

SETTLEMENT CONFIDENTIAL SUBJECT TO FRE AND NJRE 408

FIRST AMENDMENT TO FIRST TERM SHEET

SETTLEMENT BETWEEN BOROUGH OF RINGWOOD AND FORD MOTOR COMPANY

This First Amendment to the First Term Sheet ("**First Amendment**") is entered into, effective as of the date of the last signature hereto, by and between the Borough of Ringwood (including, if applicable, any successor or other interest in the Ringwood Solid Waste Management Authority, "**Borough**") and, Ford Motor Company (including its current and former subsidiaries, affiliates, assigns, predecessors and successors, "**Ford**") (each a "**Party**," and, collectively, the "**Parties**").

Whereas, Ford and the Borough entered into the First Term Sheet on December 6, 2011,

Whereas, Ford and the Borough entered into the Second Term Sheet on November 5, 2013,

Whereas, Ford and the Borough entered into an amendment to the Second Term Sheet ("**Second Term Sheet Amendment**") on December 17, 2013,

Whereas the terms of the First Term Sheet, the Second Term Sheet and the Second Term Sheet Amendment to the extent not modified by this First Amendment shall remain valid and enforceable,

Whereas, the United States Environmental Protection Agency ("**EPA**") issued the Record of Decision ("**ROD**") for the Site's three land-based Areas of Concern ("**AOCs**") on June 30, 2014,

Whereas, Ford entered into an Administrative Order on Consent for the Remedial Design for the remedies set forth in the ROD on October 1, 2014,

Whereas, EPA issued a Unilateral Administrative Order ("**UAO**") to the Borough to coordinate and participate in the design of the remedies set forth in the ROD on October 1, 2014,

Whereas, the Borough agreed to comply with the UAO via letter dated October 30, 2014,

Whereas, Ford and the Borough agree to amendment of certain provisions of the First Term Sheet as set forth in this First Amendment, and

Now therefore, in consideration of the promises and obligations contained in the First Term Sheet, Second Term Sheet, and Second Term Sheet Amendment, which remain in effect, the Parties agree to amend the First Term Sheet as follows:

This Agreement is contingent upon EPA selection of Alternative 4A, as more fully set forth in the ROD, as the remedy for the O'Connor Disposal Area.

The Parties agree that paragraphs 1, 2, 7, 12, and 21 of the First Term Sheet are deleted and replaced with the following:

1. **Payment of Remedial Design/ Remedial Action Costs.**

- a. The Borough will reimburse Ford fifteen percent (15%) of all costs of the remedial designs and remedial actions (including contractors' costs associated with administrative management and oversight) set forth in the ROD for Peter's Mine Pit Area, O'Connor Disposal Area, and Cannon Mine Area, including long-term and on-going inspection, operation and maintenance of the remedial caps, as well as groundwater monitoring required in connection with this work, subject to a review for reasonableness and necessity and set forth in c below.
- b. However, the Parties acknowledge that the obligation for inspection, operation and maintenance of the remedial caps and groundwater sampling continues as long as the caps are in place and therefore the financial obligation as agreed to by the Parties herein also shall continue, until such time as the caps no longer serve as the selected remedy or applicable regulations are amended, or EPA or the State of New Jersey Department of Environmental Protection ("NJDEP") eliminates the inspection, operation and maintenance, and groundwater sampling requirements.
- c.
 - i. Contractor invoices for remedial design, remedial action and management and oversight costs shall be submitted by the contractors directly to Ford and the Borough. Ford and the Borough agree to review invoices within fourteen (14) days and to communicate any objections or concerns to the other, and shall attempt to reach consensus on any issues.
 - ii. In the event Ford and the Borough do not achieve consensus on the amount due to a contractor, Ford shall make the payment and Ford and the Borough will continue to reserve rights with respect to any remaining disputed portion.
 - iii. The Borough's payment shall be due to Ford within thirty (30) days of consensus under paragraph (i) or, following notification of Ford's determination under paragraph (ii), the Borough's payment of its share of the uncontested amount shall be due within thirty (30) days.

2. **Oversight Costs.** The Borough will reimburse Ford for fifteen percent (15%) of the costs for regulatory oversight by EPA and NJDEP for the remedial designs and remedial actions contained in the ROD within 30 days of receipt of the costs and documentation of Ford's payment.

7. **Cost Exceedances.** The Parties shall continue to fund the remedial actions per the allocations set forth in this First Amendment until EPA certifies that all obligations under the ROD are complete unless the costs for the remedial action work exceed the estimates

contained in the ROD with respect to Peter's Mine Area and Cannon Mine Area and the estimate in the Excel RACE for the O'Connors Disposal Area (a sum total of \$19,571,066). However, the Parties reserve their rights and agree to engage in diligent and good faith negotiations to reach a mutually agreeable resolution if the costs exceed the ROD/Excel RACE estimate of \$19,571,066. If the negotiations are unsatisfactory to either Party for any reason, said Party may provide notice to the other and proceed to file suit or take any other action with respect to the contested costs (that is, only those costs above \$19,571,066, "**Contested Costs**"). Notice shall include the notice required in the Tolling Agreement by either Party to terminate the Tolling Agreement.

12. **Payment of Professionals.** The Parties shall continue to pay for their own professionals, including but not limited to, their attorneys and environmental consultants. However, under paragraph 3 of the Second Term Sheet, Ford agreed to reimburse the Borough for the Borough's direct costs associated with the design and engineering of the recycling center up to a maximum of \$200,000. In addition to these costs, Ford agrees to pay eighty-five percent (85%) of the Borough's reasonable professional fees, both legal and technical, incurred starting July 1, 2014 in support of: (1) the permitting and construction of the recycling center set forth in the contingency remedy for the O'Connor Disposal Area AOC in the ROD, or (2) EPA's selection of that contingency remedy, including but not limited to meetings and communications with the DEP, the Highlands Commission and EPA and other efforts to satisfy the requirements set forth in the ROD to obtain that remedy (hereinafter defined as "Legal and Technical Costs"). Ford's obligation to pay 85% of these Legal and Technical Costs shall continue until EPA has approved the design of the recycling center and the contingent remedy in the ROD for the O'Connor Disposal Area.
 - a. **Ford shall establish a bank account funded with \$200,000 for payment of 85% of the Legal and Technical Costs.** The Borough and/or its insurers shall provide supporting documentation of the Legal and Technical Costs from July 1, 2014 to date that qualify for reimbursement to the Borough and/or its insurers, and on an on-going basis monthly until Ford's obligation has ended as set forth above or until the \$200,000 is depleted. Any amount remaining in the bank account upon the end of Ford's obligation as set forth above shall be returned to Ford and Ford may close said bank account.
 - b. **Costs invoiced after February 1, 2015.** For the Legal and Technical Costs invoiced after **February 1, 2015**, Ford has the right to review such invoices or other supporting documentation prior to them being paid from the bank account established pursuant to (a) above and within fourteen (14) days communicate any objections or concerns to the Borough, and the parties shall attempt to reach consensus on any issues that arise due to this review.
 - i. In the event Ford and the Borough do not achieve consensus on the amount due for Legal and Technical Costs, payment of the uncontested portion shall be made from the bank account and Ford and the Borough

will continue to reserve rights with respect to any remaining disputed portion.

21. **Continuing Payment Obligations.** Notwithstanding any provision of paragraph 7 that could be interpreted to the contrary, in the event the work contemplated herein exceeds the cost estimates in the ROD/Excel RACE of \$19,571,066 , and is therefore subject to new negotiation or litigation between the Parties for the Contested Costs, the Parties agree to continue to fund the Work at the allocations under this First Amendment unless and until there is an agreement or court order providing otherwise and the provision of the First Term Sheet remain valid and enforceable.

The Parties agree to add the following paragraph 27 to the First Term Sheet:

27. **Acknowledgement of Cooperation.** In the event EPA issues a unilateral administrative order to the Borough for any of the AOC remedies set forth in the ROD, at the Borough's direction Ford shall provide written acknowledgement of its acceptance of the Borough's cooperation and contribution received to date and for the work performed in exchange for the commitments as set forth in the First Term Sheet and this First Amendment, and in recognition of the value received to date by the Borough's in-kind services, cooperation and collaboration leading up to this First Amendment which includes, but is not limited to, the technical and strategic services provided by the Borough's professionals.

This First Amendment may be executed in counterparts that, when taken together, shall constitute one and the same instrument.

The Effective Date of this First Amendment shall be the latest date upon which either Party signed this First Amendment, as reflected on the signature page.

[SIGNATURE PAGE FOLLOWS]

On Behalf of Ford Motor Company

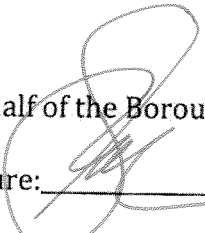
Signature: 

By: Bradley M. Gayton

Its: Secretary

Dated: March 26, 2015

On Behalf of the Borough of Ringwood

Signature: 

By: Scott Heck

Its: Borough Manager

Dated: April 15, 2015