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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:

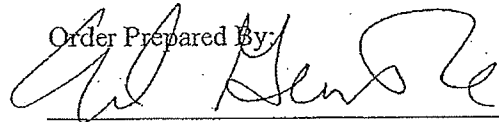
James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P. O. Box 3824  
Charleston, WV 25338  
DuPont's Finance Committee Representative

Meredith H. McCarthy, Esq.  
Guardian Ad Litem for Children  
901 W. Main St.  
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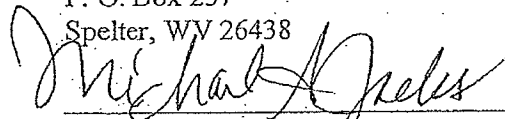
Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
Plaintiffs' Finance Committee Representative

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:

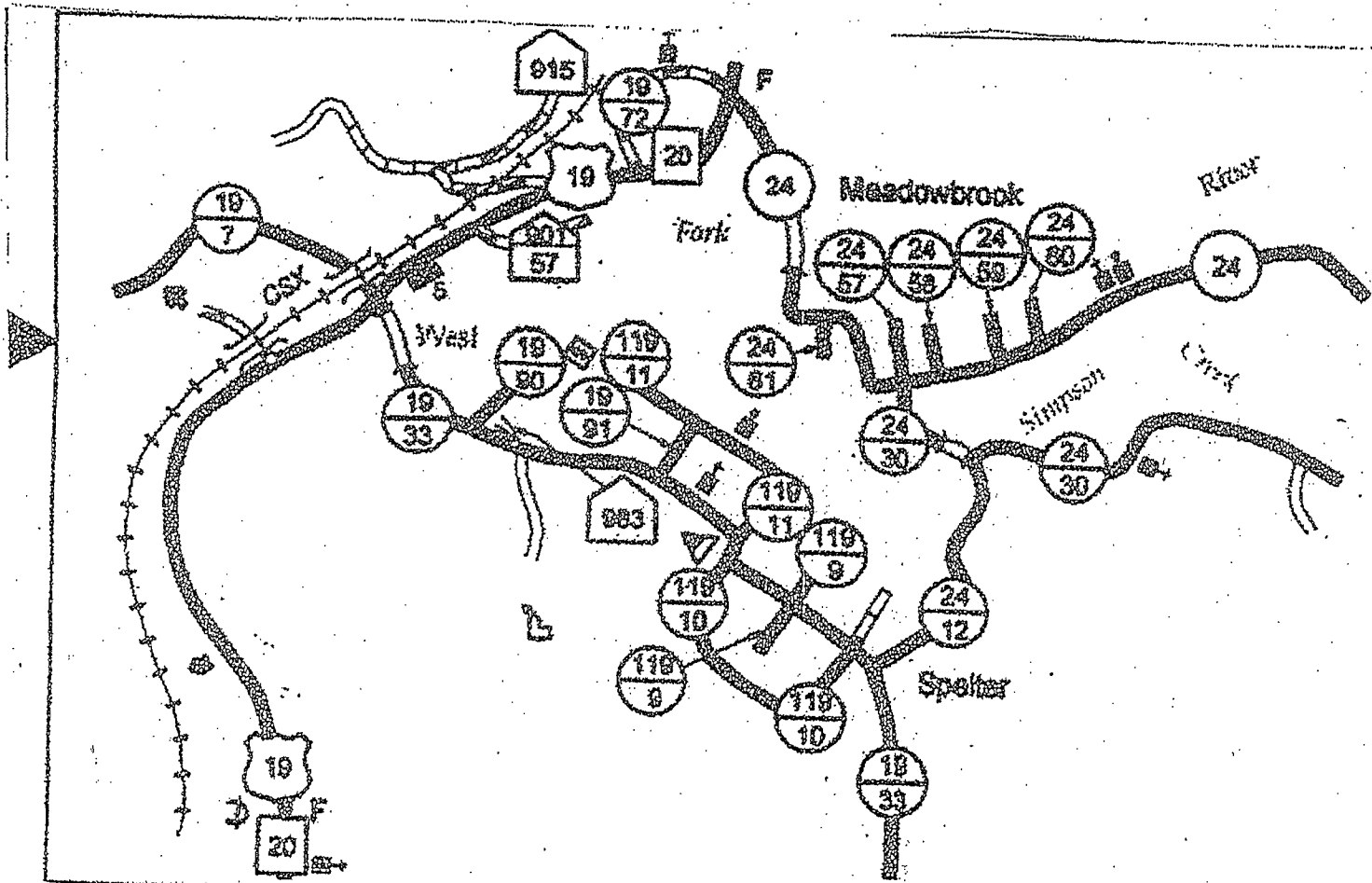
February 12, 2016



Thomas A. Bedell, Circuit Judge

**EXHIBIT A TO ORDER:**

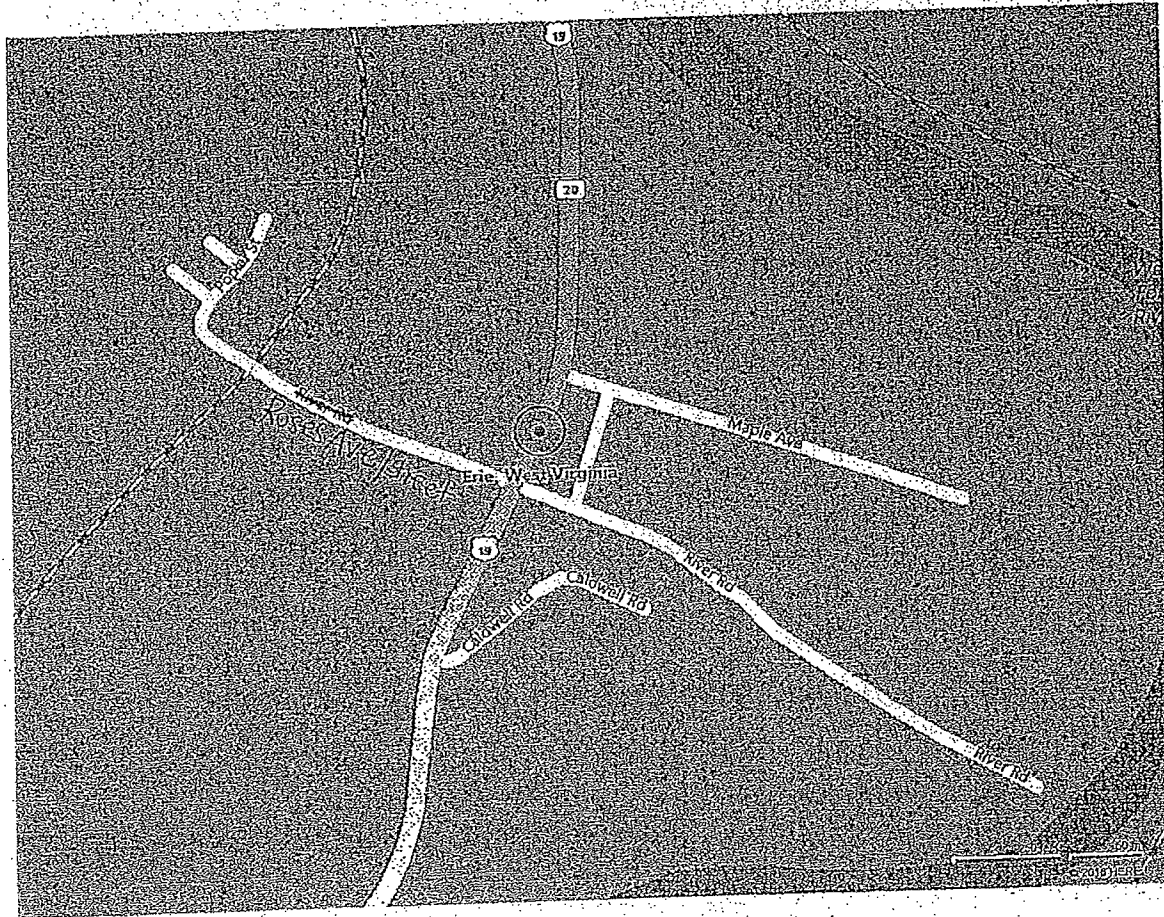
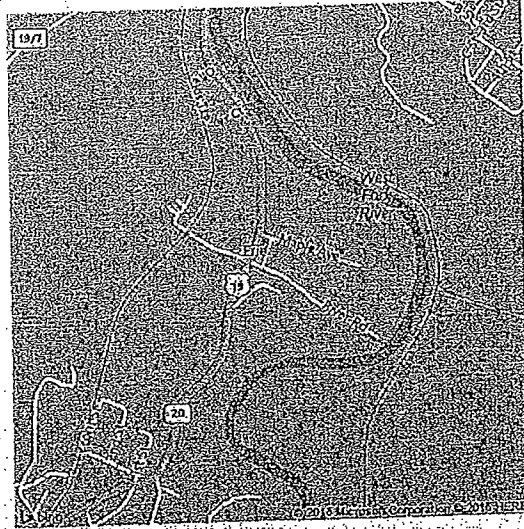
MAPS OF ROADS SUBJECT TO THE ROAD RE-  
PAVING/REPAIR PORTION OF THE SETTLEMENT  
ROAD REPAIR AND IMPROVEMENT PROGRAM

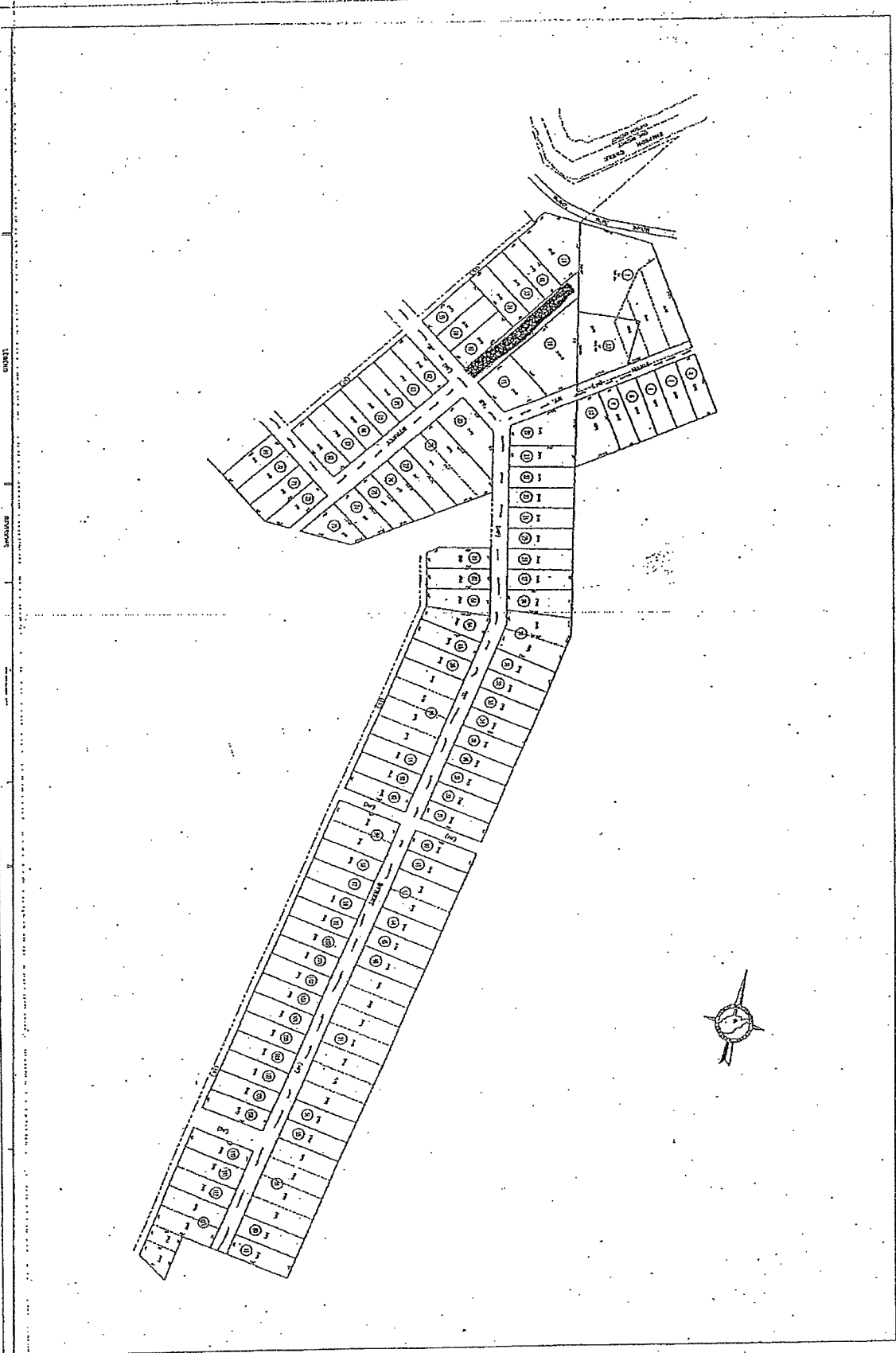


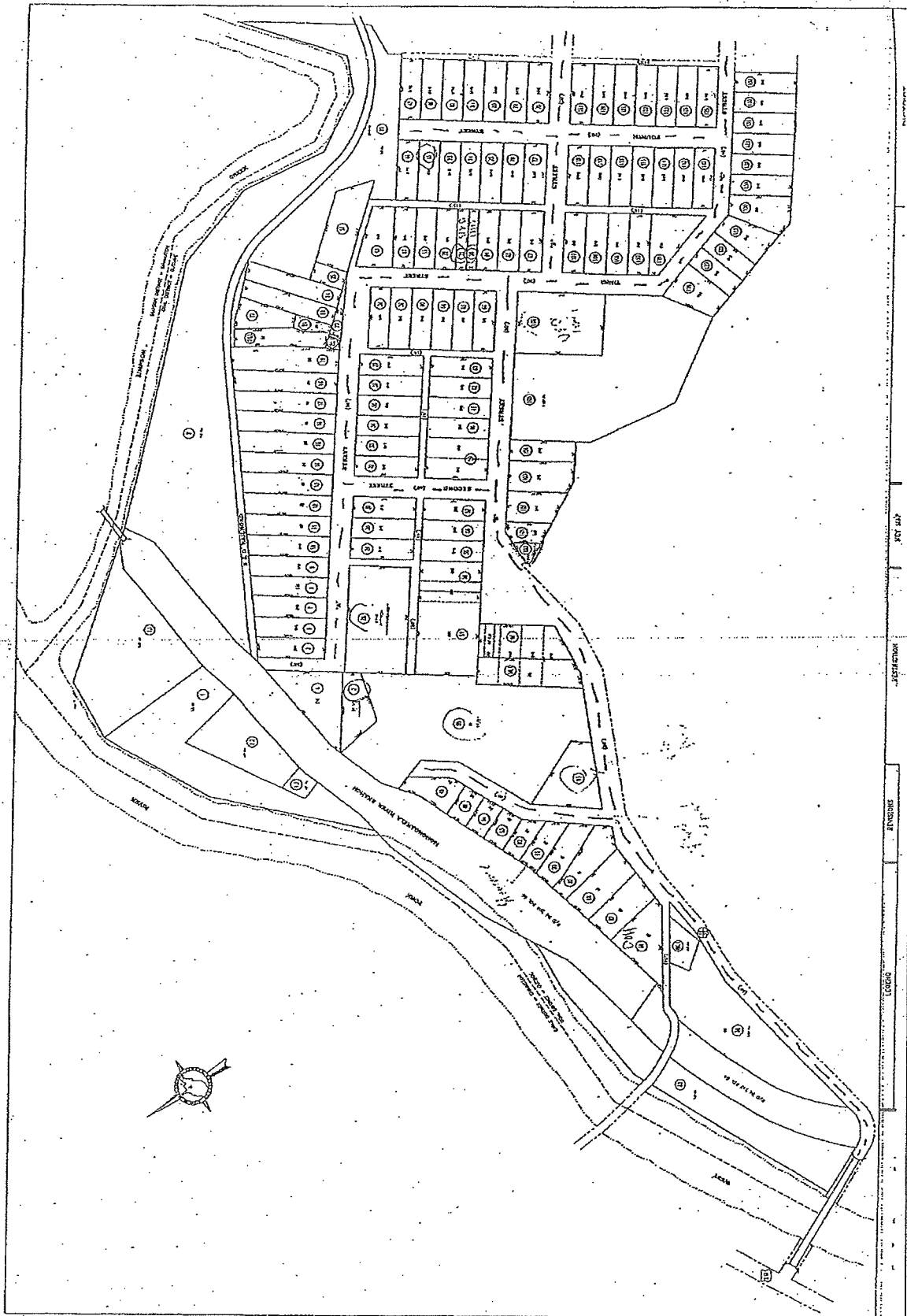
bing maps

Notes

Erie, WV - Roads to be repaired/resurfaced







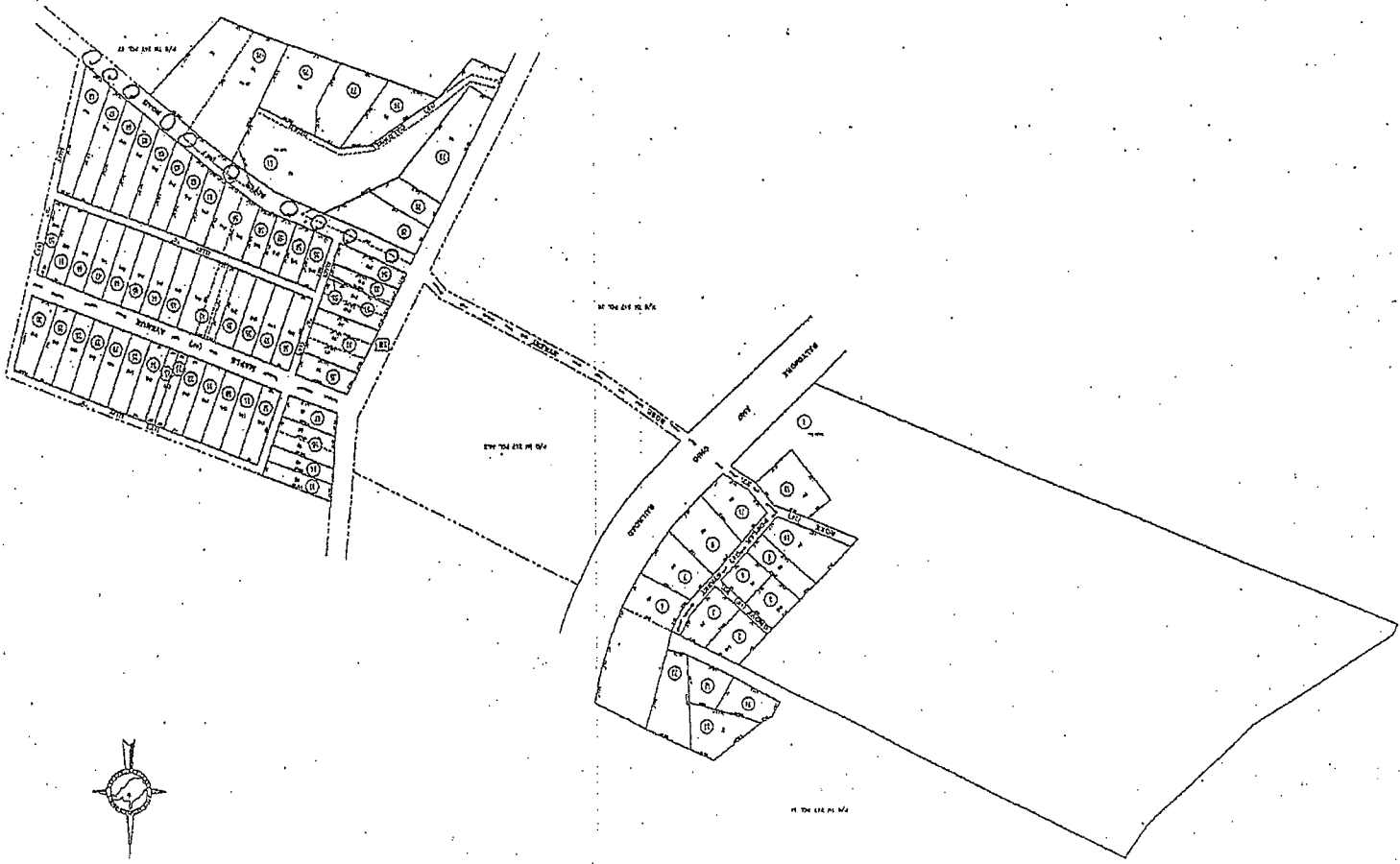
SET 217

SECTION

REVISION

1920





**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

Issued: February 22, 2016

**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

Issued: February 22, 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/eeo/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)

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ATTACHMENT 1 TO RFP:  
LIST AND MAPS OF ROAD REPAIR PROGRAM

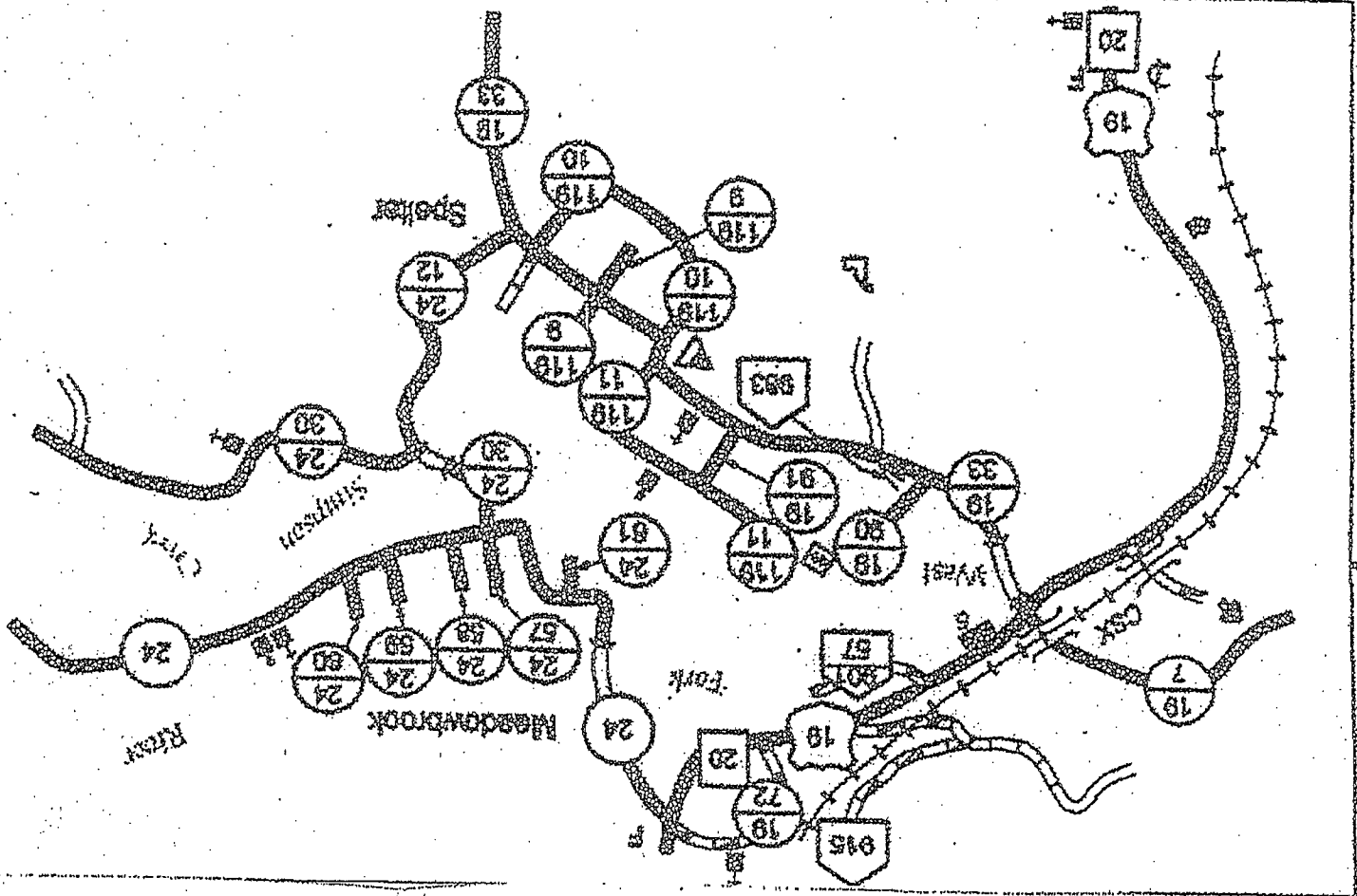
## ROAD REPAIR LIST

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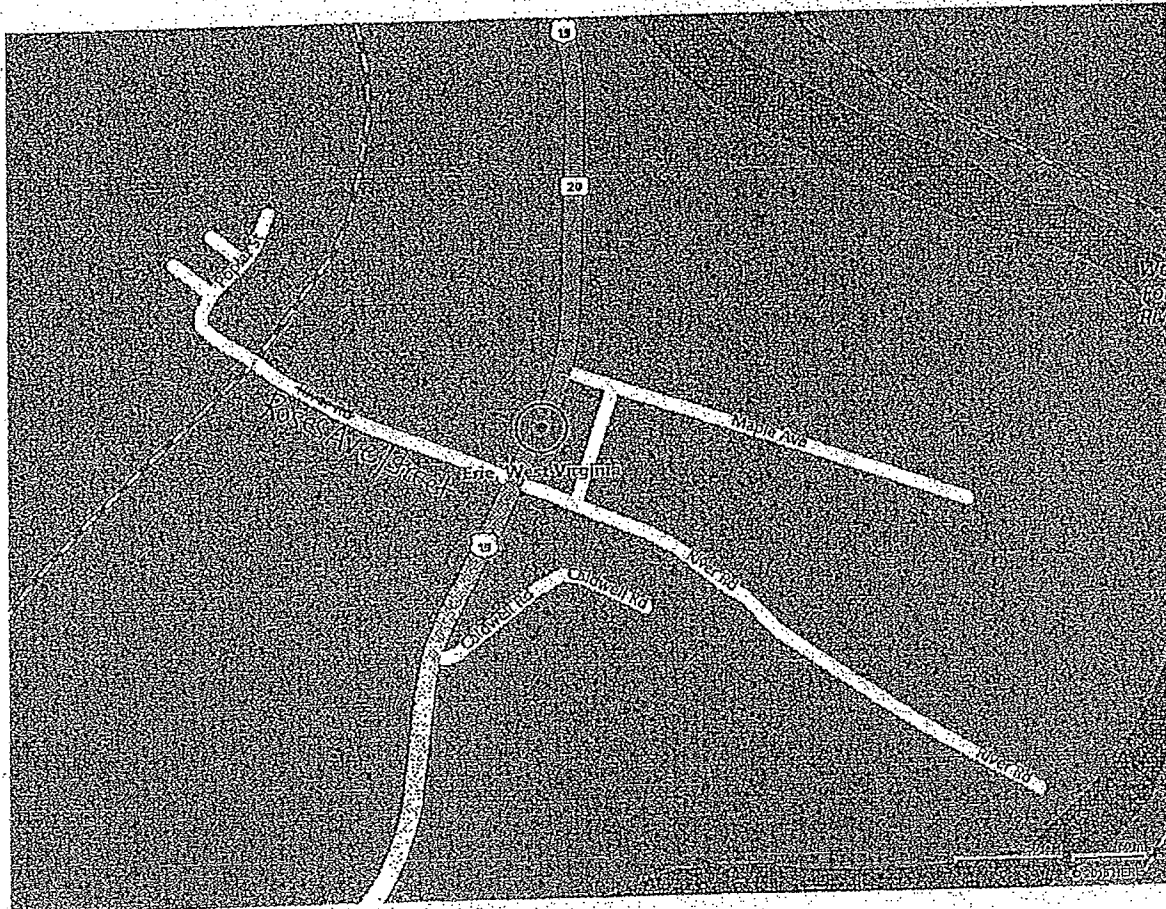
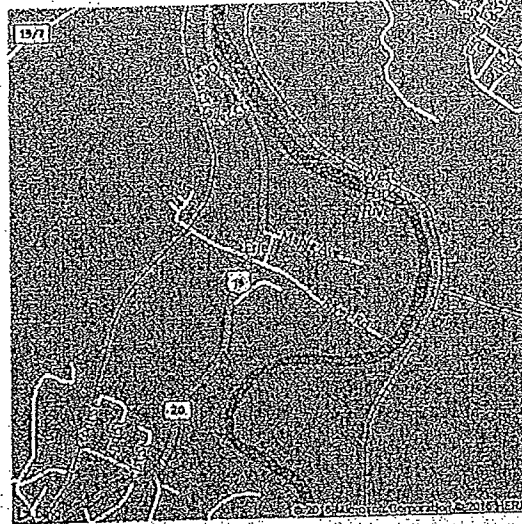


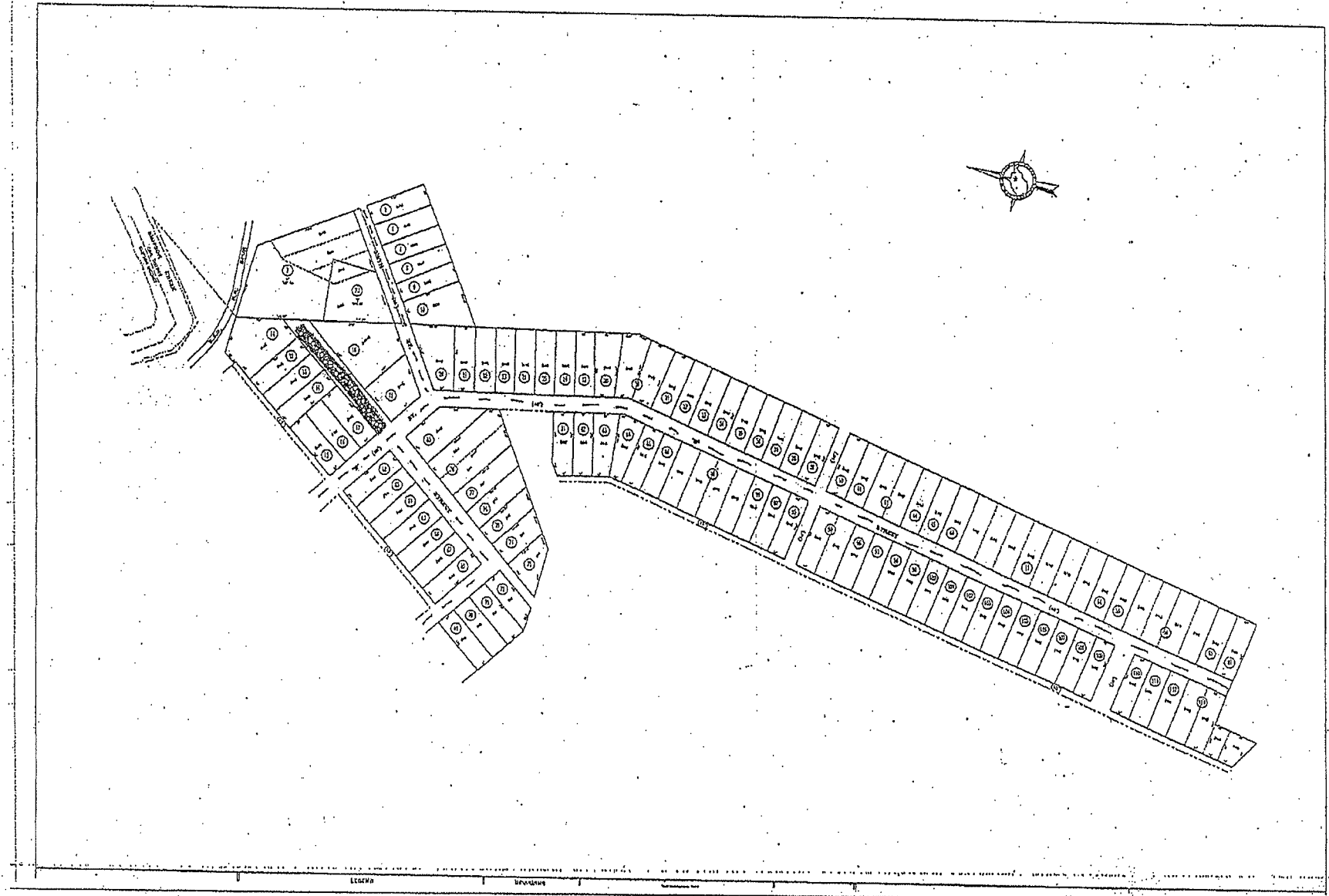


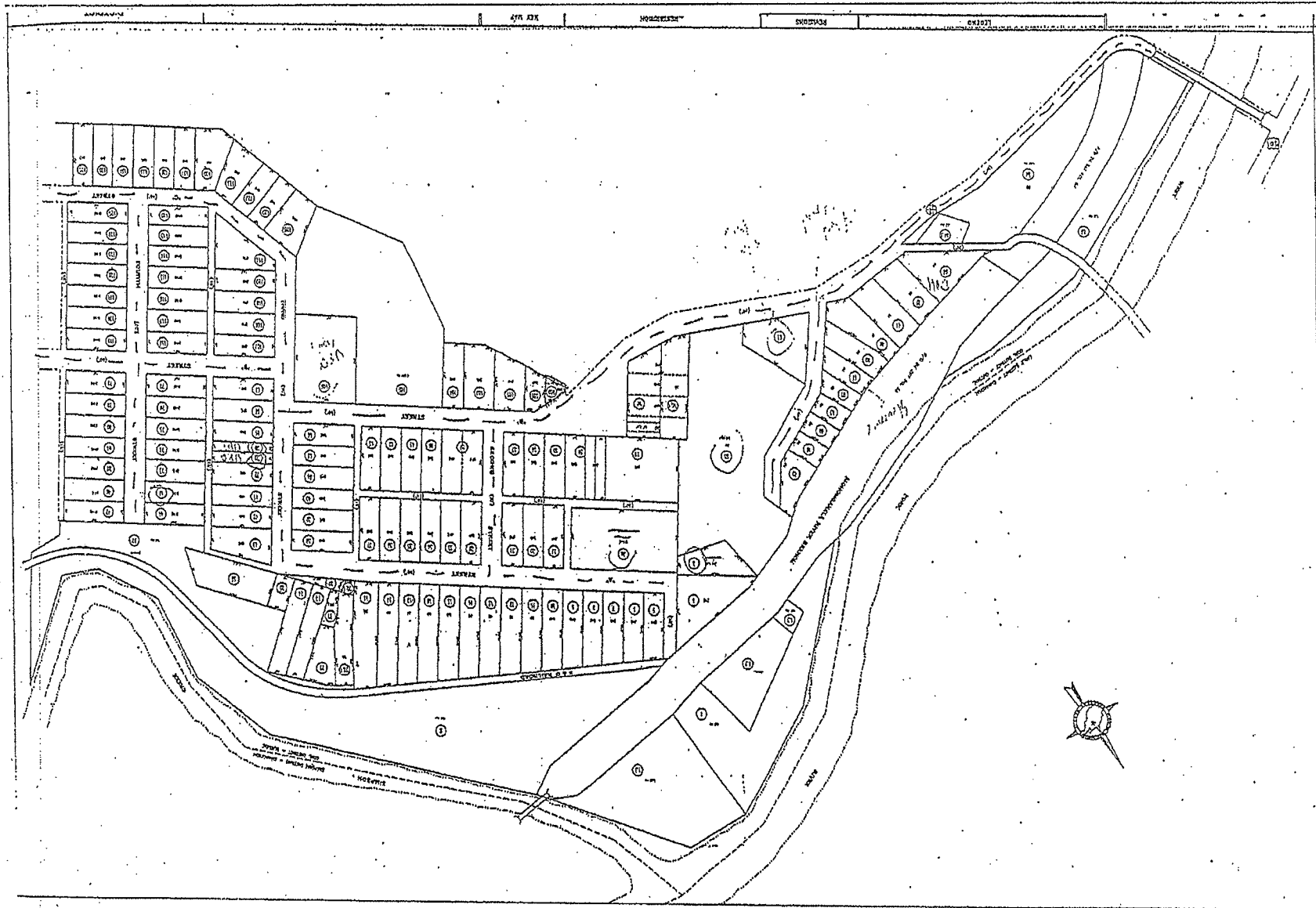
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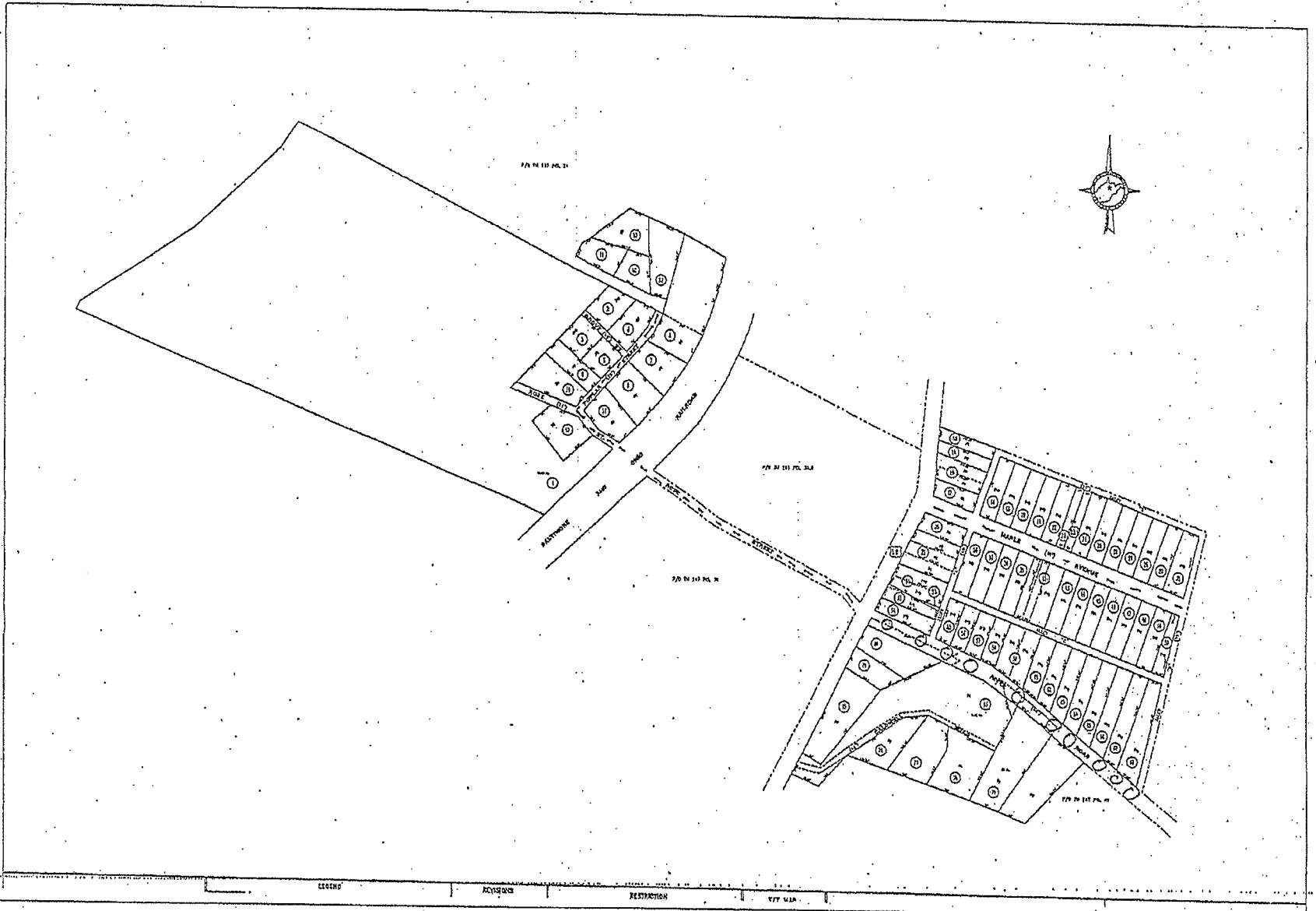
Notes

Erie, WV - Roads to be repaired/resurfaced









LEGEND

ACQUISITION

RESTRICTION

OFF MAP

ATTACHMENT 2 TO RFP:  
COURT ORDER APPROVING THE  
ROAD REPAIR PROGRAM

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

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v.

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

E. I. DUPONT DE NEMOURS &  
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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

Merèdith 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



ATTACHMENT 3 TO RFP:  
AGREEMENT

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**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:

\_\_\_\_\_

**EXHIBIT D TO ORDER:**

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

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**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:

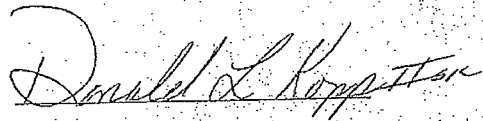
\_\_\_\_\_  
 Edgar C. Gentle, III  
 Title: Claims Administrator  
 Date: \_\_\_\_\_

WITNESS:  
 \_\_\_\_\_

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 12 day of February, 2016.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Court this 12 day of February, 2016.

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