



Department of Toxic Substances Control

cc: RDA/Puran



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Winston H. Hickox  
Agency Secretary  
California Environmental  
Protection Agency

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Governor

June 18, 2003

BY OVERNIGHT MAIL

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WEST COVINA CITY MANAGER

Mr. Andrew Pasmont  
City Manager  
City of West Covina  
1444 W. Garvey Avenue  
West Covina, California 91793

ORIGINAL EXECUTED PROSPECTIVE PURCHASER AGREEMENT

Dear Mr. Pasmont:

Enclosed please find an original of the Prospective Purchaser Agreement that was executed by the Department of Toxic Substances Control. I have provided Colin Lennard with a copy of the signature page.

Thank you for your cooperation. Please feel free to call me with questions or comments at (916) 327-0979.

Sincerely,

Antonette B. Cordero  
Chief Counsel and Deputy Director

Marilee Hanson  
Senior Staff Counsel

cc: Mr. Colin Lennard (signature page only)  
Fulbright & Jaworski L.L.P.  
865 South Figueroa Street, 29<sup>th</sup> Floor  
Los Angeles, California 90017

REDEVELOPMENT AGENCY

JUN 20 2003

WEST COVINA

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at [www.dtsc.ca.gov](http://www.dtsc.ca.gov).

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket No. HSA-A 02/03-174
	)	
	)	
THE BKK LANDFILL	)	AGREEMENT AND COVENANT
	)	NOT TO SUE THE CITY
2210 South Azusa Avenue	)	OF WEST COVINA
West Covina, California	)	
	)	
and	)	
	)	
	)	
CITY OF WEST COVINA	)	
	)	
[Settling Respondent]	)	
	)	
	)	
	)	
	)	
	)	

I. INTRODUCTION

1.1. Parties. This Agreement and Covenant Not to Sue (Agreement) is made and entered into by and between the State of California, California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) and the City of West Covina, a municipal corporation (collectively the "Parties").

1.2. Site. This Agreement applies to the site located at 2210 South Azusa Avenue in West Covina, Los Angeles County, California and depicted generally on the map attached as Exhibit 1 and more particularly described in Section II of this Agreement, Definitions. A legal description of the Site is the consolidation of the legal descriptions of Parcels 1,2 and 3 (defined in Section II below) and attached as Exhibits 4,5 and 6.

1.3 Property. This Agreement applies to the Property, which is the portion of the 583 acre Site comprised of Parcels 1 and 2 and more particularly described in Section II of this Agreement.

A legal description of the Property is the consolidation of the legal descriptions of Parcels 1 and 2 (defined in Section II

below) attached as Exhibits 4 and 5. Parcels 1 and 2 are depicted in the map of the Site attached as Exhibit 1.

1.4. Jurisdiction. DTSC enters into this Agreement pursuant to Health and Safety Code, division 20, chapter 6.8, section 25300 et seq. (the Hazardous Substance Account Act (HSAA), chapter 6.5, section 25100 et seq. (the Hazardous Waste Control Law (HWCL)) and Health and Safety Code sections 58009 and 58010. DTSC has authority to enter into agreements whereby DTSC covenants not to sue or assert claims for environmental remediation against prospective purchasers of environmentally impacted properties, if such agreements are sufficiently in the public interest.

1.5. Purpose. 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 V (Covenants Not to Sue) and VIII (Certification), the potential liability of the Settling Respondent for the Existing Contamination (hereinafter defined) at the Property that would otherwise result from Settling Respondent becoming the owner of the Property.

The City of West Covina, California, a municipal corporation and the Redevelopment Agency of the City of West Covina, California, a municipal corporation, ("Settling Respondent") are duly authorized municipal corporations. The BKK Corporation ("BKK") is the owner and operator of the BKK hazardous waste landfill, which is located at 2210 South Azusa Avenue, West Covina, California, 91792, wholly within the boundaries of the City of West Covina, California (the "Site").

Settling Respondent has certain land use authority over the Site, as well as certain Local Enforcement Authority over a portion of the Site, as defined herein. The Site is part of a redevelopment project area duly established by the Redevelopment Agency of the City of West Covina (the "Agency"). The Agency desires to purchase Parcels 1 and 2 of the Site (the "Property") from BKK and plans to develop a portion of Parcel 1 of the Property for sports park activities, plans to sell another portion of Parcel 1 of the Property for commercial development and plans to develop Parcel 2 of the Property (along with Lot 5 and a portion of Parcel 3) as a municipal golf course. A certain portion of Parcel 1 may also be set aside as habitat for the threatened California gnatcatcher. The Agency also desires to purchase Lot 5, which is not part of the Site, from BKK and desires to enter into a licensing agreement with BKK in order to use a portion of Parcel 3, which is part of the Site, for the golf course.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to DTSC of a substantial benefit, is in the public interest.

This Agreement shall be subject to the Settling Respondent's acquisition of title to the Property. If Settling Respondent fails to acquire title to the Property, the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against Settling Respondent.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA, RCRA, the Health and Safety Code or in implementing regulations promulgated thereunder shall have the meaning assigned to them in those statutes and regulations, including any amendments thereto.

1. "Agency" shall mean the Redevelopment Agency of the City of West Covina, California.

2. "BKK" shall mean the BKK Corporation.

3. "City of West Covina" shall mean the City of West Covina, California, a municipal corporation and any successor agency thereto.

4. "Documents" shall mean papers, information, memoranda, letters, studies, reports, handwritten or typed notes, facsimile compilations, electronic mail, recordings, tapes and all other types of records.

5. "DTSC" shall mean the State of California, Environmental Protection Agency, Department of Toxic Substances Control and any successor departments or agencies of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

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

7. "Existing Contamination" shall mean:

(a) any hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances, pollutants or contaminants, present or existing on or under (including within the groundwater beneath) the Property as of the Effective Date of this Agreement;

(b) any hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and

(c) any hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

8. "Final Settlement Costs" shall mean those closing costs and prorations to be paid by or charged against BKK under the Purchase Agreement, including, without limitation, escrow fees, title insurance premiums, recording fees, documentary transfer taxes, prorations of taxes and expenses and any and all other costs and expenses to be paid by BKK at closing, all pursuant to Section 6 of the Purchase Agreement.

9. "Final Workplan" means the Final Workplan described in Section III of the First Consent Order Modification (Submittal of Monitoring Plan for Development), which will implement the Environmental Monitoring Protocol attached to and defined in the First Consent Order Modification.

10. "First Consent Order Modification" shall mean the First Modification to Administrative Order on Consent (U.S. EPA Docket No. RCRA-9-2000-003) entered into between BKK and EPA, effective January 22, 2002.

11. "Institutional Controls" shall mean the Environmental Restrictions recorded with the Recorder's Office of Los Angeles County, California on May 29, 2001 applicable to the Property, and any modifications thereto, copies of which are attached hereto as Exhibit 2 of this Agreement.

12. "Lot 5" shall mean the real property located adjacent to the Site, encompassing approximately 73.1 acres, which is described in Exhibit 3 of this Agreement.

13. "Monitoring Protocol Funds" shall mean the four hundred and twenty-thousand dollars (\$420,000.00) of the net proceeds of the sale of the Property and Lot 5 pursuant to the Purchase Agreement, plus any interest earned on said four hundred and twenty-thousand dollars (\$420,000.00), to be used for the purpose of implementing, and/or purchasing financial assurance for the implementation of, the Final Workplan in accordance with the First Consent Order Modification, all in accordance with the Site Funds Escrow Agreement.

14. "Parcel 1" shall mean that portion of the Site, encompassing approximately 101.198 acres, which is described in Exhibit 4 of this Agreement.

15. "Parcel 2" shall mean that portion of the Site, encompassing approximately 56.84 acres, which is described in Exhibit 5 of this Agreement.

16. "Parcel 3" shall mean that portion of the Site, encompassing approximately 425.172 acres, which is described in Exhibit 6 of this Agreement.

17. "Parties" shall mean the State of California, California Environmental Protection Agency, Department of Toxic Substances Control, and the Settling Respondent.

18. "Property" shall mean that portion of the 583- acre Site encompassing both Parcels 1 and 2.

19. "Purchase Agreement" shall mean that certain Agreement of Purchase and Sale and Joint Escrow Instructions, dated as of June 27, 2002, by and between the Agency as Purchaser and BKK as seller, and any and all amendments thereto, which agreement and its amendments are all attached hereto as Exhibit 7.

20. "Release" shall have the meaning given it under both CERCLA section 101(22), 42 U.S.C. § 9601(22), and RCRA section 3008(h), 42 U.S.C. § 6928(h).

21. "Remaining Funds" shall mean the funds deposited into the Site Funds Escrow, excluding the Monitoring Protocol Funds, plus any interest earned on such funds.

22. "Sale Escrow Holder" shall mean First American Title Company, which is the Escrow Holder as defined in the Purchase Agreement.

23. "Second Consent Order Modification" shall mean the Second Modification to Administrative Order on Consent (U.S. EPA

Docket No. RCRA-9-2000-003) to be entered into between BKK and EPA.

24. "Security Agreements" shall mean the security agreements to be entered into by and between EPA and BKK and DTSC and BKK respectively, in substantially the same form as the documents attached hereto as Exhibit 8 and Exhibit 9, respectively.

25. "Settling Respondent" shall mean the City of West Covina, California, a municipal corporation, including without limitation the Agency.

26. "Site" shall mean the BKK Landfill RCRA facility encompassing approximately 583 acres, located at 2210 South Azusa Avenue, in West Covina, Los Angeles County, California, and depicted generally on the map attached as Exhibit 1 of this Agreement. The Site shall include the contiguous 583 acres of real property which, at the time it was split into three separate legal parcels (Parcels 1, 2 and 3) by the recording of a final parcel map on May 29, 2001 with the Recorder's Office of Los Angeles County, California, was owned by BKK. The Site includes: the closed hazardous waste landfill ("Class I landfill"), consisting of approximately 190 acres, where hazardous wastes were disposed of from 1972 to 1984 and municipal waste and asbestos were disposed until 1987; the adjacent inactive municipal solid waste landfill ("Class III landfill"), consisting of approximately 170 acres, which was operated from 1987 to 1996; a leachate treatment plant; and gas combustion and energy recovery facilities. The Site also includes the Property, and all areas to which hazardous wastes within the meaning of Health and Safety Code section 25117, hazardous substances and/or pollutants or contaminants, have come to be located.

27. "Site Funds Escrow" shall mean the escrow accounts subject to the Site Funds Escrow Agreement.

28. "Site Funds Escrow Agreement" shall mean the agreement to be entered into by and between BKK, Settling Respondent and Wells Fargo Bank in substantially the same form as the document attached hereto as Exhibit 10.

29. "Supplemental Escrow Instructions" shall mean the Fifth Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions to be delivered to the Sale Escrow Holder in accordance with the provisions of this Agreement, a true and correct copy of which is attached hereto as part of Exhibit 7.

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

### III. STATEMENT OF FACTS

DTSC hereby finds:

3.1. Ownership. The Site is currently owned by BKK.

3.2. Parcels. On May 29, 2001, the RCRA facility was divided by BKK into three separate parcels (commonly known as Parcels 1, 2 and 3) by the recording of a final parcel map with the Recorder's Office of Los Angeles County, California.

3.3. Institutional Controls. Also on May 29, 2001, the Institutional Controls, which were signed by DTSC, Settling Respondent and BKK, were recorded with the Recorder's Office of Los Angeles County, California on the Property.

3.4. Contemplated Development. The Settling Respondent contemplates a development of a sports park on a portion of Parcel 1 of the Property, contemplates selling another portion of Parcel 1 for commercial development, and contemplates development of a municipal golf course on Parcel 2 of the Property, Lot 5 and the portion of Parcel 3 subject to the licensing agreement between BKK and the Settling Respondent.

3.5. Site History. [Note: see the definition of "Site" in Section II above for additional history of the Site.] The Site, which means the RCRA facility (the Facility) encompassing approximately 583 acres, sits on previously rural land and includes the following Solid Waste Management Units (SWMUs): an operational Leachate Treatment Plant (LTP), a closed Class I landfill (on Parcel 3), an inactive Class III landfill (currently undergoing closure, on Parcel 3) and the inactive Area D landfill on Parcel 3 and formerly in the southern portion of Parcel 1. The Class I and Class III landfills are shown on Exhibit 1. The LTP treats wastewaters that derive from post-closure care of the closed Class I landfill and management of the inactive Class III landfill.

Approximately 3.4 million tons of liquid and solid hazardous wastes were disposed, together with nonhazardous wastes, in the unlined Class I landfill while it operated. Numerous types of hazardous wastes from a variety of sources were disposed at the Class I landfill. An extensive list of wastes BKK reports it accepted is in the draft Hazardous Waste Facility Post-Closure Permit issued by DTSC in November, 1999.

Closure construction was completed in March 1989 and certification was provided to DTSC on May 15, 1989. DTSC acknowledged closure certification on June 12, 1991. Closure



included installation of a clay and vegetative cover, a gas collection system, and construction of the LTP.

The closed Class I landfill is currently under a post-closure care and maintenance program. The waste remains buried within the landfill. The activities being currently conducted at the Class I landfill include: post-closure monitoring, landfill gas, leachate and contaminated groundwater extraction; inspection; maintenance and RCRA corrective action. A final Stipulated Permanent Injunction approved by the Los Angeles Superior Court on or about October 28, 1988 (Case No. C507317) also requires monitoring and corrective action. A network of extraction wells is used to remove leachate, landfill gas, and contaminated ground water. A network of groundwater monitoring wells is used to monitor ground water around the landfill.

The draft Hazardous Waste Facility Post-Closure Permit DTSC issued for the Facility (Site) in 1999 included a draft post closure permit for the Class I landfill and draft operating permit for the LTP. DTSC is currently preparing the final consolidated permit for the Facility.

3.6. Documents Related to Substances Found at the Site.  
Numerous Documents discuss hazardous substances at the Site and contamination of media such as soil, groundwater, surface water, pore gas and air, including, but not limited to, the following:

Agra Earth & Environmental Inc., *Soil and Water Sampling and Testing Program, Lower Retention Basin, BKK Landfill* (November 25, 1992);

The Janes Network, *Resource Conservation and Recovery Act Facility Investigation- Groundwater, BKK Landfill* (October 31, 1997);

BKK, *Part B Hazardous Waste Facility Permit Application* (1997).

The Janes Network, Groundworks Environmental Inc., and CB Consulting, Inc., *Resource Conservation and Recovery Act, Groundwater Interim Remedial Measures Study, BKK Landfill* (February 27, 1998);

CB Consulting, Inc., *Corrective Measures Study (CMS) for Groundwater, BKK Landfill* (August 5, 1998);

DTSC, *Draft Hazardous Waste Facility Class I Landfill Post-Closure Care Permit, BKK Landfill* (November, 1999);

Administrative Order on Consent Entered into Between US EPA and BKK (Docket No. RCRA-9-2000-003) (September 14, 2000) (attachment with Exhibit 2 of this Agreement) ;

BKK, Excavation Soils Monitoring Plan for Business Park Development (December 20, 2000) ;

DTSC, Business Park Development, Soil Monitoring Plan, BKK Landfill (March 14, 2001) ;

BKK, Excavation of 1960s Trash Near West Near West Entrance of BKK Landfill Site/ Borehole Investigation Report, BKK Landfill Site (July 10, 2001) ;

BKK, Excavation of 1960s Trash from Old Area D at BKK Landfill Site (July 11, 2001) ;

BKK, Parcel 1 at BKK Landfill Site (October 12, 2001) ;

BKK, Non-Routine Groundwater Monitoring in Parcel 1 at BKK Landfill Site (January 18, 2002) ;

Janes, Steve, Wells and Geology of the Western Entrance Area (February 26, 2002) ;

DTSC, Request for Additional Data, Southern 31 Acres of Parcel 1, BKK Landfill (March 1, 2002) ;

Romanowski, Walter, Memorandum to BKK re: Field Projects Conducted in Area D (May 20, 2002) ;

BKK, Petrogenic Gas at the Northwest Corner of BKK Landfill Site (June 27, 2002) ;

BKK, BKK Landfill Quarterly Groundwater Monitoring Report-3rd Quarter, 2002 (November 13, 2002) ;

BKK, SCAQMD Rule 1150.1 Quarterly Air Monitoring Report, BKK Landfill (January 17, 2003) ;

BKK, Groundwater Monitoring Report Annual Summary, BKK Landfill (March 28, 2003) ;

DTSC, Surface Water Monitoring and Need to Cease Sub-Drain Discharges at the Detention Basins, BKK Landfill (March 3, 2003) ;  
and

BKK, Scope of Work for Soil, Groundwater and Soil Gas Sampling for Southern 31 Acres of Parcel 1 at BKK Landfill Site (April 16, 2003) .

3.7. Settling Respondent's Representations. The Settling Respondent represents, and for the purposes of this Agreement DTSC relies on those representations, that Settling Respondent's involvement with the *Property* has been limited to the following: landfill related actions at the Site pursuant to its land use authority under the California Government Code; landfill related inspection and enforcement actions at the Site pursuant to its Local Enforcement Agency designation under the California Public Resources Code; and other landfill related actions at the Site pursuant to and in its capacity as a municipal corporation.

#### IV. AGREEMENT

4.1. IT IS HEREBY AGREED THAT the Settling Respondent shall execute and deliver valid escrow instructions pursuant to Section 4.2 (Payment) and may, if required, conduct activities under the terms of, and in accordance with, the Work to Be Performed contained in Section 4.3. Settling Respondent shall conduct activities in Section 4.3 in the manner specified herein and in accordance with the Final Workplan. All work shall be performed consistent with the HSAA, the HWCL (as defined in Section 1.4), as amended and the National Contingency Plan (40 Code of Federal Regulations (C.F.R.) Part 300), as amended.

#### 4.2. Payment

(a) Escrow Instructions. In consideration of and in exchange for DTSC's Covenant Not to Sue in Section 5.1. herein, Settling Respondent agrees to execute and deliver, and shall use its best efforts to cause BKK to execute and deliver, valid supplemental escrow instructions to the Sale Escrow Holder instructing the Sale Escrow Holder at close of Escrow (as defined in the Purchase Agreement) to:

(1) Pay in Full: ( I) all amounts due and payable under that certain Promissory Note, dated October 22, 2001, in the original principal amount of three million dollars (\$3,000,000.00) executed by BKK to the order of South Bay Bank, NA as secured by that certain Deed of Trust dated October 22, 2001, executed by BKK for the benefit of South Bay Bank, NA, filed of record in the Official Records of Los Angeles County, California on October 30, 2001, as Instrument No. 2001-2067839, and (ii) all amounts then due and payable under that certain Non-Negotiable Promissory Note, dated April 15, 1996, in the original principal amount of three million, five-hundred thousand dollars (\$3,500,000.00), executed by BKK to the order of the City;

(2) Pay all Final Settlement Costs; and

(3) Deposit the remainder of the Purchase Price (as that term is defined in the Purchase Agreement) into the Site Funds Escrow on the Closing Date (as that term is defined in the Purchase Agreement). The funds distributed from the Site Funds Escrow are to be used as follows: (i) the Monitoring Protocol Funds are to be used by BKK or the Settling Respondent to perform the monitoring described in, and required of BKK pursuant to, the First Consent Order Modification or to purchase financial assurances to implement said monitoring or are to be deposited into a Superfund Special Account managed by EPA ; and (ii) the Remaining Funds are to be used by BKK strictly in accordance with the requirements of Section 10 (d) (ii) of the Purchase Agreement and the provisions of the Site Funds Escrow Agreement or are to be deposited into the Removal and Remediation Activity Account managed by DTSC, all in accordance with the Site Funds Escrow Agreement.

(b) DTSC Concurrence. In accordance with the Site Funds Escrow Agreement, DTSC agrees that it shall provide the written concurrence on or written explanation as to no concurrence on any written proposal regarding any addition or modification to the Site Funds Escrow Agreement no later than five (5) business days following the receipt of a such written proposal. Such written concurrence on or written explanation as to no concurrence on any such written proposal shall be signed by the Chief of the Permitting Branch or the Deputy Director of the Hazardous Waste Management Program, which shall not be unreasonably withheld.

(c) Failure to Execute and Deliver Valid Escrow Instructions or Failure to Meet Requirements of Purchase Agreement. In accordance with Section 5.2 (DTSC's Reservation of Rights) of this Agreement, it is understood and agreed by the Parties that, should the fully executed Supplemental Escrow Instructions fail to be delivered to the Sale Escrow Holder in accordance with paragraph (a) of Section 4.2 (Payment/Escrow Instructions) of this Agreement, or should the monies fail to be deposited into the Site Funds Escrow in accordance with the Supplemental Escrow Instructions or should the monies deposited into the Site Funds Escrow fail to be used in accordance with the requirements of Section 10 (d) (ii) of the Purchase Agreement, the Site Funds Escrow Agreement and paragraph (a) of Section 4.2 (Payment/Escrow Instructions) of this Agreement, the covenant not sue set forth in Section 5.1 (DTSC's Covenant Not to Sue) of the this Agreement, shall be null and void and DTSC reserves all rights it may have.

#### 4.3. Work to Be Performed.

(a) Implement Final Workplan. Settling Respondent agrees that, should BKK fail to submit and/or fully implement the Final Workplan in accordance with and as required by the First Consent Order Modification, Settling Respondent shall submit and/or fully implement the Final Workplan in accordance with the First Consent Order Modification for so long as and to the extent funds are available from the sources set forth below to Settling Respondent for this purpose under: (i) the Site Funds Escrow (with respect to the Monitoring Protocol Funds); (ii) any financial assurance mechanism purchased with the Monitoring Protocol Funds; or (iii) any financial assurance mechanism established for the purpose of ensuring the implementation of the Final Workplan in accordance with the Second Consent Order Modification. Settling Respondent agrees to obtain all necessary approvals from DTSC and abide by all approved schedules relating to submittal and implementation of the Final Workplan that BKK would have otherwise been obligated to abide by or obtain. Settling Respondent intends to perform the work required under this paragraph (a) of Section 4.3 (Work to be Performed/Implement Final Workplan) through duly retained environmental consultants. It is understood and agreed by the parties that, in the event no funds described in this paragraph are available to Settling Respondent to submit or fully implement the Final Workplan, Settling Respondent shall have no further obligations under this paragraph (a) of Section 4.3 (Work to be Performed/Implement Final Workplan) with respect to fully implementing the Final Workplan.

(b) Settling Respondent also agrees to cooperate fully in being named as an additional insured, or additional payee, or otherwise being identified as an entity to whom the funds for the preparation and/or implementation of the Final Workplan will be made available in accordance with this Agreement and the Second Consent Order Modification.

(c) Direct Remaining Funds. The Site Funds Escrow Agreement requires that, if an "Event of Default" occurs under either of the Security Agreements prior to disbursement of all funds from the Site Funds Escrow, the Agency, DTSC and/or EPA shall direct the escrow holder for the Site Funds Escrow in writing to: (1) disburse any portion of the Monitoring Protocol Funds remaining in the Site Funds Escrow to a Superfund Special Account to be established by EPA pursuant to the provisions of CERCLA; and (2) disburse the remainder of the funds in the Site Funds Escrow to the Removal and Remediation Activity Account managed by DTSC to fund remediation activities at the Site. In such an event, and notwithstanding Section 4.2, paragraph

(a) (3) of this Agreement (Payment /Escrow Instructions) , EPA shall use any funds deposited into a Superfund Special Account consistent with the list of "Permitted Disbursements" attached as Exhibit "A" to the Site Funds Escrow Agreement. It is understood and agreed by the Parties that, upon the deposit of any such funds into an Superfund Special Account, Settling Respondent shall have no further obligations under this Section 4.3 (Work to be Performed) with respect to the Monitoring Protocol Funds.

#### V. COVENANTS NOT TO SUE

5.1. DTSC's Covenant Not to Sue. (a) Subject to Section 5.2. (Reservation of Rights), upon payment of the amount specified in Section 4.2 (Payment) of this Agreement and contingent upon satisfactory compliance with the terms of this Agreement, on and subsequent to the Effective Date of this Agreement, DTSC covenants not to sue or take any civil or administrative action against Settling Respondent for any and all civil liability, for injunctive relief or reimbursement of response costs pursuant to Section 107 (a) of CERCLA, 42 U.S.C. section 9607 (a); 7002 of RCRA, 42 U.S.C. section 6973; or chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with section 25301), division 20 of the Health and Safety Code with respect to Existing Contamination and as limited in paragraph (b) below.

(b) This covenant not to sue shall extend only to any liability Settling Respondent may have for Existing Contamination under either RCRA, CERCLA or the Health and Safety Code as an "owner" of Parcel 1 and as an "owner" of Parcel 2, as that term is used under CERCLA section 107(a), 42 U.S.C. section 9607(a), RCRA section 3008(a), 42 U.S.C. section 6928(a), the Health and Safety Code and implementing regulations, and/or as defined in 40 C.F.R section 260.10. It shall not extend to any other possible liability Settling Respondent may have with respect to the Site.

5.2. DTSC's Reservation of Rights. The covenant not to sue set forth in Section 5.1. above does not pertain to any matters other than those expressly specified in Section 5.1 (DTSC Covenant Not to Sue). DTSC reserves and this Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following;

(a) claims based on a failure by Settling Respondent, its successors, assignees, transferees or lessees to meet a requirement of this Agreement. (However, it is understood and agreed by the parties that only Settling Respondent City of West Covina remains responsible for performance of the work in accordance with Section 4.1 (Agreement) Section 4.2 (Payment),

Section 4.3 (Work to be Performed) and Exhibit 10 (Site Funds Escrow Agreement));

(b) any liability resulting from past or future Releases (within the meaning of RCRA section 3008, subsection(h)) of hazardous wastes (within the meaning of Health and Safety Code section 25117), substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, successors, assignees, transferee, lessees or sub-lessees ;

(c) any liability resulting from exacerbation by Settling Respondent, successors, assignees, transferees, lessees or sub-lessees of Existing Contamination;

(d) any liability resulting from the release (within the meaning of RCRA section 3008, subdivision (h)) or threat of release of hazardous wastes (within the meaning of Health and Safety Code section 25117), substances, pollutants or contaminants, at the Site after the Effective Date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) 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 agencies other than DTSC;

(g) liability under CERCLA section 107 (a) (3) and (4);

(h) liability for violations of local, State or federal law or regulations;

(i) liability relating to the Institutional Controls attached hereto as Exhibit 2; and

(j) any claims against Settling Respondent City of West Covina in the event of either the fully executed Supplemental Escrow Instructions failing to be delivered to the Sale Escrow Holder in accordance with Section 4.2 (Payment) or the monies deposited into the Sale Escrow failing to be used in accordance with the requirements of Section 10 (d)(ii) of the Purchase Agreement and the Site Funds Escrow Agreement.

5.2.1. With respect to any claim or cause of action asserted by DTSC, the Settling Respondent, successors, assigns, transferees, lessees and sub-lessees shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

5.2.2. If Settling Respondent and/or any successor, assignee, transferee, lessee or sub-lessee is determined, through adjudication or the administrative or the regulatory processes, to have committed an act or omission after the Effective Date for which DTSC has specifically reserved its rights in (a) through (j) above, Settling Respondent (if it was so determined to have committed the act or omission), or the particular successor, assignee, transferee, lessee or sub-lessee that was determined to have committed the act or omission, shall be liable for all

enforcement costs including, but not limited to, litigation costs, incurred by DTSC in conjunction with that act or omission.

5.2.3. 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 DTSC may have against any person, firm, corporation or other entity not a party to this Agreement.

5.2.4. Nothing in this Agreement is intended to limit the right of DTSC to undertake future response actions, remedial activities, or any other action or activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site or to seek to compel parties other than the Settling Respondent and/or any successor, assignee, transferee, lessee or sub-lessee to perform or pay for such actions and activities at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions, remedial activities, or any other action or activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code which may be taken or be required by DTSC in exercising its authority under federal and State law. Settling Respondent acknowledges that it is purchasing Property where response actions, remedial activities, or other activities taken pursuant to, or authorized by, CERCLA, RCRA and/or the Health and Safety Code may be required. DTSC agrees when it undertakes such actions or activities, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with use of the Property by Settling Respondent.

5.3. Settling Respondent's Covenant Not to Sue. In consideration of DTSC's Covenant Not To Sue in Section 5.1. of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against DTSC, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Waste Control Account, Hazardous Substance Account, or Hazardous Substance Cleanup Fund through Health and Safety Code section 25375 or any other provision of law; (ii) any claim against the State of California, including any department, agency or instrumentality of the State under sections 107 or 113 of CERCLA or section 7002 of RCRA related to the Site ; (iii) any other claims arising out of response actions or any other activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site, including claims based on DTSC's oversight activities or approval of plans for such activities, or claims for just compensation against the State of California, including any department, agency or instrumentality of the State for "taking" property based on the Fifth Amendment



to the United States Constitution or based on Article I, Section 19 of the California Constitution, nuisance, trespass, equitable indemnity and indemnity under California law, or strict liability under California law. This Covenant is made and given by Settling Respondent, and is effective upon execution by Settling Respondent of this Agreement and does not extend to or bind other persons.

5.4. Settling Respondent's Reservation of Rights. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against DTSC based on negligence, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than the Hazardous Waste Control Account, Hazardous Waste Control Law, Hazardous Substance Account, Hazardous Substance Cleanup Fund through Health and Safety Code section 25375, CERCLA, or RCRA.

#### VI. CONTRIBUTION PROTECTION

6.1. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA section 113, subdivision(f)(2), 42 U.S.C. section 9613, subdivision(f)(2) for CERCLA matters addressed in this Agreement. The CERCLA matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by DTSC or any other person for the Site with respect to the Existing Contamination.

6.2. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by Settling Respondent for matters related to this Agreement it will notify DTSC in writing no later than sixty (60) days prior to the initiation of any such suit or claim.

6.3. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing DTSC within ten (10) days of service of the complaint on them.

#### VII. DUE CARE/COOPERATION

7. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent shall also comply with all obligations needed to maintain the "Institutional Controls". The

Settling Respondent recognizes that the implementation of response actions, remedial activities, or any other activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site may interfere with the Settling Respondent's use of the Property and/or Lot 5, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with DTSC in the implementation of response actions, remedial activities, or any other activity taken pursuant to, or authorized by, CERCLA, RCRA or the Health and Safety Code at the Site and further agrees not to interfere with such response activities. DTSC agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the use of the Property by Settling Respondent when DTSC undertakes such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a Release (within the meaning of RCRA section 3008 (h)) of hazardous wastes (within the meaning of Health and Safety Code section 25117), hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent 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 the Health and Safety Code, or any other law, immediately notify DTSC of such Release or threatened Release.

#### VIII. CERTIFICATION

8. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has never owned Parcel 1 or Parcel 2 prior to the Effective Date of this Agreement. If DTSC determines, within its sole discretion, that information provided by the Settling Respondent is not materially accurate and complete, the Covenant Not to Sue in Section 5.1 of the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against Settling Respondent.

#### IX. GENERAL PROVISIONS

9.1. Site Access. Commencing upon the date that it acquires title to the Property, and thereafter, Settling Respondent, agrees to provide to EPA and DTSC, their authorized officers, employees, contractors, consultants, representatives, and all other persons, including but not limited to BKK, performing response actions, remedial activities, or any other

activity taken pursuant to or authorized by CERCLA, RCRA or the Health and Safety Code under EPA or State oversight, an irrevocable right of access at all reasonable times to the Property, Lot 5 and to any other property to which access is required for the implementation of such activities at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing such activities at the Site under federal or State law. To the extent controlled by Settling Respondent, Settling Respondent shall also ensure that assignees, successors in interest, lessees, and sub-lessees of the Property shall provide the same access and cooperation and shall comply with the Institutional Controls. Settling Respondent shall grant access to parties conducting response activities pursuant to this Agreement or for activities deemed necessary by DTSC to complete required response activities.

Nothing in this section is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of Settling Respondent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by Settling Respondent. DTSC agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with use of the Property by Settling Respondent when DTSC undertakes such activities. Notwithstanding any provision of this Agreement, DTSC retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, the Health and Safety Code and any other applicable statute or regulation, including any amendments thereto.

9.2. Site Access/ Notice to Successors in Interest. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sub-lessee 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 made by Settling Respondent are consistent with the Institutional Controls, and this Agreement, including but not limited to this Section 9.2, Section 9.1 (Site Access), Section VII (Due Care/Cooperation) and Section 9.25 (Transfer). However, it is understood and agreed by the parties that only Settling Respondent City of West Covina remains responsible for performance of the work in accordance with Section 4.1 (Agreement), Section 4.2 (Payment), Section 4.3

(Work to be Performed) and Exhibit 10 (Site Funds Escrow Agreement).

9.3. Cost Recovery. Subject to Section 5.1 (DTSC's Covenant Not to Sue), the Settling Respondent is liable for all of DTSC's costs incurred in responding to the contamination at the Site attributable to acts or omissions of the Settling Respondent, including costs of overseeing response work performed by the Settling Respondent for matters addressed by this Agreement, except for work Settling Respondent City of West Covina may perform pursuant to Section 4.3 (Work to Be Performed) of this Agreement, and costs incurred by DTSC in association with preparation of this Agreement. Cost recovery may be pursued by DTSC under CERCLA, Health and Safety Code Section 25360, or any other applicable State or federal statute or common law. The State of California reserves the right to bring an action against Settling Respondent under CERCLA, Health and Safety Code section 25360, or any other applicable State or federal statute or common law, for recovery of all response and oversight costs incurred by the State of California discussed in this Section 9.3 (Cost Recovery).

9.4. Payment. All payments made by the Settling Respondent pursuant to this Agreement shall be by a cashier's or certified check made payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the site (site # 300002) and the docket number of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control  
Accounting/Cashier  
400 P Street, 4th Floor  
P.O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager/Regional Branch Chief.

9.4.1. If any bill is not paid by the Settling Respondent within sixty (60) days after it is sent by DTSC, the Settling Respondent may be deemed to be in material default of this Agreement.

9.5. Project Coordinator. If the Settling Respondent City of West Covina implements the Final Workplan pursuant to Section 4.3 (Work to Be Performed), the work shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. The Settling Respondent shall submit to DTSC the name, address and resume of the coordinator. The Settling Respondent shall promptly notify

DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

9.6. Notices and Submissions. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight delivery service, facsimile transmission or courier hand delivery service:

All notices to Settling Respondent shall be sent to:

Steve Samaniego  
Environmental Management Director  
City of West Covina  
1444 W. Garvey Avenue  
West Covina, California 91793

with a copy to:

Colin Lennard, Esq.  
Fulbright & Jaworski L.L.P.  
865 South Figueroa Street  
29th Floor  
Los Angeles, California 90017

All notices to DTSC shall be sent to:

Jose Kou  
Branch Chief  
Department of Toxic Substances Control  
Southern California Permitting Branch  
1011 North Grandview Avenue  
Glendale, California 91201

Phil Chandler  
Supervising Engineering Geologist  
Department of Toxic Substances Control  
Southern California Permitting Branch  
1011 North Grandview Avenue  
Glendale, California 91201

with a copy to:

Marilee Hanson  
Senior Staff Counsel  
Department of Toxic Substances Control  
1001 "I" Street, 23rd Floor  
Sacramento, California 95814

9.7. Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to Settling Respondent in writing by the Site Mitigation Branch Chief, Department of Toxic Substances Control, the Permitting Branch Chief or his/her respective designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by Settling Respondent shall be construed to relieve Settling Respondent of the obligation to obtain such formal approvals as may be required.

9.8. DTSC Review and Approval. (a) If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to of this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may:

(1) Modify the document as deemed necessary and approve the document as modified; or

(2) Return comments to Settling Respondent with recommended changes and a date by which Settling Respondent(s) must submit to DTSC a revised document incorporating the recommended changes.

(b) Any modifications, comments or other directive issued pursuant to (a) above, are incorporated into this Agreement.

Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Agreement.

9.9. Compliance with Applicable Laws. Settling Respondent shall carry out this Agreement in compliance with all applicable State, local, and federal laws, regulations and requirements including, but not limited to, requirements to obtain permits and to assure worker safety.

9.10. Sampling, Data and Document Availability. Settling Respondent shall permit DTSC and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by Settling Respondent or on Settling Respondent's

behalf in any way pertaining to work undertaken pursuant to Sections 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement. Settling Respondent shall submit all such data upon the request of DTSC. Copies shall be provided within ten (10) days of receipt of DTSC's written request. Settling Respondent shall inform DTSC at least ten (10) days in advance of all field sampling under Sections 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement, and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Settling Respondent pursuant to Section 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement. Settling Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to Section 4.3 (Work to Be Performed) and VII. (Due Care/Cooperation) of this Agreement. It is understood and agreed by the parties that only Settling Respondent City of West Covina shall remain responsible for performance of the work to be performed in accordance with Section 4.3 (Work to Be Performed).

9.11. Document Retention. All data, reports and other Documents shall be preserved by Settling Respondent for a minimum of ten (10) years after the conclusion of all activities under this Agreement to the satisfaction of DTSC. If DTSC requests that some or all of these documents be preserved for a longer period of time, Settling Respondent shall either comply with that request or deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. Settling Respondent shall notify DTSC in writing, at least six (6) months prior to destroying any documents prepared pursuant to this Agreement and shall provide DTSC with an opportunity to copy any documents at the expense of DTSC.

9.12. Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Settling Respondent, or related parties specified in Section 9.24, (Parties Bound), in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by Settling Respondent or its agents in carrying out activities pursuant to this Agreement.

9.13. Additional Actions. By entering into this Agreement, DTSC does not waive the right to take any further actions authorized by law.

9.14. Extension Requests. If Settling Respondent is unable to perform any activity or submit any document within the time required under this Agreement, Settling Respondent may, prior to expiration of the time, request an extension of the time

in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

9.15. Extension Approvals. If DTSC determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Settling Respondent shall comply with the new schedule incorporated in this Agreement.

9.16. Severability. The requirements of this Agreement are severable, and Settling Respondent shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

9.17. Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Settling Respondent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval or as modified pursuant to Section 9.8, (DTSC Review and Approval), and shall be implemented by Settling Respondent. Any noncompliance with the documents incorporated in this Agreement, shall be deemed a failure or refusal to comply with this Agreement.

9.18. Modifications. This Agreement may be amended in writing by mutual agreement of DTSC and Settling Respondent. Any amendment to this Agreement shall be effective upon the date the modification is signed by DTSC and shall be deemed incorporated in this Agreement.

9.19. Time Periods. Unless otherwise specified, time periods begin from the Effective Date of this Agreement and "days" means calendar days.

9.20. Effective Date. The Effective Date of this Agreement shall be the date upon which DTSC issues written notice to Settling Respondent that DTSC has fully executed the Agreement after review and response to public comments received.

9.21. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

9.22. Third Party Actions. In the event that the Settling Respondent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Settling Respondent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party



action. Settling Respondent shall pay all costs incurred by DTSC relating to such third-party actions, relating to this Agreement in whole or in part, including but not limited to responding to subpoenas.

9.23. Governing Law. This Agreement shall be construed and governed by the laws of the State of California.

9.24. Parties Bound.

(a) This Agreement shall apply to and be binding upon:

(1) DTSC, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement; and

(2) the Settling Respondent, its successors, officers, directors, appointed and elected officials, agents, and employees.

(b) DTSC's Covenant Not to Sue in Section 5.1 and Contribution Protection in Section VI shall apply to Settling Respondent and its successors, officers, directors, appointed and elected officials, agents, and employees to the extent that the alleged liability of the successor, officer, director, appointed and elected official, agent and employee is based on its status and in its capacity as an officer, director, appointed and elected official, agents, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent.

(c) 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.

9.25. Transfer. (a) Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with prior written consent of DTSC in its sole discretion.

(b) Transferees, assignees, tenants and sub-tenants shall pay costs incurred by DTSC to review any requests for consent to assign or transfer benefits conferred by this Agreement.

(c) 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,

assignment or transfer, the assignee/transferee submits an affidavit and supporting documentation demonstrating to DTSC's reasonable satisfaction the truth of the preceding clauses (2) through (6) in this paragraph(d) of Section 9.25; (8) Settling Respondent City of West Covina shall have fully performed its obligations under paragraph (a) of Section 4.2 (Payment/ Escrow Instructions) of this Agreement; and (9) DTSC shall not have objected to the assignee/transferee's certification, affidavit and supporting documentation. In the event that DTSC has not so objected within thirty (30) days of its receipt of written notice from the assignee/transferee, such assignment or transfer shall be deemed approved. If at any time DTSC determines that an assignee/transferee's certification, affidavit or supporting documentation is materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to such assignee/transferee, and the State of California reserves all rights it may have against such transferee.

(e) Settling Respondent may lease the Property or any portion thereof to tenants who in turn may lease to sub-tenants. Any prospective tenants or sub-tenants desiring to obtain the prior written consent of DTSC with respect to acquiring rights, benefits and obligations conferred upon Settling Respondent under this Agreement shall submit a Certification of Compliance with Agreement and Covenant Not to Sue (Tenant) in the form of the model certification attached hereto as Exhibit 12. No tenant or sub-tenant shall have any right hereunder (including any right under the Covenant Not to Sue set forth in Section 5.1) unless:

- (1) at least 30 days before the inception of such tenancy or sub-tenancy, the tenant or sub-tenant submits a Certification of Compliance with Agreement and Covenant Not to Sue (Tenant) in the form of the model certification attached hereto as Exhibit 12;
- (2) the tenant or sub-tenant shall be financially capable of performing all the obligations referenced in such Certification;
- (3) the tenant or sub-tenant's use of the Property shall not result in a release or threat of release of any hazardous substance;
- (4) the tenant or sub-tenant is not liable under CERCLA, the Health and Safety Code or any other law for the Existing Contamination;
- (5) the tenant or sub-tenant's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or to any threat to human health or the environment caused by any such release or threat of release;
- (6) the tenant or sub-tenant agrees to pay costs incurred by DTSC to review the request for consent to assign or transfer benefits conferred by this Agreement;
- (7) at least 30 days before the inception of such tenancy, the tenant or sub-tenant submits an affidavit and supporting documentation demonstrating to DTSC's reasonable satisfaction the truth of the preceding clauses (2) through (6) in this paragraph (e) of Section 9.25;
- (8) Settling Respondent City of West Covina shall have fully performed its

of this Agreement except as DTSC and the assignor or transferor otherwise agree and modify this Agreement, in writing, accordingly. Moreover, prior to any assignment or transfer of the Property, 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 VIII of this Agreement in order for the Covenant Not to Sue in Section 5.1 to be available to the party. The Covenant Not to Sue in Section 5.1 shall not be effective with respect to any assignees or transferees who fail to provide such written consent to DTSC. However, notwithstanding anything to the contrary contained herein, it is understood and agreed by the parties that Settling Respondent City of West Covina shall remain responsible for performance of the work to be performed in accordance with Section 4.1 (Agreement), Section 4.2 (Payment), Section 4.3 (Work to Be Performed) and Exhibit 10 (Site Funds Escrow Agreement) of this Agreement and that no subsequent assignee, transferee, lessee or sub-lessee shall be obligated or bound by the terms of the Agreement with respect to implement such work or shall be required to demonstrate that it is financially capable of performing such work in order to obtain DTSC's prior written consent to the assignment, transfer, lease or sublease in accordance with paragraphs (d) or (e) below.

(d) Any person desiring to obtain the prior written consent of DTSC with respect to the assignment or transfer of all or any portion of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement shall submit a Certification of Compliance with Agreement and Covenant Not to Sue (Assignees/Transferee) in the form of the model certification attached hereto as Exhibit 11. No transferee or assignee of all or any portion of the Property shall have any right hereunder (including any right under the Covenant Not to Sue set forth in Section 5.1) unless: (1) at least 30 days before such assignment or transfer, the transferee submits a Certification of Compliance with Agreement and Covenant Not to Sue (Assignee/Transferee) in the form of the model certification attached hereto as Exhibit 11; (2) the assignee/transferee shall be financially capable of performing all the obligations referenced in such Certification; (3) the assignee/transferee is not liable under CERCLA, the Health and Safety Code or any other law for the Existing Contamination; (4) the assignee/transferee's use of the Property will not result in a release or threat of release of any hazardous substance; (5) the assignee/transferee's use of the Property will not cause or contribute to the migration or release of any Existing Contamination or to any threat to human health or the environment caused by any such release or threat of release; (6) the assignee/transferee agrees to pay costs incurred by DTSC to review the request for consent to assign or transfer benefits conferred by this Agreement; (7) at least 30 days before such

obligations under paragraph (a) of Section 4.2 of this Agreement (Payment/Escrow Instructions); and (9) DTSC shall not have objected to the tenant or sub-tenant's certification, affidavit and supporting documentation. In the event that DTSC has not so objected within thirty (30) days of its receipt of written notice from the tenant or sub-tenant, such tenant or sub-tenant shall have the benefit of the Covenant Not to Sue and Contribution Protection with respect to the leased property from the inception of such tenancy. If at any time DTSC determines that a tenant or a sub-tenant's certification, affidavit or supporting documentation is materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to such tenant or sub-tenant, and the State of California reserves all rights it may have against such tenant or sub-tenant.

9.26. Representative Authority. Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.

9.27. Disclaimer. This Agreement in no way constitutes a finding by DTSC as to the risks to human health and the environment that may be posed by contamination at the Property or the Site nor constitutes any representation by DTSC that the Property or the Site is fit for any particular purpose.

9.28. Exhibits All exhibits attached to this Agreement are incorporated herein by this reference.

#### X. NOTICE OF SETTLEMENT

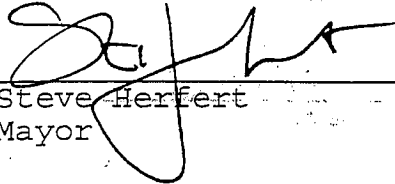
10. This Agreement shall be subject to a 30-day comment period, after which DTSC may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations that indicate that this Agreement is inappropriate, improper or inadequate. Settling Respondent shall prepare the notice for the 30-day comment period, with DTSC approval of all aspects of the notice. The notice shall require that all comments be forwarded simultaneously to Settling Respondent and DTSC.

XI. EXHIBITS

- 11.1 Exhibit 1 shall mean the map depicting the Site.
- 11.2 Exhibit 2 shall mean the Institutional Controls recorded with the Recorder's Office of Los Angeles County, California on May 29, 2001 applicable to the Property (i.e., Parcels 1 and 2).
- 11.3 Exhibit 3 shall mean the description of Lot 5.
- 11.4 Exhibit 4 shall mean the description of Parcel 1 of the Property.
- 11.5 Exhibit 5 shall mean the description of Parcel 2 of the Property.
- 11.6 Exhibit 6 shall mean the description of Parcel 3 of the Property.
- 11.7 Exhibit 7 shall mean the Purchase Agreement and all its amendments, including the Supplemental Escrow Instructions.
- 11.8 Exhibit 8 shall mean the form of the Security Agreement to be entered into between EPA and BKK.
- 11.9 Exhibit 9 shall mean the form of the Security Agreement to be entered into between DTSC and BKK.
- 11.10 Exhibit 10 shall mean the Site Funds Escrow Agreement to be entered into by and between BKK, Settling Respondent and Wells Fargo Bank.
- 11.11 Exhibit 11 shall mean the Certification of Compliance with Agreement and Covenant Not to Sue (Assignee/Transferee).
- 11.12 Exhibit 12 shall mean the Certification of Compliance with Agreement and Covenant Not to Sue (Tenant).


IT IS SO AGREED:

THE CITY OF WEST COVINA, A MUNICIPAL CORPORATION

BY:  7/9/03  
Steve Herfert / Date  
Mayor

APPROVED AS TO FORM:

FULBRIGHT & JAWORSKI L.L.P., Special Counsel


BY:  \_\_\_\_\_  
Colin Lennard, Esq. / Date

ATTEST:

  
Janet Berry, City Clerk

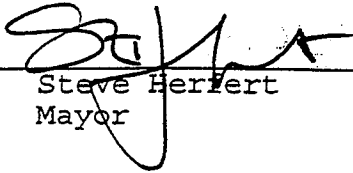
IT IS SO AGREED:

STATE OF CALIFORNIA, ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

BY:  5/27/03  
Rick Moss / Date  
Division Chief  
Department of Toxic Substances Control

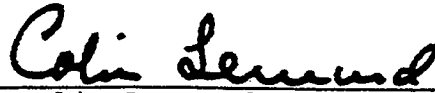
IT IS SO AGREED:

THE CITY OF WEST COVINA, A MUNICIPAL CORPORATION

BY:  7/9/03  
Steve Herrert Date  
Mayor

APPROVED AS TO FORM: .

FULBRIGHT & JAWORSKI L.L.P., Special Counsel

BY:  5/27/03  
Colin Lennard, Esq. Date

ATTEST:

  
Janet Berry, City Clerk

IT IS SO AGREED:

STATE OF CALIFORNIA, ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

BY: \_\_\_\_\_  
Rick Moss Date  
Division Chief  
Department of Toxic Substances Control