

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of)
COOPER MARINE & TIMBERLANDS)
CORPORATION,)
Respondent)
)

) EPA Case No. 15-0641-00 and
15-0641-00A

ADMINISTRATIVE AGREEMENT

I. INTRODUCTION

This Administrative Agreement (“Agreement”) is made between the U.S. Environmental Protection Agency (“EPA”), acting as lead federal agency, and Cooper Marine & Timberlands Corporation (“CMT” or “Respondent”). This Agreement resolves matters relating to discretionary debarment and to statutory disqualification pursuant to Section 508(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1368(a), arising out of the conviction of CMT for violations of the CWA, 33 U.S.C. §§ 1311(a) and 1319(c)(1)(A) at its Chipco Export Terminal in Mobile, Alabama.

II. RECITALS

A. CMT is an active Alabama corporation with 226 employees and with its principal place of business in Mobile, Alabama. CMT operates the Chipco Export Terminal on Blakely Island on the Mobile River, located across the river from the Alabama State Docks. The area is a heavy shipping corridor widely used for commercial and recreational boating.

B. CMT is a subsidiary of Cooper T. Smith Corporation and is in the business of providing timber products to numerous wood-consuming industries in the Southeast United States, marine transportation along the Tennessee-Tombigbee River and Gulf Intercostal Waterway, and dry bulk cargo stevedoring services in the Port of Mobile.

C. CMT has a National Pollution Discharge Elimination System (“NPDES”) permit that identifies four outfall locations where stormwater runoff is discharged from the Chipco Export Terminal facility into the Mobile River within certain limits.

D. At the CMT Chipco Export Terminal water puddles on the dock after rain events. On September 28, 2010, a CMT employee was instructed to push water off the dock into the Mobile River with a front end loader. In doing so, the employee pushed water and debris off the dock instead of to an authorized outfall.

E. CMT pled guilty to, and was convicted of, violating the CWA, 33 U.S.C. §§ 1311 and 1319(c)(1)(A).

F. On August 18, 2015, CMT was sentenced and fined \$200,000 and placed on probation for five years. CMT has paid the \$200,000 fine and the \$125.00 mandatory special assessment. In addition, CMT's sentencing required that its environmental compliance plan ("ECP") was to be reviewed by the court and if necessary, CMT would be required to develop and fund a revised ECP to prevent future violations. In addition, the revised ECP shall be formulated, implemented and administered through an independent third-party environmental auditor approved by the United States and the U.S. Probation Office.

G. As a result of CMT's CWA conviction, EPA issued a Notice of Clean Water Act Listing to CMT on December 15, 2015.

H. By letter dated March 28, 2016, CMT filed a Petition for Reinstatement to eligibility for Federal procurement transactions covered under the Federal Acquisition Regulation ("FAR"), 48 C.F.R. Chapter 1, and any covered transaction under the Nonprocurement Common Rule, 2 C.F.R. Part 180. The CMT Petition for Reinstatement is attached hereto as Attachment 1 and is incorporated by reference herein. CMT provided supplemental information to its Petition for Reinstatement by letter dated May 3, 2016 which is attached hereto as Attachment 2 and is incorporated by reference herein.

Correction of Conditions that Gave Rise to Conviction

I. The CWA violations occurred as a result of an employee's pushing water and debris off the dock to an unauthorized outfall.

J. In correction of the non-technical conditions that gave rise to the conviction, CMT discussed the incident with Chipco employees on September 28, 2010, the date of the violation, and employees have been and continue to be instructed not to push water or other debris off of the Chipco dock with a front-end loader. Such discussions have occurred regularly since the September 28, 2010 incident. All Chipco employees, typically numbering around 50, have been informed of the violation in question and CMT has provided repeated admonitions to the pertinent employees since the violation occurred in order to avoid a repetition of the incident.

K. In addition, CMT has reviewed its work practices and compliance efforts, in conjunction with an independent, court-approved third-party consultant and auditor, Thompson Engineering. CMT has also in consultation with the U.S. Attorney's Office for the Southern District of Alabama and EPA, revised, supplemented, and undertaken the following steps to remedy the conditions that led to the violation and to prevent recurrence:

- CMT has reviewed, reaffirmed, clarified, and improved its Environmental Responsibility Structure as shown in its organizational chart at Attachment 1 (CMT Reinstatement Petition, Exhibit C) consisting of supervisors and managers responsible for

addressing and maintaining the environmental compliance of employees under their supervision.

- CMT has employed and continues to employ Thompson Engineering to audit and maintain compliance with all local, state and federal agencies. The ECP prepared by Thompson Engineering is fully implemented. Attachment 1, CMT Reinstatement Petition at Exhibit D.
- CMT maintains a well-publicized 24-hour telephone hotline to receive calls on environmental concerns; all emergency calls are forwarded to the safety compliance employee for the CMT-specific location and to the CMT Director of Safety and Environment for decision-making on which agencies are to be notified, if necessary.
- CMT has designated a high-level corporate official as the designated central management point of contact for environmental compliance.
- On January 7, 2016, Thompson Engineering conducted Qualified Credentialed Inspector training for stormwater inspectors for 25 individuals. The training course included detailed instructions on recordkeeping and reporting requirements, client-specific permits, and inspection and monitoring requirements.
- In conjunction with the CMT ECP, an environmental recordkeeping and reporting guidance has been developed and is being implemented to ensure that all required records and reports are being generated, submitted, and maintained consistent with permit requirements.

L. The EPA Region 4 water program has reviewed information contained in CMT's Petition for Reinstatement and its May 3, 2016 supplemental letter and has concluded that the company's approach and its commitment to implement a permanent control to stormwater drainage corrects the conditions that gave rise to the violation.

M. Respondent and EPA agree that the convictions and/or the improper misconduct as set forth in the above-mentioned facts are causes for debarment pursuant to 2 C.F.R. Part 180 as implemented by 2 C.F.R. Part 1532 and 48 C.F.R. Subpart 9.4. Respondent desires to resolve the potential statutory and discretionary debarment actions arising out of the above-mentioned facts. In support of its efforts to resolve this matter amicably, Respondent has submitted documentation to EPA describing how it has addressed the conditions that gave rise to the violations and its corporate ethics and compliance efforts.

N. Based upon the information as stated above and Respondent's corrective actions as represented in the recitals and in the terms and conditions of this Agreement, and all documentation submitted in support of this Agreement, EPA will not take a discretionary debarment action against Respondent based on the misconduct set forth herein and the EPA Suspension and Debarment Official ("SDO") will certify that the Respondent has corrected the conditions which led to the conviction and lift the statutory debarment imposed upon CMT's conviction.

III. TERMS AND CONDITIONS

A. DEFINITIONS

- 1. AGENT.** Any person, as defined by 2 C.F.R. § 180.985, who acts on behalf of or who is authorized to commit a Respondent in a covered transaction under the Nonprocurement Common Rule (2 C.F.R. Part 180) or any transaction covered under the Federal Acquisition Regulation (FAR) (48 C.F.R. Chapter 1).
- 2. AFFILIATE.** As defined in 2 C.F.R. § 180.905, an affiliate to a Respondent is any entity that directly or indirectly, controls or is controlled, or has the power to control or be controlled, by the Respondent. In addition, an affiliate to a Respondent is any entity that is controlled by the same third person as the Respondent. Indicia of control include, but are not limited to: (a) interlocking management or ownership; (b) identity of interests among family members; (c) shared facilities and equipment; (d) common use of employees; or (e) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.
- 3. ARM'S LENGTH TRANSACTION.** A bona fide transaction between a purchaser and a seller, each acting independently and having no relationship to each other. Both parties in the transaction are acting in their own self-interest and are not subject to any pressure or duress from the other party. Transactions between affiliates shall not be considered to be arm's length transactions for purposes of this Agreement, regardless of how the transactions are structured.
- 4. CONTRACT PERSONNEL.** An employee who works for one person (subject to that person's salary and benefits structure) whose services are sold to on a project or time basis to another person.
- 5. CONTRACTOR.** Any person with whom the Respondent has a contract. Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Respondent to an expenditure of funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include nonprocurement transactions as defined in 2 C.F.R. § 180.970.
- 6. COVERED TRANSACTION.** A nonprocurement, procurement, or other transaction as defined in 2 C.F.R. Part 180, Subpart B, and 2 C.F.R. § 1532.220. See also Appendix to 2 C.F.R. Part 180 (illustrating primary tier and lower tier covered transactions) and 2 C.F.R. § 180.970 (defining nonprocurement transactions). Covered transactions include, but are not limited to, assistance agreements (binding agreements between a federal agency and the Respondent which provides financial assistance to the Respondent in the form of a grant, cooperative agreement or similar instrument).

- 7. EMPLOYEE.** Includes any individual providing services on behalf of Respondent and certain individuals providing services to the Respondent. This includes, but is not limited to, any permanent, temporary, full-time, or part-time employees; volunteers; agents; and “principals” as defined at “II. 15.” below.
- 8. EPA AUTHORIZED REPRESENTATIVE(S).** The EPA official(s) who is the primary EPA contact(s) for the purpose of monitoring the Agreement. That person(s) is listed at paragraph “V. 31.” herein. Unless specifically stated otherwise herein, all matters involving the Agreement shall be coordinated through this person(s), including but not limited to questions, submittals and other communications.
- 9. EXCLUDED TRANSACTION.** A transaction in which a person is prohibited from being a participant or principal, whether the person has been suspended, debarred, or proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, the Nonprocurement Common Rule (2 C.F.R. Part 180) or voluntarily excluded. Excluded transactions include covered transactions under the Nonprocurement Common Rule (2 C.F.R. Part 180) and transactions covered under the FAR (48 C.F.R. Chapter 1). Excluded transactions include transactions with excluded persons.
- 10. FEDERAL AGENCY.** As defined in 2 C.F.R. § 180.950, any United States executive department, military department, defense agency or any other agency of the executive branch.
- 11. GOVERNMENTAL ENTITY.** Includes all U.S. federal, state, and local government agencies or instrumentalities. State, as defined in 2 C.F.R. § 180.1005, shall include any of the states of the United States; the District of Columbia; the Commonwealth of Puerto Rico; any territory or possession of the United States; or any agency or instrumentality of a state.
- 12. INELIGIBLE TRANSACTION.** A transaction in which a person is prohibited from being a participant or principal pursuant to the Clean Air Act and/or Clean Water Act, as applicable. If a person is convicted of any offense described in 2 C.F.R. § 1532.1105, the person is automatically disqualified from eligibility to receive any covered transaction under the Nonprocurement Common Rule (2 C.F.R. Part 180) and transactions covered under the Federal Acquisition Regulation (48 C.F.R. Part 9, Subpart 9.4), if the person will perform any part of the transaction or award at the facility giving rise to the person’s conviction and the person owns, leases, or supervises the violating facility. See 2 C.F.R. Part 1532, Subpart J.
- 13. PERIOD OF TIME.** The number of days as referenced in the Agreement shall be calculated by calendar days inclusive of weekends and holidays. Deadlines falling on a weekend or holiday shall automatically be extended to the next business day.
- 14. PERSON.** As defined in 2 C.F.R. § 180.985, any individual, corporation, partnership, association, unit of government, or legal entity, however organized.
- 15. PRINCIPAL.** As defined in 2 C.F.R. § 180.995; 2 C.F.R. § 1532.995(a)(b)(c)(e) and (g); and 48 C.F.R. § 2.101(b) this includes, but is not limited to, officers, directors, owners,

partners, or other person having primary management or supervisory responsibilities within a business entity.

16. RESPONDENT. A person against whom the EPA has initiated or is considering initiating a debarment and/or suspension action, or is facing a potential statutory disqualification or is statutorily disqualified.

17. RESPONDENT'S AUTHORIZED REPRESENTATIVE(S). The Respondent's official(s) who is the Respondent's primary contact(s) for the purpose of the Respondent's compliance to the Agreement. That person(s) is listed at paragraph "V. 31." herein. All matters involving the Agreement shall be coordinated through this person(s), including but not limited to questions, requests and other communications.

B. PROGRAM COMPONENTS

1. SELF-GOVERNANCE PROGRAM ELEMENTS. Respondent has implemented, and agrees to maintain, a self-governance program that includes an Environmental Compliance Program. The ECP as documented in Attachment 1, CMT Petition for Reinstatement at its Exhibit D. The self-governance program also contains an Ethics Program. Collectively the Environmental Compliance Program and the Ethics Programs are referred to as "the Self Governance Program" that covers all employees. The Self Governance Program shall be designed and maintained so as to ensure that Respondent and each of its employees maintain the business honesty and integrity required of a government contractor/participant and that Respondent operates in strict compliance with all applicable laws, regulations, and the terms of any contract or covered transaction.

a. Environmental Compliance Program/Plan

Pursuant to the requirements outlined in its Plea Agreement, Respondent has initiated implementation of a revised ECP. The criminal Plea Agreement and the Judgment in the criminal case are attached hereto at Attachment 1, CMT Reinstatement Petition at its Exhibit D, Appendix A and Attachment 3 and are incorporated by reference as if restated in full.

- (i) The Parties agree that any knowing or willful violation of the terms or conditions of the Plea Agreement shall be deemed a material breach of this Agreement.
- (ii) Respondent shall notify the Independent Monitor and the EPA Authorized Representatives identified herein of any violation of the Plea Agreement or failure to comply with the recommended conditions of probation within ten (10) calendar days of discovery of such violation or compliance failure by management.
- (iii) Respondent shall submit to the Independent Monitor and the EPA Authorized Representatives identified herein any correspondence the Respondent is required to submit to the United States government

pursuant to the terms of any Plea Agreement and the ECP which has been incorporated into this Administrative Agreement with EPA.

In addition, Respondent agrees to implement and maintain throughout the duration of this agreement, the following:

(1) Environmental Stewardship and Ethics Policy.

Within sixty (60) days of the effective date of this Agreement, Respondent shall establish and publish a policy which sets forth the Respondent's corporate responsibilities regarding its role as a steward of the environment and in its community. Respondent shall also state in its environmental stewardship and ethics policy that "employees, supervisors or operational managers who knowingly engage in or condone environmental, health, or safety violations are subject to disciplinary action, including suspension or termination." A copy of the policy is attached hereto and incorporated by reference as Attachment 4. Within ninety (90) days of the effective date of this Agreement, Respondent shall establish and maintain annually, written documentation that employees must comply with environmental policies and laws as a positive factor in all appropriate personnel evaluations and failure to comply with such policies and laws as a negative factor.

(2) Central, High Level Program Management.

The Respondent has designated Tim Sheppard to be the Respondent's Ethics and Environmental Compliance Officer ("ECO") and provided the EPA SDD a copy of his resume. Any change in the ECO shall require prior notification to EPA SDD. The ECO is responsible for managing all aspects of the Respondent's Self-Governance Program, and shall report, not less than quarterly, to the Respondent's President and Board of Directors.

Specifically, the ECO is responsible for:

- (i) Serving as the Respondent's first point of contact for all questions regarding the terms and conditions of this Agreement and Respondent's implementation of this Agreement;
- (ii) Investigating complaints concerning the Respondent's compliance with this Agreement;
- (iii) Reporting to the EPA Authorized Representative concerning the Respondent's compliance with this Agreement;
- (iv) Ensuring the deployment of the Self- Governance Program;
- (v) Overseeing the development of environmental training standards and the content of Respondent's in-house environmental training material;

- (vi) Implementing and overseeing procedures to communicate Respondent's expectation of environmental regulatory compliance to Respondent's employees and outside contractors or providers;
 - (vii) Receiving investigation reports of environmental concerns or violations;
 - (viii) Serving as the routine point of contact with regulatory agencies regarding environmental disclosures and regulatory compliance;
 - (ix) Providing any material environmental and business ethics quarterly reports to the Respondent's Board of Directors with the documentary evidence that demonstrates that such reports were presented and made available to the EPA SDD upon request; and
 - (x) Providing the EPA Authorized Representative and the Independent Monitor prompt access at its corporate headquarters to all records and documentation to support and demonstrate compliance with this Agreement.
- (xi) *Notification.* Within ninety (90) days of the effective date of this Agreement and thereafter annually, Respondent will notify all employees at its facilities or plants of the name, address, and telephone number of the ECO and Ethics Committee in writing and by prominent display of posters with this information in appropriate work areas. The letter and posters will inform all Respondent's employees that: the ECO or his/her delegate is available for consultation on any questions they may have regarding their responsibilities as employees; they are encouraged to report any alleged violation of law or regulation by employees; and their identity may remain confidential through the use of Respondent's compliance and ethics hotline.
- (xii) *Authority.* The ECO or his/her delegate shall have written authority to investigate any allegations of suspected environmental violations. The ECO shall establish a documented process for conducting such investigations (i.e. investigation checklists), including written reports confirming follow-up corrective action, tracking of corrective actions to completion, and caller notification of investigation results. At the conclusion of such investigation, a written report shall be prepared and provided to the President and the Board of Directors, detailing the substance of the allegations, evidence revealed by the investigation, and the findings and recommendations.

(3) Compliance Reporting System.

The Respondent has instituted and agrees to maintain a dedicated telephone number (hereinafter called the "Hotline") for anonymous and confidential reports describing suspected misconduct or for handling questions related to business ethics or business conduct.

In addition, the Respondent has posted in prominent places accessible to each of their employees, a notice giving the dedicated number, inviting confidential calls, and stating the Respondent's commitment to comply with all applicable laws and regulations in the conduct of its business. A copy of the notice is attached as Attachment 5 to this Agreement. The Respondent agrees to maintain notices posted in prominent places accessible to each of their employees. The Respondent has also provided its employees with the Hotline information.

Respondent shall establish a corporate primary contact and alternate contacts for all communications directed to the company from the third-party operator. Calls related to business ethics or business conduct shall be directed to the ECO or his/her delegate. Calls concerning environmental issues received by this Helpline/Compliance Line will be directed to the ECO or his/her delegate will be investigated with written investigation and corrective action documentation retained by the ECO for EPA, SDD audit review. The ECO will include in an ECO Annual Report to EPA, a recap of all environmental concerns reported either via the hotline or through other corporate reporting avenues. Respondent will make employees aware that they are protected from retaliation for efforts to report environmental compliance violations, business ethics issues or regulatory compliance issues.

The Respondent also has posted in common work areas a "Hotline" poster prepared by the EPA Inspector General providing phone numbers to report fraud, waste, and abuse, and/or security violations. A copy of the poster is attached as Attachment 6. The Respondent agrees to maintain Hotline posters posted in prominent places accessible to each of their employees. Posters and the font of the posters must be of ample size and design to enable the employee to readily find and understand the information regarding the "Hotline," and comply with the languages provision herein at "III. E. 1." Within 60 days of the effective date of this Agreement, Respondent shall create a written policy generally describing its process for addressing issues that may be reported to the confidential telephone number.

(4) Environmental Training.

In addition to any other training required under the ECP, Respondent shall provide, at a minimum, a one (1) hour annual training to all Respondent's employees covering general awareness of Respondent's various operations and Respondent's commitment to environmental compliance and employees' roles in environmental compliance. This training may be computer-based, live, face-to-face or through self-study. This environmental training shall be completed within one hundred and twenty (120) days of the effective date of this Agreement. New employees will receive this training during the first fifteen (15) days of beginning employment as part of Respondent's new employee orientation.

(5) Employee Acknowledgements.

Employees shall annually acknowledge, in writing or if electronically, via a printed certificate, that they have read and understand their responsibilities under the environmental policy and the Respondent's Code of Business Ethics and Conduct ("the Code") as discussed below herein. Copies of all such written or electronic acknowledgements will be maintained on file or in electronic records accessible at Respondent's corporate headquarters for EPA review or

review by the Independent Monitor for the duration of this Agreement. Respondent shall certify in writing within one hundred and thirty (130) days of the effective date of this Agreement to the EPA Authorized Representative(s) with a copy to the Independent Monitor that employees have completed the required acknowledgements within the required one hundred and twenty (120) days of the effective date of this Agreement. Thereafter, acknowledgments (written or electronic) will be renewed annually on or before the anniversary date of the effective date of this Agreement each calendar year by employees.

New employees shall read and acknowledge the environmental policy and the Code within fifteen (15) days of being employed by Respondent.

(6) Manager/Supervisor Acknowledgment of Environmental Commitment.

Managers and supervisors (those Respondent employees with "manager" or "supervisor" in their title and who have a direct report) will sign an acknowledgement stating that they:

- a. Will not knowingly cause, direct or tolerate illegal environmental practices in the course of their duties for Respondent;
- b. Will immediately report any actual or suspected criminal environmental condition or activity, as soon as possible once it becomes known to them, to their immediate supervisor and also to the ECO;
- c. Will promptly report any actual or suspected civil noncompliance not already reported through Respondent's existing compliance system to their immediate supervisor and also to the ECO or other federal or state reporting mechanisms; and,
- d. Will work expeditiously to resolve the condition or cease the activity and eliminate the violation in compliance with an established corrective action plan.

Respondent shall certify in writing within 180 days of the effective date of this Agreement to EPA's Authorized Representative(s) with a copy to the Independent Monitor that managers and supervisors have completed the required acknowledgements. Thereafter, these acknowledgements will be renewed each calendar year.

Any manager or supervisor employed by Respondents shall read and sign the acknowledgement required by this section of this Agreement within 30 days of the commencement of his or her employment or promotion to manager or supervisor and annually throughout the duration of this Agreement. The acknowledgement form is attached as Attachment 7.

(7) Internal Dock Inspections.

Respondent shall, within six (6) months of the effective date of this Agreement, establish a weekly Internal Dock Inspection Program through which the ECO and the President shall be apprised of all matters in which pooling of stormwater on the dock poses a problem. Current

practice is to let stormwater that pools on the dock evaporate and if pooling is a safety issue then first remove all solids and direct the water to a permitted NPDES outfall. The Internal Dock Inspections shall be conducted by a manager or supervisor who is responsible for dock operations at a particular facility. Inspection sheets shall include findings of any departure from Respondent's environmental policies and procedures, or potential or actual releases. All inspection sheets shall be submitted to and reviewed by the ECO. After review, the ECO shall sign and date the inspection sheet and file said sheet with other documents required pursuant to this Agreement. The ECO shall immediately report any significant findings that require corrective action to the President, the CEO, and the Independent Monitor. All weekly inspection sheets and monthly reports shall be reviewed by the Independent Monitor as a part of the outside Independent Monitor's annual report.

The parties acknowledge that the practice of handling pooled stormwater on the dock as described above is an interim solution while the Respondent develops and implements a system permanently to control stormwater drainage (for the purposes of this Agreement, "the stormwater drainage plan"). Respondent shall notify the EPA Authorized Representative(s) and the Independent Monitor within thirty (30) days of the development and approval (if any) of the stormwater drainage plan. Respondent shall implement the stormwater drainage plan and, upon full implementation, may request that this provision regarding the Internal Dock Inspection Program be modified in accordance with V.30, herein. Failure to complete the implementation of an effective stormwater drainage plan during the Term of this agreement shall be deemed a material breach of this Agreement. If an effective stormwater drainage plan has not been implemented fully within three (3) years of the effective date of this Agreement, the Respondent may request that the Term of this Agreement be modified in accordance with V.30, herein.

(8) Third Party Environmental Audits.

Respondent agrees to provide to EPA and the Independent Monitor copies of any third-party environmental audit report conducted by, or on behalf of, any local, state or federal agency or consultant that may be conducted during the term of this agreement within fourteen (14) days of the completion of the report.

b. Respondent's Business Ethics Program

(1) Code of Business Ethics.

Respondent has adopted a written Code of Business Ethics ("the Code"), attached hereto as Attachment 8. The Code has been circulated, or within ninety (90) days of the effective date of this Agreement will be circulated, to each employee of Respondent. After reading the Code each current employee is to sign and date, in a register to be maintained by Respondent and open to inspection by EPA SDD, that he or she has read and understood the Code. At least once in each calendar year on or about the anniversary date of this Agreement, each employee shall repeat the procedure of reading the Code and signing the Register. Within fifteen (15) days of starting employment with Respondent, new employees shall read the Code, sign, and date the register, indicating that he or she has read and understood the Code. Within such 15-day period the new employee's immediate supervisor or other management person shall discuss the content and requirements of the Code with the new employee.

(2) Ethics Training.

Respondent will ensure that all officers, managers, supervisors, operators, and employees receive a total of one (1) hour minimum training in both ethical conduct and corporate business integrity annually to provide understanding of the basic standards of conduct for Respondent and the processes for making inquiries or reporting concerns. Respondent shall track the training described herein, including, but not limited to computer based, live, face-to-face, or self-study. Respondent shall maintain at its corporate headquarters a record of training completed for each employee. Written documentation such as manager confirmations, training sign-in sheets, online training certificates, or any electronic reports that may generate a listing of employees who have completed the required training may be used or Respondent may use a computer-based personnel training tool to help manage the training requirements. The initial ethics training shall be completed within one hundred and twenty (120) days of the effective date of this Agreement.

IV. INDEPENDENT MONITOR.

Respondent, at its sole expense, shall retain an Independent Monitor for the duration of this Agreement who meets the qualifications identified below to perform oversight of this Agreement.

Respondent shall provide the EPA Authorized Representative with the Independent Monitor's name, telephone number, email address, current position, resume, certification of independence, and a summary of the Independent Monitor's qualifications no later than fourteen (14) calendar days after the effective date of this Agreement. If there is a change in Independent Monitor during the term of this Agreement, Respondent shall provide the EPA Authorized Representative with the new Independent Monitor's name, telephone number, email address, current position, resume, and a summary of the new Independent Monitor's qualifications fourteen (14) calendar days after obtaining the services of the new Independent Monitor or fourteen (14) calendar days after the prior Independent Monitor's last day, whichever occurs earlier.

Respondent is responsible for ensuring that the Independent Monitor retained pursuant to this Agreement meets the qualifications below. Respondent's failure to retain the services of an Independent Monitor who meets the qualifications identified below will be considered a material breach of this Agreement.

The qualifications of the Independent Monitor shall include the necessary education, training and experience to determine Respondent's compliance with this Agreement. The Independent Monitor shall be qualified to evaluate compliance with the terms of this Agreement, including the Plea Agreement, the Environmental Compliance Program, and the Self-Governance Program.

Respondent shall require the Independent Monitor to review this Agreement, its attachments, and any other documentation the Respondent or Independent Monitor believes necessary, in order to develop a monitoring work plan or program to be performed by the Independent Monitor, in accordance with the scope and provisions of this Agreement, as soon as possible, but no later

than (14) calendar days after retaining the services of the Independent Monitor. Respondent shall provide the EPA Authorized Representative with a copy of the Independent Monitor's work plan and methodology for developing the work plan no later than thirty (30) calendar days after the effective date of this Agreement.

Although it is Respondent's responsibility to obtain the services of a qualified Independent Monitor meeting the requirements established above in order to perform the responsibilities discussed herein, if the EPA has any concerns with the qualifications or performance of the Independent Monitor, the EPA will raise those concerns to Respondent in writing. It is Respondent's responsibility to take appropriate corrective action to address the EPA's written concerns. Respondent's failure to adequately address the EPA's written concerns within thirty (30) days of the EPA providing notification of such concerns to Respondent may be considered a material breach of this Agreement.

Note: The EPA has no contractual or other relationship with the Independent Monitor nor any privity of contract with the Independent Monitor. The contractual relationship is solely between the Independent Monitor and Respondent.

a. **NATURE OF EMPLOYMENT.** Respondent shall retain the Independent Monitor as an independent check upon Respondent's compliance with this Agreement. Respondent shall ensure that the Independent Monitor is not an agent of Respondent or the EPA, and his or her work pursuant to this Agreement is not subject to Respondent's assertion of the attorney-client or work product privilege doctrines. Respondent shall ensure that the Independent Monitor is an independent party who is appropriately certified, licensed and qualified to perform the responsibilities discussed herein and who has had no previous business relationship with Respondent. Respondent shall require the Independent Monitor to make available to the EPA, upon request, information and supporting documentation related to the Independent Monitor's performance under this Agreement. Respondent shall require the Independent Monitor to provide the EPA with the requested information and documentation within fourteen (14) days of the EPA's request.

b. **ANNUAL CERTIFICATION OF INDEPENDENCE.** Respondent shall require the Independent Monitor to provide an affidavit to Respondent, upon initial selection of the Independent Monitor and upon each anniversary of the effective date of this Agreement, certifying that the Independent Monitor has no financial, professional, personal, familial or other interest that would create an actual or apparent conflict of interest with Respondent, Respondent's employees, or affiliates, other than that arising from the appointment as the Independent Monitor. The affidavit must also certify that his or her representation of any other client will not create an actual or apparent conflict of interest in fulfilling his or her responsibilities as Independent Monitor. Respondent shall provide a copy of the certification to the EPA at the time of providing initial notification to the EPA Authorized Representative of Respondent's selection of an Independent Monitor as discussed above, and within fourteen (14) days of each anniversary of the effective date of this Agreement during the Independent Monitor's tenure.

c. **PARTICULAR DUTIES.** Respondent shall require the Independent Monitor to review Respondent's reports required under this Agreement and certify whether or not Respondent has complied with the terms of this Agreement during the reporting period. Respondent shall provide the Independent Monitor with the same access to materials and employees as Respondent provides the EPA Authorized Representative pursuant to "V.7." of this Agreement. Respondent shall require the Independent Monitor to provide its certification to Respondent, and simultaneously provide a copy to the EPA, no later than thirty (30) calendar days after receipt of Respondent's report.

In addition, during the term of this Agreement, the Respondent shall require the Independent Monitor to perform an annual review of this Agreement and submit its findings to the Respondent and EPA in an annual report within thirty (30) calendar days of each anniversary of the effective date of this Agreement. Respondent shall ensure that the Independent Monitor receives a copy of any document submitted to EPA pursuant to this Agreement. Respondent shall require the Independent Monitor to annually review Respondent's reports, any supporting documentation, and any other documentation required pursuant to this Agreement, in order to prepare the annual report for Respondent evaluating Respondent's compliance with this Agreement and recommending any changes that seem appropriate. Respondent shall direct the Independent Monitor to issue the annual report to Respondent and to EPA without first discussing its proposed conclusions with Respondent. After review of the annual report, EPA, at its discretion, may provide additional recommendations to Respondent. Respondent shall provide its action plan for implementing any recommended changes to EPA and the Independent Monitor within sixty (60) calendar days of receipt of such recommendations.

Respondent shall require the Independent Monitor to perform an on-site audit of this Agreement and simultaneously submit its findings and any recommendations to the Respondent and EPA in a report within thirty (30) calendar days of the nine (9) month anniversary of the effective date of this Agreement. Respondent shall direct the Independent Monitor to submit the results of its audit within twenty-one (21) calendar days from completion of the on-site audit. The Respondent will address any recommendations with a corrective action plan in its next quarterly report and will provide updates on its progress on each outstanding item in subsequent quarterly reports until all such recommendations have been implemented.

V. GENERAL PROVISIONS

1. LEP EMPLOYEES. Respondents will reduce language barriers for its employees that are limited English proficient (who do not speak English as their primary language and who have a limited ability to read, speak, write or understand English) by providing the LEP employees with language assistance services for the written materials, notices, and/or training required under this Agreement. Language assistance services may include, but are not limited to, oral interpretation services, bilingual staff, or written language services.

2. NOTICE TO EMPLOYEES. Respondent will notify all employees of the fact and substance of this Agreement, the nature of the wrongdoing leading to this Agreement, and the importance of each employee abiding by the terms and conditions of this Agreement and all

requirements of law, regulations, and Respondent policies and procedures during the term of the Agreement. New employees shall be notified within ten (10) calendar days of their employment with Respondent as provided in this provision below.

Respondent may provide employees such notification of this Agreement by posting the Agreement on the Respondent's intranet site in such a manner as to ensure ready access by all employees and in the Respondent's employee break areas or other similar common areas normally used to post notices for employees, if such areas or intranet site exists. If posting this Agreement on the Respondent's intranet and common area as set forth herein does not ensure access to all employees, Respondent shall send this Agreement to all employees and principals and obtain written and signed documentation from each employee certifying that each employee reviewed and understands the Agreement.

3. CORPORATE OFFICIAL'S CERTIFICATION. Respondent's chief corporate official shall certify annually that Respondent is in compliance with all terms and conditions of this Agreement.

4. REPORTS OF LEGAL PROCEEDINGS AND GOVERNMENT INVESTIGATIONS. Respondent represents to the EPA that, to the best of its knowledge, neither it nor any of its principals or affiliates is currently under criminal or civil investigation by any governmental entity.

In addition to any periodic written reports, Respondent shall notify the EPA Authorized Representative as soon as possible, and no later than ten (10) calendar days after Respondent becomes aware of:

- a. The initiation or continued development of any criminal or civil investigation by any governmental entity involving allegations of any violation(s) of state or federal environmental laws, Foreign Corrupt Practices Act, false statements, false claims, corruption, conflict of interest or antitrust violations, if Respondent has reason to believe that it or any of its principals, affiliates, employees, or agents is a target or subject of such investigation. "Initiation or continued development" in a criminal matter includes, but is not limited to, the issuance of a subpoena, the execution of a search warrant, or formal charges. "Initiation or continued development" in a civil matter includes, but is not limited to, the commencement of discovery, depositions, the issuance of administrative subpoenas, administrative adjudication, and the issuance of show cause orders;
- b. Initiation of any legal action including, but not limited to, qui tam actions or citizen suits against Respondent or any of its principals, affiliates, employees, or agents by any entity alleging violations of any state or federal environmental laws, the Foreign Corrupt Practices Act, false statements to government authorities or public filings, including filings required by U.S. security laws, false claims for government reimbursement, public corruption, conflict of interest, or anti-trust violations;

- c. Criminal charges, civil law suits, or administrative proceedings, including suspension or debarment actions, brought by any governmental entity against Respondent or any of its principals, affiliates, employees, or agents, in a matter relating to the business of Respondent; or
- d. Any conviction or guilty plea, nolo contendere plea, deferred prosecution agreement, pre-trial diversion agreement, civil judgment or civil consent decree in which the Respondent or any of its principals, affiliates, employees, or agents are parties in a matter relating to the business of Respondent.

5. REPORTS OF NONCOMPLIANCE OR MISCONDUCT. Respondent shall report to the EPA Authorized Representative, as soon as possible and no later than ten (10) calendar days after discovery by a principal(s) of any noncompliance with this Agreement or suspected misconduct which there are reasonable grounds to believe may constitute a violation of criminal or civil law or a state or federal administrative action or agreement when such misconduct is in any way related to the Respondent's business with a governmental entity. The misconduct to be reported pursuant to this provision includes misconduct by Respondent's employees, affiliates, agents or contractors, as related in any manner to Respondent's business with a governmental entity.

Respondent will investigate all reports of such noncompliance or misconduct that comes to its attention and will notify the EPA Authorized Representative of the outcome of such investigations and any potential or actual impact of the misconduct on any aspect of Respondent's business with a governmental entity. Respondent will take corrective action, including prompt restitution when established by a court or a tribunal with competent jurisdiction or agreed upon between the parties for any harm to the governmental entity. Respondent will include summary reports of the status of each such investigation to the EPA Authorized Representative in the reports submitted pursuant to this Agreement until each matter is finally resolved. This requirement does not in any way waive Respondent's obligations to submit reports pursuant to any other section in this Agreement or requirements of the Federal Acquisition Regulation (FAR) 9.406-2 (b)(1)(vi) and 9.407-2 (a)(8), if applicable, or any other statutory or regulatory reporting requirement.

6. SCHEDULE OF AUDIT REPORTS. Respondent agrees to semi-annually provide the EPA Authorized Representative with a schedule of all internal and independent outside audit reports, relating to: (a) environmental compliance; (b) health and safety compliance; and (c) corporate integrity and business ethics. The semi-annual schedule of audit reports shall include a description of the audit, the name and contact information of the auditor and, when applicable, dates or proposed dates of the audits.

7. GOVERNMENT AUDITS AND ACCESS TO RECORDS AND INFORMATION. In addition to any other right the Federal Government may have by statute, regulation, agreement, or contract, upon reasonable notice (minimum five (5) calendar days), the EPA Authorized Representative may examine Respondent's books, records, and other company documents and supporting materials for the purpose of verifying and evaluating Respondent's compliance with the terms and conditions of this Agreement, including:

- a. Respondent's business conduct in its dealings with all of its customers, including the Federal Government;
- b. Respondent's compliance with federal laws, regulations, and procurement policies and with accepted business practices; and
- c. Respondent's compliance with the requirements of covered transactions under the Nonprocurement Common Rule (2 CFR Part 180) or any transaction covered under the Federal Acquisition Regulation (48 CFR Chapter 1), as applicable.

The materials described above shall be made available by Respondent at all reasonable times for inspection, audit, or reproduction. Further, for purposes of this provision, the EPA Authorized Representative may interview any of Respondent's employees at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed between the employee and the EPA Authorized Representative. Employees will be interviewed without a representative of Respondent or Respondent's principals being present. The employee may be represented personally by his own counsel, a union representative, or other representative not associated with the Respondent if requested by the employee. The employee also may decline to be interviewed.

As an alternative to an on-site audit of Respondent's compliance with the terms and conditions of this Agreement, the EPA may, at its sole election, conduct an audit electronically or by mail in which instance Respondent shall provide documentation of its compliance with this Agreement including but not limited to providing copies of documentation maintained as required in this Agreement and such additional documentation and/or certifications as may be requested by the EPA.

8. SALE OF THE RESPONDENT'S BUSINESSES. The sale or transfer of ownership of Respondent's business or any divisions, subsidiaries, affiliates, business units, facilities, offices or other corporate components shall not be executed as an artifice to avoid being subject to the Agreement. The terms, conditions and obligations of this Agreement shall survive a merger or acquisition of the Respondent's business or other reorganization of Respondent's corporate structure and shall be fully binding upon any organization which is successor in interest. However, this Agreement is not intended to restrict the lawful and legitimate sale of assets through an arm's length transaction and would not bind an asset purchaser who purchases through an arm's length transaction.

9. THE RESPONDENT'S PURCHASE OF BUSINESSES. In the event that Respondent purchases or establishes new business units after the effective date of this Agreement, Respondent shall implement all provisions of this Agreement to the new business units, including any training or education requirements, within ninety (90) calendar days following such purchase or establishment. Should Respondent be unable to implement fully such provisions, training or education requirements within ninety (90) calendar days, Respondent shall notify the EPA Authorized Representative in writing, and shall propose a timeline for the complete implementation of the provisions of this Agreement to the new business units, which

will be subject to the EPA SDO's approval. The Respondent shall be notified of the EPA SDO's decision on the implementation plan within thirty (30) calendar days of their receipt of the plan.

If, during the period covered by this Agreement, Respondent acquires or gains control of any business concern, which performs or may perform work on projects funded under covered transactions under the Nonprocurement Common Rule (2 C.F.R. Part 180) or transactions covered under the FAR (48 C.F.R. Chapter 1), the EPA Authorized Representative shall be notified within ten (10) calendar days of the acquisition. Such notice shall state the name, address, nature of the business concern, and any work it has done for any government entities over the last year.

10. RESTRUCTURING OR ACQUISITION OF NEW BUSINESSES. Respondent shall not, through a change of name, business reorganization, restructuring or realignment, sale or purchase of assets, or similar action, seek to avoid the obligations and conditions set forth in this Agreement.

11. HIRING NEW EMPLOYEES. Prior to hiring any new employees, Respondent shall make reasonable inquiry into the status of that employee which, at a minimum, shall include a review of the System for Award Management (SAM) or any successor system as maintained by the General Services Administration (GSA) on the internet (<https://www.sam.gov/>) for federal procurement and nonprocurement programs. The results from all SAM searches shall be kept in Respondent's records. Respondent is not, however, required to decline to employ prospective employees who are suspended, debarred, proposed for debarment, or otherwise ineligible as prescribed by any governmental entity debarment program. However, Respondent will ensure that such employees have no responsibility for, or involvement with, Respondent's business affairs related in any manner whatsoever with federal procurement and nonprocurement programs, as applicable, until the final resolution of such suspension, proposed debarment, debarment, or statutory disqualification.

12. EXISTING EMPLOYEES. Respondent is required to conduct a SAM search on all existing employees within thirty (30) days of the effective date of this Agreement. Respondent is not, however, required to terminate the employment of employees who are or become suspended, debarred, proposed for debarment, or otherwise ineligible as prescribed by any governmental entity debarment program during their employment with Respondent. However, Respondent will remove such employees from responsibility for, or involvement with, Respondent's business affairs related in any manner whatsoever with federal procurement and nonprocurement programs, as applicable, until the final resolution of such suspension, proposed debarment, debarment, or statutory disqualification.

In addition, if any employee of Respondent is charged with a criminal offense relating to business or otherwise relating to honesty or integrity, Respondent will remove that employee immediately from responsibility for, or involvement with Respondent's business affairs as related in any manner to a governmental entity.

If an employee is suspended, debarred, and/or statutorily disqualified, Respondent shall notify the EPA Authorized Representative of such action and the reasons therefore, and whatever

personnel action Respondent may have taken against the employee, within ten (10) calendar days of the Respondent's knowledge of the suspension, debarment, and/or disqualification action.

13. TRANSACTIONS WITH SUSPENDED, DEBARRED, OR DISQUALIFIED PERSONS AND INELIGIBLE TRANSACTIONS.

Prior to entering into a new covered transaction under the Nonprocurement Common Rule (2 C.F.R. Part 180), any transaction covered under the FAR (48 C.F.R. Chapter 1), or renewing/exercising options to extend or otherwise extending such a transaction, Respondent shall review the SAM to identify any person that would be a participant, contractor, or principal in that transaction that may be currently excluded or disqualified from participation in such transaction as defined at II.9. Unless otherwise stated herein, Respondent shall not knowingly enter into any new covered transaction under the Nonprocurement Common Rule (2 C.F.R. Part 180), any transaction under the FAR (48 C.F.R. Chapter 1), or renew/exercise options to extend or otherwise extend such a transaction with a person listed on the SAM (<http://www.sam.gov>) as debarred, suspended, proposed for debarment, or otherwise ineligible as defined at II.12.

In addition, if a possible match is identified, Respondent shall require the person to certify in writing as to its status on the SAM. Respondent shall keep a paper copy of all search results and certifications that are required pursuant to this provision.

a. EXCEPTIONS FOR COVERED TRANSACTIONS.

(1) EPA COVERED TRANSACTIONS. Respondent may enter into an EPA covered transaction under the Nonprocurement Common Rule (2 C.F.R. Part 180) with a suspended or debarred person if: 1) Respondent submits to the EPA Authorized Representative in writing the compelling reasons that justify entering into a business transaction with a person listed on the SAM as soon as possible, but not later than sixty (60) calendar days prior to the date that the Respondent proposes to enter into such transaction; and 2) the EPA SDO approves the request for an exception to enter into the transaction. The EPA Authorized Representative shall notify the EPA SDO of the request. The EPA SDO shall respond to the request within forty-five (45) calendar days of receipt of the request from the EPA Authorized Representative. Unless otherwise indicated in writing by the EPA Authorized Representative, each request must be made on a transaction by transaction basis. If the EPA SDO does not approve the exception request and Respondent enters into an EPA covered transaction, the EPA may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend Respondent, or take other remedies as appropriate.

(2) OTHER FEDERAL AGENCY COVERED TRANSACTIONS.

Respondent may not enter into a covered transaction with an excluded person unless the Federal Agency responsible for the transaction grants an exception under 2 C.F.R. § 180.135. Respondent shall notify the EPA Authorized Representative of any such exception requests within (30) calendar days of the request to the Federal Agency and shall provide the EPA Authorized Representative with a copy of the exception approval, if granted, within ten (10) calendar days of receipt of the exception approval.

b. REQUIREMENTS FOR TRANSACTIONS COVERED UNDER THE FAR.

Respondents with federal contracts covered under the FAR and subject to FAR 9.405-2 and FAR 52.209 shall provide the EPA Authorized Representative with a copy of the written notification provided to the applicable Contracting Officer within ten (10) calendar days of the notification to the Contracting Officer.

14. FUTURE MISCONDUCT DURING AGREEMENT. In matters unrelated to the misconduct stipulated herein, the EPA may find that the Respondent has materially breached this Agreement based on any misconduct which occurs during the period of the Agreement that leads to any action taken pursuant to 2 C.F.R. § 180.700, 2 C.F.R. § 180.800, or 48 C.F.R. Part 9, Subpart 9.4.

15. RESPONDENT'S LEGAL OBLIGATIONS. Nothing in this Agreement shall be deemed to limit or affect Respondent's obligations under any federal, state or local law or regulation, nor does this Agreement limit in any manner the EPA's ability to enforce any law or regulation within the EPA's jurisdiction.

16. UNALLOWABLE COSTS. Respondent agrees that costs, as defined in FAR 31.205-47 or described at 2 C.F.R. § 200.402, that arise from or are related to this Agreement or an associated notice of suspension or proposed debarment, and that are incurred by, for, or on behalf of Respondent or any of Respondent's current or former officer(s), director(s), agent(s), employee(s), consultant(s), or affiliate(s), shall be expressly unallowable costs for covered transactions under the Nonprocurement Common Rule (2 C.F.R. Part 180) and transactions covered under the FAR (48 C.F.R. Chapter 1). Unallowable costs include, but are not limited to, costs arising from, related to, or in connection with:

- a. The matters at issue herein;
- b. The Government's criminal and civil investigations regarding the matters at issue herein; and
- c. The EPA's review of Respondent's present responsibility, including but not limited to the costs of the Respondent's submissions, presentations, and appearances before the EPA Suspension and Debarment Program offices.

Respondent's costs of performing, implementing, and administering the terms and conditions of this Agreement, the costs incurred by the EPA Authorized Representative, and any fines or penalties levied or to be levied in or arising out of this Agreement, are agreed to be expressly unallowable costs. Also unallowable are Respondent's costs of bringing Respondent's self-governance, compliance, and/or ethics programs to a level acceptable to the EPA. Respondent agrees to account separately for such costs. Respondent's costs of maintaining, operating, and improving Respondent's corporate self-governance/compliance/ethics programs that are incurred after expiration of this Agreement, may be allowable costs.

Respondent agrees to treat as unallowable costs the full salary and benefits of any officer, employee, or consultant terminated from Respondent's employ or removed from participation in covered transactions (2 C.F.R. Part 180) or transactions covered under the FAR (48 C.F.R. Chapter 1) as a result of the wrongdoing at issue here and the cost of any severance payments or early retirement incentive payments paid to employees released from the Respondent's employ as a result of the wrongdoing at issue here. For purposes of the preceding sentence, the salary and benefits costs shall include all such costs from the first instance of participation of each individual in the matters at issue here, as determined by the EPA Authorized Representative.

Respondent recognizes that in order to comply with the terms and conditions of this paragraph, certain costs may need to be reclassified. Respondent shall proceed immediately to identify and reclassify such costs and, within ninety (90) calendar days of the effective date of this Agreement, Respondent shall adjust any bid rate, billing rate, or unsettled final indirect cost rate pools to eliminate any costs made unallowable by this Agreement, and shall advise the EPA Authorized Representative, the cognizant administrative contracting officer or award official, and the cognizant Government auditor of the amount and nature of the reclassified costs within one hundred and twenty (120) calendar days of the date of this Agreement. The EPA Authorized Representative or a designated representative shall have the right to audit Respondent's books and records to verify compliance with this paragraph. Such audit rights shall be in addition to any audit rights the Government may have under the terms of any covered transactions under the Nonprocurement Common Rule (2 C.F.R. Part 180) and transactions covered under the FAR (48 C.F.R. Chapter 1) with Respondent.

17. ADVERSE ACTIONS. Respondent avers that adverse actions taken, or to be taken by it against any employee or other individual associated with Respondent arising out of or related to the wrongdoing at issue herein were solely the result of Respondent's initiatives and decisions and were not the result of any action by, or on behalf of, agents or employees of the United States.

18. BREACH OF AGREEMENT / SURVIVAL OF CAUSE FOR DEBARMENT. Respondent's failure to meet any of its obligations pursuant to the terms and conditions of this Agreement or any agreement specifically incorporated herein, if determined by the SDO to be a material breach of this Agreement, shall constitute a separate cause for suspension and/or debarment. Repeated violations of non-material provisions of this Agreement may cumulatively constitute a material breach of the Agreement. The underlying causes for debarment survive the execution of this Agreement and the EPA may initiate suspension or debarment proceedings against the Respondent or statutorily disqualify the Respondent on these grounds if there is a breach of this Agreement. Nothing in this provision or this Agreement shall be construed as a waiver of any legal rights of Respondent to contest the SDO's determination of materiality.

19. RESOLUTION OF DEBARMENT, SUSPENSION, OR STATUTORY DISQUALIFICATION. Provided that the terms and conditions of this Agreement are fulfilled, EPA will not suspend, debar, or statutorily disqualify the Respondent and will lift any existing suspension, debarment or statutory disqualification, as applicable, based on the facts and circumstances set forth in the Preamble herein. The EPA SDO's decision, which is based upon the facts at issue here, shall not restrict the EPA or any other Federal Agency from instituting

administrative actions, including, without limitation, suspension, debarment or statutory disqualification should:

- a. Other information indicating the propriety of such action come to the attention of the EPA or such other Federal Agency; or
- b. Additional information concerning the facts at issue here is discovered by the EPA or such other Federal Agency and was not disclosed by Respondent.

This Agreement relates solely to suspension, debarment and statutory disqualification issues, pursuant to 48 C.F.R. Part 9, Subpart 9.4 and 2 C.F.R. Part 180 as implemented by 2 C.F.R. § 1532, in conjunction with the circumstances recited herein and in no way waives any criminal, civil, contractual, or administrative remedy or right which the Government may have for the circumstances so described in this Agreement.

20. NOTICE OF DEBARMENT PROCEEDINGS. Respondent hereby waives all further notice and opportunity for hearing to which it may otherwise be entitled to except that Respondent shall receive such notice(s) and opportunity for hearing as it would otherwise be entitled if provisions "V. 18" or "V. 19" are invoked or if a subsequent suspension or debarment action is initiated pursuant to 48 C.F.R. Part 9, Subpart 9.4 or 2 C.F.R. Part 180 as implemented by 2 C.F.R. Part 1532.

21. RELEASE OF LIABILITY. Respondent hereby releases the United States, its instrumentalities, agents, and employees in their official and personal capacities, of any and all liability or claims arising out of or related to the investigation, criminal prosecution, or civil settlement at issue here, or the suspension, proposed debarment, or debarment of Respondent or the discussions leading to this Agreement.

22. PRESENT RESPONSIBILITY. By entering into this Agreement, the EPA is not determining that Respondent is presently responsible for any specific covered transaction under the Nonprocurement Common Rule (2 C.F.R. Part 180) or transactions covered under the FAR (48 C.F.R. Chapter 1). Respondent's compliance with the terms and conditions of this Agreement may be a relevant factor to be considered by an award official in rendering a responsibility determination for purposes of these transactions.

23. RESTRICTION ON USE. Respondent shall not use any term or condition of this Agreement, or the fact of the existence of this Agreement, for any purpose related to the defense of, or in mitigation of, any criminal, civil, or administrative investigation or action by any element of the Federal Government. However, the existence of this Agreement may be used in any action or proceeding initiated by any Federal Agency to suspend, debar or otherwise render ineligible Respondent based on the events giving rise to this Agreement.

24. BANKRUPTCY. Respondent shall not use bankruptcy proceedings to affect the enforcement of this Agreement in the interests of the Federal Government.

- 25. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, relating to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.
- 26. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together, shall constitute one and the same agreement.
- 27. SEVERABILITY.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions of this Agreement.
- 28. PARAGRAPH HEADINGS.** The paragraph headings in this Agreement are inserted for convenient reference only and shall not affect the meaning or interpretation of this Agreement.
- 29. PROPOSED CHANGES.** Respondent shall notify the EPA Authorized Representative at least forty-five (45) calendar days prior to instituting any proposed changes in the directives, instructions, procedures, or programs governed by this Agreement. The EPA will verify, approve, or disapprove any such changes within thirty (30) calendar days of receipt of notification by Respondent. The proposed changes are effectively approved if no response is issued by the EPA within forty-five (45) calendar days of receipt of the proposed changes. The EPA reserves the right to require additional time to review proposed changes.
- 30. EFFECTIVE DATE AND MODIFICATION.** This Agreement shall become effective only upon endorsement by the EPA SDO (the "effective date") of this Agreement. This Agreement may be amended or modified only by a written document signed by all parties, and shall become effective only upon endorsement by the EPA SDO. Any such request for modification by the Respondent shall be submitted to the EPA SDO through the EPA Authorized Representative. Requests shall be denied, endorsed, or endorsed as modified by the EPA SDO within thirty (30) calendar days of the EPA SDO's receipt of said request from the EPA Authorized Representative.
- 31. NOTICES.** Any notices, reports, or information required hereunder shall be in writing and delivered electronically or mailed by registered or certified mail, postage prepaid as follows:

To Respondent (Respondent's Authorized Representative(s)):

Jason Anderson
Executive Vice President
Cooper Marine & Timberlands Corporation
118 North Royal Street
Mobile, AL 36602
(251) 431-6176
Jason.anderson@coopertsmith.com

To EPA (EPA Authorized Representative(s)):

Peggy Anthony (Mail Code 3902R)
Lead Coordinator, Audits, Oversight and Reviews
Suspension and Debarment Division
Office of Grants and Debarment
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-5364
Anthony.peggy@epa.gov

Via Overnight Mail:

Peggy Anthony (Room 51235)
Lead Coordinator, Audits, Oversight and Reviews
Suspension and Debarment Division
Office of Grants and Debarment
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

With a copy to:

Angelia Souder Blackwell
District Counsel, Southeastern District
Suspension and Debarment
U.S. Environmental Protection Agency
61 Forsyth Street
Atlanta, GA 30303
(404) 562-9878
(404) 562-9875 (fax)
Blackwell.angelia@epa.gov.

or such other address as either party shall have designated by notice in writing to the other party. Additionally, any such aforementioned submission to EPA sent by registered or certified mail must also be accompanied by a digital copy either by email, disc, or flash drive. Submissions to EPA may be electronic only.

32. PUBLIC DOCUMENT. This Agreement, including all attachments and reports submitted pursuant to this Agreement, subject to the restrictions under the Privacy Act, exemptions under the Freedom of Information Act, or other applicable limitations, is a public document and may be distributed by the EPA throughout the Government and entered into Government data base systems as appropriate, and provided to other interested persons upon request. It is Respondent's responsibility to claim as Confidential Business Information (CBI) any and all documents attached to and submitted pursuant to the requirements of this Agreement.

If CBI is not claimed at the time such documentation is submitted to the EPA, Respondent hereby agrees it has waived such claim and has no objection to the EPA releasing such information to the public as appropriate.

The fact that Respondent has entered into this Agreement will be posted on the Federal Awardee Performance and Integrity Information System and any other public website as required by law.

33. EPA RELIANCE. Respondent and Respondent's signatories hereto represent that subject to criminal penalties pursuant to 18 U.S.C. § 1001 all written materials and other information supplied to the EPA by its authorized representative(s) during the course of discussions with the EPA preceding this Agreement, and during the term of this Agreement, are true, current, complete, and accurate, to the best of their information and belief. Respondent also represents that it has provided to the EPA all information in their possession relating to the facts at issue. Respondent understands that this Agreement is executed on behalf of the EPA in reliance upon the truth, accuracy, and completeness of all such representations.

34. TIME IS OF THE ESSENCE. Time is of the essence with respect to the performance of, compliance with, and receipt of the benefit of all rights, duties, and obligations herein. If EPA should provide additional time for the Respondent to comply with any specific deadline hereunder, such tolerance by EPA shall not be construed as a waiver or modification for any future deadlines as required herein.

35. RESPONDENT'S SIGNATORY(IES). Jason Anderson, Executive Vice President, is fully authorized to execute this Agreement and represents that he or she has authority to bind Respondent.

36. ENDORSEMENT BY SUSPENSION AND DEBARMENT OFFICIAL. This Agreement shall become effective only upon its endorsement by the EPA Suspension and Debarment Official.

37. TERM. The period of this Agreement shall be three (3) years from the date of endorsement by the EPA Suspension and Debarment Official (SDO).

VI. PARTIES' ENDORSEMENTS

FOR COOPER MARINE & TIMBERLANDS CORPORATION



Jason Anderson

Executive Vice President

8/9/16
DATE



Warren Butler,
Starnes Davis Florie LLP
Counsel for Respondent

8/9/16
DATE

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
SUSPENSION AND DEBARMENT DIVISION**

Angelia Souder Blackwell

Angelia Souder Blackwell
Debarment Counsel

August 4, 2016

DATE

VII. SUSPENSION AND DEBARMENT OFFICIAL'S ENDORSEMENT

Having reviewed the terms and conditions of the above Administrative Agreement between the Environmental Protection Agency and Cooper Marine & Timberlands Corporation and in reliance on the representations, covenants, and terms herein, I hereby endorse the said terms and conditions as an appropriate resolution of this matter. This approval is conditioned upon full compliance with all the terms and conditions of this Agreement. Any material breach or failure to comply with all the terms and conditions of this Agreement may result in a discretionary suspension or debarment as appropriate.

This Agreement also resolves Cooper Marine & Timberlands Corporation's existing ineligibility under Section 508 of the Clean Water Act and constitutes certification that the condition(s) giving rise to the violations have been corrected. Accordingly, I have directed that Cooper Marine & Timberlands Corporation be reinstated and that the active exclusion record on the System for Award Management (SAM) exclusion list maintained by the General Services Administration be rendered inactive.

Duc H. Nguyen

Duc H. Nguyen
EPA Suspension and Debarment Official

AUGUST 22, 2016

DATE

LIST OF ATTACHMENTS

1. CMT Reinstatement Petition and Exhibits
Exhibit A- CMT Organizational Chart
Exhibit B- CMT Brochure
Exhibit C- Environmental Responsibility Structure Chart
Exhibit D- Environmental Compliance Plan (ECP) and copies of the Plea Agreement and Associated Factual Resume at Appendix A to ECP
Exhibit E- CMT Recordkeeping and Reporting Guidance
Exhibit F- Thompson Engineering Audit Report
2. Letter dated May 3, 2016 from Richard E. Davis, Starnes Davis Florie LLP, to Angelia Souder Blackwell, Debarment Counsel, EPA Suspension and Debarment Division.
3. Judgment in a Criminal Case in *U.S. v. Cooper Marine & Timberland Corp*, Case No. 15-00181-001-WS, U.S. District Court, Southern District of Alabama.
4. CMT Environmental Stewardship and Ethics Policy.
5. CMT Hotline Poster.
6. EPA OIG Hotline Poster.
7. CMT Manager/Supervisor Acknowledgment of Environmental Commitment.
8. CMT Code of Business Ethics.