

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

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

Plaintiffs,

v.

Civil Action No. 04-C-296-2  
(The Honorable Thomas A. Bedell, Judge)

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

Defendants.

**NORTHSTAR DEMOLITION AND REMEDIATION, L.P., f/k/a NCM DEMOLITION  
AND REMEDIATION, L.P.'S MOTION TO APPLY AND ENFORCE THE TERMS OF  
THE AGREEMENT FOR SOIL AND PROPERTY REMEDIATION SERVICES**

NOW COMES Northstar Demolition and Remediation, L.P., f/k/a NCM Demolition and Remediation, L.P., by counsel, Cy A. Hill, Jr., and MANNION, GRAY, UHL & HILL CO., L.P.A., and hereby moves this Honorable Court to apply and enforce the terms of the Agreement for Soil and Property Remediation Services (the "Agreement"). In support, Northstar states as follows:

**I. BRIEF FACTUAL BACKGROUND**

On or about April 26, 2012, the parties entered into the subject Agreement. See *EXHIBIT 1*. In relevant part, Article II, Section A of the Agreement provides, "[t]his Agreement shall become effective following Court approval, and shall continue in full force through December 31, 2014, 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 remediation services in accordance with the terms of this Agreement." Furthermore, Article IX, Section E provides, "Except for termination due to Claims Administrator's breach, NCM 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 conditions of this Agreement in effect prior to termination. The fees for such continuation period shall be equitably adjusted."

By letter dated January 21, 2015, NorthStar Branch Manager, Jason Haller, advised Settlement Administrator, Ed Gentle (the "Settlement"), that the Agreement expired on December 31, 2014. Accordingly, Mr. Haller requested an equitable adjustment pursuant to the Continuation of Services provision cited above. *See EXHIBIT 2*. On January 28, 2015, Mr. Gentle responded to Mr. Haller's January 21, 2015 letter. *See EXHIBIT 3*. Mr. Gentle (the "Settlement"), takes the position that the Agreement has not expired, and thus, the Continuation of Services clause is inapplicable. Specifically, the Settlement claims that the "conditions and obligations" of the Agreement have not been "met and satisfied" as many houses have not yet been remediated.

For the reasons set forth below, Northstar maintains that the Agreement expired on December 31, 2014, and that the Continuation of Services provision applies.

## **II. LEGAL ARGUMENTS**

### **A. The Agreement expired on December 31, 2014, by the clear and unambiguous terms of the Agreement.**

It is a fundamental principle of contract law that "[a] valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent." Syl Pt. 2, Cabot Oil & Gas Corp. v. Huffman, 227 W. Va. 109, 705 S.E.2d 806 (2010). "Where the terms of a contract are clear and unambiguous, they must be applied and not construed." Syl. Pt. 2, Bethlehem Mines Corp. v. Haden, 153 W. Va. 721, 172 S.E.2d 126 (1969). The Supreme

Court of Appeals of West Virginia has further stated, "It is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them." *Id.* at Syl. Pt. 3. "The question as to whether a contract is ambiguous is a question of law to be determined by the court." Dan's Carworld v. Serian, 223 W. Va. 478, 677 S.E.2d 914 (2009) *quoting* Syl. Pt. 1, Berkeley County Public Service District v. Vitro Corp. of America, 152 W. Va. 252, 162 S.E.2d 189 (1968).

Northstar maintains that the Agreement terminated on December 31, 2014 by the clear and unambiguous language of the Agreement. The Agreement states, "[t]his Agreement shall become effective following Court approval, and shall continue in full force through December 31, 2014, 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 remediation services in accordance with the terms of this Agreement." The presence of a very specific date of December 31, 2014 in the Agreement demonstrates that the parties did not intend for the terms of the Agreement to extend past that date. The second part of the provision that states "or until such time as all conditions and obligations are met and satisfied herein . . ." when read in conjunction with the December 31, 2014 date demonstrates that the Agreement expires either on December 31, 2014 or when "the conditions and obligations are met and satisfied," whichever occurs first, not last.

The Settlement ignores the December 31, 2014 date and focuses only on the second part of the provision. Accordingly, the Settlement takes the position that the "conditions and obligations" of the Agreement have not been "met and satisfied" as many houses have not yet been remediated. However, if the intent of the parties was for the Agreement to expire only when

“the conditions and obligations are met and satisfied,” then there would be no point in having the December 31, 2014 date in the Agreement. Under the Settlement’s interpretation, the Agreement would remain in full force and effect until “the conditions and obligations are met and satisfied,” thereby rendering the December 31, 2014 language completely superfluous. However, since the specific date of December 31, 2014 was used in the Agreement, it must be given full force and effect. “[N]o word or clause in a contract will be treated as meaningless if a reasonable meaning can be given to it, and parties are presumed not to have included needless words in the contract.” Lee Graham Shopping Ctr., LLC v. Estate of Kirsch, 777 F.3d 678 (4<sup>th</sup> Cir. 2015) *quoting* TM Delmarva Power, L.L.C. v. NCP of Virginia, L.L.C., 263 Va. 116, 557 S.E.2d 199, 200 (Va. 2002).

The parties did not needlessly include the December 31, 2014 date in the Period of Performance section of the Agreement. According to the plain and unambiguous language of the Agreement, the Agreement expired on December 31, 2014. While Northstar maintains that this provision of the Agreement is not ambiguous, it is a fundamental principle of contract law that a contract should be construed most strongly against the person who wrote it, or caused it to be written. Bischoff v. Francesca, 133 W. Va. 474, 56 S.E.2d 865 (1949). The Agreement was drafted by the Settlement, not Northstar. Therefore, Northstar respectfully moves this Honorable Court to enter an Order declaring that the subject Agreement expired on December 31, 2014 as well as any other relief deemed appropriate by the Court.

**B. As the Agreement expired on December 31, 2014, Northstar is entitled to an equitable adjustment of fees for any continuation of services after December 31, 2014.**

By requesting the Court to find that the subject Agreement expired on December 31, 2014, Northstar is not necessarily requesting the Court to relieve it from any further obligations under the Agreement. In fact, in a good faith effort to keep the project moving forward,

Northstar has continued to perform remediation services after December 31, 2014. Northstar simply maintains that it is entitled to an equitable adjustment for its continuation of services for any work performed after December 31, 2014, pursuant to Article IX, Section E of the Agreement. This provision provides, "Except for termination due to Claims Administrator's breach, NCM 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 conditions of this Agreement in effect prior to termination. The fees for such continuation period shall be equitably adjusted."

If requested by the Court, Northstar is prepared to show that its costs have significantly increased since the Agreement was entered into in April of 2012. Given that the Agreement is now expired, Northstar respectfully requests that the Court find that the Continuation of Services provision applies and that it be permitted to demonstrate to the Court its increase in costs going forward. Although Northstar and the Settlement have discussed some figures, Northstar is mindful that the Court would ultimately have to approve any equitable adjustment under the Continuation of Services provision.

**WHEREFORE**, for all of the reasons set forth hereinabove, Northstar respectfully moves this Honorable Court to enter an Order declaring that the Agreement expired on December 31, 2014, and that Northstar receive an equitable adjustment for its continuation of services pursuant to Article IX, Section E of the Agreement in an amount to be approved by the Court and any other relief deemed just and proper.

NORTHSTAR DEMOLITION AND  
REMEDICATION, LP f/k/a NCM DEMOLITION  
AND REMEDIATION, LP

By Counsel

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# EXHIBIT 1

AGREEMENT FOR SOIL AND PROPERTY REMEDIATION SERVICES

for the LENORA PERRINE, ET AL.

V.

E.I. DuPONT DE NEMOURS AND COMPANY, ET AL.

SETTLEMENT

aka the PERRINE DUPONT SETTLEMENT

by and through

THE SPECIAL MASTER AND CLAIMS ADMINISTRATOR

and

NCM Demolition and Remediation, LP

Submitted to the Court, on  
April 30, 2012, and  
approved by Court Order  
dated May \_\_\_\_, 2012



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THIS AGREEMENT is entered into on May\_, 2012, and is effective upon Court approval ("Effective Date"), being between NCM Demolition and Remediation, LP, a corporation with its headquarters at 404 N. Berry Street, Brea, California, 92821 ("NCM") and the Lenora Perrine, et al. v. E.I. DuPont de Nemours and Company, et al., 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, 2011, described in more detail below and in the Orders in Exhibits A and B, by and through the appointed Special Master and Claims Administrator, Edgar C. Gentle, III, Esq., of the firm of Gentle, Turner & Sexton (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, and the principal place of business of the Claims Administrator is Gentle, Turner & Sexton, 501 Riverchase Parkway East, Suite 100, Hoover, Alabama, 35244. A copy of the June 27, 2011, "Final Order Establishing Property Remediation (Clean-Up) Program," and establishing the authority of the Sponsor to enter into this Agreement is attached hereto as Exhibit B.

WHEREAS, by the "Final Order Approving Settlement" entered on January 4, 2011, in Lenora Perrine, et al. v. E.I. DuPont de Nemours and Company, et al., Case No. 04-C-296-2 (the "Perrine DuPont Case"), the Court approved a Property Remediation Program (the "Property Remediation Program" or the "Program"), which has already been fully funded by the Defendants for the benefit of the Class. Said Final Order Approving Settlement is attached hereto as Exhibit A;

WHEREAS, by said Final Orders dated January 4, 2011, and June 27, 2011, the Court established the Property Remediation (Clean-Up) Program, which provides for soil remediation of Zone 1A only, and house and commercial structure remediation of Zones 1A, 1B, 2, and 3, and appointed Edgar C. Gentle, III, Esq. as Claims Administrator of the Program. Said Final Orders are attached hereto as Exhibits A and B (collectively, the "Property Orders");

WHEREAS, in the Property Orders, the Court ordered that all participating Property Class Members, i.e. those individuals who currently own eligible property in the Class Area and who timely submit the Court-approved Claim Form and provide sufficient documentation and information to substantiate their claims, have their property tested for potential contamination of houses or commercial structures fit for human occupancy throughout the Class Area, and has ordered testing of the soil of Zone 1A, as previously defined by the Court, and further ordered the testing of twenty-four (24) parcels of property in addition to Zone 1A, for possible inclusion of these additional parcels in Zone 1A, by the "Final Order Approving Soil Tests for 24 Upper B Street Properties," attached hereto as Exhibit C;

WHEREAS, the Court ordered that the "so-called Grasselli properties shall not be part of the property remediation program," in the June 27, 2011, "Final Order Establishing Remediation (Clean-Up) Program in Exhibit B," and that the Settlement shall deny any claims received for Grasselli properties and said properties have not been parties to prior testing for potential contamination of homes or commercial structures fit for human occupancy, and shall not participate in any soil and/or house or commercial structure remediation contemplated herein;

WHEREAS, by Order dated October 11, 2011, CORE Environmental Services, Inc., was retained by the Sponsor to provide sampling services of both soil in Zone 1A and the 24 Upper B Street properties, and sampling services of dust within homes and commercial structures fit for human occupancy in the Class Area as directed by the Claims Administrator, and CORE has created and maintains a database and sampling results of said services;

WHEREAS, remediation of eligible soil shall be conducted solely in Zone 1A and, if determined by the Court, on the 24 Upper B properties where higher than acceptable levels of zinc, arsenic, lead, and cadmium have been identified (levels of which are set forth in Exhibit D);

WHEREAS, house and commercial structure remediation shall be conducted in Zone 1A,

Zone 1B, Zone 2 and Zone 3 where higher than acceptable risk levels of zinc, arsenic, lead, and cadmium have been identified (risk based on clean-up standard levels of which are set forth in Exhibit D);

WHEREAS, on January 27, 2012, the Claims Administrator issued the "Request for Proposals for Remediation of Soil and Houses in the Class Area in the Perrine DuPont Settlement," attached hereto as Exhibit E (the "RFP");

WHEREAS, on or about March 5, 2012, a Response to said Request for Proposals was submitted to the Settlement by NCM, including Appendix A, "Acceptance of Mandatory RFP Requirements" (the "Response"), with the Response being attached hereto as Exhibit F;

WHEREAS, the Claims Administrator recommends to the Court that NCM be awarded the contract to provide the remediation services described in this Agreement, with NCM being the lowest qualified bidder;

WHEREAS, by entering into this Agreement, NCM agrees to provide remediation services for eligible soils and remediation services for eligible houses and commercial structures, as determined by the Claims Administrator, including, but not limited to, project planning, mobilization and site preparation, pre-remediation planning and coordination, video and photo documentation of the condition of the property pre-remediation, contaminated soil removal, house and commercial structure contaminated dust removal, transportation and disposal of all associated waste, site restoration, demobilization, sub-contracting work, creating and maintaining a database reflecting remediation activities, communications and results, structural repairs, as described in the RFP defined scope of work, among other items, communicating with Class Members to schedule appointments for remediation and to discuss property specific remediation plans, conducting with the Claims Administrator town hall meetings with interested Class Members to explain the remediation process before remediation begins, consulting with the Claims Administrator on related services as necessary as provided herein, and all other services as set forth in the RFP and the NCM Response, as provided in Exhibits E and F, NCM's Supplemental RFP Responses of March 13, 2012, March 16, 2012 and March 23, 2012 in Exhibit G, and all services as set forth

and described in all other Exhibits and Addenda attached hereto (hereinafter collectively referred to as "Remediation Services");

WHEREAS, in carrying out the Remediation Services, NCM agrees to (i) conduct all required waste disposal characterizations before disposal, including any necessary sampling to ensure that the waste is properly characterized; and (ii) prepare for the Claims Administrator's review and approval during a reasonable editing cycle an implementation plan that identifies the full scope of work required of NCM and the Claims Administrator respecting the Remediation Service, and the protocols that NCM performed and rely upon in carrying out the Remediation Services, as described in Section IV below;

WHEREAS, the Claims Administrator desires to work with NCM and NCM desires to work with the Claims Administrator to implement the Remediation Services Program; and

WHEREAS, the Claims Administrator and NCM (collectively, the "Parties") have agreed that NCM shall exclusively provide the Remediation Services which are described hereinbelow for the Claims Administrator 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. "Claimant" or "Member" means a Property Remediation Class Member, subject to the Claims Administrator's verification of ownership rights of that individual to an eligible Class Area property, or a tenant who is not a Property Remediation Class Member but currently resides in an Eligible House or Commercial Structure, subject to

the Claims Administrator's verification of lessee rights of that individual to an eligible Class Area property. The list of eligible properties for sampling shall be provided by the Claims Administrator to NCM upon request, and may be relied upon by NCM.

- B. "Eligible House or Commercial Structure" means a home or commercial structure that the Claims Administrator has determined meets all pertinent requirements of the Claims Administrator and the Program to qualify for remediation, including but not limited to a house or commercial structure being "fit for human occupancy" and "regularly occupied by people," a house or commercial structure being within an eligible Zone of the Class Area, not being a Grasselli Property, a house or commercial structure with heavy metals contamination at or above the clean-up standard levels for zinc, arsenic, cadmium, and lead in Exhibit D, a house or commercial structure not being exclusively owned by an "opt-out" Claimant, which the Claims Administrator has approved for remediation, and which the Claims Administrator shall identify to NCM from time to time as part of the "Eligibility Database" as ready and eligible for remediation, and may be relied upon by NCM.
- C. "Eligible Soil Property" means a property or a discrete portion of a property that the Claims Administrator has determined meets all pertinent requirements of the Claims Administrator and the Program to qualify for remediation, including but not limited to a property or a discrete portion of a property that is separately assessed for tax purposes and is within Zone 1A, or, subject to Court determination, is one of the twenty-four (24) Upper B Street Properties, not being a Grasselli property, with heavy metals contamination at or above the clean-up standard levels for zinc, arsenic, cadmium, and lead in Exhibit D, not being exclusively owned by an "opt-out" Claimant and which the Claims Administrator has approved for remediation, and which the Claims Administrator shall identify to NCM from time to time as part of the "Eligibility Database" as ready and eligible for remediation, and may be relied upon by NCM.
- D. "Eligibility Database" means the database of eligible properties (houses and

commercial structures and soil), their owners, and any lessees, which shall be maintained by the Claims Administrator but made available, as necessary, to NCM to allow the scheduling of soil and/or house or commercial structure remediation appointments, and may be relied upon by NCM.

- E. "RFP" collectively means the Claims Administrator's January 27, 2012 Request for Proposals with respect to the Remediation Services described herein, a copy of which is in Exhibit E and is incorporated by reference; and the Claims Administrator's February 8, 2012 Potential Bidder Questions and Answers; and the February 23, 2012, March 8, 2012 and March 9, 2012 Follow-Up Potential Bidder Questions and Answers in Exhibit H.
- F. "Remediation Services" is defined above, and includes NCM's agreement to (i) conduct all required waste disposal characterizations before disposal, including any necessary sampling to ensure that the waste is properly characterized; and (ii) an implementation plan to be prepared for the Claims Administrator review and approval during a reasonable editing cycle that identifies the full scope of work required of NCM and the Claims Administrator respecting the Remediation Service, and the protocols that NCM shall perform and rely upon in carrying out the Remediation Services, as described in Section IV C.c.i, below and Exhibit G.
- G. "Waste" or "Waste Materials" refers to those solid, liquid or semisolid materials removed incidental to the Remediation Services.

## II. PERIOD OF PERFORMANCE

- A. This Agreement shall become effective following Court approval, and shall continue in full force through December 31, 2014, 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 remediation services in accordance with the terms of this Agreement.

### III. COMPENSATION AND TERMS OF PAYMENT

- A. NCM agrees to provide the services described herein at the costs delineated in the Perrine Dupont Claims Administrator Remediation Project Uniform Bid Price Form, the final version of which was submitted at the Claims Administrator's request, on April 23, 2012, and is attached hereto as Exhibit I, with total NCM compensation not to exceed \$14,820,000.00 (the "capped amount"), if there are no more than 160 Eligible Soil Property and 600 Eligible Houses or Commercial Structures cleaned. If there are more remediated properties, the capped amount shall be ratably increased. Within seven (7) days following Court approval of this Agreement, NCM shall receive an amount equal to 5% of the capped amount, or \$741,000 (the "5% down payment").
- B. NCM shall submit twice a month invoices for the portion of Remediation Services actually completed. Payment shall be as follows:
  - i. Payment for Remediation of Eligible Houses and Commercial Structures:
    - a. For purposes of payment for services rendered, house remediation shall occur per a batch of houses approved by the Claims Administrator. One batch of houses or commercial structures is defined as 14 Eligible Houses or Commercial Structures or a number agreed to by the Parties;
    - b. Upon commencement of House Remediation Services per batch (commencement of the House Remediation Services as marked by the completion of the Pre-Remediation House or Commercial Structure Inspection Visit as set forth in this Agreement) the Claims Administrator



shall issue payment of twenty percent (20%) of the total of specific remediation costs for remediation of the houses or commercial structures in the batch being remediated (less a ratable share of the 5% down payment), as set forth in NCM's Uniform Bid Price Form in Exhibit I within fourteen (14) days of receipt of NCM's twice a month invoice.

- c. Upon completion of House or Commercial Structure Remediation Services for a house or commercial structure, yet prior to the installation of carpeting and/or the replacement of insulation, the Claims Administrator, by and through a third party, shall provide post-remediation house or commercial structure sampling to confirm that heavy metals levels have been reduced below the clean-up levels in Exhibit D. The Claims Administrator shall provide the post-remediation sampling and provision of results within forty-eight (48) hours of the written confirmation by NCM that the house or commercial structures has been remediated except for the remaining steps below.
- d. Upon Claims Administrator confirmation that the heavy metals levels are below the clean-up levels in Exhibit D, the Claims Administrator shall issue payment of sixty (60%) of the total of specific remediation costs for remediation of the house or commercial structure so tested and confirmed (less a ratable share of the 5% down payment), as set forth in NCM's Uniform Bid Price Form in Exhibit I within fourteen (14) days of receipt of NCM's twice a month invoice.
- e. In the event that the Claims Administrator cannot confirm that the heavy metals levels are below the clean-up levels in Exhibit D, NCM shall receive notification of the apparent failure of the house remediation (a "negative house remediation finding"). Upon a negative house remediation finding, the house or commercial structure shall be immediately retested by the Claims Administrator. If, upon retest, the

heavy metals levels are below the clean-up levels in Exhibit D, then the house or commercial structure shall be treated in accordance with paragraph d., above. However, if there is still a negative house remediation finding, then the Claims Administrator and NCM shall meet and determine a reasonable means to solve the problem, to include NCM's additional remediation at NCM's expense of the house or commercial structure, if there is no apparent extraneous reason for the negative house remediation finding. Upon such additional remediation by NCM being completed, the house or commercial structure shall be immediately retested by the Claims Administrator, with paragraphs d. or e. herof to be applicable, depending on the test results.

- f. Upon successful completion of the House Remediation as contemplated herein in III(B)(ii)(d), upon certification by NCM, the Claims Administrator and the Claimant that the house remediation is completed by execution of the Remediation Verification Agreement for Soil and Housing in Exhibit L, the Claims Administrator shall issue payment the balance of all remediation costs, namely the remaining twenty percent (20%) for remediation of the house or commercial structure so remediated (less a ratable share of the 5% down payment), as set forth in NCM's Uniform Bid Price Form in Exhibit I within fourteen (14) days of receipt of NCM's twice a month invoice.

ii. Payment for Remediation of Soils:

- a. For purposes of payment for services rendered, soil remediation shall occur per a batch of soil lots approved by the Claims Administrator. One batch of soil lots is defined as 14 Eligible Soil lots or a number agreed to by the Parties
- b. Upon commencement of Soil Remediation Services per batch

(commencement of the House Remediation Services as marked by the completion of the Pre-Remediation Soil Inspection Visit per soil lot as set forth in this Agreement) the Claims Administrator shall issue payment of twenty percent (20%) of the total of specific remediation costs for remediation of soils in the batch being remediated (less a ratable share of the 5% down payment), as set forth in NCM's Uniform Bid Price Form in Exhibit I within fourteen (14) days of receipt of NCM's twice a month invoice.

- c. Upon completion of Soil Remediation services for a soil lot, after the installation of sod, on Eligible Soils, the Claims Administrator, by and through a third party, shall provide post-remediation soil sampling at a depth of three inches to confirm that the levels of the heavy metals are below the clean-up levels in Exhibit D. The Claims Administrator shall provide for said post-remediation sampling and provision of results within five (5) days of written confirmation from NCM that the soil has been remediated except for the remaining steps below.
- d. Upon confirmation that the heavy metals levels are below the clean-up levels in Exhibit D, the Claims Administrator shall issue payment of sixty (60%) of the total of specific remediation costs for remediation of the soil lot (less a ratable share of the 5% down payment), as set forth in NCM's Uniform Bid Price Form in Exhibit I within fourteen (14) days of receipt of NCM's twice a month invoice.
- e. In the event that the Claims Administrator cannot confirm that the heavy metals levels are below the clean-up levels in Exhibit D, NCM shall receive notification of the apparent failure of the soil remediation (the "negative soil remediation testing"). Upon a negative soil remediation finding, the soil shall be immediately retested by the Claims Administrator. If, upon retest, the heavy metals levels are below the

clean-up levels in Exhibit D, then the soil lot shall be treated in accordance with paragraph d., above. However, if there is still a negative soil remediation finding, then the Claims Administrator and NCM shall meet and determine a reasonable means to solve the problem, to include NCM's additional remediation at NCM's expense of the soil, if there is no apparent extraneous reason for the negative soil remediation finding. Upon such additional remediation by NCM being completed, the soil shall be immediately retested by the Claims Administrator, with paragraphs d. or c. hereof to be applicable, depending on the test results.

- f. Upon successful completion of the Soil Remediation as contemplated herein in III(B)(ii)(d), upon certification by NCM, the Claims Administrator and the Claimant that the soil remediation is completed by execution of the Remediation Verification Agreement for Soil and Housing in Exhibit L, the Claims Administrator shall issue payment the balance of all remediation costs, namely the remaining twenty percent (20%) for remediation of soils remediated (less a ratable share of the 5% down payment), as set forth in NCM's Uniform Bid Price Form in Exhibit I within fourteen (14) days of receipt of NCM's twice a month invoice.

### III. Disposition of 5% Down Payment.

If the 5% down payment is fully utilized in ratably reducing the above payments, then future payments to NCM 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 Remediation Services, the remaining portion of the 5% down payment shall be refunded by NCM to the Claims Administrator.

- C. NCM 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 NCM purchases or uses for the purpose of conducting, facilitating and/or supervising the Remediation Services contemplated herein. NCM

represents that all amounts required for such taxes are included and are part and parcel of the compensation as set for in the Uniform Bid Price Form in Exhibit I.

- D. NCM will take the risk of diesel fuel cost fluctuations up to a ceiling of \$4.20 per gallon per <http://www.eia.gov/petroleum/gasdiesel/> (the "fuel cap"). Upon NCM 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 NCM dollar for dollar for the amount above the fuel cap so paid by NCM for diesel fuel.

#### IV. OBLIGATIONS OF NCM

##### A. Good Faith:

NCM 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. NCM 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. NCM 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. Commitment to Uniform Bid Price:

NCM agrees to provide the services described herein at the costs delineated in the Perrine DuPont Claims Administrator Remediation Project Uniform Bid Price Form, the final version of which was submitted at the Claims Administrator's request, on April 23, 2012, and is attached hereto as Exhibit I, with total NCM compensation not to exceed the \$14,820,000.00 capped amount, if there are no more than 160 Eligible Soil Properties, and 600 Eligible Houses or Commercial Structures cleaned. If there are more remediated properties, the amount shall be ratably increased.

C. Remediation Services:

NCM shall provide Remediation Services for eligible soils and eligible houses and commercial structures as follows:

- a. Incorporation of the RFP, the RFP Bidder Questions and Answers, the RFP Response and Supplemental Responses: The Parties hereby agree that (i) the RFP in Exhibit E, the Bidder Q/A's in Exhibit H; and (ii) the NCM Responses and Supplemental Responses to the RFP, in Exhibits F, G and I, are incorporated herein and, together with this Agreement, define the scope of the work for the Remediation Services. Nonetheless, if any terms set forth in Exhibits E, H, F, G, or I conflict with any term contained in this Agreement, the Agreement shall govern.
- b. Exclusion of Response Assumptions, Exceptions, and Caveats: Claims Administrator and NCM specifically exclude any exclusions, limitations, assumptions, or other statements of reservation listed in Exhibits F, G, or I that are not in this Agreement. This Agreement, with its Exhibits, represents the complete, entire and sole agreement between the Parties and NCM's previous statements of

"reservation" are not a final part of this Agreement unless specifically stated and agreed to by the Claims Administrator herein.

c. Project Planning:

i. NCM 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 Remediation Services.

ii. NCM shall prepare a stand-alone Health and Safety Plan (HASP) compliant with 29 CFR §1910.120 and any other applicable health and safety regulations, and a Quality Assurance Project Plan/ Work Plan (QAPP/WP), as detailed in Section D(8) of the RFP, for submittal to the Claims Administrator for review and approval, and all other communications and meetings with the Claims Administrator and the community as necessary to effectuate an approved Claims Administrator Plan as set forth in Section 1.5.3 of NCM'S Response to the RFP, which is incorporated herein and is part and parcel of this Agreement, the QAPP/WP shall include, but is not limited to, a Dust Control Plan, Air Monitoring Plan, Sampling and Analysis Plan, Stabilization Plan, Waste Management Plan, Transportation Plan, Traffic Area Analysis, and a Community Relations and Claims Administrator Communication Plan. A site-specific Surface Water Pollution Prevention Plan (SWPPP), Groundwater Protection Plan (GPP) and Erosion and Sediment Control Plan (ESCP) shall also be prepared for the West Virginia Department of Environmental Protection (WVDEP) as part of the General Construction permit requirements, if necessary.

iii. Permits: NCM shall ensure that all required permits are secured prior to commencing Remediation Services. NCM shall file permits or notify the appropriate permitting agencies, as necessary, in order to limit potential delays in the commencement of remedial activities. NCM shall also obtain any other local authorizations that may be necessary for the completion of work. NCM'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: NCM shall secure from the Claims Administrator copies of all available access agreements prior to commencing Remediation 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 NCM by the Claims Administrator. Said data management system shall maintain the ongoing status of Remediation Services activities at each property where an access agreement has been obtained with weekly updated reports submitted by NCM to the Claims Administrator for tracking the work. NCM 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-Remediation Meeting: NCM shall conduct a pre-Remediation conference to introduce key personnel, define authorities and responsibilities, discuss details related to project implementation and Remediation schedule, set forth in Section 1.5.4 of NCM'S



Response to the RFP, 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 Remediation Services, NCM 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 NCM daily as part of NCM's HASP as contemplated in Section IV(c)(ii) above, and 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.
- iv. Monthly Remediation Reports: During the execution of the Remediation Services, NCM shall provide the Claims Administrator monthly written reports identifying, at a minimum, the number of Eligible Soils and Eligible Houses and Commercial Structures at the commencement, written certification, and final confirmation stages as described in Section III(B) above; summaries of any Problem Resolution Meetings that month; any air monitoring and sampling results that exceed action or trigger levels; status summaries for Remediation Services described in Sections IV(C)(c) through IV(C)(e); any significant damage caused to

Claimants' yards, structures, or personal property caused by NCM or its subcontractors; and any complaints received from Claimants.

- v. Complaints: NCM shall notify the Claims Administrator immediately in writing, to the extent practicable, when it becomes aware of any Claimant's complaint related to the Remediation Services, and NCM 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, NCM 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 NCM 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 NCM or Claims Administrator. The request shall identify the condition or event to be discussed.
- vii. Logistics: NCM shall facilitate all logistical support as set forth in Section 5.4 of NCM'S Response to the RFP, and any and all logistical planning necessary to effectuate an efficient start up and continuation of Remediation Services while ensuring the least disruption to Claimants.

- viii. Photographs, Videotaping, and Property Drawings: Prior to work at each eligible soil and/or eligible house or commercial structure, NCM shall take photographs and prepare a videotape of the property to show pre-remediation conditions. NCM shall retain and use the photographs and videotape for resolving disputes with property owners, if any arise, related to post-remediation conditions at the property. NCM shall also prepare a sketch for each property to depict conditions at the property (dimensions, house location and size, sidewalks, driveways, shrubbery beds, trees, soil remediation areas, etc.).
- ix. Utility Identification: Prior to initiating Remediation Services activities, NCM shall locate and mark all underground utilities.
- x. Access Road Construction: NCM shall construct access roadways, as necessary, utilizing crushed stone or other materials, to facilitate work activities. NCM shall establish suitable facilities for parking.
- xi. Engineering Controls: If necessary, NCM shall install erosion and sediment controls at each eligible soil and/or eligible house or commercial structure site.
- xii. Personnel and Equipment Decontamination: As required, NCM shall ensure decontamination of personnel and excavation equipment.
- xiii. Borrow Source Evaluation: As part of the pre-mobilizing activities, the name and location of each proposed borrow source for imported topsoil to be used as part of the Remediation Services contemplated herein shall be identified by NCM and sampling shall be conducted on said topsoil, and provided to the Claims

Administrator. Samples shall be collected for analysis of the following analytical parameters typically required for documenting clean fill (VOCs, SVOCs, pesticides/PCBs and metals) using the EPA Test Methods, and at the frequency, specified in the QAPP/WP. Said topsoil shall be clean mineral soil, free of roots, woody vegetation, stumps, sod, large rocks, frozen soil or other objectionable material. The topsoil shall follow the general criteria outline in ASTM D 5286 ("Standard Specifications for Topsoil for Landscape Purposes") to properly establish and sustain sod.

xiv. Stockpile Staging Areas: The parties do not contemplate a necessity for staging stockpile staging areas, but in the event that said stockpile staging areas become a necessity, NCM shall ensure that erosion and sediment controls and best management practices (BMPs) are utilized. NCM may or may not have a stockpile area. If there is one, the stockpile area shall be approved by Claims Administrator, shall be located and constructed in a secure area to facilitate stockpiling, sampling and treating of excavated soils in routine increments of 250 cubic yards. Erosion and sediment controls and best management practices (BMPs) shall be used in accordance with the SWPPP to control storm water run-off and run-on and fugitive dust from impacted soil stockpiles.

xv. Mobilization: Upon completion of logistical preparation activities, NCM shall mobilize personnel, equipment, materials, and other resources to the site to initiate remedial action 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.

- xvi. Site Security: NCM 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 staged contaminated soils and to control access in other dangerous conditions.
- xvii. Dust Control: NCM shall utilize dust suppression methods during soil removal, backstaging and soil loading, including, but not limited to, water misting in excavation areas using high-pressure low-volume sprayers and water trucks with a pump and hose system. NCM shall be responsible for monitoring airborne dust and corrective actions to reduce any actionable level of hazardous airborne dust.
- xviii. Air Monitoring: NCM shall develop and implement an air sampling and monitoring program during Remediation Services. The air sampling and monitoring program shall be performed to evaluate potential exposure to on-site personnel and to evaluate the potential off-site mobilization of airborne contaminants. To monitor the potential concerns, NCM shall collect and analyze air samples from the perimeter of the property as well as in work areas. Real-time air monitoring shall also be performed in work areas to evaluate the potential risks to on-site workers and the level of respiratory protection required while performing remedial

activities. Air monitoring shall be performed in accordance with the air monitoring specifications as summarized below:

1. High-Volume (Perimeter) Air Sampling: NCM shall provide, install, and maintain four ambient air monitoring stations along the perimeter of the remediation zone that shall be used by NCM for collecting and analyzing samples for airborne metals and particulates using the procedures outlined in the Quality Assurance Project Plan during remedial activities. At a minimum, three high-volume air samplers as specified in the Quality Assurance Project Plan shall be located in prevailing downwind areas of the remediation zone, and a fourth air monitoring station shall be located in the prevailing upwind portion of the remediation zone. The air monitoring stations shall be placed as far away as possible from potential interferences associated with roads, trees, buildings, or any other obstructions to the wind, and in general accordance with EPA's siting criteria. At the four monitoring stations, NCM shall provide and install high-volume particulate samplers mounted on a stable base, approximately six to eight inches above the ground surface, which shall allow air samples to be collected from the breathing zone. NCM shall supply a power source(s) for operating the samplers and shall ensure that each station is equipped to monitor for total suspended particulates (TSP) and total metals.
2. NCM shall be responsible for collecting air samples, for delivery of those samples to the analytical laboratory, and for reporting the data to the Claims Administrator. NCM shall perform TSP and total metals sampling using the procedures

outlined in the Quality Assurance Project Plan on a daily basis for each phase of work that has the potential to generate significant amounts of dust until analytical results from at least the first three days of sampling have been reported to the Claims Administrator. Work phases that have a potential for significant release of dust include soil excavation, soil loading activities, transportation, and decontamination activities. Samples shall be collected with high-volume air samplers for an eight-hour period during the work activity. High-volume air sample analysis shall be performed on a rush (three-day) basis.

3. If analytical results from the first three days of sampling for each phase of work are below one half of the appropriate action levels defined in the Health and Safety/Contingency Plan, then the sampling and analysis frequency shall be reduced to once per week, and samples collected after the initial three days but prior to receiving the initial data shall not be analyzed. If the total metal concentrations in any high-volume perimeter air sample exceed the action levels, NCM shall immediately identify the source(s) of the contaminants and take the necessary measures to reduce the contaminant concentrations below the action level.
4. If real-time TSP monitoring, as indicated below, exceeds the trigger level for TSP, then time-integrated high-volume air sampling for TSP and total metals shall be reinstated until the analytical results of three consecutive days of sampling have been reported and the results are below the action level.

5. Work Area (Personnel) Sampling: NCM shall develop and implement a personnel air sampling program to evaluate the level of respiratory protection, if any, required by site workers performing remedial activities. Personnel air sampling and monitoring shall be conducted at a minimum: (a) during mobilization to establish background airborne metal concentrations; and (b) during remedial activities that have the potential to expose site workers to airborne dust.
6. Personnel air monitoring data shall be collected from site workers with the greatest potential to be exposed to airborne dust. NCM shall prepare a personnel air sampling and monitoring plan as part of NCM's Health and Safety/Contingency Plan. The personnel air sampling and monitoring plan shall describe the number and frequency of samples to be collected, shall identify the specific site workers to be protected, and shall include procedures for the collection and evaluation of data from personnel sampling activities.
7. Real-Time Air Monitoring: NCM shall be responsible for real-time air monitoring of construction activities using an aerosol monitor or equivalent as specified in the Quality Assurance Project Plan. Real-time air monitoring at the site perimeter and work zone perimeter shall be performed during all phases of work with the potential for significant release of dust, including soil excavation, loading activities, transportation, and decontamination activities.
8. NCM shall calculate an airborne TSP concentration (i.e., a trigger level) that cannot be exceeded downwind of the work



zone to ensure that the action levels for total metals are not exceeded at the site perimeter. This calculation shall be performed by comparing the total metals and TSP results from the high-volume air samples to the real-time air monitoring readings for TSP for the same time period.

9. NCM shall monitor for TSP at a minimum of four locations at the perimeter of the remediation zone every two hours during each work activity listed above.

10. If real-time TSP monitoring results at the remediation zone perimeter exceed the trigger level, NCM shall stop work and initiate additional dust control measures, and time-integrated high-volume air sampling for TSP and total metals shall be reinstated until analytical results of three days of sampling have been reported and the emissions are below the action level.

c. Remedial Action Implementation

a. Soil Remediation: For eligible Zone 1A houses or commercial structures located on contaminated eligible Zone 1A soils (and for Upper B Street Properties if determined by the Court), remediation of eligible houses or commercial structures, shall be conducted in tandem with the soil cleanup to the extent practicable.

i. Indemnification: NCM shall be responsible for any and all yard or structure damage resulting from the soil remediation process, and shall 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 Claims Administrator in relation to any and all yard or structure damage resulting from NCM'S soil Remediation Services 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.

- ii. Soil Remediation Activities: NCM shall, in addition to the activities identified hereinabove, including but not limited to pre-mobilization, site preparation, mobilization, and implementation of quality control and health safety measures, also perform the following services as part of the Remediation Services for soils, and any and all other Remediation Services necessary to fulfill all obligations under this Agreement:

- 1. Pre-Remediation Inspection Meeting: Prior to performing remediation of the soil, a pre-inspection meeting will be held at the eligible property to define the structure specific scope of work as determined and agreed upon by NCM and Claims Administrator. NCM shall make a written request to the Claims Administrator and Claimant for a meeting five (5) working days in advance. Such meeting shall occur no later than five (5) working days after such request is made by NCM. The meeting shall include the Claimant owner, Claimant tenant, or their authorized representatives, a representative of the Claims Administrator, and NCM'S representative (the

"Parties"). An inspection of the soil will be performed with all Parties participating in developing the site specific scope of work necessary to complete remedial objectives. NCM shall seek confirmation from the Claimant of any hazardous or potentially hazardous conditions, including any buried electrical, gas, or plumbing lines, septic tanks and field lines, buried propane tanks, abandoned foundations, storm shelters or other buried structures or obstacles that the Claimant is or should be aware of that might reasonably be expected to be affected by the Remediation Services to be performed. To the extent practicable, all Parties will agree to the scope of work and indicate, by signature, the agreed upon approach on a form provided by the Claims Administrator. The scope of work must be agreed upon and provided to NCM within forty-eight hours after the meeting. A draft of said Claimant Remediation Plan Agreement is attached hereto as Exhibit K. A signed copy will then be provided to all Parties and work may then begin.

2. Eligible Soils and Soil Remediation Excavation:

Only Eligible Soils, as defined by the Claims Administrator, are to be remediated. Soil remediation shall be performed to a depth of six (6) inches of soil below where the existing grass meets the existing soil. It is NCM's responsibility to record and maintain records of the grade level of the original yard as well as the grade level upon completion of the remediation. The Soil remediation shall only address open yard areas (bare and vegetated soil). Soils below

shrubby beds, wood decks, porches, concrete sidewalks, asphalt driveways, or other impervious surfaces will not be remediated. Areas below large trees will not be remediated, any closer than the tree canopy drip line to protect root systems. In the event that there is existing turf grass beneath a tree and within the canopy drip line, NCM will attempt to remove said total of 6" of turf grass and soil. If during this removal there is suspected damage to be caused to the tree or the tree root system by performing the removal activities, then work beneath the tree canopy drip line shall cease. In the event there is not grass beneath the tree canopy drip line NCM will attempt to remove up to 6" of soil. If during this removal there is suspected damage to be caused to the tree or the tree root system by performing the removal activities, then work beneath the tree canopy drip line shall cease. Sod shall not be placed in areas beneath the existing tree canopy drip line where grass currently does not exist or grow. The limit of excavation created by construction equipment shall extend no closer than two (2) feet from existing structure foundations. Hand digging shall be substituted in these instances within two (2) feet of existing structure in order to recover accessible sod layers and attached soils. This may be or may not be up to 6" deep, but in no case will be less than what is required to accept new sod.

3. Preparation of Work Areas: Preparation for removal activities shall include, at a minimum, constructing work zones around the perimeter of the

area to be excavated by placing cones, caution tape, warning signs, or barricades where necessary.

4. Backfilling, Cover and Final Grading, Restoration:

NCM shall replace and backfill all eligible soils to the level of the original yard inclusive of the sod, with a pre-tested topsoil from an off-site source which has been tested for the contaminants of concern (cadmium, arsenic, zinc and lead), and shown to be free of said contaminants below the clean-up standard levels which is attached hereto as Exhibit D.

5. Cover and Final Grading, and Restoration:

The replacement soil shall be covered with sod, and irrigated until vegetative growth is satisfactory, and NCM shall water and maintain said sod for thirty (30) days per eligible soil. In the event that the vegetative growth is not satisfactory, NCM shall re-sod the unsatisfactory areas and shall bear any and all costs associated with said "re-sodding" until the vegetative growth is satisfactory. Re-sodding is not required if the unsatisfactory area was caused by the owner or his or her pet.

6. Failure to Remediate - Soil Replacement / Re-Digs:

NCM shall be responsible for any "re-digs" which are necessitated by NCM's default and failure to remediate the eligible soil to the levels identified by the Claims Administrator as set forth in Exhibit D, as determined by the Claims Administrator's post-remediation sampling of imported soils. The

Claims Administrator shall not incur any additional costs for any "Re-Digs".

7. Waste Transportation and Disposal: NCM shall characterize, properly classify, and properly dispose of all soil waste. NCM shall provide all labor, materials, and equipment required to transport waste materials from the eligible soil properties to the off-site disposal facility(ies), and NCM shall be responsible for all such costs. Off-site transportation and disposal shall comply with all applicable regulatory requirements, and all federal, state, or local laws, codes, and ordinances. All costs associated with disposal and transportation shall be borne solely by NCM.

- a. Soil Stabilization: The Parties do not contemplate that there will be hazardous soil. However, if there is hazardous soil, then, if determined to be necessary, NCM shall perform soil stabilization of characteristically hazardous soil to render the soil nonhazardous prior to disposal.

If soil stabilization is necessary to render the soil nonhazardous prior to off-site disposal, NCM shall perform treatability testing and prepare a stabilization plan for review and approval by the Claims Administrator. NCM's invoice to the Claims Administrator for such additional services shall be reasonably negotiated.

- b. NCM shall be responsible for loading, labeling, placarding, marking, and manifesting all off-site shipments. NCM shall execute all manifests and/or other shipping on behalf of the Claims Administrator. Prior to departure from the site, NCM shall tarp all vehicles and decontaminate all vehicles transporting materials for off-site disposal. Each and every vehicle shall be inspected and approved by NCM for general cleanliness of the frame and tires. The vehicle shall also be inspected for leaks, tarp tears, or container damage.
8. Site Clean Up and Demobilization: Within forty-eight (48) hours of completion of soil removal and replacement activities, a Pre-Final Inspection between NCM, Claimant owner, Claimant tenant (if any), and the Claims Administrator representatives will be held to review and inspect the removal and replacement action work completed. Any punch list items identified in the Pre-final inspection will be promptly addressed by NCM. A draft copy of the Remediation Verification Form is attached as Exhibit L.
9. Failure to Remediate: Direct, documentable and reasonable costs incurred by Claimant owner due to additional tenant relocation and additional remediation efforts by NCM as a result of NCM's default and failure to properly remediate any eligible soil and necessary re-digs shall be borne solely by NCM. The

Claims Administrator shall not incur any additional costs for any failure to remediate by NCM.

10. Documentation: NCM shall be responsible for documenting all field activities during the soil Remediation Services process. Records of field activities shall be legible, identifiable, retrievable, and protected against damage, deterioration, and loss. NCM shall record all documentation in waterproof, non-erasable ink. If an error in any of these documents is made, NCM 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. NCM shall maintain a dedicated logbook which documents each and every soil remediation at each and every eligible soil, which shall include, but not be limited to, the name of the project leader, team members, and project name written inside the front cover. Entries shall be legible, accurate, and complete. The language shall be factual and objective. 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.



11. Time Limitation and Sequencing: Subject to delays not its fault, including but not limited to weather, NCM shall ensure that soil remediation shall be completed within six (6) work days upon mobilization on the respective site and commencement of the work for a given eligible soil. NCM shall sequence the soil Remediation Services with other structure Remediation Services to minimize risks and hazards of cross-contaminating the soils or the structure. NCM, to the extent practicable, assuming ground is broken on May 15, 2012, and there are no more than 160 soil properties remediated, shall ensure that remediation of all eligible soils shall be completed by December 2012.

b. Structure Remediation:

- i. Indemnification: NCM shall be responsible for any and all damage or loss resulting from the structure remediation process, and shall 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 Claims Administrator in relation to any and all damage or loss resulting from NCM'S structure Remediation Services 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.

- ii. NCM shall, in addition to the activities identified hereinabove, and including, but not limited to, pre-mobilization, site preparation, mobilization, and implementation of quality control and health safety measures, also perform the following services as part and parcel of the Soils Remediation Services, and any and all other Remediation Services necessary to fulfill all obligations under this Agreement:

i. Pre-Remediation Inspection Meeting: Prior to performing remediation within the eligible house or commercial structure, a pre-inspection meeting will be held at the eligible property to define the structure specific scope of work. This activity will be performed to determine the specific activities required for each property based on Dr. Kirk Brown's and the RFP's approach (with the RFP governing) for each type of structure by Remediation Zone. Dr. Brown's Report is in Exhibit J. The meeting shall include the Claimant owner, Claimant tenant, or their authorized representatives, a representative of the Claims Administrator, and NCM's representative (the "Parties"). An inspection of the house or commercial structure shall be performed with all Parties participating in developing the site specific scope of work necessary to complete remedial objectives. NCM shall seek confirmation from the Claimant of any hazardous or potentially hazardous conditions, including any structural issues, potential wiring or electrical hazards, or other obstacles that the Claimant is aware of that might reasonably be

expected to be affected by the Remediation Services to be performed. To the extent practicable, all Parties shall agree to the scope of work and indicate, by signature, the agreed upon approach on a form provided by the Claims Administrator. A signed copy will then be provided to all Parties and work may then begin. A draft of said Claimant Remediation Plan Agreement is attached hereto as Exhibit K.

2. Interior Dust Cleanup: NCM shall ensure that each dust removal field crew shall be sufficiently staffed with the following dedicated work assignments: Movers/ Carpet Removers, HVAC, Cleaners, Painters, General Construction Repair and Carpet Installers.
3. Time Limitation and Sequencing: Subject to delays not its fault, NCM shall ensure that house or commercial structure remediation shall be completed within six (6) work days upon mobilization on the respective site and commencement of the work for a given eligible house or commercial structure. NCM shall sequence the soil Remediation Services with other house or commercial structure Remediation Services to minimize risks and hazards of cross-contaminating the soils or the house or commercial structures.
4. Securing of Structure Contents: Any and all contents which are removed out of the house or commercial structure for remediation purposes shall be returned to the interior of the house or commercial structure post-interior dust cleanup to the reasonable satisfaction of the

Claims Administrator and the Claimant. NCM is responsible for any and all content packing, removal, storage, and staging.

5. Disposal of Eligible House or Commercial Structure Contents: NCM shall not be responsible for disposal of any contents except for those identified in the RFP and herein, and which are incidental to and/or necessary to the execution of NCM's obligations under this Agreement. Any and all contents shall be disposed of only upon written Claimant consent.
6. Attic Remediation Procedures: NCM shall access eligible houses or commercial structures attics from existing scuttle holes or through creation of an interior access way. In the event that NCM seeks entrance into the attic from the exterior, entrance shall only be provided upon written approval from the owner Claimant and the Claims Administrator. After insulation is removed and/or cleaned, and the surfaces of the attic cleaned, the exposed porous surfaces of the attic shall be sealed with a general purpose interior latex sealer/primer.
7. Insulation Replacement Guarantee: Any and all insulation which is removed in an eligible structure shall be re-insulated with loose-fill blown-in insulation at a R-19 standard provided that the R-value of the removed insulation was 19 or below. In the event that duct insulation is removed that is in excess of a R-value of 19 but at or less than an R-value of 38, NCM

shall replace said insulation in-kind, provided that said in-kind insulation in excess of R-19 does not exceed replacement of insulation in up to or more than 10% of the eligible structure attic areas.

8. Duct Cleaning Guarantee: In the event of duct cleaning, air ducts shall be cleaned utilizing a High Efficiency Particulate Air (HEPA) vacuum.
9. Carpet Replacement: All carpet for eligible houses or commercial structures in Zone 1 shall be replaced. All carpet for eligible houses or commercial structures in Zones 2 and 3 shall be cleaned, but shall not be replaced.
10. Waste Transportation and Disposal: NCM shall characterize, properly classify, and properly dispose of all waste. NCM shall provide all labor, materials, and equipment required to transport all project-generated materials, including insulation, carpeting, duct, and dust waste, from the Eligible Structure properties to the off-site disposal facility(ies), and NCM shall be responsible for all such costs. Off-site transportation and disposal shall comply with all applicable regulatory requirements, and all federal, state, or local laws, codes, and ordinances. All costs associated with disposal and transportation shall be borne solely by NCM.

- a. NCM shall be responsible for loading, labeling, placarding, marking, and manifesting all off-site shipments. NCM shall execute all manifests and/or other shipping on behalf of the Claims Administrator. Prior to departure from the site, NCM shall tarp all vehicles and decontaminate all vehicles transporting materials for off-site disposal. Each and every vehicle shall be inspected and approved by NCM for general cleanliness of the frame and tires. The vehicle shall also be inspected for leaks, tarp tears, or container damage.

11. Site Clean Up and Demobilization: Within forty-eight (48) hours of completion of eligible house or commercial structure dust removal and remediation activities, a Pre-Final Inspection between NCM, Claimant owner, Claimant tenant (if any) and the Claims Administrator representatives will be held to review and inspect the removal action work completed. A draft copy of the Remediation Verification Agreement is attached as Exhibit L. Any punch list items identified in the Pre-final inspection will be promptly addressed by NCM.

12. Failure to Remediate House or Commercial Structure Re-Do's: NCM shall be responsible for any "re-do's" which are necessitated by NCM's default and failure to remediate the house or commercial structure to the levels specified by the Claims Administrator in

Exhibit D, as determined by the Claims Administrator's post-remediation sampling. However, this provision is inapplicable if post-remediation levels cannot be achieved due to lead paint contamination or other factor outside the control of NCM. Direct, documentable and reasonable costs incurred by Claimant owner due to such default of NCM, and additional remediation efforts by NCM as a result of NCM's default failure to remediate (based upon the cleanup standards as set forth in Exhibit D) any eligible house or commercial structure shall be borne solely by NCM. The Claims Administrator shall not incur any additional costs for any failure to remediate by NCM per Exhibit D.

D. Reporting Requirements:

- a. At a minimum, NCM shall provide the Claims Administrator with a monthly report detailing the following: (i) soils totally remediated; (ii) average time for soil remediated; (iii) houses and commercial structures remediated; (iv) average time for house and commercial structure remediation; (v) any oral or written complaints levied by any community members, whether participants in the Program as described herein or not; (vi) the response of NCM to said complaint; (vii) any safety issues or injuries which have occurred within the prior thirty (30) day period; (viii) alignment with prior proposed timeline for completion of remedial activities in a certain section; and (ix) updates regarding any and all of the services contemplated herein.
- b. The reports contemplated hereinabove shall be provided to the Claims Administrator's office via hand or overnight delivery and electronic mail.

- c. NCM shall work with the Claims Administrator to determine which reports shall be necessary to fully perform the services contained herein.

E. Insurance and Bond Requirements:

- a. NCM 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.
- b. NCM 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.
- c. NCM 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.
- d. NCM 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.



- e. NCM 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.
- f. NCM 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.
- g. NCM 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.
- h. The insurance required herein shall be primary to any other valid and collectible insurance.
- i. NCM must ensure that the Perrine DuPont Settlement, DuPont and the law firm of Gentle, Turner & Sexton are listed as additional insureds on the above policies, as evidenced by a Certificate of Insurance verifying coverage limits.

Bonds: NCM 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 Remediation Services and/or modifications to this Agreement shall in no way relieve the surety of its obligations. Bonding provided by NCM 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.

**F. Sub-Contracts:**

- a. NCM may sublet to Sub-contractors acceptable to the Claims Administrator any portions of the Remediation Services. Claims Administrator reserves the right to review and approve or disapprove all subcontracts as to scope of the Remediation 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 NCM of any responsibilities under this Agreement.
- c. NCM shall have full directing authority over and responsibility for the performance of all Remedial Services which NCM subcontracts and shall not be relieved of its responsibility for the proper performance of the services contemplated herein due to subcontracting.
- d. NCM agrees to bind each and every Sub-contractor by the terms, conditions and provisions of this Agreement applicable to Remediation 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. Eligible Soils and Eligible House and Commercial Structure Database and Documents: The Claims Administrator shall provide to NCM:

- a. The names and addresses of the contact owners of eligible soils and/or eligible house or commercial structures on electronic media;
- b. Access Documents;
- c. Contamination Level Reports; and
- d. All other documentation reasonably necessary for the purpose facilitating NCM's Remediation Services as contemplated herein.

B. Schedule and Coordination of Claimant Relocation Services as Necessary: The Claims Administrator shall organize, schedule and coordinate all Claimant relocation services with regard to the necessary and agreed relocation of individuals and pets from eligible structures and soils for the purposes discussed herein. Such activities shall be performed so as not to delay or hinder the progress of the Work or NCM to the extent practicable. To the extent practicable, the form in Exhibit M will be utilized.

C. Claims Administrator shall pay future NCM bills directly and in accordance with Section III(A) of this Agreement and the Uniform Price Bid Form in Exhibit L.

D. Complaints: NCM shall notify the Claims Administrator immediately in writing, to the extent practicable, when it becomes aware of any Claimant's complaint related to Remediation Services, and NCM shall cooperate with the Claims Administrator and the Claims Administrator and NCM undertake reasonable measures to

resolve such complaints. To the extent practicable, the form in Exhibit O will be utilized.

E. Fiduciary Duties: The Claims Administrator shall be responsible for and act as the fiduciary for all activities associated with the administration of the Program. This includes the interpretation of Court and Program documents, and any communications to the Claimants, the Finance Committee, the Claimants Advisory Committee, and the Court.

F. Amendments to the Program: The Claims Administrator shall provide written notification to NCM of any modifications or amendments to the Program. NCM or the Claims Administrator may require the execution of a modified Agreement. Modifications to the Program that have a cost impact upon NCM shall, result in written, reasonable pricing revisions effective as of the date of the modification or amendment.

G. Response Time: The Claims Administrator shall provide any written response required herein or otherwise reasonably required by NCM 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 NCM, 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 Program and furnished, revealed or otherwise made available to the Claims Administrator by NCM, whether on NCM's premises or the Claims Administrator's premises (the "NCM Information"), shall remain the sole and exclusive property of NCM. All other Information, records, and documentation generated in carrying out the Remediation

Services contemplated herein is 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. NCM 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 only to be used to enforce NCM's rights under this agreement.

- B. Storage and Inspection: All documents, books, and records furnished to NCM 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 NCM provided in accordance with this Agreement pertaining to any individual insurance, group insurance, or services, whether original records of NCM or furnished by the Claims Administrator, shall be open for inspection at NCM's West Virginia location, unless otherwise agreed, at all reasonable times. NCM 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, NCM shall return to the Claims Administrator all Claims Administrator Information received or created by NCM on behalf of the Property Remediation 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 Exhibit M are a part of this Agreement, and are incorporated herein by reference.

## VIII. INDEMNIFICATION

- A. Indemnification of NCM: Claims Administrator agrees to indemnify and hold harmless NCM 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 NCM 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 NCM's negligence, willful misconduct, or criminal misconduct.
- B. Indemnification of the Claims Administrator: NCM 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 NCM and/or the Claims Administrator as a result or arising out of NCM'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 NCM for non-payment and not cured by Claims Administrator, NCM may, at its sole discretion, suspend performance upon expiration of the fifteen (15) days

without terminating the Agreement. Should suspension occur and thereafter Work recommence, NCM 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 NCM 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, NCM 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, NCM agrees to provide Claims Administrator all Information in NCM 's possession pertaining to all services, records, and efforts related to this Agreement, consistent with reasonable industry norms, are within five (5) business days. NCM 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 Exhibit M, 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. Prior to litigation or judicial 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: NCM 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 NCM 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 NCM from its obligation to provide all such operations, labor, equipment, materials and things reasonably required. Parts of the Remediation 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. Audit Rights: NCM shall provide to the Claims Administrator access to data as appropriate and reasonable for the purpose of auditing sampling services. NCM shall provide data necessary to conduct audits on electronic media (diskettes, tapes, etc.) at no additional charge to the Claims Administrator. The Claims Administrator shall have the right to select an independent audit firm to perform sampling services audits during the term of this agreement. The Claims Administrator must give forty-five (45) days advance written notice to NCM to schedule a sampling services audit and at a mutually convenient time.

D. 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, NCM shall be entitled to an equitable adjustment to this Agreement for delays due to weather.

E. 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 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 [gsorewag@att.net](mailto:gsorewag@att.net)

B. If to NCM, to:  
NCM Demolition and Remediation, LP  
3900 Vero Road Baltimore, MD 21227 ("NCM") Attention: George W.  
Hilton, III  
VP / Branch Manager

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

F. 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 NCM in any responses to the RFP shall not be part and parcel of this Agreement, excepting those that are explicitly acknowledged herein.

G. 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.

H. 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, NCM's Response to RFP, and/or any other Exhibits attached hereto, and/or any other documents identified in this Agreement, this Agreement shall control.

- I. 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.
- J. 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.
- K. 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.
- L. 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 NCM 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.

M. 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.

N. Advertising, Promotion, and Trade Name: NCM may not list Claims Administrator as one of NCM'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 NCM's name, in any form other than its logo, in marketing materials, in a form acceptable to NCM. Claims Administrator may not use NCM's name or logo, or any form thereof, in such a way as to convey that NCM is an administrator and/or fiduciary with regards to Claimants, or the Program.

O. Exclusivity: Claims Administrator agrees that, during the term of this Agreement, it shall not utilize the services of another entity to provide the services NCM has agreed to perform under this Agreement.

P. Third Party Beneficiaries: NCM 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 NCM.

NCM Demolition and Remediation, LP

By: 

George W. Hillon, III

Title: VP / Branch Manager

Date: 4/26/2012

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: April 25, 2012

WITNESS:



# EXHIBIT 2



NorthStar Contracting Group, Inc.  
3900 Vero Road • Baltimore, MD 21227-1510  
Phone: 410.247.5031 / 800.666.0741 • Fax: 410.247.6714

January 21, 2013

The Perrine DuPont Property Remediation Program  
Spelter Volunteer Fire Department Office  
55 B Street  
PO Box 257  
Spelter, West Virginia 26438  
Attn: Edgar C. Gentle, III, Esq.

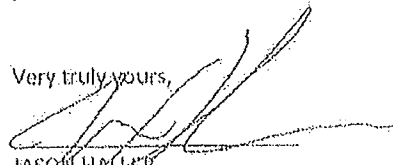
Via Federal Express

RE: Notice of Expiration of Period of Performance/Potential Continuation of Services

Dear Mr. Gentle:

Please take notice that pursuant to Article II, Section A of the AGREEMENT FOR SOIL AND PROPERTY REMEDIATION SERVICES for the LENORA AND PERRINE, ET AL., V. E.I. DUPONT DE NEMOURS AND COMPANY, ET AL., SETTLEMENT a.k.a the PERRINE DUPONT SETTLEMENT by and through THE SPECIAL MASTER AND CLAIMS ADMINISTRATOR and NCM Demolition and Remediation, LP (the "Agreement"), the period of performance expired on December 31, 2012.

In the event you desire NCM to continue to perform certain soil and property remediation work pursuant to Article IX, Section E, Continuation of Services, please advise as soon as practicable. Costs and expenses associated with the work have escalated since the agreement was entered into in April of 2012. Accordingly, and as provided for under the Continuation of Services provision, an equitable adjustment will need to be agreed upon by the parties for the services performed in such continuation period.

Very truly yours,  
  
JASON HACKER,  
Branch Manager

Cc via email: [escrowagen@aol.com](mailto:escrowagen@aol.com)  
[gdicarlo@northstar.com](mailto:gdicarlo@northstar.com)



# EXHIBIT 3

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

55 B Street  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837

www.perrinedupont.com  
perrinedupont@gtandslaw.com

January 28, 2015

VIA EMAIL  
CONFIDENTIAL

Mr. Jason Haller  
Branch Manager  
NorthStar Contracting Group, Inc.  
3900 Vero Road  
Baltimore, MD 21227

Re: The Perrine DuPont Settlement (the "Settlement") - Response to  
NorthStar Correspondence of January 21, 2015; 4609-1-DD-34

Dear Mr. Haller:

The purpose of this letter is to provide NorthStar Contracting Group, Inc. ("NorthStar") with the Settlement's position regarding email correspondence dated January 21, 2015, regarding the term of the Agreement. The email correspondence is attached for your reference. The two points raised in your letter regarding Agreement termination and equitable adjustment are incorrect, as explained below.

I. The Agreement Has Not Expired

Contrary to your letter, the Agreement for Soil and Property Remediation Services for the Lenora Perrine, et al., v. E.I. DuPont Nemours and Company, et al., Settlement a.k.a. the Perrine DuPont Settlement dated April 25, 2012, and approved by the Court on May 1, 2012 (the "Agreement"), with regard to remediation services, has not expired.

The plain language of the Agreement, on page 8, Section II., A., states that “[t]his Agreement shall become effective following Court approval, and shall continue in full force through December 31, 2014, 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 remediation services in accordance with the terms of this Agreement.” (Emphasis added).

The “conditions and obligations” of the Agreement have not been “met and satisfied.” *Id.*

Under the plain language of the Agreement, page 9, Section III., A., your company is under contract to remediate “600 eligible houses or commercial structures.” To date, NorthStar has only remediated approximately 380 houses, which leaves a significant portion of the house remediation work to be completed before the Agreement will expire.

The soil remediation work has not been completed due to NorthStar’s breach of contract and failure to obtain contractually compliant replacement soil during 2012, which resulted in the 2012 soil properties having to participate in the Amendment Treatment Program during 2013, so that a soil remediation season was lost. The relevant previous Notices of Material Breach of Contract are attached for your reference.

## **II. The Continuation Of Services Clause In The Agreement Has Not Been Triggered Because The Work Has Not Been Completed**

Page 48 of the Agreement, Section IX., E., Continuation of Services, states that, “[e]xcept for termination due to the Claims Administrator’s breach, NCM 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.” (Emphasis added).

As discussed above, the work has not been completed. There has been no termination of the Agreement. This clause is inapplicable.

### III. Choice of Law and Resolution of Disputes

Page 49 of the Agreement, Section X., A. and B., provide that this Agreement is governed by the laws of the State of West Virginia and further, that any judicial proceeding arising out of or relating to this Agreement may only be brought before the Circuit Court of Harrison County.

### IV. Proposed Resolution

The Settlement suggests two possible courses of action for NorthStar. The first course of action is to admit that the Agreement has not expired or been terminated and drop the request for additional reimbursement identified in the January 21, 2015, email correspondence.

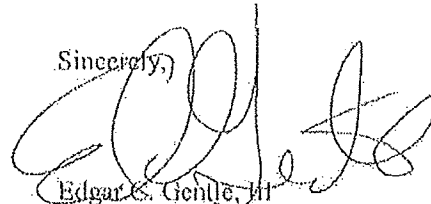
The second course of action is to bring an attorney before the Honorable Judge Bedell and argue this matter of contractual interpretation. We have requested a hearing date for February 18, 2015, and will notify you of the hearing time when it is set.

Please prepare a corporate representative to testify under oath as to the completion of the work required by the Agreement.

Further, our previous Notices of Material Breach of Contract itemizing your company's failure to timely complete the remediation work under this Agreement are attached for your reference.

Please notify us of your position on or before February 9, 2015, or we will consider this matter to have been dropped.

As usual, please do not hesitate to contact us if you have any questions.

Sincerely,  
  
Edgar E. Genthle, III  
Settlement Administrator

cc: (with enclosure)(via e-mail)(confidential)  
Katherine A. "Kip" Harbison, Esq.  
Michael A. Jacks, Esq.  
Mr. Billy Sublett  
Mr. Paul Emerson

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

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

Plaintiffs,

v.

Civil Action No. 04-C-296-2  
(The Honorable Thomas A. Bedell, Judge)

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

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2015, I caused service of the foregoing "NORTHSTAR DEMOLITION AND REMEDIATION, L.P., f/k/a NCM DEMOLITION AND REMEDIATION, L.P.'S MOTION TO APPLY AND ENFORCE THE TERMS OF THE AGREEMENT FOR SOIL AND PROPERTY REMEDIATION SERVICES" to be made upon interested parties by depositing true and accurate copies of the same in the regular course of the United States mail, postage prepaid, in envelopes addressed as follows:

Edgar C. Gentle, III, Esquire  
Michael A. Jacks, Esquire  
GENTLE, TURNER, SEXTON & HARBISON  
P O Box 257  
Spelter WV 26438.  
*Claims Administrators*

*8825 M. Mannion*  
*M. Mannion*  
\_\_\_\_\_  
Cy A. Hill, Jr. (WVSB ID No. 8816)  
MANNION, GRAY, UHL & HILL CO., L.P.A.  
707 Virginia Street East Suite 260  
Charleston WV 25301  
304-513-4242  
304-513-4243 (fax)  
[chill@mannongray.com](mailto:chill@mannongray.com)