed Supplemental Replacement Soil Testing Procedures.

After due and proper notice, this matter came on to be heard on Friday, April 5, 2013 at 2:30 p.m. Appearing were the Settlement Administrator, the Finance Committee, Representative for DuPont, James S. Arnold, Esq., Meredith H. McCarthy, Esq., the Guardian *ad litem* for Minor and Incompetent Claimants, and Cy A. Hill, Esq., Counsel for NCM Demolition and Remediation ("NCM"). Also appearing were Michael

A. Jacks, Esq., the Executive Director for the Settlement Claims Office, Diandra S. Debrosse-Zimmerman, Esq., the Settlement Administrator's law partner, Mr. Billy Sublett, the Settlement Construction Supervisor, Mr. Marc Glass and Mr. Duane Truax the Remediation and Soil Experts for the Settlement, and Dr. Eugenia M. Pena-Yewtukhiw, NCM's Soil Expert.

The Court considered the submissions of the Settlement Administrator, the Finance Committee, the Guardian *ad litem*, and NCM, and took such testimony as the Court deemed to be appropriate.

After careful review of the Claims Administrator's report, and in consideration of applicable law, the Court makes the following findings and decisions:

1. The Court hereby approves the requested adjustment to the Working Budget for the Program.
2. The Court approves the proposed Road Repair and Improvement Program and Related Budget in the Report.
3. The Court hereby approves the 2012 Replacement Soil Enhancement Procedures and Supplemental Soil Replacement Procedures described in Exhibit A, subject to their being finalized by the experts for the Settlement and NCM and approved by this Court in a subsequent Order.

Lastly, pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, the Court directs entry of this Order as a Final Order as to the claims and issues above upon an express determination that there is no just reason for delay, and upon an express direction for the entry for judgment.

IT IS SO ORDERED.

Finally, it is ORDERED that the Clerk of this Court shall provide certified copies

of this Order to the following:

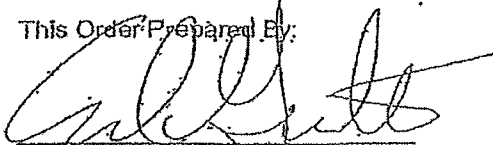
David B. Thomas  
James S. Arnold  
Guthrie & Thomas, PLLC  
P.O. Box 3824  
Charleston, WV 25338-3824

Edgar Gentle, III  
Michael Jacks  
Settlement Claims Office  
P.O. Box 257  
Spelter, WV 26438  
*Special Master*

Virginia Buchanan  
Levin, Papantonio, Thomas, Mitchell  
Eshsner & Proctor, P.A.  
316 South Baylen St., Suite 600  
Pensacola, FL 32502-5996

Cy A. Hill, Esq.  
Mannion & Gray, L.P.A.  
122 Capitol Street, Suite 100  
Charleston, WV 25301

This Order Prepared By:




Edgar C. Gentle, III, Esq.  
Gentle, Turner & Sexton  
P. O. Box 257  
Spelter, WV 26438  
*Claims Administrator*

Meredith McCarthy  
901 W. Main St.  
Bridgeport, WV 26330  
*Guardian ad litem*

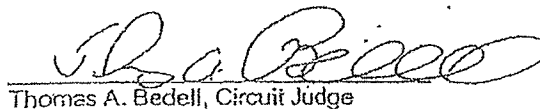
J. Farrest Taylor  
Angela Mason  
Cochran, Cherry, Givens, Smith,  
Lane & Taylor, P.C.  
163 West Main St.  
Dothan, AL 36301

Steve Zbur  
Tony Rebar  
CORE Environmental Services, Inc.  
4 Brookstone Plaza  
Morgantown, WV 26508



Michael A. Jacks, Esq.  
W. Va. Bar No. 11044  
P.O. Box 257  
Spelter, WV 26438

ENTER: April 22, 2013



Thomas A. Bedell, Circuit Judge

April 12, 2013

The Perrine DuPont Settlement - Soil Remediation Remedy for Old and New Soil

Below is the remedy for Old and New Soil.

I. New Soil

For the remaining approximately 140 soil properties still to be remediated, the Settlement, at its expense, at the same time that the new soil is tested for contaminants and, to the extent practicable, as rapidly as contaminant testing is conducted, will sample the new soil to confirm that it is sandy loam, loam or silt loam, in accordance with the USDA soil classification system ("Compliant Soil"). If the soil fails the test, the remedies of the current Agreement pertaining to soil failing contaminants testing apply. NCM's and the Settlement's experts will reasonably agree to the Compliant Soil Testing Procedures, and NCM's experts are drafting them for review by the Settlement's experts.

II. Old Soil

For the approximately 92 properties (the Settlement and NCM will reasonably agree to the list of such properties) whose soil was remediated during the 2012 season, the following terms apply:

1. For soils that are subjected to the below described optional old soil testing, based upon voluntary Claimant participation and are found to be non-Compliant Soil, only, NCM shall extend the sod warranty under the current Agreement to November 15, 2014.

2. NCM and the Settlement, using a script reasonably agreed to, will notify all Claimants who received soil remediation during 2012 of the soil quality issue, and will meet with the impacted Claimants to offer optional testing and optional aeration and sanding using procedures reasonably agreed to by NCM's and the Settlement's soil experts, to promote long term successful sod growth (the "Soil Enhancement Procedures"). The Settlement's experts and NCM's experts will reasonably agree to the Soil Enhancement Procedures. They have one sand application. The Settlement's experts are drafting the Soil Enhancement Procedures for review by NCM's experts.

3. Claimants who opt to have their soil tested will be paid a \$50 annoyance and inconvenience fee by the Settlement. The deadline for Claimants to sign up for optional testing is November 30, 2013. If the testing results show non-Compliant Soil, then NCM will pay the reasonable costs of such testing. If the testing results show Compliant Soil, then the Settlement will pay the reasonable costs of such testing. For each claimant who opts to have their yard tested and has test results that indicate the soil is not sandy loam, loam, or silt loam, in accordance with the USDA soil classification system (the "non-Compliant Soil"), NCM will provide, at the Claimant's option, the Soil Enhancement Procedures.

Exhibit A to  
The Court's Order

To the extent practicable, the Soil Enhancement Procedures will be administered once in the Spring and once in the Fall. Claimants with non-Compliant Soil, based on testing, who agree to receive the Soil Enhancement Procedures will receive an annoyance and inconvenience payment of \$175 for each of the two (2) procedures, to be paid by the Settlement and reimbursed by NCM.

III. Court Approval of Compliant Soil Testing Procedures and Soil Enhancement Procedures Required

After the Settlement and NCM reasonably agree to the Compliant Soil Testing Procedures and the Soil Enhancement Procedures, the Settlement shall submit them to the Court for review and possible approval.

The above remedy shall become effective only upon Court approval of such procedures.

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
Family Court Circuit of Harrison County, West Virginia, hereby certify the  
foregoing to be a true copy of the ORDER entered in the above styled action  
on the 22 day of April, 2013.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix  
the Seal of the Court this 20 day of April, 2013.

Donald L. Kopp II  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

Plaintiffs,

v.

Case No. 04-C-296-2  
Judge Thomas A. Bedell

E. I. DUPONT DE NEMOURS &  
COMPANY, et al.,

Defendants:

FINAL ORDER APPROVING (i) THE DESCRIPTION AND MAPS OF THE ROADS SUBJECT TO THE ROAD RE-PAVING/REPAIR PORTION OF THE SETTLEMENT ROAD IMPROVEMENT PROGRAM; (ii) THE ROAD RE-PAVING/REPAIR BIDDER LIST; (iii) THE ROAD RE-PAVING/REPAIR REQUEST FOR PROPOSALS; AND (iv) THE ROAD RE-PAVING/REPAIR AGREEMENT

Presently before the Court is the Claims Administrator's February 11, 2016 Report (the "Claims Administrator's Report"), submitted for review and consideration in connection with the Settlement Property Remediation (Clean-Up) Program approved by the Court's June 27, 2011 Order, regarding the implementation of a portion of the Court's April 15, 2014 Order approved Settlement Road Repair and Improvement Program ("Road Repair Program"). The Road Repair Program has three parts: (i) road re-paving/repairs; (ii) alleys; and (iii) drainage. The portion of the Road Repair Program subject to this Order is the first step of the program, road re-paving repairs. The roads subject to the road re-paving portion of the program are illustrated in the Maps in Exhibit A, and are listed below:

**I. Spelter Roads**

- 1) 1<sup>st</sup> Street - County Road ("CR") 19/90
- 2) 2<sup>nd</sup> Street - CR 19/91
- 3) 3<sup>rd</sup> Street - CR 119/10



- 4) 4<sup>th</sup> Street - CR 119/9
- 5) 5<sup>th</sup> Street - CR 119/10
- 6) 6<sup>th</sup> Street - CR 24/12
- 7) A Street - CR 119/11
- 8) B Street - CR 19/33 (from Spelter side of bridge to the top of hill)
- 9) C Street - CR 119/10

## **II. Erie Roads**

- 10) Maple Ave - CR 19/32
- 11) Rose Street/Poplar Street - CR 19/34

To begin this portion of the program, the Claims Administrator's Report requests that the Court consider: (i) finalizing of the roads to be so re-paved/repared, as described above and depicted in Exhibit A; (ii) approving the Bidder List of qualified bidders for this portion of the program in Exhibit B; (iii) approving the Request for Proposals form to be used to obtain the lowest qualified bid in Exhibit C; and (iv) approving the form of Agreement with the successful bidder in Exhibit D.

After a careful review of the Claims Administrator's Report, along with the list of maps of the roads to be re-paved/repared, the Bidder List, the Request for Proposals and the Agreement, and in consideration of the applicable law, the Court **ORDERS AND APPROVES:** (i) the map and description of the roads subject to the road re-paving/repair portion of the Road Improvement Program depicted in Exhibit A; (ii) the Bidder List of qualified bidders for the work contained in Exhibit B; (iii) the Request for Proposals form to be used in obtaining the lowest qualified bidder in Exhibit C; and (iv) the form of the Agreement with the successful bidder in Exhibit D, with the resulting Agreement with the lowest qualified bidder to be substantially in the form of Exhibit D, but subject to negotiations.

**IT IS SO ORDERED.**

The Clerk of this Court shall provide certified copies of this Order to the following:

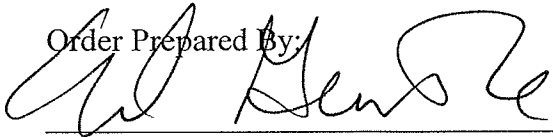
James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P. O. Box 3824  
Charleston, WV 25338  
DuPont's Finance Committee Representative

Meredith H. McCarthy, Esq.  
Guardian Ad Litem for Children  
901 W. Main St.  
Bridgeport, WV 26330

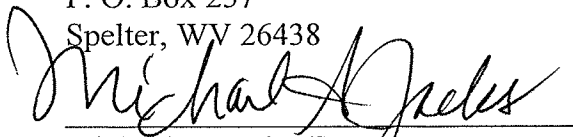
Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
Plaintiffs' Finance Committee Representative

Edgar C. Gentle, III, Claims Administrator  
Gentle, Turner, Sexton & Harbison  
P. O. Box 257  
Spelter, WV 26438

Order Prepared By:



Edgar C. Gentle, III, Claims Administrator  
Gentle, Turner, Sexton & Harbison  
P. O. Box 257  
Spelter, WV 26438



Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
W.Va. Bar No 11044  
United Federal Credit Union Building  
3467 University Ave, Suite 200  
Morgantown, WV 26505

ENTER: \_\_\_\_\_

\_\_\_\_\_  
Thomas A. Bedell, Circuit Judge

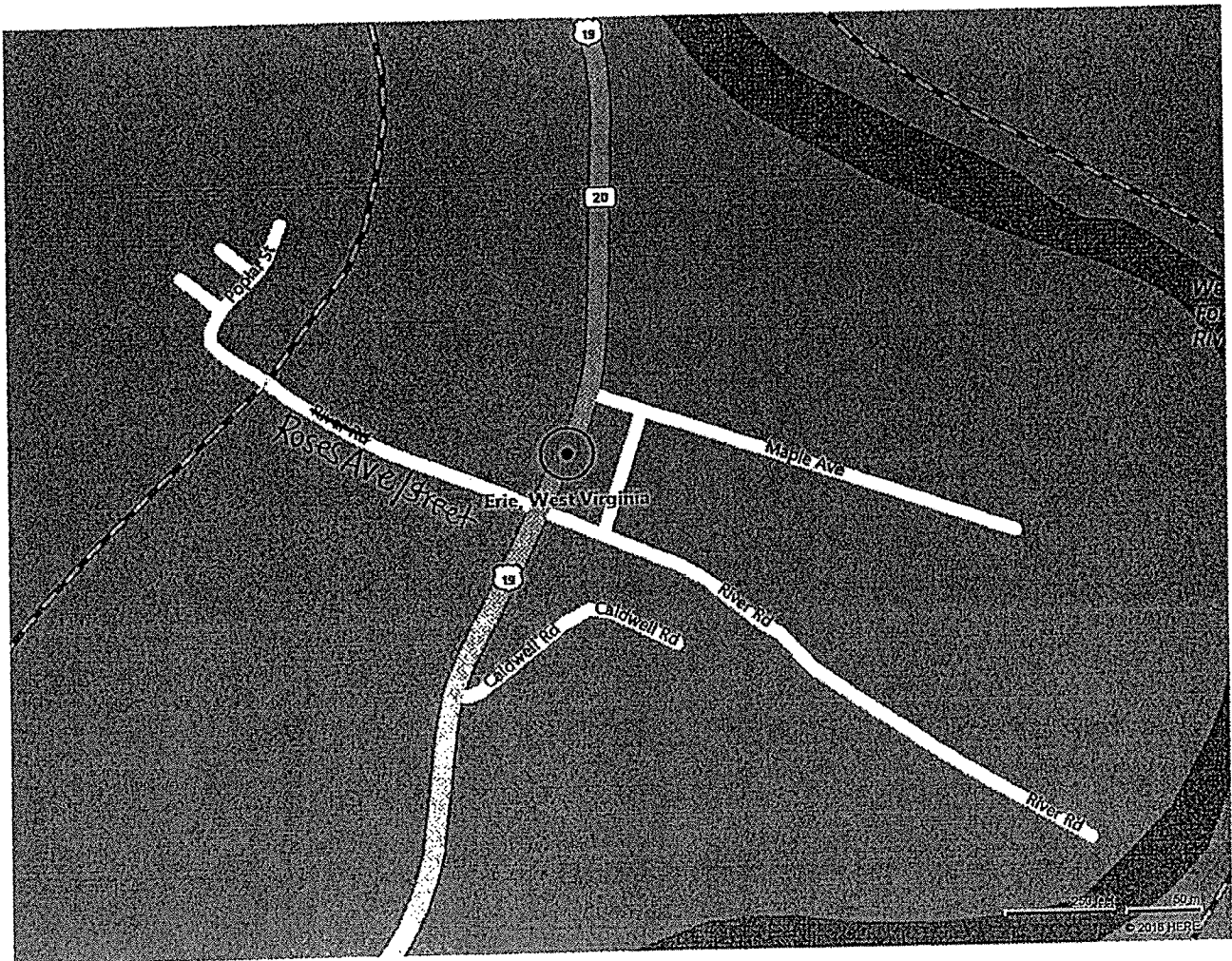
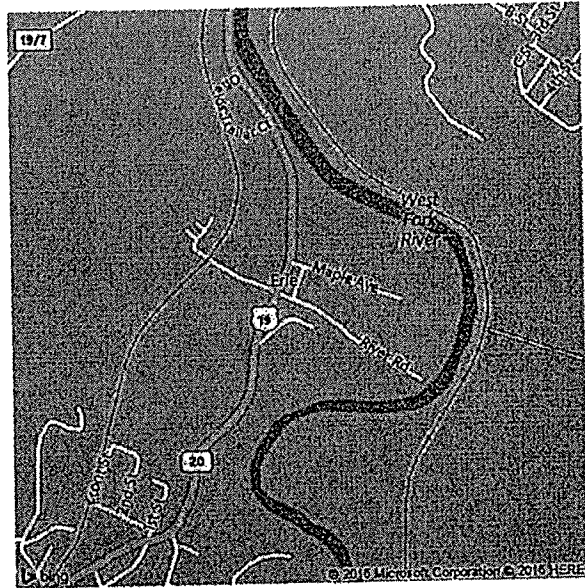
# **EXHIBIT A TO ORDER:**

**MAPS OF ROADS SUBJECT TO THE ROAD RE-  
PAVING/REPAIR PORTION OF THE SETTLEMENT  
ROAD REPAIR AND IMPROVEMENT PROGRAM**



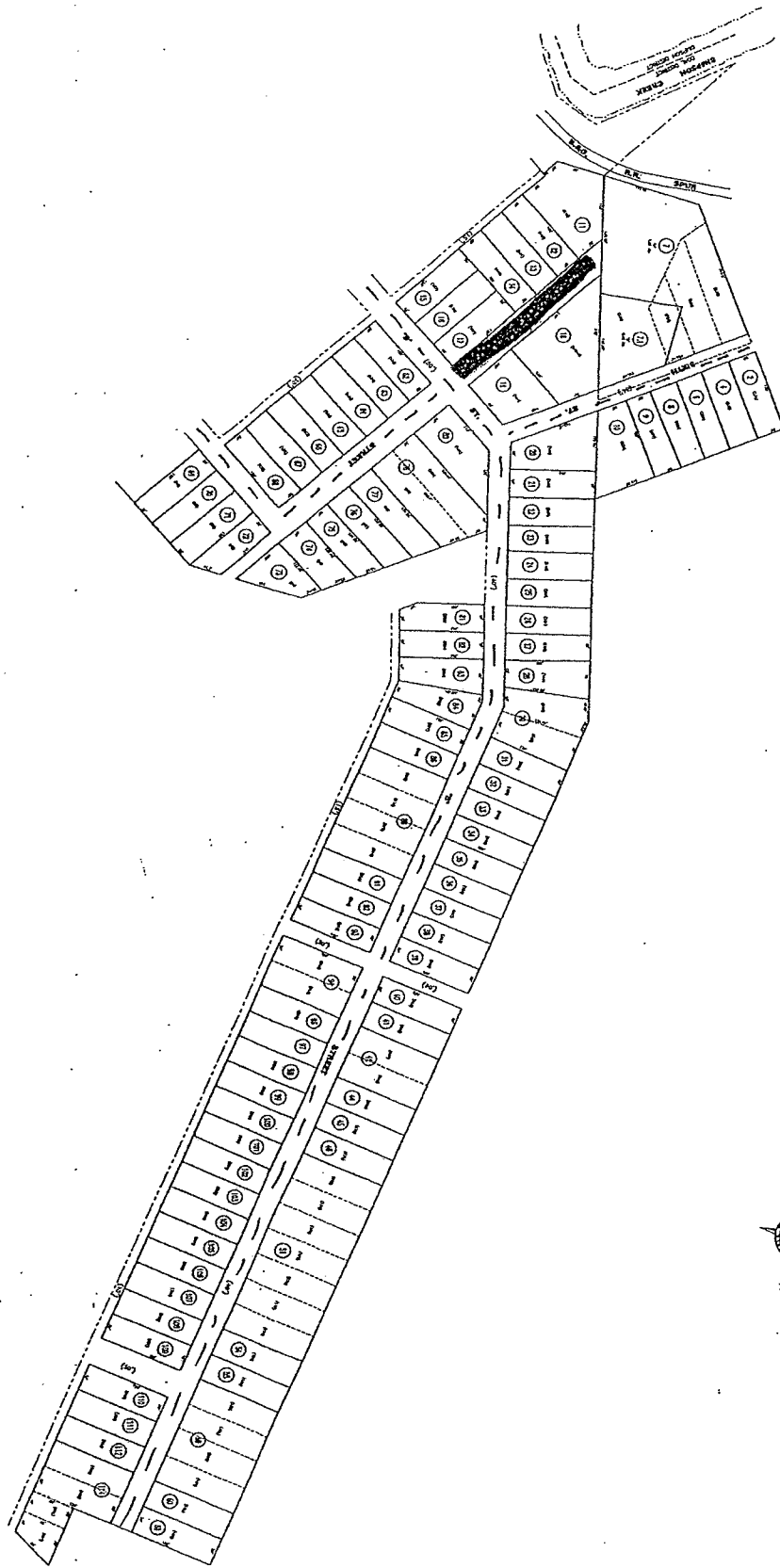
Notes

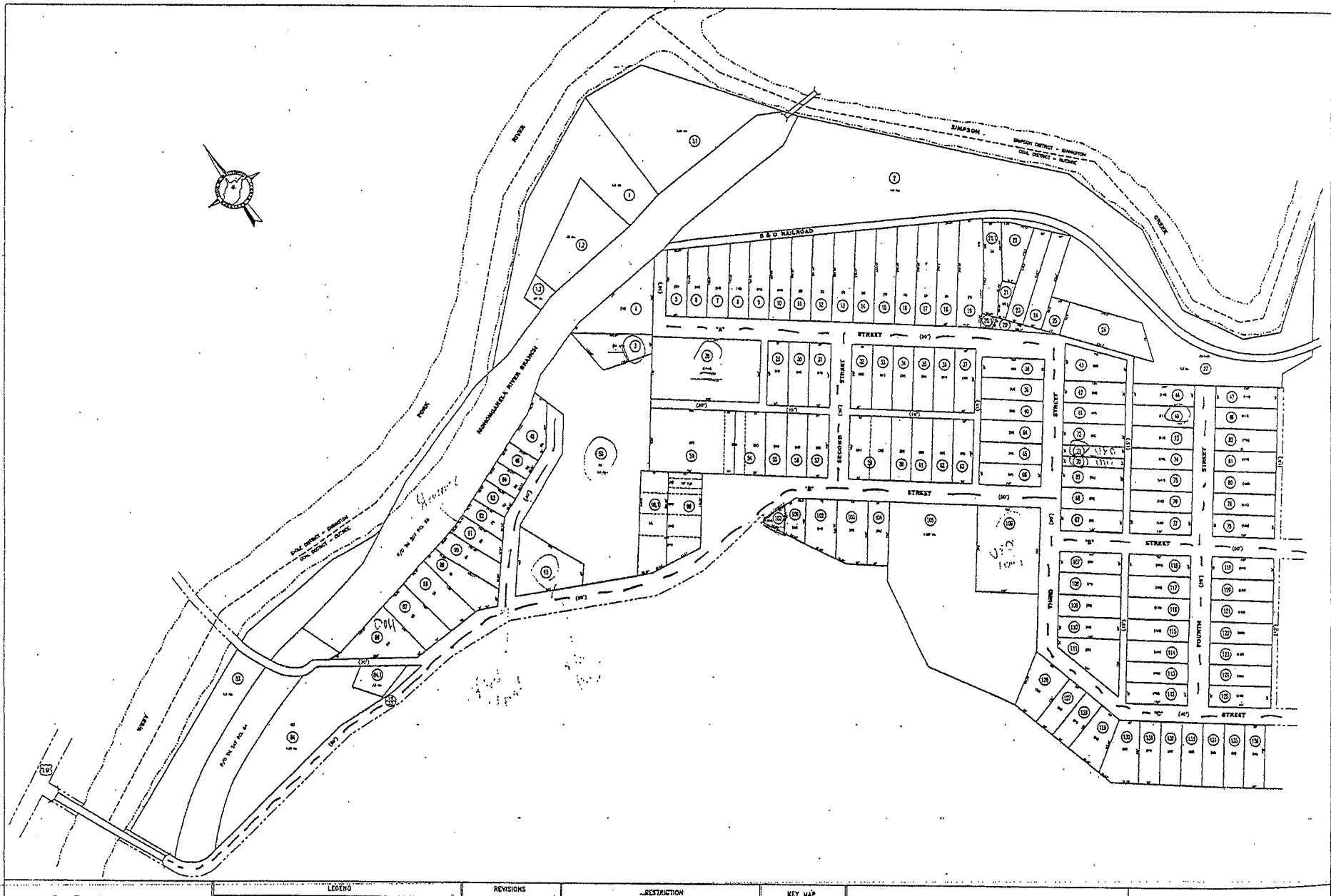
Erie, WV - Roads to be repaired/resurfaced



UNEDT

UNEDT





LEGEND

REVISIONS

RESTRICTION

KEY MAP

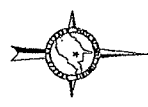
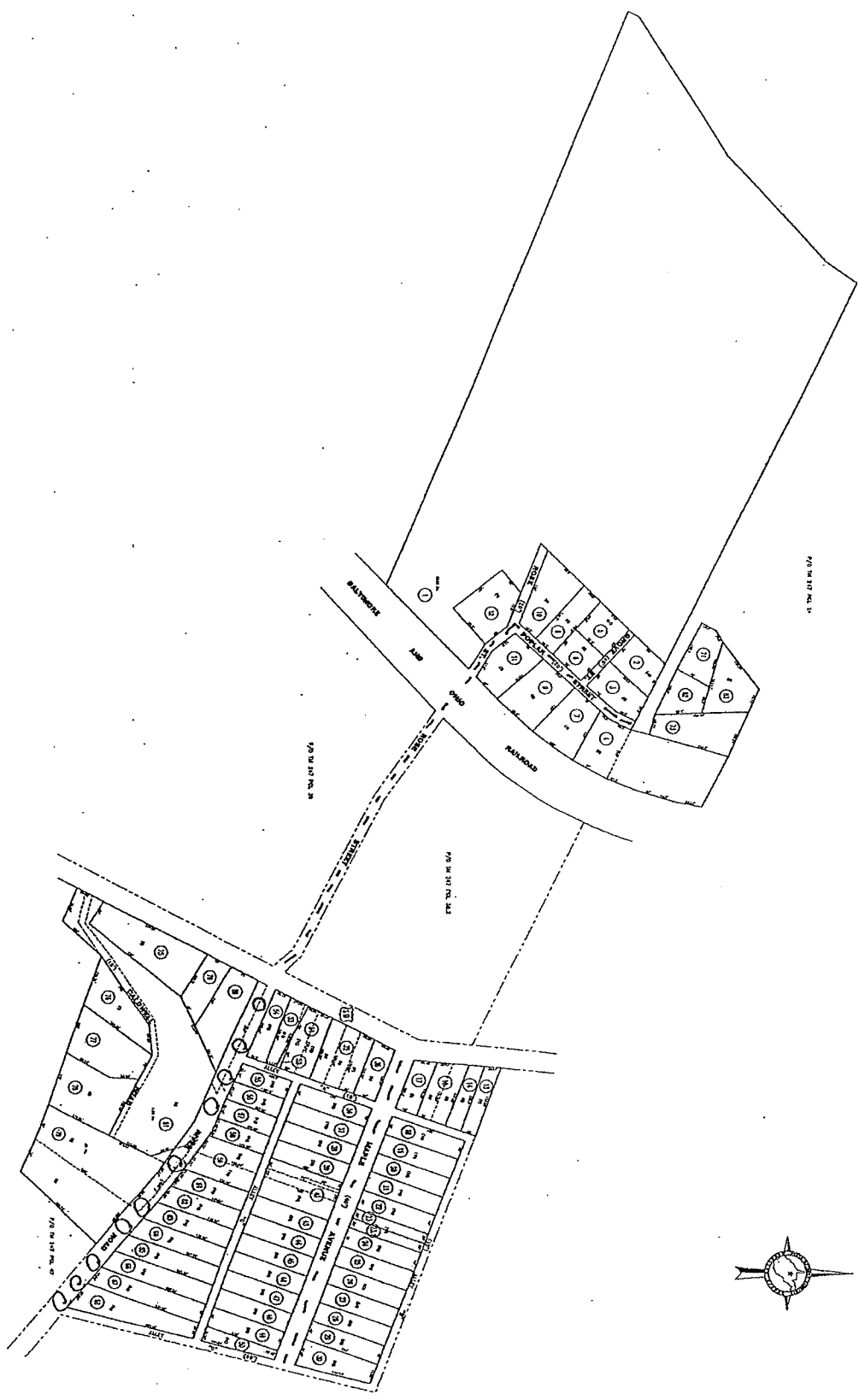
DISTRICT

SECTION

EXTENSION

RESTRICTION

DATE





# **EXHIBIT B TO ORDER:**

## **ROAD RE-PAVING/REPAIR PORTION OF THE SETTLEMENT ROAD REPAIR AND IMPROVEMENT PROGRAM BIDDER LIST**



# **EXHIBIT C TO ORDER:**

**ROAD RE-PAVING/REPAIR PORTION OF THE  
SETTLEMENT ROAD REPAIR AND IMPROVEMENT  
PROGRAM REQUEST FOR PROPOSALS**

**REQUEST FOR PROPOSALS (RFP)**  
**FOR THE ROAD REPAIR PROGRAM**  
**IN THE PERRINE DUPONT SETTLEMENT**

1. Project Title: The Perrine DuPont Settlement Road Repair Program
  
2. Contact Person: Edgar C. Gentle, III, Esq.  
Special Master and Claims Administrator  
Perrine DuPont Settlement Remediation Administration  
ATTN: Edgar C. Gentle, Claims Administrator  
C/O Spelter Volunteer Fire Department Office  
55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
Website: [www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)
  
3. Format: One (1) paper copy and one electronic disc or USB flash drive.
  
4. Proposed Budget: Budget will be negotiated upon selection.
  
6. Repair Repair Area: The roads to be repaired, resurfaced and paved are shown in the Maps in Attachment 1 (the "Road Repair List"), and are listed as follows:  
  

*Spelter Roads:*

  - 1) 1<sup>st</sup> Street - County Road ("CR") 19/90
  - 2) 2<sup>nd</sup> Street - CR 19/91
  - 3) 3<sup>rd</sup> Street - CR 119/10
  - 4) 4<sup>th</sup> Street - CR 119/9
  - 5) 5<sup>th</sup> Street - CR 119/10
  - 6) 6<sup>th</sup> Street - CR 24/12
  - 7) A Street - CR 119/11
  - 8) B Street - CR 19/33 (From Spelter side of bridge to the top of hill)
  - 9) C Street - CR 119/10  

*Erie Roads:*

  - 10) Maple Ave -CR 19/32
  - 11) Rose Street/Poplar Street – CR 19/34
  
7. Issuance Date: February 22, 2016
  
8. Bidder Questions Conference Call: March 7, 2016

**Issued: February 22, 2016**

9. Bid Submission  
Deadline: March 14, 2016 - delivered no later than 5:00 PM CST.
10. Bidder Interview  
Date: March 22, 2016
11. Award(s) Date: March 29, 2016
12. Project Start Date: April 11, 2016

**I. REPAIR, RESURFACING AND PAVING OF ELIGIBLE ROADS**

**A. Introduction**

The Perrine DuPont Settlement (the “Settlement”), involves, in part, the remediation (clean-up) of property in and around Spelter, West Virginia, because of heavy metals contamination. To implement the clean-up process, the use of heavy trucks and other equipment was required, which subsequently may have caused damage to the roads named in the “Road Repair List” provided above and shown in the Maps in Attachment 1 (the “Eligible Roads”).

Under the Settlement, the Honorable Thomas A. Bedell, Circuit Judge of Harrison County, West Virginia, by Order dated \_\_\_\_\_ in Attachment 2, has approved the Road Repair Program to repair, resurface and pave the Eligible Roads.

In an effort to improve road conditions, the Eligible Roads need to be resurfaced and paved, as more fully described below in the Scope of Work. (See, Section I, Part C).

**B. Key Components of the Request for Proposals (RFP)**

All bids shall:

1. Include a Price Proposal for the repair, resurface, and paving of the Eligible Roads, and milling of joints (as needed to tie new asphalt into existing pavement) for the Scope of Work, as defined in Part C below.
2. Respond directly showing your ability to conduct the Scope of Work, within a time-frame acceptable to the Claims Administrator.
3. Be delivered to Edgar C. Gentle, III, Esq., Claims Administrator, the Perrine DuPont Settlement Remediation Administration, 55 B Street, P. O. BOX 257, Spelter, West Virginia 26438. All documents should be delivered **no later than March 14, 2016 @ 5:00 PM CST.**

**C. Scope of Work**

The Scope of Work for the proposal encompasses road repair, resurfacing and paving of the Eligible Roads.

Eligible Roads are to be overlaid with two (2) inches of TYPE-1 Wear Surface. Prior to resurfacing the overlay, all existing pot holes and other defects are to be filled and repaired. Once all existing potholes are filled and other defects repaired, the Eligible Roads are to be resurfaced and paved with two (2) inches of TYPE-1 Wear Surface. The new surface on the Eligible Roads will then be graded and blended with all connecting right-of-ways, including roads, streets, alleys, driveways, and the like.

**II. PRICE PROPOSAL**

A Price Proposal must be submitted and accompany the bid. The name of the bidding firm and the date of submission shall be clearly marked at the upper right hand corner of the bid.

**III. ADDITIONAL NECESSARY ITEMS**

1. Please provide a list of all current applicable insurance policies.
2. Please state whether you are certified/licensed by the West Virginia Department of Transportation (“WVDOT”), Division of Highways (“DOH”) (Collectively, referred to as the “WVDOH”) as an approved subcontractor/vendor.
3. Please provide your experience in complying with the Americans with Disabilities Act (“ADA”), and please state how the job will comply with ADA.
4. Identify any exceptions or special conditions applicable to the proposed scope of work.
5. List the last three road repair and resurfacing/paving jobs you performed, and the contact person details.
6. Only bidders who provide their own traffic control and flag personnel will be considered. Also, bidders must be able to provide due notice, such as adequate signage and notification to proper authorities, including the WVDOH, before any and all road closures and throughout the entire road repair and improvement program.
7. Completion of Appendix A - Mandatory Terms, is mandatory.
8. Bidders must be in compliance with all applicable state and federal laws governing the project, including, but not limited to, any state and federal environmental laws, and equal protection laws, such as the Americans with Disabilities Act (“ADA”).
9. The project is to be commenced no later than May 2016 and completed no later than November 2016.

**IV. BIDDER REVIEW PROCESS**

Based upon bidder presentations during the interview process and review of the RFP submissions, the Claims Administrator will determine one or more preferred candidate(s). The preferred candidate(s) will be chosen based upon the following:

1. Estimated total cost, fixed costs, unit costs, and contract terms and conditions;
2. Responsiveness to all aspects of this solicitation;
3. Technical merit (i.e., approach detail, appropriateness of approach, experience & depth of risk assessment, staff, probability of method success, plan with regard to community outreach);

Issued: February 22, 2016

4. Ability to meet the determined schedule; and
5. Bidders ability to meet all mandatory terms, including the form contract.

If a negotiated contract is not achievable or funds are not available, the Claims Administrator has the option to award no contract, or to award multiple contracts, or to award a contract to bidder(s) who are not the preferred candidate(s).

**Upon request, there may be an opportunity for an optional site visit to the Eligible Roads subject to this project. A conference call shall be held on March 7, 2016, at 2:00 PM Eastern Time with the Claims Administrator to allow for any questions that you may have regarding this solicitation.**



APPENDIX A TO RFP:  
MANDATORY TERMS

**REQUEST FOR PROPOSALS (RFP)**  
**FOR THE ROAD REPAIR PROGRAM**  
**IN THE PERRINE DUPONT SETTLEMENT**

**APPENDIX A**  
**ACCEPTANCE OF MANDATORY TERMS**

The following are the mandatory terms and RFP requirements that shall be met by the successful bidder(s):

General

1. Bidder agrees that the response to the RFP and any subsequent documentation (best and final offer, and interview responses) shall be considered part of the final agreement and contract.
2. Bidder understands that the contract with the Settlement will be substantially in the form of Attachment 3. Please list your exceptions (if any) to the contract below:

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Account Management

3. Bidder will provide a representative to attend meetings as necessary at the job site.
4. Bidder will maintain a database regarding the road repair services for all Eligible Roads.
5. Bidder will assign a main contact person to interface with the Claims Administrator throughout the road repair program and as long as any executed contract is in effect. This person will be charged with providing requested information and documentation within a twenty four (24) hour period.

Data, Systems, and Reporting

6. Bidder will accept electronic data transfer and administer information regarding the road repair program in a confidential manner.
7. Bidder will provide road repair data for all Eligible Roads to the Claims Administrator in electronic format.

Financial Proposal

8. Bidder guarantees the financial elements of its proposal throughout the term of the contract.

Americans with Disability Act Compliance

9. The successful bidder will comply with all applicable Americans with Disabilities Act ("ADA") terms and provisions as determined by the bidder and the West Virginia Department of Transportation, Division of Highways. For example, compliance may include the installation of wheel chair ramps for two (2) sidewalks, totaling approximately 900 feet, at intersections on 1<sup>st</sup> Street and B Street.

Additionally, the successful bidder will comply with all other applicable federal and state laws and regulations, such as the Equal Employment Opportunity laws and regulations as set out on the WVDOH website (<http://www.transportation.wv.gov/eec/Pages/default.aspx>), and demonstrate any and all related certification(s) and licenses demonstrating compliance where required.

#### Consent to Jurisdiction and Waiver of Objections

10. Bidder, by its execution of the Agreement (to be substantially in the form of Attachment 3), submits to the jurisdiction of the Circuit Court of Harrison County, West Virginia in Perrine, et al., v. E. I. DuPont De Nemours and Company, et al., Case No. 04-C-296-2, (the "DuPont Case") for all purposes related to or arising out of Bidder's proposal to provide road repair services for all Eligible Roads. In addition, Bidder hereby waives any and all objections it might otherwise assert to the aforesaid jurisdiction, venue, or authority of the Court in the DuPont Case to hear and determine any and all disputes that might arise out of or be related to the services described herein, reserving its rights to be heard in connection therewith and to appeal, it may be advised, from any adverse determination of the Court in the DuPont Case.

#### Confidentiality Agreement

11. Bidder understands that the Court in the DuPont Case has ordered that the data be maintained in a confidential manner, and state that Bidder will not reveal this information to anyone outside of authorized personnel in the bidder company unless Bidder has express permission to do so from the Honorable Thomas A. Beddell or the Claims Administrator. Bidder further understands that if Bidder violates this pledge of confidentiality, Bidder is subject to being brought before the Honorable Thomas A. Beddell for investigation and possible sanctions for this breach.

#### Other

12. Only bidders who provide their own traffic control and flag personnel will be considered. Also, bidders must be able to provide due notice, such as adequate signage and notification to proper authorities, including the WVDOT and the DOH, before any and all road closures and throughout the entire road repair program.
13. *The West Virginia Department of Transportation, Division of Highways, Standard Specifications Roads and Bridges*, adopted 2010 and amended by the *West Virginia Department of Transportation, Division of Highways, Supplemental Specifications*, dated January 1, 2016, "the Contract Documents and the Contract Plans" are the governing provisions applicable to this road repair project.
14. *The West Virginia Department of Transportation, Division of Highways, Standard Details Book, Volume I*, dated January 1, 2000 and *Volume II*, dated January 1, 1994 shall apply to this road repair project. The following revised standard drawings (also available at <http://www.transportation.wv.gov/highways/engineering/Pages/publications.aspx>) supersede the aforementioned Standard Details: (1) *Typical Pavement Markings TEM-2*; Revised on January 29, 2010, and (2) *Channelization, Word and Symbol Markings TEM-3*; Revised on January 29, 2010
15. *The Manual on Temporary Traffic Control for Streets and Highways, 2006 Edition*, dated May 1, 2006 shall apply to this project.

16. The bidder shall be responsible for coordination of contract work with utilities when they are involved or in conflict. The bidder has full responsibility for any damage to any utility or lighting system caused by contract activities.
17. Bidders must be in compliance with all state and federal laws related to and governing the project, including but not limited to, any state and federal environmental laws and equal protection laws.

By signing the below, I, \_\_\_\_\_ hereby represent that I have the authority and power to bind \_\_\_\_\_ (company name), and that I will comply with all of the terms as set forth hereinabove.

Company Name: \_\_\_\_\_

By: \_\_\_\_\_ (Sign name)

\_\_\_\_\_ Date

\_\_\_\_\_ (Print name)

\_\_\_\_\_ (Title with the Company)

# ATTACHMENT 1 TO RFP:

LIST AND MAPS OF ROAD REPAIR PROGRAM

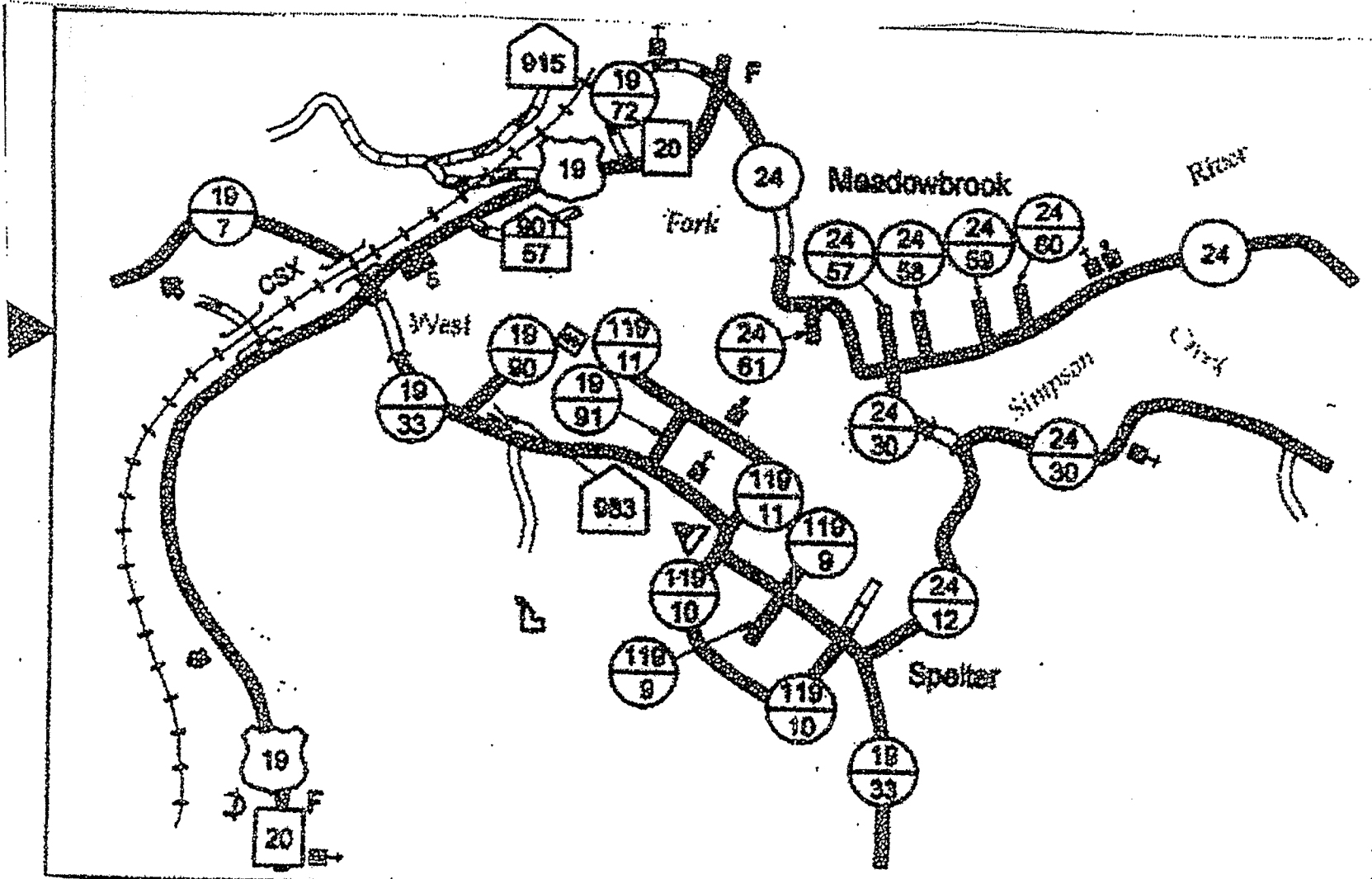
## ROAD REPAIR LIST

### I. Spelter Roads

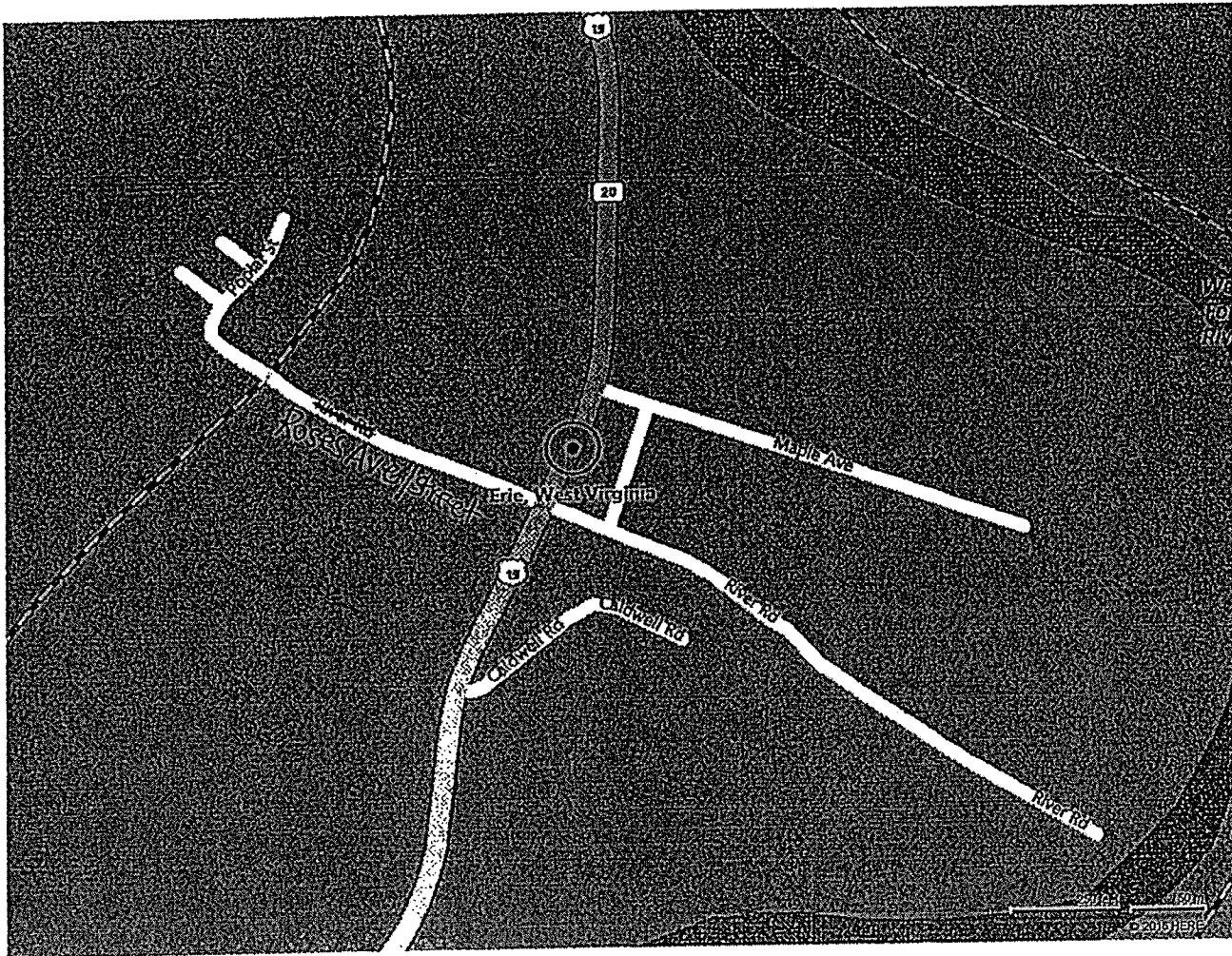
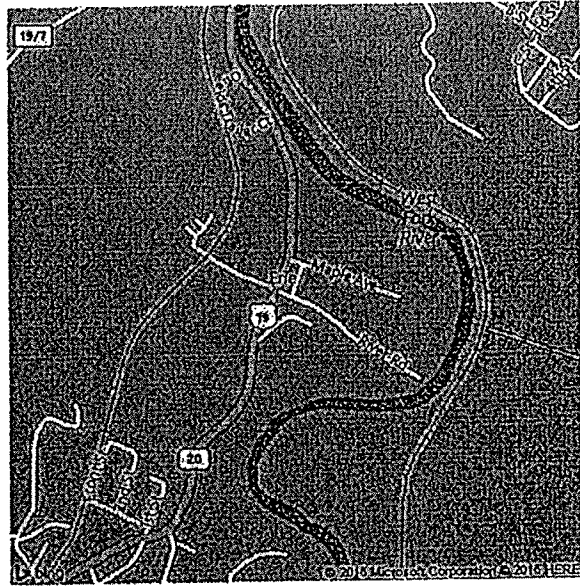
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- 4) 4<sup>th</sup> Street - CR 119/9
- 5) 5<sup>th</sup> Street - CR 119/10
- 6) 6<sup>th</sup> Street - CR 24/12
- 7) A Street - CR 119/11
- 8) B Street - CR 19/33 (from Spelter side of bridge to the top of hill)
- 9) C Street - CR 119/10

### II. Erie Roads

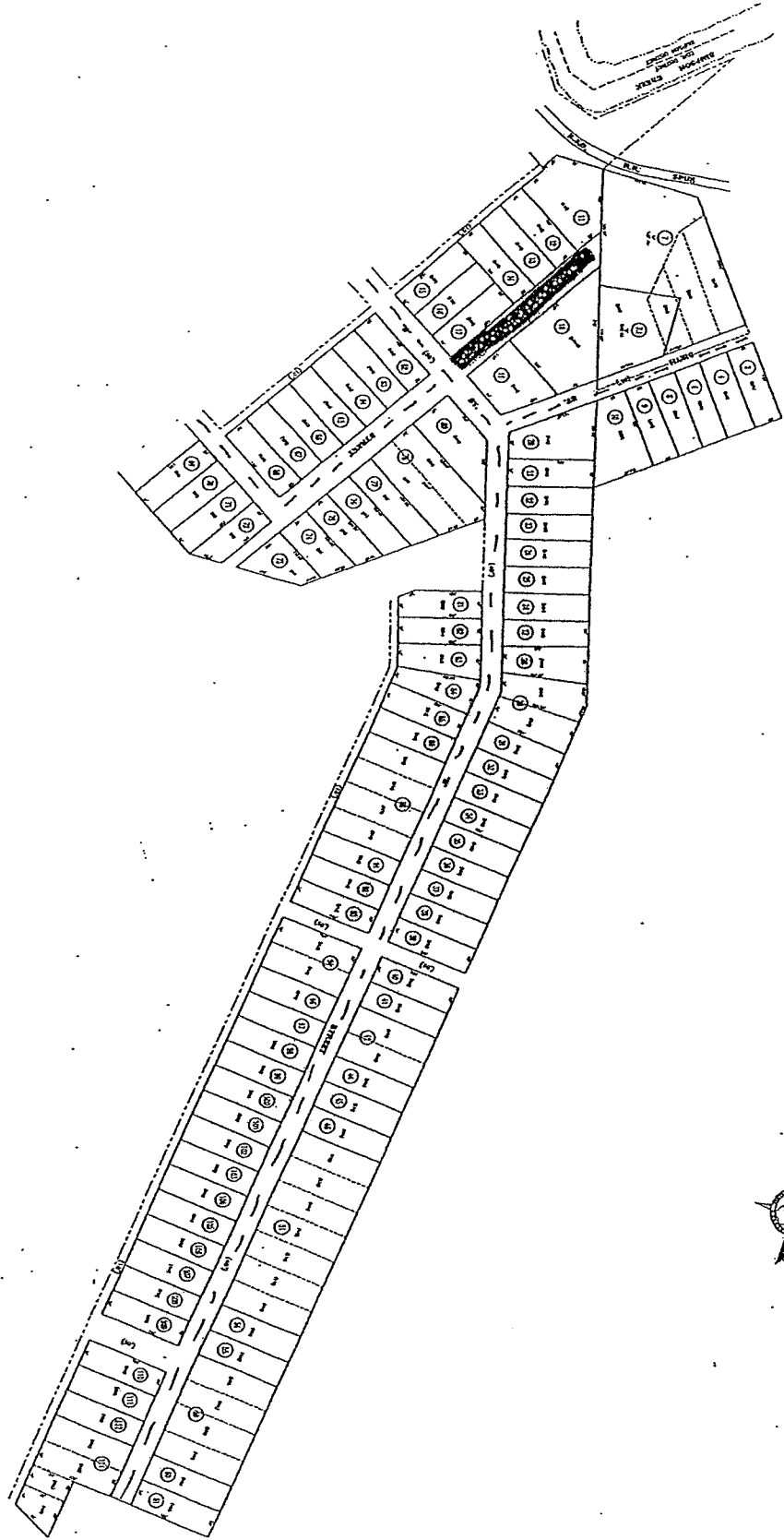
- 10) Maple Ave - CR 19/32
- 11) Rose Street/Poplar Street - CR 19/34



Erie, WV - Roads to be repaired/resurfaced







LEGEND

STRAIGHT THROUGH

R.R. SPUR

STRAIGHT THROUGH

R.R. SPUR

STRAIGHT THROUGH

R.R. SPUR





ATTACHMENT 2 TO RFP:

COURT ORDER APPROVING THE  
ROAD REPAIR PROGRAM

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

Plaintiffs,

v.

Case No. 04-C-296-2  
Judge Thomas A. Bedell

E. I. DUPONT DE NEMOURS &  
COMPANY, et al.,

Defendants.

FINAL ORDER APPROVING (i) THE DESCRIPTION AND MAPS OF THE ROADS SUBJECT TO THE ROAD RE-PAVING/REPAIR PORTION OF THE SETTLEMENT ROAD IMPROVEMENT PROGRAM; (ii) THE ROAD RE-PAVING/REPAIR BIDDER LIST; (iii) THE ROAD RE-PAVING/REPAIR REQUEST FOR PROPOSALS; AND (iv) THE ROAD RE-PAVING/REPAIR AGREEMENT

Presently before the Court is the Claims Administrator's February 11, 2016 Report (the "Claims Administrator's Report"), submitted for review and consideration in connection with the Settlement Property Remediation (Clean-Up) Program approved by the Court's June 27, 2011 Order, regarding the implementation of a portion of the Court's April 15, 2014 Order approved Settlement Road Repair and Improvement Program ("Road Repair Program"). The Road Repair Program has three parts: (i) road re-paving/repairs; (ii) alleys; and (iii) drainage. The portion of the Road Repair Program subject to this Order is the first step of the program, road re-paving repairs. The roads subject to the road re-paving portion of the program are illustrated in the Maps in Exhibit A, and are listed below:

**I. Spelter Roads**

- 1) 1<sup>st</sup> Street - County Road ("CR") 19/90
- 2) 2<sup>nd</sup> Street - CR 19/91
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## **II. Erie Roads**

- 10) Maple Ave - CR 19/32
- 11) Rose Street/Poplar Street - CR 19/34

To begin this portion of the program, the Claims Administrator's Report requests that the Court consider: (i) finalizing of the roads to be so re-paved/repared, as described above and depicted in Exhibit A; (ii) approving the Bidder List of qualified bidders for this portion of the program in Exhibit B; (iii) approving the Request for Proposals form to be used to obtain the lowest qualified bid in Exhibit C; and (iv) approving the form of Agreement with the successful bidder in Exhibit D.

After a careful review of the Claims Administrator's Report, along with the list of maps of the roads to be re-paved/repared, the Bidder List, the Request for Proposals and the Agreement, and in consideration of the applicable law, the Court **ORDERS AND APPROVES**: (i) the map and description of the roads subject to the road re-paving/repair portion of the Road Improvement Program depicted in Exhibit A; (ii) the Bidder List of qualified bidders for the work contained in Exhibit B; (iii) the Request for Proposals form to be used in obtaining the lowest qualified bidder in Exhibit C; and (iv) the form of the Agreement with the successful bidder in Exhibit D, with the resulting Agreement with the lowest qualified bidder to be substantially in the form of Exhibit D, but subject to negotiations.

**IT IS SO ORDERED.**

The Clerk of this Court shall provide certified copies of this Order to the following:

James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P. O. Box 3824  
Charleston, WV 25338  
DuPont's Finance Committee Representative

Meredith H. McCarthy, Esq.  
Guardian Ad Litem for Children  
901 W. Main St.  
Bridgeport, WV 26330

Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
Plaintiffs' Finance Committee Representative

Edgar C. Gentle, III, Claims Administrator  
Gentle, Turner, Sexton & Harbison  
P. O. Box 257  
Spelter, WV 26438

Order Prepared By:

---

Edgar C. Gentle, III, Claims Administrator  
Gentle, Turner, Sexton & Harbison  
P. O. Box 257  
Spelter, WV 26438

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Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
W.Va. Bar No 11044  
United Federal Credit Union Building  
3467 University Ave, Suite 200  
Morgantown, WV 26505

ENTER: \_\_\_\_\_

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Thomas A. Bedell, Circuit Judge

ATTACHMENT 3 TO RFP:  
AGREEMENT



## INDEX

|                                              |   |
|----------------------------------------------|---|
| Preamble .....                               | 1 |
| Definitions .....                            | 1 |
| Period of Performance .....                  | 2 |
| Compensation and Terms of Payment .....      | 2 |
| Obligations of The Contractor .....          | 2 |
| Good Faith .....                             | 2 |
| Road Repair Services .....                   | 2 |
| Incorporation of RFP .....                   | 3 |
| Project Planning.....                        | 3 |
| Site Preparation and Mobilization .....      | 3 |
| Reporting Requirements.....                  | 5 |
| Insurance and Bond Requirements.....         | 5 |
| Sub-Contracts.....                           | 6 |
| Obligations of the Claims Administrator..... | 6 |
| Property Rights and Confidentiality.....     | 6 |
| Mandatory Terms .....                        | 7 |
| Indemnification.....                         | 7 |
| Termination .....                            | 8 |
| Choice of Law.....                           | 8 |
| Miscellaneous.....                           | 9 |

**ROAD REPAIR PROGRAM  
AGREEMENT**

THIS AGREEMENT is entered into on \_\_\_\_\_, \_\_\_\_\_, 2016, and is effective upon Court approval ("Effective Date"), being between \_\_\_\_\_, a corporation with its headquarters at \_\_\_\_\_ ("Contractor") and the Perrine DuPont Settlement (hereinafter "Sponsor") which was approved by the Circuit Court of Harrison County, West Virginia, Case No. 04-C-296-2 (the "Court"), by Orders dated January 4, 2011, and June 27, 201, by and through the appointed Special Master and Claims Administrator, Edgar C. Gentle, III., Esq., of the firm of Gentle, Turner, Sexton, & Harbison, LLC (hereinafter collectively referred to as "Claims Administrator").

The principal place of business of the Sponsor, as administered by the Claims Administrator, is 55 B Street, P.O. Box 257, Spelter, West Virginia, 26438.

WHEREAS, on February 22, 2016, the Claims Administrator issued the Request for Proposals for the Road Re-paving/Repair portion of the Settlement Road Repair and Improvement Program in the Perrine DuPont Settlement, attached hereto as Exhibit A (the "RFP").

WHEREAS, the Claims Administrator recommends to the Court that the Contractor be awarded the contract to provide the Road Repair Services described in this Agreement;

WHEREAS, by entering into this Agreement, the Contractor agrees to provide Road Repair Services, including, the repair, resurfacing and paving of the Eligible Roads as listed in the RFP and incorporated herein by reference (*See*, Exhibit A).

WHEREAS, the Claims Administrator desires to work with the Contractor and the Contractor desires to work with the Claims Administrator to implement the Road Repair Program; and

WHEREAS, the Claims Administrator and the Contractor (collectively, the "Parties") have agreed that the Contractor shall exclusively provide the Road Repair Services for the Claims Administrator for the roads described in the Order of the Court dated \_\_\_\_\_, 2016, in Exhibit A, for the duration of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and for other good and substantial consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. DEFINITIONS**

All words and phrases defined below shall have the following meaning:

- A. "RFP" collectively means the Claims Administrator's February 22, 2016 Request for Proposals with respect to the Road Repair Services defined below (*See*, Section I.B. below), a copy of which is attached hereto as Exhibit A and is incorporated by reference;
- B. "Road Repair Services" includes the Contractor's agreement to (i) perform the "Scope of Work" for the designated "Road Repair List" as described in the RFP and incorporated herein by reference (*See*, Exhibit A); and (ii) an implementation plan to be prepared for the Claims Administrator's review and approval during a reasonable editing cycle that identifies the full scope of work required of the Contractor and the Claims Administrator, and the protocols that the Contractor shall perform and rely upon in carrying out the Road Repair Services, as described in Section IV.B. below.

## II. PERIOD OF PERFORMANCE

This Agreement shall become effective following Court approval, and shall continue in full force through December 31, 2016, or until such time as all conditions and obligations are met and satisfied herein, which the Claims Administrator estimates is sufficient time to complete all Road Repair Services in accordance with the terms of this Agreement.

## III. COMPENSATION AND TERMS OF PAYMENT

- A. The Contractor agrees to provide the Road Repair Services as described herein at a cost agreed to by the Claims Administrator, with total compensation not to exceed \$ \_\_\_\_\_ (the "capped amount"). Within seven (7) days following Court approval of this Agreement, the Contractor shall receive an amount equal to 5% of the capped amount, or \$ \_\_\_\_\_ (the "5% down payment").
- i. **Payment Terms for Road Repair Services.** To be negotiated and included herein prior to the execution of this agreement.
  - ii. **Disposition of 5% Down Payment.** The 5% down payment shall be utilized in ratably reducing the payments to the Contractor. If the down payment is fully utilized, then future payments to the Contractor shall no longer be reduced by the 5% down payment. But, if the 5% down payment is not so utilized in full, then, following completion of the Road Repair Services, the remaining portion of the 5% down payment shall be refunded by the Contractor to the Claims Administrator.
- B. The Contractor shall be responsible for the payment of all excise, sales, or use taxes and all taxes required by law on all labor, materials, tools, apparatus, equipment, fixtures, and incidentals which purchases or uses for the purpose of conducting, facilitating and/or supervising the Road Repair Services contemplated herein. The Contractor represents that all amounts required for such taxes are included and are part and parcel of the compensation as set out in the Price Proposal submitted by the Contractor.
- C. The Contractor will take the risk of diesel fuel cost fluctuations up to a ceiling of \$3.00 per gallon per <http://www.eia.gov/petroleum/gasdiesel/> (the "fuel cap"). Upon the Contractor providing reasonable proof that it purchased diesel fuel for the project and only used it for the project at a price above the fuel cap at a time that the fuel cap was exceeded per <http://www.eia.gov/petroleum/gasdiesel/>, the Settlement shall reimburse the Contractor, dollar for dollar for the amount above the fuel cap so paid by the Contractor, for diesel fuel.

## IV. OBLIGATIONS OF: THE CONTRACTOR

- A. **Good Faith:** The Contractor commits to act in good faith in working with the Claims Administrator to complete all of the tasks and obligations identified herein, and to perform all actions required to effectuate the items identified herein in a reasonable and responsible manner consistent with industry practices. The Contractor represents and warrants that all services performed in accordance with this Agreement shall be performed in accordance with all applicable federal, state and local rules and regulations. The Contractor further warrants that it has or will have examined and familiarized itself with the services and the laws, rules and regulations relating to this Agreement and that all employees and any subcontractors authorized hereunder shall possess such expertise and skill and such training and certifications as may be necessary to perform the tasks and responsibilities to which they are assigned.
- B. **Road Repair Services:** The Contractor shall provide Road Repair Services for the Eligible Roads listed in the RFP, as follows:

- a. **Incorporation of the RFP:** The Parties hereby agree that the RFP in Exhibit A is incorporated herein and, together with this Agreement, define the scope of the work for the Road Repair Services. Nonetheless, if any terms set forth in Exhibit A conflicts with any term contained in this Agreement, the Agreement shall govern.
- b. **Exclusion of Response Assumptions, Exceptions, and Caveats:** Claims Administrator and the Contractor specifically exclude any exclusions, limitations, assumptions, or other statements of reservation that are not in this Agreement. This Agreement, with its Exhibits, represents the complete, entire and sole agreement between the Parties, and any and all previous statements of "reservation" made by the Contractor are not a final part of this Agreement unless specifically stated and agreed to by the Claims Administrator herein.
- c. **Project Planning:**
- i. The Contractor shall prepare an Implementation Plan and provide to the Claims Administrator for review and approval that encompasses the full scope of work and identifies the protocols for the completion of the Road Repair Services.
  - ii. The Contractor shall carry out and perform any and all duties pursuant to and in compliance with all state and federal laws, including but not limited to any and all state and federal environmental laws, along with any applicable healthy and safety regulations.
  - iii. **Permits:** The Contractor shall ensure that all required permits are secured prior to commencing Road Repair Services. The Contractor shall file permits or notify the appropriate permitting agencies, as necessary, in order to limit potential delays in the commencement of road repair activities. The Contractor shall also obtain any other local authorizations that may be necessary for the completion of work. The Contractor's activities include, but are not limited to, obtaining all permits required by Harrison County, the State of West Virginia, the United States Government, and/or any municipality within the Class Area that require permits related to the work described herein.
  - iv. **Access Agreements:** The Contractor shall secure from the Claims Administrator copies of all available access agreements prior to commencing Road Repair Services, and shall ensure that copies of said agreements are uploaded and maintained onto an electronic data management system. All necessary and relevant access agreements have been procured by the Claims Administrator and shall be provided upon request to The Contractor by the Claims Administrator. Said data management system shall maintain the ongoing status of Road Repair Services activities at each location where an access agreement has been obtained with weekly updated reports submitted by the Contractor to the Claims Administrator for tracking the work. The Contractor shall also provide reports as requested by the Claims Administrator within forty-eight (48) hours of written request.
- d. **Site Preparation and Mobilization**
- i. **Pre-Road Repair Program Meeting:** The Contractor shall conduct a pre-Road Repair Program conference to introduce key personnel, define authorities and responsibilities, discuss details related to project implementation and a detailed schedule for the Road Repair Services, with a teleconference option for those participants electing to meet via telephone, including, but not limited to Claims Administrator representatives, the Finance Committee and the Claimant Advisory Committee.
  - ii. **Weekly Meetings:** During the execution of the Road Repair Services, the Contractor will conduct weekly project meetings to inform the Claims Administrator of the progress of the work, any problems and/or corrective actions implemented, and updates on the construction schedule. A teleconference option for those participants electing to meet via telephone, and including, but not limited to Claims Administrator representatives, if so requested, shall be provided.

- iii. Daily Safety Meetings: Safety meetings will be conducted by the Contractor daily as part of the Contractor's duty to fulfill its obligations under any and all federal and state as contemplated in Section IV(c)(ii) above.
- iv. Monthly Reports: During the execution of the Road Repair Services, the Contractor shall provide the Claims Administrator monthly written reports identifying, at a minimum, the progress of repairing the Eligible Roads, including, if any, significant damage caused to areas surrounding the road repair area, such as yards, structures, or personal property, caused by the Contractor or its subcontractors; and any complaints received from Claimants or other persons effected by the damage. The report shall be provided to the Claims Administrator office via hand or overnight delivery and electronic mail.
- v. Complaints: The Contractor shall notify the Claims Administrator immediately in writing, to the extent practicable, when it becomes aware of any Claimant's complaint related to the Road Repair Services, and the Contractor shall cooperate with the Claims Administrator in undertaking reasonable measures to resolve such complaints.
- vi. Problem Resolution Meetings: A special meeting shall be held when and if a problem or deficiency is present or likely to occur. At a minimum, the meeting shall be attended by the Claims Administrator, the Contractor team members, and any affected third party subcontractors and/or Claimants. The purpose of the meeting shall be to define and resolve the problem or work deficiency. The meeting shall be documented by the Contractor and minutes shall be prepared and distributed to all parties attending or participating. A teleconference option for those participants electing to meet via telephone, and including, but not limited to Claims Administrator representatives, if so requested, shall be provided. The meeting shall occur promptly but no later than seventy-two (72) hours after written request of the Contractor or Claims Administrator. The request shall identify the condition or event to be discussed.
- vii. Logistics: The Contractor shall facilitate all logistical support, and any and all logistical planning necessary to effectuate an efficient start-up and continuation of Road Repair Services.
- viii. Utility Identification: Prior to initiating Road Repair Services activities, the Contractor shall locate and mark all underground utilities.
- ix. Access Road Construction: The Contractor shall construct access roadways, as necessary, utilizing crushed stone or other materials, to facilitate work activities. The Contractor shall establish suitable facilities for parking.
- x. Personnel and Equipment Decontamination: As required, the Contractor shall ensure decontamination of personnel and excavation equipment.
- xi. Mobilization: Upon completion of logistical preparation activities, the Contractor shall mobilize personnel, equipment, materials, and other resources to the site to initiate road repair activities. Mobilization activities are anticipated to include, but are not limited to, the delivery, installation, hookup, and maintenance of temporary offices and construction facilities. Temporary offices and construction facilities are expected to include field offices, support facilities, utilities, dust and pollution control facilities, personnel protection and work areas, and creation and maintenance of access roads and parking areas, as required.
- xii. Site Security: The Contractor shall be responsible for access control and security at all staging areas and at the individual work areas. Security shall include at least one of the following: use of existing fencing, snow fencing, at a minimum caution tape, and signage warning of restricted areas and hazards to control access, protect equipment and support facilities, and prevent unauthorized entry and exposure to Eligible Roads and to control access to other dangerous conditions.
- xiii. Documentation: The Contractor shall be responsible for documenting all field activities during the Road Repair Program. Records of field activities shall be legible, identifiable, retrievable, and protected against damage, deterioration, and loss. The Contractor shall record all documentation in waterproof, non-erasable ink. If an error in any of these documents is made, shall make corrections by crossing a single line through the error and entering the correct

information adjacent to it. The corrections shall then be initialed and dated. All data and documentation shall also be uploaded and maintained onto an electronic data management system. The data management system shall be in a format that is easily readable and exportable, and access to said data and documentation, and/or reports generated from said data and documentation, shall be provided to the Claims Administrator within five (5) days of written request.

**C. Reporting Requirements:**

- a. The reports to be submitted by the Contractor pursuant to the terms of this Agreement shall be provided to the Claims Administrator's office via hand or overnight delivery and electronic mail.
- b. The Contractor shall work with the Claims Administrator to determine which reports shall be necessary to fully perform the services contained herein.

**D. Insurance and Bond Requirements:**

- a. The Contractor shall maintain Workers' Compensation benefits within the State of West Virginia throughout all periods relevant to the execution of duties and obligations under this Agreement with waiver of subrogation in favor of the Perrine DuPont Settlement (which is the Perrine DuPont Property Remediation Qualified Settlement Fund, an IRC §468B Qualified Settlement Fund domiciled in West Virginia), E.I. DuPont De NeMours and Company ("DuPont"), and the law firm of Gentle, Turner, Sexton & Harbison, LLC.
- b. The Contractor shall maintain an Employer's Liability insurance policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per incident, with waiver of subrogation in favor of the Perrine DuPont Settlement, DuPont, and Gentle, Turner, Sexton & Harbison, LLC. The Contractor shall maintain a Commercial General Liability insurance policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence.
- c. The Contractor shall maintain Professional Liability insurance throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per claim with maintenance of coverage for two (2) years following the completion of the Project.
- d. The Contractor shall maintain an Excess Liability policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per claim.
- e. The Contractor shall maintain an Environmental Impairment insurance policy or Pollution Liability insurance policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of Two Million Dollars (\$2,000,000.00) per claim.
- f. The Contractor shall maintain comprehensive or commercial automobile liability for bodily injury and property damage throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per claim.
- g. The insurance required herein shall be primary to any other valid and collectible insurance.
- h. The Contractor must ensure that the Perrine DuPont Settlement, DuPont and the law firm of Gentle, Turner, Sexton & Harbison, LLC, are listed as additional insureds on the above policies, as evidenced by a Certificate of Insurance verifying coverage limits.
- i. Bonds: The Contractor shall furnish bonds covering the faithful performance of this Agreement and the payment of all obligations arising in connection therewith, said bonds to be in such form Claims Administrator approves, and with sureties that Claims Administrator approves. Approval of the bond form shall not be unreasonably denied; reasons for denial shall be stated in writing. Each bond shall

contain a provision to the effect that changes in the Road Repair Services and/or modifications to this Agreement shall in no way relieve the surety of its obligations. Bonding provided by the Contractor shall equal the total contract value of this Agreement. Bonds may be furnished for different phases of the work so long as the penal value of each bond is commensurate with the value of each phase.

**E. Sub-Contracts:**

- a. The Contractor may sublet to Sub-contractors acceptable to the Claims Administrator any portions of the Road Repair Services. Claims Administrator reserves the right to review and approve or disapprove all subcontracts as to scope of the Road Repair Services to be performed or for any reasonable basis. If Claims Administrator rejects a proposed subcontractor, it must state all bases in writing and allow Contractor to respond and request a reconsideration with a reasonable period of time.
- b. Such Claims Administrator's acceptance, review or approval, or the failure to accept, review, or approve a subcontractor shall not be construed as relieving the Contractor of any responsibilities under this Agreement.
- c. The Contractor shall have full directing authority over and responsibility for the performance of all Road Repair Services which the Contractor subcontracts and shall not be relieved of its responsibility for the proper performance of the services contemplated herein due to subcontracting.
- d. The Contractor agrees to bind each and every Sub-contractor by the terms, conditions and provisions of this Agreement applicable to Road Repair Services, unless otherwise specifically agreed to in writing by the Claims Administrator.
- e. Nothing contained in this Agreement is intended to or shall the same create any contractual or privity relation between any Sub-contractor and the Claims Administrator or any obligation on the part of the Claims Administrator to pay or to see to the payment of any moneys due any Sub-contractor.

**V. OBLIGATIONS OF THE CLAIMS ADMINISTRATOR**

- A. **Fiduciary Duties:** The Claims Administrator shall be responsible for the interpretation of Court Orders and Road Repair Program documents, and any communications to the Claimants, the Finance Committee, the Claimants Advisory Committee, and the Court.
- B. **Amendments to the Road Repair Program:** The Claims Administrator shall provide written notification to the Contractor of any modifications or amendments to the Road Repair Program. Modifications to the Road Repair Program that have a cost impact upon the Contractor shall, result in written, reasonable pricing revisions effective as of the date of the modification or amendment.
- C. **Response Time:** The Claims Administrator shall provide any written response required herein or otherwise reasonably required by the Contractor no later than five (5) working days after request. In instances where a response is needed faster in order to avoid delay, such response shall be provided sooner so as to avoid delay.

**VI. PROPERTY RIGHTS AND CONFIDENTIALITY**

- A. **Computer Equipment and Confidential Information:** All computer equipment owned by the Contractor, programs, drawings, diagrams, specifications, manuals, forms, procedures, data files (but not the data therein belonging to the Claims Administrator), and all other information and materials of any nature existing before the commencement of the Road Repair Program and furnished, revealed or otherwise made available to the Claims Administrator by the Contractor, whether on the Contractor's premises or the Claims Administrator's premises (the "Confidential

Information"), shall remain the sole and exclusive property of the Contractor. All other Information, records, and documentation generated in carrying out the Road Repair Services contemplated herein are hereby designated the "Claims Administrator's Information." The Claims Administrator's Information shall be and remain the sole and exclusive property of the Claims Administrator. The Contractor shall return the Claims Administrator's Information to the Claims Administrator within thirty (30) days from the date of termination of this Agreement, while being able to maintain a copy on a confidential basis and also to be used to enforce the Contractor's rights under this agreement.

- B. **Storage and Inspection:** All documents, books, and records furnished to the Contractor by the Claims Administrator provided in accordance with this Agreement shall remain the property of the Claims Administrator; and all documents, books, and records of the Contractor provided in accordance with this Agreement pertaining to any individual insurance, group insurance, or services, whether original records of the Contractor or furnished by the Claims Administrator, shall be open for inspection at the Contractor's West Virginia location, unless otherwise agreed, at all reasonable times. The Contractor may store any or all of such documents, books, and records in microfilm, magnetic tape, or other electronic medium.
- C. **Disposition upon Termination of this Agreement:** To the extent feasible, upon termination of this agreement, the Contractor shall return to the Claims Administrator all Claims Administrator Information received or created by the Contractor on behalf of the Road Repair Road Repair Program within ten (10) business days; however if it is not reasonably feasible, the protections of this Agreement shall continue to apply to such information after the termination of this Agreement.

## VII. **MANDATORY TERMS**

The Mandatory Terms in Appendix A to the RFP and attached hereto as Exhibit B are a part of this Agreement, and are incorporated herein by reference.

## VIII. **INDEMNIFICATION**

- A. **Indemnification of the Contractor.** Claims Administrator agrees to indemnify and hold harmless the Contractor or any of its officers, or employees from any and all losses, liability, damages, expenses or other cost or obligation, resulting from or arising out of claims, demands, lawsuits or judgments brought against Claims Administrator and/or the Contractor as a result or arising out of Claims Administrator's performance of its responsibilities pursuant to the provisions of this Agreement, except any such claims, losses, liabilities, damages, or expense which arise out of or in connection with the Contractor's negligence, willful misconduct, or criminal misconduct.
- B. **Indemnification of the Claims Administrator.** The Contractor agrees to indemnify and hold harmless the Claims Administrator or any of its officers, or employees from any and all losses, liability, damages, expenses or other cost or obligation, resulting from or arising out of claims, demands, lawsuits or judgments brought against the Contractor and/or the Claims Administrator as a result or arising out of the Contractor's performance of its responsibilities pursuant to the provisions of this Agreement, except any such claims, losses, liabilities, damages, or expense which arise out of or in connection with the Claims Administrator's negligence, willful misconduct, or criminal misconduct.



## IX. TERMINATION

- A. **Material Breach:** If either party materially breaches this Agreement, the other party may terminate the Agreement provided that it notifies, in writing, the breaching party of the specific breach and allows the breaching party the opportunity to cure the breach within fifteen (15) days of the date of the notice. If reasonable and substantial steps to cure the breach have not been corrected in fifteen (15) days, the Agreement may be terminated upon five (5) days further written notice. If a notice and opportunity to cure is generated by the Contractor for non-payment and not cured by Claims Administrator, the Contractor may, at its sole discretion, suspend performance upon expiration of the fifteen (15) days the Contractor shall be entitled to an equitable adjustment to this Agreement.
- B. **Termination for Insolvency:** If either party applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or of all, or a substantial part, of its assets; files a voluntary petition in bankruptcy; admits in writing to its inability to pay its debts as they become due; makes a general assignment for the benefit of creditors; files a petition or an answer seeking reorganization or rearrangement with creditors; or, as a debtor, invokes or takes advantage of any insolvency law; or if an order, judgment, or decree is entered by a court of competent jurisdiction upon application of a creditor adjudicating such party bankrupt or insolvent or approving a petition seeking reorganization of such party of all, or a substantial part, of its assets, and such order, judgment, or decree continues unstayed for thirty (30) days, then the other party may, by written notice, terminate this Agreement effective on any future date specified in such notice.
- C. **Termination for Convenience:** The Claims Administrator reserves the right to terminate this Agreement and all rights and obligations hereunder without cause, or for convenience, at its sole discretion, at any time after five (5) days written notice. In the event Claims Administrator terminates this Agreement without cause then Claims Administrator shall reimburse the Contractor for any reasonable out-of-pocket costs and expenses incurred for the actual preparation and/or performance of Work and for reasonable lost profit and overhead.
- D. **Effect of Termination:** In the event of a termination, this Agreement shall be of no further force or effect except that each party hereto shall remain liable for any debts and/or liabilities arising from activities under this Agreement occurring prior to the effective date of termination.
- E. **Continuation of Services:** Except for termination due to Claims Administrator's breach, the Contractor agrees that upon completion of the work, at Claims Administrator's request for continuation of services, it shall continue to provide services hereunder, provided Claims Administrator complies with all the terms and provisions of this Agreement in effect prior to the termination. The fees for such continuation period shall be equitably adjusted.
- F. **Information Transfer:** In the event of termination of this Agreement, the Contractor agrees to provide Claims Administrator all Information in the Contractor's possession pertaining to all services, records, and efforts related to this Agreement, consistent with reasonable industry norms, are within five (5) business days. The Contractor may provide the data by electronic or wire communication or a media type such as disk, tape, or CD.

## X. CHOICE OF LAW AND RESOLUTION OF ALL DISPUTES

- A. **Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.
- B. **Resolution of All Disputes:** In accordance with the Mandatory Terms in Appendix A to the RFP and attached hereto as Exhibit B, the Circuit Court in Harrison County, West Virginia, retains continuous and exclusive jurisdiction and supervision over the Property Remediation Plan and over this Agreement, and any agreements related thereto. Any judicial proceeding arising out of or relating to this Agreement may be brought only before the Circuit Court of Harrison County West Virginia, and any judgment against a party may be enforced only by a proceeding before the Circuit Court of Harrison

County West Virginia. The Parties irrevocably and expressly submit to the jurisdiction of the Court over any such proceeding. The Parties irrevocably and expressly waive any objection that they might now or hereafter have to the laying of venue for such proceeding in the Circuit Court of Harrison County West Virginia and any claim that any such proceeding in the Circuit Court of Harrison County West Virginia has been brought in an inconvenient forum.

- C. **Mediation:** Prior to litigation or juridical proceeding, the Parties must first subject the dispute to mediation as a condition precedent. Mediation shall be administered by a mediator to be agreed upon by the parties.

**XI. MISCELLANEOUS**

- A. **Prompt Notification of any and all Complaints:** The Contractor and Claims Administrator both mutually agree that each shall both promptly notify in writing the other of any and all complaints and/or issues which relate to or arise from this Agreement contemplated herein, and the Contractor and Claims Administrator shall work in tandem to resolve any and all claims and/or complaints which may arise.

- B. **Correlation of Documents:** The Agreement documents are complementary and what is called for by any one of the documents described herein and attached hereto are binding as if called by all. There are certain operations, labor, equipment, materials and things reasonably inferable from the Agreement as being necessary to produce the intended results; even though no mention thereof is made in said Agreement, such omission shall not relieve the Contractor from its obligation to provide all such operations, labor, equipment, materials and things reasonably required. Parts of the Road Repair Services described in words which, when applied, have a well-known technical or trade meaning shall be furnished or performed in accordance with the recognized standards applicable to such meaning.

- C. **Force Majeure:** Notwithstanding anything herein or otherwise which may appear to be to the contrary, neither party shall be responsible for delays or failures in performance under this Agreement resulting from any force majeure or acts beyond the reasonable control of the party. Such acts shall include, without limitation, acts of God, strikes, blackouts, riots, acts of war, epidemics, governmental regulations, fire, communication line failure, power failures, mechanical failures, storms or other disasters. Notwithstanding any other provision, the Contractor shall be entitled to an equitable adjustment to this Agreement for delays due to weather.

- D. **Notice:** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally hand delivered or, if sent via overnight mail upon receipt, or three (3) days after deposit in the United States Mail, postage prepaid, sent certified or registered, addressed as follows:

- a. If to the Claims Administrator, to:  
The Perrine DuPont Property Remediation Road Repair Program  
Spelter Volunteer Fire Department Office  
55 B Street  
PO BOX 257  
Spelter, West Virginia 26438  
Attention: Edgar C. Gentle, III, Esq.  
Claims Administrator  
With an email copy to [escrowagen@aol.com](mailto:escrowagen@aol.com)

- b. If to the Contractor, to  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or to such other address or person as hereafter shall be designated in writing by the applicable party.

- E. **Entire Agreement:** This Agreement and all exhibits and schedules hereto constitute the entire agreement between the Parties hereto pertaining to the subject matters hereof and supersede all negotiations, preliminary agreements and all prior or contemporaneous discussions and understandings of the Parties hereto in connection with the subject matters hereof. All exhibits and schedules are incorporated into this Agreement as if set forth in their entirety and constitute a part hereof. Any exceptions or reservations set forth by the Contractor in any responses to the RFP shall not be part and parcel of this Agreement, excepting those that are explicitly acknowledged herein.
- F. **Modifications in Writing:** No failure or delay on the part of any party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the party subject to the enforcement thereof. Any amendment, modification or supplement of or to any provision of the Agreement, any waiver of any provision of this Agreement, and any consent to any departure from the terms of any provisions of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given.
- G. **Conflicting Terms:** In the event that any term shall conflict with any of the terms contained in any of the documents which are part and parcel of this Agreement, including but not limited to, Claims Administrator's RFP, the Contractor's Response to RFP, and/or any other Exhibits attached hereto, and/or any other documents identified in this Agreement, this Agreement shall control.
- H. **Severability:** In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. In the event any provision of this Agreement is held to be unenforceable as written, but enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be enforceable and shall be enforced to that extent.
- I. **Relationship:** Nothing contained in this Agreement and no action taken by the Parties pursuant hereto shall be deemed to constitute the Parties as a partnership, an association, a joint venture or other entity. It is expressly agreed that neither Party for any purpose shall be deemed to be an agent, ostensible or apparent agent, employee, or servant of the other Party.
- J. **Headings and Captions:** The titles or captions of sections and paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement, and such titles or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions.
- K. **Binding Effect on Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns. In the event of assignment, all of the terms, covenants and conditions of this Agreement shall remain in full force and effect and the party making the assignment shall remain liable and responsible for the due performance of all of the terms, covenants and conditions of this Agreement that it is obligated to observe and perform. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement. However, neither the Claims Administrator, nor the Contractor may assign the rights and obligations provided hereunder without the prior written express permission of the other party, which shall not be unreasonably denied. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in making proof hereof, it shall not be necessary to produce or account for more than one such counterpart.

- L. **Changes in Law:** If changes in the laws materially affect a party's rights and obligations under this Agreement or render any portion illegal or unenforceable, then the Parties agree to negotiate modifications to the terms of this Agreement in good faith. If the Parties cannot agree to modify terms that comply with the changes in laws, then either party may terminate this Agreement upon thirty (30) days prior written notice.
- M. **Advertising, Promotion, and Trade Name:** The Contractor may not list Claims Administrator as one of the Contractor's clients in proposals and responses to proposals for the development of new business, without Claims Administrator's prior written permission. Claims Administrator may use the Contractor's name, in any form other than its logo, in marketing materials, in a form acceptable to the Contractor. Claims Administrator may not use the Contractor's name or logo, or any form thereof, in such a way as to convey that the Contractor is an administrator and/or fiduciary with regards to Claimants, or the Road Repair Program.
- N. **Exclusivity:** Claims Administrator agrees that, during the term of this Agreement, it shall not utilize the services of another entity to provide the services the Contractor has agreed to perform under this Agreement.
- O. **Third Party Beneficiaries:** The Contractor and Claims Administrator specifically state, acknowledge, and agree that it is their intent that no other party, person or entity, including, but not limited to, Claimants, shall be third-party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

The undersigned certifies that he has legal authority to bind \_\_\_\_\_.

By:

\_\_\_\_\_  
 Name:  
 Title:  
 Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

The undersigned certifies that he has legal authority to bind Claims Administrator upon approval of this Agreement by the Court in the DuPont Case.

The Perrine DuPont Settlement

By:

\_\_\_\_\_  
 Edgar C. Gentle, III  
 Title: Claims Administrator  
 Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

# **EXHIBIT D TO ORDER:**

## **ROAD RE-PAVING/REPAIR PORTION OF THE SETTLEMENT ROAD REPAIR AND IMPROVEMENT PROGRAM AGREEMENT**

## INDEX

|                                              |   |
|----------------------------------------------|---|
| Preamble .....                               | 1 |
| Definitions .....                            | 1 |
| Period of Performance .....                  | 2 |
| Compensation and Terms of Payment .....      | 2 |
| Obligations of The Contractor .....          | 2 |
| Good Faith .....                             | 2 |
| Road Repair Services .....                   | 2 |
| Incorporation of RFP .....                   | 3 |
| Project Planning.....                        | 3 |
| Site Preparation and Mobilization .....      | 3 |
| Reporting Requirements.....                  | 5 |
| Insurance and Bond Requirements.....         | 5 |
| Sub-Contracts.....                           | 6 |
| Obligations of the Claims Administrator..... | 6 |
| Property Rights and Confidentiality .....    | 6 |
| Mandatory Terms .....                        | 7 |
| Indemnification.....                         | 7 |
| Termination .....                            | 8 |
| Choice of Law.....                           | 8 |
| Miscellaneous.....                           | 9 |

**ROAD REPAIR PROGRAM  
AGREEMENT**

THIS AGREEMENT is entered into on \_\_\_\_\_, \_\_\_\_\_, 2016, and is effective upon Court approval ("Effective Date"), being between \_\_\_\_\_, a corporation with its headquarters at \_\_\_\_\_ ("Contractor") and the Perrine DuPont Settlement (hereinafter "Sponsor") which was approved by the Circuit Court of Harrison County, West Virginia, Case No. 04-C-296-2 (the "Court"), by Orders dated January 4, 2011, and June 27, 201, by and through the appointed Special Master and Claims Administrator, Edgar C. Gentle, III., Esq., of the firm of Gentle, Turner, Sexton, & Harbison, LLC (hereinafter collectively referred to as "Claims Administrator").

The principal place of business of the Sponsor, as administered by the Claims Administrator, is 55 B Street, P.O. Box 257, Spelter, West Virginia, 26438.

WHEREAS, on February 22, 2016, the Claims Administrator issued the Request for Proposals for the Road Re-paving/Repair portion of the Settlement Road Repair and Improvement Program in the Perrine DuPont Settlement, attached hereto as Exhibit A (the "RFP").

WHEREAS, the Claims Administrator recommends to the Court that the Contractor be awarded the contract to provide the Road Repair Services described in this Agreement;

WHEREAS, by entering into this Agreement, the Contractor agrees to provide Road Repair Services, including, the repair, resurfacing and paving of the Eligible Roads as listed in the RFP and incorporated herein by reference (*See*, Exhibit A).

WHEREAS, the Claims Administrator desires to work with the Contractor and the Contractor desires to work with the Claims Administrator to implement the Road Repair Program; and

WHEREAS, the Claims Administrator and the Contractor (collectively, the "Parties") have agreed that the Contractor shall exclusively provide the Road Repair Services for the Claims Administrator for the roads described in the Order of the Court dated \_\_\_\_\_, 2016, in Exhibit A, for the duration of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and for other good and substantial consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. DEFINITIONS**

All words and phrases defined below shall have the following meaning:

- A. "RFP" collectively means the Claims Administrator's February 22, 2016 Request for Proposals with respect to the Road Repair Services defined below (*See*, Section I.B. below), a copy of which is attached hereto as Exhibit A and is incorporated by reference;
- B. "Road Repair Services" includes the Contractor's agreement to (i) perform the "Scope of Work" for the designated "Road Repair List" as described in the RFP and incorporated herein by reference (*See*, Exhibit A); and (ii) an implementation plan to be prepared for the Claims Administrator's review and approval during a reasonable editing cycle that identifies the full scope of work required of the Contractor and the Claims Administrator, and the protocols that the Contractor shall perform and rely upon in carrying out the Road Repair Services, as described in Section IV.B. below.

## II. PERIOD OF PERFORMANCE

This Agreement shall become effective following Court approval, and shall continue in full force through December 31, 2016, or until such time as all conditions and obligations are met and satisfied herein, which the Claims Administrator estimates is sufficient time to complete all Road Repair Services in accordance with the terms of this Agreement.

## III. COMPENSATION AND TERMS OF PAYMENT

- A. The Contractor agrees to provide the Road Repair Services as described herein at a cost agreed to by the Claims Administrator, with total compensation **not to exceed** \$ \_\_\_\_\_ (the "capped amount"). Within seven (7) days following Court approval of this Agreement, the Contractor shall receive an amount equal to 5% of the capped amount, or \$ \_\_\_\_\_ (the "5% down payment").
- i. **Payment Terms for Road Repair Services.** To be negotiated and included herein prior to the execution of this agreement.
  - ii. **Disposition of 5% Down Payment.** The 5% down payment shall be utilized in ratably reducing the payments to the Contractor. If the down payment is fully utilized, then future payments to the Contractor shall no longer be reduced by the 5% down payment. But, if the 5% down payment is not so utilized in full, then, following completion of the Road Repair Services, the remaining portion of the 5% down payment shall be refunded by the Contractor to the Claims Administrator.
- B. The Contractor shall be responsible for the payment of all excise, sales, or use taxes and all taxes required by law on all labor, materials, tools, apparatus, equipment, fixtures, and incidentals which purchases or uses for the purpose of conducting, facilitating and/or supervising the Road Repair Services contemplated herein. The Contractor represents that all amounts required for such taxes are included and are part and parcel of the compensation as set out in the Price Proposal submitted by the Contractor.
- C. The Contractor will take the risk of diesel fuel cost fluctuations up to a ceiling of \$3.00 per gallon per <http://www.eia.gov/petroleum/gasdiesel/> (the "fuel cap"). Upon the Contractor providing reasonable proof that it purchased diesel fuel for the project and only used it for the project at a price above the fuel cap at a time that the fuel cap was exceeded per <http://www.eia.gov/petroleum/gasdiesel/>, the Settlement shall reimburse the Contractor, dollar for dollar for the amount above the fuel cap so paid by the Contractor, for diesel fuel.

## IV. OBLIGATIONS OF: THE CONTRACTOR

- A. **Good Faith:** The Contractor commits to act in good faith in working with the Claims Administrator to complete all of the tasks and obligations identified herein, and to perform all actions required to effectuate the items identified herein in a reasonable and responsible manner consistent with industry practices. The Contractor represents and warrants that all services performed in accordance with this Agreement shall be performed in accordance with all applicable federal, state and local rules and regulations. The Contractor further warrants that it has or will have examined and familiarized itself with the services and the laws, rules and regulations relating to this Agreement and that all employees and any subcontractors authorized hereunder shall possess such expertise and skill and such training and certifications as may be necessary to perform the tasks and responsibilities to which they are assigned.
- B. **Road Repair Services:** The Contractor shall provide Road Repair Services for the Eligible Roads listed in the RFP, as follows:



a. **Incorporation of the RFP:** The Parties hereby agree that the RFP in Exhibit A is incorporated herein and, together with this Agreement, define the scope of the work for the Road Repair Services. Nonetheless, if any terms set forth in Exhibit A conflicts with any term contained in this Agreement, the Agreement shall govern.

b. **Exclusion of Response Assumptions, Exceptions, and Caveats:** Claims Administrator and the Contractor specifically exclude any exclusions, limitations, assumptions, or other statements of reservation that are not in this Agreement. This Agreement, with its Exhibits, represents the complete, entire and sole agreement between the Parties, and any and all previous statements of "reservation" made by the Contractor are not a final part of this Agreement unless specifically stated and agreed to by the Claims Administrator herein.

c. **Project Planning:**

i. The Contractor shall prepare an Implementation Plan and provide to the Claims Administrator for review and approval that encompasses the full scope of work and identifies the protocols for the completion of the Road Repair Services.

ii. The Contractor shall carry out and perform any and all duties pursuant to and in compliance with all state and federal laws, including but not limited to any and all state and federal environmental laws, along with any applicable healthy and safety regulations.

iii. **Permits:** The Contractor shall ensure that all required permits are secured prior to commencing Road Repair Services. The Contractor shall file permits or notify the appropriate permitting agencies, as necessary, in order to limit potential delays in the commencement of road repair activities. The Contractor shall also obtain any other local authorizations that may be necessary for the completion of work. The Contractor 's activities include, but are not limited to, obtaining all permits required by Harrison County, the State of West Virginia, the United States Government, and/or any municipality within the Class Area that require permits related to the work described herein.

iv. **Access Agreements:** The Contractor shall secure from the Claims Administrator copies of all available access agreements prior to commencing Road Repair Services, and shall ensure that copies of said agreements are uploaded and maintained onto an electronic data management system. All necessary and relevant access agreements have been procured by the Claims Administrator and shall be provided upon request to The Contractor by the Claims Administrator. Said data management system shall maintain the ongoing status of Road Repair Services activities at each location where an access agreement has been obtained with weekly updated reports submitted by the Contractor to the Claims Administrator for tracking the work. The Contractor shall also provide reports as requested by the Claims Administrator within forty-eight (48) hours of written request.

d. **Site Preparation and Mobilization**

i. **Pre-Road Repair Program Meeting:** The Contractor shall conduct a pre-Road Repair Program conference to introduce key personnel, define authorities and responsibilities, discuss details related to project implementation and a detailed schedule for the Road Repair Services, with a teleconference option for those participants electing to meet via telephone, including, but not limited to Claims Administrator representatives, the Finance Committee and the Claimant Advisory Committee.

ii. **Weekly Meetings:** During the execution of the Road Repair Services, the Contractor will conduct weekly project meetings to inform the Claims Administrator of the progress of the work, any problems and/or corrective actions implemented, and updates on the construction schedule. A teleconference option for those participants electing to meet via telephone, and including, but not limited to Claims Administrator representatives, if so requested, shall be provided.

- iii. Daily Safety Meetings: Safety meetings will be conducted by the Contractor daily as part of the Contractor's duty to fulfill its obligations under any and all federal and state as contemplated in Section IV(c)(ii) above.
- iv. Monthly Reports: During the execution of the Road Repair Services, the Contractor shall provide the Claims Administrator monthly written reports identifying, at a minimum, the progress of repairing the Eligible Roads, including, if any, significant damage caused to areas surrounding the road repair area, such as yards, structures, or personal property, caused by the Contractor or its subcontractors; and any complaints received from Claimants or other persons effected by the damage. The report shall be provided to the Claims Administrator office via hand or overnight delivery and electronic mail.
- v. Complaints: The Contractor shall notify the Claims Administrator immediately in writing, to the extent practicable, when it becomes aware of any Claimant's complaint related to the Road Repair Services, and the Contractor shall cooperate with the Claims Administrator in undertaking reasonable measures to resolve such complaints.
- vi. Problem Resolution Meetings: A special meeting shall be held when and if a problem or deficiency is present or likely to occur. At a minimum, the meeting shall be attended by the Claims Administrator, the Contractor team members, and any affected third party subcontractors and/or Claimants. The purpose of the meeting shall be to define and resolve the problem or work deficiency. The meeting shall be documented by the Contractor and minutes shall be prepared and distributed to all parties attending or participating. A teleconference option for those participants electing to meet via telephone, and including, but not limited to Claims Administrator representatives, if so requested, shall be provided. The meeting shall occur promptly but no later than seventy-two (72) hours after written request of the Contractor or Claims Administrator. The request shall identify the condition or event to be discussed.
- vii. Logistics: The Contractor shall facilitate all logistical support, and any and all logistical planning necessary to effectuate an efficient start-up and continuation of Road Repair Services.
- viii. Utility Identification: Prior to initiating Road Repair Services activities, the Contractor shall locate and mark all underground utilities.
- ix. Access Road Construction: The Contractor shall construct access roadways, as necessary, utilizing crushed stone or other materials, to facilitate work activities. The Contractor shall establish suitable facilities for parking.
- x. Personnel and Equipment Decontamination: As required, the Contractor shall ensure decontamination of personnel and excavation equipment.
- xi. Mobilization: Upon completion of logistical preparation activities, the Contractor shall mobilize personnel, equipment, materials, and other resources to the site to initiate road repair activities. Mobilization activities are anticipated to include, but are not limited to, the delivery, installation, hookup, and maintenance of temporary offices and construction facilities. Temporary offices and construction facilities are expected to include field offices, support facilities, utilities, dust and pollution control facilities, personnel protection and work areas, and creation and maintenance of access roads and parking areas, as required.
- xii. Site Security: The Contractor shall be responsible for access control and security at all staging areas and at the individual work areas. Security shall include at least one of the following: use of existing fencing, snow fencing, at a minimum caution tape, and signage warning of restricted areas and hazards to control access, protect equipment and support facilities, and prevent unauthorized entry and exposure to Eligible Roads and to control access to other dangerous conditions.
- xiii. Documentation: The Contractor shall be responsible for documenting all field activities during the Road Repair Program. Records of field activities shall be legible, identifiable, retrievable, and protected against damage, deterioration, and loss. The Contractor shall record all documentation in waterproof, non-erasable ink. If an error in any of these documents is made, shall make corrections by crossing a single line through the error and entering the correct

information adjacent to it. The corrections shall then be initialed and dated. All data and documentation shall also be uploaded and maintained onto an electronic data management system. The data management system shall be in a format that is easily readable and exportable, and access to said data and documentation, and/or reports generated from said data and documentation, shall be provided to the Claims Administrator within five (5) days of written request.

**C. Reporting Requirements:**

- a. The reports to be submitted by the Contractor pursuant to the terms of this Agreement shall be provided to the Claims Administrator's office via hand or overnight delivery and electronic mail.
- b. The Contractor shall work with the Claims Administrator to determine which reports shall be necessary to fully perform the services contained herein.

**D. Insurance and Bond Requirements:**

- a. The Contractor shall maintain Workers' Compensation benefits within the State of West Virginia throughout all periods relevant to the execution of duties and obligations under this Agreement with waiver of subrogation in favor of the Perrine DuPont Settlement (which is the Perrine DuPont Property Remediation Qualified Settlement Fund, an IRC §468B Qualified Settlement Fund domiciled in West Virginia), E.I. DuPont De NeMours and Company ("DuPont"), and the law firm of Gentle, Turner, Sexton & Harbison, LLC.
- b. The Contractor shall maintain an Employer's Liability insurance policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per incident, with waiver of subrogation in favor of the Perrine DuPont Settlement, DuPont, and Gentle, Turner, Sexton & Harbison, LLC. The Contractor shall maintain a Commercial General Liability insurance policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence.
- c. The Contractor shall maintain Professional Liability insurance throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per claim with maintenance of coverage for two (2) years following the completion of the Project.
- d. The Contractor shall maintain an Excess Liability policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per claim.
- e. The Contractor shall maintain an Environmental Impairment insurance policy or Pollution Liability insurance policy throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of Two Million Dollars (\$2,000,000.00) per claim.
- f. The Contractor shall maintain comprehensive or commercial automobile liability for bodily injury and property damage throughout all periods relevant to the execution of duties and obligations under this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per claim.
- g. The insurance required herein shall be primary to any other valid and collectible insurance.
- h. The Contractor must ensure that the Perrine DuPont Settlement, DuPont and the law firm of Gentle, Turner, Sexton & Harbison, LLC, are listed as additional insureds on the above policies, as evidenced by a Certificate of Insurance verifying coverage limits.
- i. Bonds: The Contractor shall furnish bonds covering the faithful performance of this Agreement and the payment of all obligations arising in connection therewith, said bonds to be in such form Claims Administrator approves, and with sureties that Claims Administrator approves. Approval of the bond form shall not be unreasonably denied; reasons for denial shall be stated in writing. Each bond shall

contain a provision to the effect that changes in the Road Repair Services and/or modifications to this Agreement shall in no way relieve the surety of its obligations. Bonding provided by the Contractor shall equal the total contract value of this Agreement. Bonds may be furnished for different phases of the work so long as the penal value of each bond is commensurate with the value of each phase.

**E. Sub-Contracts:**

- a. The Contractor may sublet to Sub-contractors acceptable to the Claims Administrator any portions of the Road Repair Services. Claims Administrator reserves the right to review and approve or disapprove all subcontracts as to scope of the Road Repair Services to be performed or for any reasonable basis. If Claims Administrator rejects a proposed subcontractor, it must state all bases in writing and allow Contractor to respond and request a reconsideration with a reasonable period of time.
- b. Such Claims Administrator's acceptance, review or approval, or the failure to accept, review, or approve a subcontractor shall not be construed as relieving the Contractor of any responsibilities under this Agreement.
- c. The Contractor shall have full directing authority over and responsibility for the performance of all Road Repair Services which the Contractor subcontracts and shall not be relieved of its responsibility for the proper performance of the services contemplated herein due to subcontracting.
- d. The Contractor agrees to bind each and every Sub-contractor by the terms, conditions and provisions of this Agreement applicable to Road Repair Services, unless otherwise specifically agreed to in writing by the Claims Administrator.
- e. Nothing contained in this Agreement is intended to or shall the same create any contractual or privity relation between any Sub-contractor and the Claims Administrator or any obligation on the part of the Claims Administrator to pay or to see to the payment of any moneys due any Sub-contractor.

**V. OBLIGATIONS OF THE CLAIMS ADMINISTRATOR**

- A. **Fiduciary Duties:** The Claims Administrator shall be responsible for the interpretation of Court Orders and Road Repair Program documents, and any communications to the Claimants, the Finance Committee, the Claimants Advisory Committee, and the Court.
- B. **Amendments to the Road Repair Program:** The Claims Administrator shall provide written notification to the Contractor of any modifications or amendments to the Road Repair Program. Modifications to the Road Repair Program that have a cost impact upon the Contractor shall, result in written, reasonable pricing revisions effective as of the date of the modification or amendment.
- C. **Response Time:** The Claims Administrator shall provide any written response required herein or otherwise reasonably required by the Contractor no later than five (5) working days after request. In instances where a response is needed faster in order to avoid delay, such response shall be provided sooner so as to avoid delay.

**VI. PROPERTY RIGHTS AND CONFIDENTIALITY**

- A. **Computer Equipment and Confidential Information:** All computer equipment owned by the Contractor, programs, drawings, diagrams, specifications, manuals, forms, procedures, data files (but not the data therein belonging to the Claims Administrator), and all other information and materials of any nature existing before the commencement of the Road Repair Program and furnished, revealed or otherwise made available to the Claims Administrator by the Contractor, whether on the Contractor's premises or the Claims Administrator's premises (the "Confidential

Information"), shall remain the sole and exclusive property of the Contractor. All other Information, records, and documentation generated in carrying out the Road Repair Services contemplated herein are hereby designated the "Claims Administrator's Information." The Claims Administrator's Information shall be and remain the sole and exclusive property of the Claims Administrator. The Contractor shall return the Claims Administrator's Information to the Claims Administrator within thirty (30) days from the date of termination of this Agreement, while being able to maintain a copy on a confidential basis and also to be used to enforce the Contractor's rights under this agreement.

- B. **Storage and Inspection:** All documents, books, and records furnished to the Contractor by the Claims Administrator provided in accordance with this Agreement shall remain the property of the Claims Administrator; and all documents, books, and records of the Contractor provided in accordance with this Agreement pertaining to any individual insurance, group insurance, or services, whether original records of the Contractor or furnished by the Claims Administrator, shall be open for inspection at the Contractor's West Virginia location, unless otherwise agreed, at all reasonable times. The Contractor may store any or all of such documents, books, and records in microfilm, magnetic tape, or other electronic medium.
- C. **Disposition upon Termination of this Agreement:** To the extent feasible, upon termination of this agreement, the Contractor shall return to the Claims Administrator all Claims Administrator Information received or created by the Contractor on behalf of the Road Repair Road Repair Program within ten (10) business days; however if it is not reasonably feasible, the protections of this Agreement shall continue to apply to such information after the termination of this Agreement.

## VII. **MANDATORY TERMS**

The Mandatory Terms in Appendix A to the RFP and attached hereto as Exhibit B are a part of this Agreement, and are incorporated herein by reference.

## VIII. **INDEMINIFICATION**

- A. **Indemnification of the Contractor.** Claims Administrator agrees to indemnify and hold harmless the Contractor or any of its officers, or employees from any and all losses, liability, damages, expenses or other cost or obligation, resulting from or arising out of claims, demands, lawsuits or judgments brought against Claims Administrator and/or the Contractor as a result or arising out of Claims Administrator's performance of its responsibilities pursuant to the provisions of this Agreement, except any such claims, losses, liabilities, damages, or expense which arise out of or in connection with the Contractor's negligence, willful misconduct, or criminal misconduct.
- B. **Indemnification of the Claims Administrator.** The Contractor agrees to indemnify and hold harmless the Claims Administrator or any of its officers, or employees from any and all losses, liability, damages, expenses or other cost or obligation, resulting from or arising out of claims, demands, lawsuits or judgments brought against the Contractor and/or the Claims Administrator as a result or arising out of the Contractor's performance of its responsibilities pursuant to the provisions of this Agreement, except any such claims, losses, liabilities, damages, or expense which arise out of or in connection with the Claims Administrator's negligence, willful misconduct, or criminal misconduct.

## IX. TERMINATION

- A. **Material Breach:** If either party materially breaches this Agreement, the other party may terminate the Agreement provided that it notifies, in writing, the breaching party of the specific breach and allows the breaching party the opportunity to cure the breach within fifteen (15) days of the date of the notice. If reasonable and substantial steps to cure the breach have not been corrected in fifteen (15) days, the Agreement may be terminated upon five (5) days further written notice. If a notice and opportunity to cure is generated by the Contractor for non-payment and not cured by Claims Administrator, the Contractor may, at its sole discretion, suspend performance upon expiration of the fifteen (15) days the Contractor shall be entitled to an equitable adjustment to this Agreement.
- B. **Termination for Insolvency:** If either party applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or of all, or a substantial part, of its assets; files a voluntary petition in bankruptcy; admits in writing to its inability to pay its debts as they become due; makes a general assignment for the benefit of creditors; files a petition or an answer seeking reorganization or rearrangement with creditors; or, as a debtor, invokes or takes advantage of any insolvency law; or if an order, judgment, or decree is entered by a court of competent jurisdiction upon application of a creditor adjudicating such party bankrupt or insolvent or approving a petition seeking reorganization of such party of all, or a substantial part, of its assets, and such order, judgment, or decree continues unstayed for thirty (30) days, then the other party may, by written notice, terminate this Agreement effective on any future date specified in such notice.
- C. **Termination for Convenience:** The Claims Administrator reserves the right to terminate this Agreement and all rights and obligations hereunder without cause, or for convenience, at its sole discretion, at any time after five (5) days written notice. In the event Claims Administrator terminates this Agreement without cause then Claims Administrator shall reimburse the Contractor for any reasonable out-of-pocket costs and expenses incurred for the actual preparation and/or performance of Work and for reasonable lost profit and overhead.
- D. **Effect of Termination:** In the event of a termination, this Agreement shall be of no further force or effect except that each party hereto shall remain liable for any debts and/or liabilities arising from activities under this Agreement occurring prior to the effective date of termination.
- E. **Continuation of Services:** Except for termination due to Claims Administrator's breach, the Contractor agrees that upon completion of the work, at Claims Administrator's request for continuation of services, it shall continue to provide services hereunder, provided Claims Administrator complies with all the terms and provisions of this Agreement in effect prior to the termination. The fees for such continuation period shall be equitably adjusted.
- F. **Information Transfer:** In the event of termination of this Agreement, the Contractor agrees to provide Claims Administrator all Information in the Contractor's possession pertaining to all services, records, and efforts related to this Agreement, consistent with reasonable industry norms, are within five (5) business days. The Contractor may provide the data by electronic or wire communication or a media type such as disk, tape, or CD.

## X. CHOICE OF LAW AND RESOLUTION OF ALL DISPUTES

- A. **Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.
- B. **Resolution of All Disputes:** In accordance with the Mandatory Terms in Appendix A to the RFP and attached hereto as Exhibit B, the Circuit Court in Harrison County, West Virginia, retains continuous and exclusive jurisdiction and supervision over the Property Remediation Plan and over this Agreement, and any agreements related thereto. Any judicial proceeding arising out of or relating to this Agreement may be brought only before the Circuit Court of Harrison County West Virginia, and any judgment against a party may be enforced only by a proceeding before the Circuit Court of Harrison

County West Virginia. The Parties irrevocably and expressly submit to the jurisdiction of the Court over any such proceeding. The Parties irrevocably and expressly waive any objection that they might now or hereafter have to the laying of venue for such proceeding in the Circuit Court of Harrison County West Virginia and any claim that any such proceeding in the Circuit Court of Harrison County West Virginia has been brought in an inconvenient forum.

- C. **Mediation:** Prior to litigation or juridical proceeding, the Parties must first subject the dispute to mediation as a condition precedent. Mediation shall be administered by a mediator to be agreed upon by the parties.

**XI. MISCELLANEOUS**

- A. **Prompt Notification of any and all Complaints:** The Contractor and Claims Administrator both mutually agree that each shall both promptly notify in writing the other of any and all complaints and/or issues which relate to or arise from this Agreement contemplated herein, and the Contractor and Claims Administrator shall work in tandem to resolve any and all claims and/or complaints which may arise.

- B. **Correlation of Documents:** The Agreement documents are complementary and what is called for by any one of the documents described herein and attached hereto are binding as if called by all. There are certain operations, labor, equipment, materials and things reasonably inferable from the Agreement as being necessary to produce the intended results; even though no mention thereof is made in said Agreement, such omission shall not relieve the Contractor from its obligation to provide all such operations, labor, equipment, materials and things reasonably required. Parts of the Road Repair Services described in words which, when applied, have a well-known technical or trade meaning shall be furnished or performed in accordance with the recognized standards applicable to such meaning.

- C. **Force Majeure:** Notwithstanding anything herein or otherwise which may appear to be to the contrary, neither party shall be responsible for delays or failures in performance under this Agreement resulting from any force majeure or acts beyond the reasonable control of the party. Such acts shall include, without limitation, acts of God, strikes, blackouts, riots, acts of war, epidemics, governmental regulations, fire, communication line failure, power failures, mechanical failures, storms or other disasters. Notwithstanding any other provision, the Contractor shall be entitled to an equitable adjustment to this Agreement for delays due to weather.

- D. **Notice:** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally hand delivered or, if sent via overnight mail upon receipt, or three (3) days after deposit in the United States Mail, postage prepaid, sent certified or registered, addressed as follows:

- a. If to the Claims Administrator, to:

The Perrine DuPont Property Remediation Road Repair Program  
Spelter Volunteer Fire Department Office  
55 B Street  
PO BOX 257  
Spelter, West Virginia 26438  
Attention: Edgar C. Gentle, III, Esq.  
Claims Administrator  
With an email copy to [escrowagen@aol.com](mailto:escrowagen@aol.com)

- b. If to the Contractor, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

or to such other address or person as hereafter shall be designated in writing by the applicable party.

- E. **Entire Agreement:** This Agreement and all exhibits and schedules hereto constitute the entire agreement between the Parties hereto pertaining to the subject matters hereof and supersede all negotiations, preliminary agreements and all prior or contemporaneous discussions and understandings of the Parties hereto in connection with the subject matters hereof. All exhibits and schedules are incorporated into this Agreement as if set forth in their entirety and constitute a part hereof. Any exceptions or reservations set forth by the Contractor in any responses to the RFP shall not be part and parcel of this Agreement, excepting those that are explicitly acknowledged herein.
- F. **Modifications in Writing:** No failure or delay on the part of any party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the party subject to the enforcement thereof. Any amendment, modification or supplement of or to any provision of the Agreement, any waiver of any provision of this Agreement, and any consent to any departure from the terms of any provisions of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given.
- G. **Conflicting Terms:** In the event that any term shall conflict with any of the terms contained in any of the documents which are part and parcel of this Agreement, including but not limited to, Claims Administrator's RFP, the Contractor's Response to RFP, and/or any other Exhibits attached hereto, and/or any other documents identified in this Agreement, this Agreement shall control.
- H. **Severability:** In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. In the event any provision of this Agreement is held to be unenforceable as written, but enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be enforceable and shall be enforced to that extent.
- I. **Relationship:** Nothing contained in this Agreement and no action taken by the Parties pursuant hereto shall be deemed to constitute the Parties as a partnership, an association, a joint venture or other entity. It is expressly agreed that neither Party for any purpose shall be deemed to be an agent, ostensible or apparent agent, employee, or servant of the other Party.
- J. **Headings and Captions:** The titles or captions of sections and paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement, and such titles or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions.
- K. **Binding Effect on Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns. In the event of assignment, all of the terms, covenants and conditions of this Agreement shall remain in full force and effect and the party making the assignment shall remain liable and responsible for the due performance of all of the terms, covenants and conditions of this Agreement that it is obligated to observe and perform. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement. However, neither the Claims Administrator, nor the Contractor may assign the rights and obligations provided hereunder without the prior written express permission of the other party, which shall not be unreasonably denied. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in making proof hereof, it shall not be necessary to produce or account for more than one such counterpart.



- L. **Changes in Law:** If changes in the laws materially affect a party's rights and obligations under this Agreement or render any portion illegal or unenforceable, then the Parties agree to negotiate modifications to the terms of this Agreement in good faith. If the Parties cannot agree to modify terms that comply with the changes in laws, then either party may terminate this Agreement upon thirty (30) days prior written notice.
- M. **Advertising, Promotion, and Trade Name:** The Contractor may not list Claims Administrator as one of the Contractor's clients in proposals and responses to proposals for the development of new business, without Claims Administrator's prior written permission. Claims Administrator may use the Contractor's name, in any form other than its logo, in marketing materials, in a form acceptable to the Contractor. Claims Administrator may not use the Contractor's name or logo, or any form thereof, in such a way as to convey that the Contractor is an administrator and/or fiduciary with regards to Claimants, or the Road Repair Program.
- N. **Exclusivity:** Claims Administrator agrees that, during the term of this Agreement, it shall not utilize the services of another entity to provide the services the Contractor has agreed to perform under this Agreement.
- O. **Third Party Beneficiaries:** The Contractor and Claims Administrator specifically state, acknowledge, and agree that it is their intent that no other party, person or entity, including, but not limited to, Claimants, shall be third-party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

The undersigned certifies that he has legal authority to bind \_\_\_\_\_.

By:

\_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

The undersigned certifies that he has legal authority to bind Claims Administrator upon approval of this Agreement by the Court in the DuPont Case.

The Perrine DuPont Settlement

By:

\_\_\_\_\_

Edgar C. Gentle, III

Title: Claims Administrator

Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_