

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)	
2800 South Sacramento Avenue)	Docket No. V-W-06-C-853
)	
Respondents: City of Chicago)	
and Chicago Park District)	
)	
UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE CITYOF CHICAGO
RESPONSE, COMPENSATION, AND)	OR CHICAGO PARK DISTRICT
LIABILITY ACT OF 1980, 42 U.S.C.)	
§ 9601, <u>et seq.</u> , as amended.)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue (“Agreement”) is made and entered into by and between the United States on behalf of the United States Environmental Protection Agency (“EPA”) and the City of Chicago, an Illinois municipal corporation (“City”) and the Chicago Park District, an Illinois municipal corporation (“Park District” and together with the City, the “City Parties”) (collectively the “Parties”).

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

The City intends to take ownership of approximately 24 acres of land located at 2800 South Sacramento Avenue in Chicago, Cook County, Illinois (the “Property”), commonly referred to as the “Celotex Site,” (EPA ID No. ILD051053692), and thereafter transfer or lease the Property to the Park District. The Property is to be acquired by the City through a condemnation or sale in lieu of condemnation. The Property is generally bounded on the north by 27th Street; on the east by Sacramento and Whipple Avenues; on the west by Albany Avenue and on the south by an adjacent facility owned by the City. The Property is more precisely described in Exhibit A (Property Description) to the Declaration of Restrictive

Covenants in Exhibit 3, and its location and detail are depicted on the maps in Exhibits 1 and 2 (on which the Property is referred to as the “Celotex Site”).

The City, through its Department of Planning and Development and its Department of Environment, has been a leader in establishing sustainable development standards and initiatives for urban areas. Through its planning document entitled *CitySpace: An Open Space Plan for Chicago*, published in 1998, the City set a goal of providing at least two acres of open space for every 1,000 residents in each community. The Property is in the South Lawndale community, which currently has only three-fourths of an acre of open space for every 1,000 residents. The City Parties will develop the park, incorporating sustainable development practices and features, as outlined below.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII (Certification), VIII (United States’ Covenant Not to Sue), IX (Reservation of Rights), and X (Respondents’ Covenant Not to Sue), the potential liability of the City Parties under CERCLA for the Existing Contamination which might otherwise result from the City Parties becoming the owner and/or lessee of the Property.

The Parties agree that the City Parties’ entry into this Agreement, and the actions to be undertaken by the City Parties in accordance with the Agreement, do not constitute an admission of any liability by the City Parties.

The resolution of this potential liability, in exchange for performance of the work by the City Parties pursuant to EPA’s Environmentally Responsible Redevelopment and Reuse (“ER3”) Initiative, is in the public interest.

II. DEFINITIONS

1. Unless otherwise expressly provided herein, the terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the

meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

a. "Administrative Settlement" shall mean the Administrative Settlement Agreement and Order on Consent for Removal Action, Docket No. V-W-06-C-853, effective August 28, 2006, entered into between EPA and Honeywell and attached hereto as Exhibit 4.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

c. "City" or "City of Chicago" shall mean the City of Chicago, an Illinois municipal corporation, its departments, agencies and instrumentalities, including but not limited to the Chicago Department of the Environment and the Chicago Department of Planning and Development, and any successor departments, agencies and instrumentalities.

d. "City Parties" shall mean the City and the Park District.

e. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or State of Illinois, City of Chicago or federal holiday, the period shall run until the close of business on the next working day.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Existing Contamination" shall mean:

(1) any Hazardous Substances present or existing on or under the Property as of the effective date of this Agreement;

(2) any Hazardous Substances that migrated from the Property prior to the effective date of this Agreement;

(3) any Hazardous Substances presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement; and

(4) any Hazardous Substances that have been removed from the Property, transported, and disposed of off-site pursuant to the Administrative Settlement.

h. "Hazardous Substances" shall have the meaning given that term in CERCLA Section 101(14), 42 U.S.C. § 9601(14).

i. "Institutional Controls" shall mean those deed restrictions on disturbance of the Property cover and land use set forth in the Declaration of Restrictive Covenants in Exhibit 3.

j. "Park District" shall mean the Chicago Park District, an Illinois municipal corporation, its departments, agencies and instrumentalities, and any successor departments, agencies and instrumentalities.

k. "Parties" shall mean the United States (on behalf of EPA), and the City Parties.

l. "Property" shall mean approximately 24 acres located at 2800 South Sacramento Avenue in Chicago, Cook County, Illinois, and described in Exhibit A in the Declaration of Restrictive Covenants in Exhibit 3 of this Agreement. The general location of the Property is depicted on the map attached as Exhibit 1. The boundaries of the Property are generally laid out on the map attached as Exhibit 2.

m. "Site" shall mean the Property and all areas to which Hazardous Substances from the Property have come to be located.

n. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

2. Between 1911 and 1982, the Property was used by several companies to conduct various operations, including: distillation of coal tar to produce sealants and coatings; manufacture of asphalt roofing products; mixing of asphalt concrete; and production of driveway sealer.

3. In 1989, the Illinois Environmental Protection Agency (“IEPA”) completed an initial CERCLA evaluation with a Preliminary Assessment. In 1991 and 1992, IEPA conducted inspections and sampling on the Property that identified several areas that contained materials and soils with concentrations of certain semi-volatile organic compounds (“SVOCs”) in excess of background concentrations. EPA also conducted inspections of the Property.

4. In 1996, AlliedSignal Inc. (“Allied Signal”), one of the companies EPA identified as a potentially responsible party, entered into an Administrative Order on Consent (“AOC”) to conduct testing and produce an Engineering Evaluation/Cost Analysis (“EE/CA”) for the Property.

5. In performing the EE/CA, AlliedSignal conducted a field investigation and risk assessment for the Property which reported that: Volatile Organic Compounds (“VOCs”) were elevated at the southwest area of the Property at a depth of 0 to 6 inches at concentrations between 25 and 83 parts per million (ppm). VOC concentrations at various sample intervals between depths of 6 inches and 8 feet had a maximum concentration of 272 ppm at a sample depth of 4 to 6 feet in the southwest area of the Property. VOC concentrations at greater depths (8 to 18 feet) were much higher and are primarily located in the central west portion of the Property with concentrations as high as 862 ppm. Polycyclic aromatic hydrocarbons (“PAHs”) at a depth of 0 to 6 inches were elevated at the northern and southern areas of the Property with a concentration as high as 139 ppm benzo(a)pyrene equivalents (“BAPEQ”). PAH concentrations trended higher with depth; at the 1 to 2 feet sample interval the maximum concentration was 421 ppm BAPEQ and the maximum concentration at the 8 to 10 feet sample interval was 3,236 ppm BAPEQ.

6. Honeywell International, Inc., successor to AlliedSignal (“Honeywell”), published the EE/CA in September 2004. EPA issued an Action Memorandum in March 2005 selecting the appropriate response action for the Property. Honeywell agreed to conduct the response action for the Property pursuant to an Administrative Settlement Agreement and Order on

Consent for Removal Action, Docket No. V-W-06-C-853, effective August 28, 2006, together with all appendices, exhibits and subsequent modifications or amendments thereto ("Administrative Settlement"). The Administrative Settlement is attached hereto as Exhibit 4. The City Parties are not parties to the Administrative Settlement and have no obligations under the Administrative Settlement. The conveyance of the Property to the City shall not release or otherwise affect the liability of Honeywell to comply with the Administrative Settlement.

7. The northern 22 acres of the Property are currently owned by 2600 Sacramento Corp., which operates the Property as a storage lot for trailers. The southern 2 acres of the Property are currently owned by Monarch Paving Corp., but are not currently being used.

8. The City represents, and for the purposes of this Agreement EPA relies on the City's representation that its involvement with the Property has been limited to the following: (i) the City has had no direct involvement in any prior use, contamination or remediation of the Property; (ii) as the municipality in which the Property is located, the City has provided various services to, and has exercised its taxing authority and police powers with respect to, the Property as typical of municipalities; (iii) the City has conducted certain investigations of the Property in connection with its proposed acquisition and development of the land, consisting of chemical analyses of soil boring samples and the performance of an independent risk assessment for a recreational land use scenario; and (iv) the City owns property adjacent to the south side of the Property. The Park District represents, and for the purposes of this Agreement EPA relies on the Park District's representation that its involvement with the Property has been limited to the following: (i) the Park District has had no direct involvement in any prior use, contamination or remediation of the Property; (ii) the Park District has exercised its taxing authority with respect to the Property, as typical of local taxing bodies; and (iii) the Park District has conducted certain investigations of the land in connection with its proposed acquisition or lease and development of the Property.

IV. WORK TO BE PERFORMED

9. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII, the City Parties shall: (1) develop the Property as a public park, utilizing the sustainable development practices in Paragraph 10, absent a force majeure event, within four years after securing adequate project financing to fully develop the Property, but in no event later than seven years after acquisition of the Property unless EPA gives prior written consent to a longer development period; (2) after soliciting and considering public input regarding the intended uses for the Property as a park, develop park features consistent with the sustainable development practices listed in Paragraph 11; and (3) record modifications to the Institutional Controls contained in Exhibit 3 to name the City Parties as Third Party Beneficiaries of the Declaration of Restrictive Covenants.

10. In developing the Property as a public park, the City Parties shall utilize all of the following sustainable development practices in a manner that preserves the cover remedy for the Property to the fullest extent possible and results in significant environmental benefits:

a. Adding topsoil and seeding. The City Parties shall cover the Property with topsoil and/or clay to a depth sufficient for the intended vegetative cover, over and above what is required in Paragraph 15 of the Settlement Agreement, excluding perimeter side slopes and any areas where topsoil would be inconsistent with the installation of recreational features that will be installed. The City Parties will seed such topsoil with vegetation consistent with the Sustainable Sites Initiative as described in subparagraph 10.b.

b. Sustainable Sites Initiative. The City Parties will follow the most current guidelines and standards for landscaping sustainability developed by the Sustainable Sites Initiative unless it can demonstrate that doing so is impractical or conflicts with park features developed in accordance with the community planning process described in Paragraph 11. In 2005, the Lady Bird Johnson Wildflower Center and the American Society of Landscape Architects partnered to create the Sustainable Sites Initiative, and in 2006 they were joined by

the United States Botanic Garden. The general concepts of the Sustainable Sites Initiative that apply to urban parks include:

(1) The construction process will identify practices and materials that minimize the environmental footprint of the park development.

(2) Park management and use will seek to emphasize recycling and use of green energy, sustainable operations, and recycled materials. The City Parties will install recycling receptacles near public trash cans on the Property.

(3) As new features are added or changed at the Property, the City Parties will focus on scalability and sustainability by incorporating the park into its surrounding community as a niche for learning and developing environmental practices.

c. Increase Native Biodiversity. Native biodiversity refers to the number and variety of living organisms (plants and animals) that are native to an area. Greater native plant biodiversity attracts and sustains a greater diversity of native animals, including birds and butterflies. To increase native biodiversity, the City Parties will plant appropriate, habitat-specific, native trees, shrubs, grasses and wildflowers.

d. Control of Invasive Species: An invasive species is one that reproduces so aggressively that it threatens the survival and sustainability of other species, thus reducing biodiversity. Both native and non-native plants can become overpopulated in urban natural areas, thereby requiring management. The City Parties will manage invasive species on the Property using the current standards recommended by the Sustainable Sites Initiative, which may include a combination of the following techniques:

(1) Hand-pulling: carried out when the invasive plant is easily extracted from the soil (e.g., garlic mustard); and

(2) Girdling: a preferred technique used to remove relatively large invasive trees in order to prevent resprouting and minimize damage to surrounding vegetation (e.g., European buckthorn).

e. Wildlife Population Control. Wildlife species will be managed when they become overpopulated and threaten native biodiversity, cause significant damage to Park District landscapes and cause dangerous conditions for people. For example:

(1) Resident seagulls and Canada geese will be managed to reduce additional population growth by adding or oiling the eggs, removing nesting material or using other techniques to stabilize or reduce flock size;

(2) Monk parakeets will be discouraged from nesting on built infrastructure such as transformers, cell towers and light poles; and

(3) Beavers and rabbits will be trapped and released into more sustainable, larger areas in situations where their overpopulation obliterates immense amounts of vegetation.

f. Low-Mow Areas. The City Parties will maintain the tall grass fescue or other “no-mow” or “low-mow” plants along the perimeter slopes planted by Honeywell to stabilize the Property cover and reduce maintenance costs.

g. Plant Maintenance. The City Parties will not use chemical fertilizers, pesticides or herbicides on the Property consistent with the Sustainable Sites Initiative as described in subparagraph 10.b, except as necessary to prevent the transmission of pest-borne disease. The City Parties will utilize Integrated Pest Management principles in place of chemical pesticides. Irrigation on the Property will use, to the extent feasible, gray water and collected rainwater. Mowers used on the Property will be designed to produce low or no emissions and to leave clippings in place. All trees will be mulched with cuttings from the Property or other Chicago Park District properties.

h. Drainage. The City Parties will manage all storm water on the Property so as to minimize discharge into the combined sanitary/storm sewer. EPA acknowledges that Honeywell is developing the storm water infrastructure for the Property in accordance with the City’s stormwater regulations. EPA does not expect the City to change that infrastructure, but

the City agrees to maintain that infrastructure and, where possible, will grade the Property when developing the park to maximize the runoff flow that drains to the Sanitary & Ship Canal, where it should increase water flow to the Chicago River, improve water quality and complement the ongoing efforts of the Metropolitan Water Reclamation District of Greater Chicago (MWRD) to remediate and restore the contaminated waterway.

i. Lighting. The City Parties will use energy efficient lighting, including solar-powered lighting, anywhere on the Property it installs lighting except in those areas where it is impractical to do so. The City Parties will control any outdoor lighting with remote control timers, and will direct lights in a manner to avoid light pollution.

j. Promote Cycling. The City Parties will install bicycle racks near all play areas on the Property, including any soccer fields, baseball fields and playgrounds, and will work with the Chicago Department of Transportation to create a direct bike route to the park. Presently there are bike routes on California Avenue and 26th Street. The City Parties will explore the possibility of converting nearby abandoned railroad rights-of-way into recreational trails to further encourage park patrons to ride bicycles to the Property.

k. Community Involvement. The Park District will use its best efforts to form an Advisory Council comprised of local residents to help steer programs and activities in the park and to establish a stewardship program for the Property. Volunteer stewards will help maintain natural areas and participate in group work days and other outings and activities. The Park District will recruit volunteers through community outreach, and will supply mulch, rakes and other materials and equipment necessary for upkeep. Community involvement in the planning process and stewardship of natural areas will help foster respect and appreciation for the park. Volunteers will be offered the opportunity to train in cooperation with local nonprofits.

l. Use restrictions. The City Parties shall utilize no part of the Property for commercial or municipal purposes unrelated to its development and use as a park.

11. The Park District shall utilize an inclusive planning process designed to identify community needs and involve residents of the surrounding area while identifying green features that complement the planned uses of the park. Incorporating this input, the City Parties shall develop the Property as a public park with various recreational features in a manner that preserves the cover remedy to the fullest extent possible and results in significant environmental benefits. To the extent the City Parties decide to develop any of the following features on the Property, it shall utilize the sustainable development practices prescribed herein.

a. Park Trails. Any interior hard surface recreational trail constructed in the park shall be composed of a lakefront trail mix or other pervious material designed to maximize water filtration and to avoid runoff. This requirement shall not apply to interior paths or driveways intended for emergency and maintenance vehicles.

b. Soccer Fields. Any soccer fields constructed on the Property using artificial turf shall be made with the highest percentage of recycled content available on the market (giving due consideration to health and safety concerns, maintenance costs and durability), and the City Parties will recycle the turf at the end of its useful life.

c. Playground. Any playground equipment and soft surface base for playground equipment shall be made with the highest percentage of recycled content available on the market (giving due consideration to health and safety concerns, maintenance costs and durability). Any spray pool will include a motion-activated solenoid valve to conserve water and drainage will be managed pursuant to Paragraph 10.h.

d. Parking Lot. Any parking lot constructed on the Property will consist of porous material, include a bioswale for drainage, utilize recycled materials in tire stops, and will reserve at least ten percent of the spaces for hybrid, electric, and high-efficiency vehicles.

e. Natural Passive Area. The City Parties will consider creation of a natural passive area that includes native grasses, wildflowers, shrubs and trees, so as to provide an important habitat for local insects and migratory birds following the Lake Michigan flyway. Any

such natural passive area must be managed to maintain a high level of native biodiversity for the Property, to the extent possible under modern conditions. The objective of this strategy is to promote a healthier environment, conserve native biodiversity, develop and maintain natural area aesthetics, and provide landscapes for nature-based recreation and education.

f. Buildings. Any building larger than a shed or storage facility constructed on the Property shall be certified by the U.S. Green Building Council as meeting the Silver (or higher) standard set forth in the Leadership in Energy and Environmental Design (LEED) for New Construction.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

12. Commencing upon the date that it acquires title to or a leasehold interest in the Property, the City Parties agree to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the City Parties, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the City Parties of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"), and any other applicable statute or regulation, including any amendments thereto.

13. Within 15 Days after the date of acquisition of the Property, the City shall submit to EPA for review and approval a notice to be filed with the Office of the Cook County (Illinois) Recorder of Deeds, which shall provide notice to all successors-in-title that EPA selected a response action for the Property on March 7, 2005, and that a potentially responsible party has

entered into an Administrative Settlement requiring implementation of the response action. Such notice shall identify the EPA Docket Number in which the Administrative Settlement was entered. The City shall record the notice within 30 Days of EPA's approval of the notice. The City shall provide EPA with a certified copy of the recorded notice within 10 Days of the recordation date.

14. The City Parties shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation, including any responsibilities of implementing, monitoring, or enforcing Institutional Controls. The City Parties shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, Section XI (Parties Bound/Transfer of Covenant), and Section IV (Work to be Performed).

VI. DUE CARE/COOPERATION

15. The City Parties shall exercise due care at the Property with respect to the Existing Contamination and shall comply with the Institutional Controls and all applicable local, state, and federal laws and regulations. The City Parties recognize that the implementation of response actions at the Property may interfere with the City Parties' use of the Property, and may require closure of its operations or a part thereof. The City Parties agree to cooperate fully with EPA in the implementation of response actions at the Property and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the City Parties' operations by such entry and response. In the event the City Parties become aware of any action or occurrence which causes or threatens a release of Hazardous Substances at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the City Parties shall immediately take all

appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

16. Absent emergency circumstances, the City Parties shall not remove the two-foot cover described in Paragraph 15 of the Administrative Settlement on any portion of the Property or dig, drill or excavate below such two-foot cover without prior notice to and approval by the EPA. This Paragraph does not prohibit the City Parties or park users from digging in any topsoil or other material placed on top of the two-foot cover.

VII. CERTIFICATION

17. By entering into this Agreement, the City Parties certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to the City Parties and all information in the possession or control of their current elected and/or appointed officials, the Chicago Department of Environment and the signatories to this Agreement which relates in any way to any Existing Contamination or any past or potential future release of Hazardous Substances at or from the Property and to its qualification for this Agreement. The City Parties also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of Hazardous Substances at the Property. If the United States determines that information provided by the City Parties is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

18. Subject to the Reservation of Rights in Section IX of this Agreement, and conditional upon completion of the work specified in Section IV (Work to Be Performed) to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against the City Parties for any and all civil liability for injunctive relief or

reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

19. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against the City Parties with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by the City Parties to meet a requirement of this Agreement, including but not limited to Section IV (Work to be Performed), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), and Section XIII (Payment of Costs);

b. any liability resulting from ownership or operation of adjacent property, subject to the contiguous property defense in CERCLA Section 107(q), 42 U.S.C. § 9607(q);

c. any liability resulting from past or future releases of Hazardous Substances at or from the Property caused or contributed to by the City Parties, their successors, assignees, lessees or sublessees;

d. any liability resulting from exacerbation by the City Parties, their successors, assignees, lessees or sublessees, of Existing Contamination, unless resulting from activities approved by the EPA in accordance with Paragraph 16, or required or approved under the Administrative Settlement or otherwise ordered by EPA;

e. any liability resulting from the release or threat of release of Hazardous Substances at the Property after the effective date of this Agreement, not within the definition of Existing Contamination;

f. criminal liability;

g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

h. liability for violations of local, state or federal law or regulations.

20. With respect to any claim or cause of action asserted by the United States, the City Parties shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

21. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

22. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Property or to seek to compel parties other than the City Parties to perform or pay for response actions at the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. The City Parties acknowledge that they are acquiring and/or leasing Property where response actions may be required.

X. RESPONDENTS' COVENANT NOT TO SUE

23. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the City Parties hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Property,

or any claims arising out of response activities at the Property, including claims based on EPA's oversight of such activities or approval of plans for such activities.

24. The City Parties reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the City Parties' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

25. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the City Parties, their authorized officers, employees, and representatives. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVII shall apply to the City Parties' officers, employees and representatives to the extent that the alleged liability of such officers, employees or representatives is based on their status and in their capacity as officers, employees or representatives of the City Parties, and not to the extent that the alleged liability arose independently of the alleged liability of the City Parties. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

26. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon the City Parties under this Agreement may be assigned or transferred to any person with the prior written consent of the EPA in its sole discretion; provided, however, the City may transfer any interest in some or all of the Property to the Park District without the EPA's prior consent.

27. The City Parties agree to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

28. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as the EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property (other than from the City to the Park District), the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees (other than the Park District) who fail to provide such written consent to EPA.

XII. DOCUMENT RETENTION

29. The City Parties agree to retain and make available to EPA all final drafts of business and operating records, contracts, studies and investigations, and documents relating to “as built” development of the park in accordance with the sustainable development practices and features listed in Paragraphs 9, 10 and 11, for at least ten years following the effective date of this Agreement unless a different period of years is otherwise agreed to in writing by the Parties. At the end of ten years, the City Parties shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIII. PAYMENT OF COSTS

30. If the City Parties fail to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Work to be Performed) of this Agreement, they shall

be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XIV. NOTICES AND SUBMISSIONS

31. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Agreement, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Re: DOJ No. 90-11-3-09384

and

Compliance Tracker
U.S. Environmental Protection Agency, Region 5 (AE-17J)
77 West Jackson Blvd.
Chicago, IL 60604

To EPA:

Karen Peaceman
Associate Regional Counsel
U.S. Environmental Protection Agency, Region V (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604-3590
(312) 353-5751
(312) 886-7160 (fax)

and

Jena Sleboda
Remedial Project Manager
U.S. Environmental Protection Agency, Region V (SR-6J)
77 West Jackson Blvd.
Chicago, IL 60604-3590
(312) 353-1263
(312) 886-4071 (fax)

To the City of Chicago:

Lisa Misher
Assistant Corporation Counsel
City of Chicago Department of Law
121 North LaSalle Street, Suite 600
Chicago, Illinois 60602
(312) 742-3932
(312) 742-0277 (fax)

To the Chicago Park District:

General Superintendent and CEO
Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
(312) 742-4800
(312) 742-6098 (fax)

and

General Counsel
Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
(312) 742-4602
(312) 742-5316 (fax)

32. Any party may designate a different address by notice given as herein required. All notices, submissions and communications shall be deemed properly given: (a) three (3) working days after mailing by first class United States mail, postage prepaid, or (b) upon receipt by certified or registered mail, overnight courier, personal delivery or facsimile transmission.

XV. EFFECTIVE DATE

33. The effective date of this Agreement shall be the date upon which EPA issues written notice to the City Parties that EPA has fully executed the Agreement after review of and response to any public comments received pursuant to Section XIX.

XVI. TERMINATION

34. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with

the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provisions establishing such obligations; provided, however, that the provisions in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provisions.

35. The City Parties' obligations under Paragraphs 9, 10 and 11 to maintain the Property as a public park shall terminate in 50 years from the effective date of this Agreement unless a shorter period is agreed upon by all parties.

XVII. CONTRIBUTION PROTECTION

36. With regard to claims for contribution against the City Parties (including any claim based on the contention that the City Parties are not a bona fide prospective purchaser), the Parties hereto agree that this Agreement constitutes an administrative settlement for purposes of CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that the City Parties are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may otherwise be provided by law, from the effective date of this Agreement for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

37. Notwithstanding the provisions of this Section, nothing in this Agreement shall be interpreted as extinguishing or altering the rights and obligations between the City Parties pursuant to any lease of the Property or intergovernmental agreement relating to the development and maintenance of the Property.

38. The City Parties agree that with respect to any suit or claim for contribution brought by either or both of them for matters related to this Agreement they will notify the United States in writing no later than 60 Days prior to the initiation of such suit or claim.

39. The City Parties also agree that with respect to any suit or claim for contribution brought against either or both of them for matters related to this Agreement they will notify in writing the EPA within 10 working days of service of the complaint on them.

XVIII. EXHIBITS

- 40. Exhibit 1 is a map depicting the location of the Property.
- 41. Exhibit 2 is a map depicting the Property.
- 42. Exhibit 3 are the Institutional Controls for the Property.
- 43. Exhibit 4 is the Administrative Settlement.

XIX. PUBLIC COMMENT

44. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XX. MODIFICATION

45. The requirements of this Agreement may be modified in writing by mutual agreement of the Parties.

XXI. COUNTERPART ORIGINALS

46. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(SIGNATURE PAGES FOLLOW)

THE UNDERSIGNED PARTY enters into this Agreement and Covenant Not to Sue in the matter of *2800 South Sacramento Avenue* (EPA Docket No. V-W-06-C-853).

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

LYNN BUHL
Regional Administrator
United States Environmental
Protection Agency, Region 5
77 W. Jackson Blvd
Chicago, IL 60604

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date

THE UNDERSIGNED PARTY enters into this Agreement and Covenant Not to Sue in the matter of *2800 South Sacramento Avenue* (EPA Docket No. V-W-06-C-853).

IT IS SO AGREED:

THE CITY OF CHICAGO

BY:

Arnold L. Randall
Commissioner
Department of Planning and Development
City of Chicago
121 North La Salle Avenue
Suite 1000
Chicago, Illinois 60602

Date

BY:

Suzanne Malec-McKenna
Commissioner
Department of Environment
City of Chicago
30 North La Salle Avenue
Suite 2500
Chicago, Illinois 60602

Date

THE UNDERSIGNED PARTY enters into this Agreement and Covenant Not to Sue in the matter of *2800 South Sacramento Avenue* (EPA Docket No. V-W-06-C-853).

IT IS SO AGREED:

THE CHICAGO PARK DISTRICT

BY:

Timothy J. Mitchell
General Superintendent and CEO
Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611

Date

Attest: _____
Kantrice Ogletree
Secretary Pro Tempore

EXHIBIT 1

Property Location Map

EXHIBIT 2

Property Map