IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

COMMISSIONER OF THE DEPARTMENT OF PLANNING AND NATURAL RESOURCES, ALICIA V. BARNES, et al. Plaintiffs, vs. CENTURY ALUMINA COMPANY, LLLP, et al. Defendants.	CIVIL NO. 2005-0062 ACTION FOR DAMAGES JURY TRIAL DEMANDED

AGREEMENT AND CONSENT DECREE REGARDING THE FORMER ALUMINA REFINERY PROPERTY, ANGUILLA ESTATE, ST. CROIX, U.S. VIRGIN ISLANDS

This *Agreement and Consent Decree* (the "Consent Decree") is made and entered into by (1) the Virgin Islands Department of Planning and Natural Resources ("DPNR"), (2) Alicia V. Barnes, Commissioner of the DPNR, in her capacity as Commissioner ("Commissioner") and as Trustee for Natural Resources of the Territory of the United States Virgin Islands ("Trustee"), and (3) the Government of the Virgin Islands, in its *parens patriae* and public trustee capacities, on behalf of the public and its quasi-sovereign interests ("Government" or "Government of the Virgin Islands"), collectively referred to as "Plaintiffs," and (4) Lockheed Martin Corporation ("Lockheed Martin"). The DPNR, the Trustee, the Commissioner, the Government of the Virgin Islands, and Lockheed Martin each may be referred to herein as a "Settling Party" and collectively as the "Settling Parties."

I. BACKGROUND

1. On May 5, 2005, the Trustee filed a complaint against St. Croix Renaissance Group, L.L.L.P. ("SCRG"), St. Croix Alumina, L.L.C. ("SCA"), Alcoa World Alumina, L.L.C. ("AWA"), Century Aluminum Company ("Century"), Virgin Islands Alumina Corporation ("VIALCO"), HOVENSA, L.L.C. ("HOVENSA"), and Hess Oil Virgin Islands Corporation ("HOVIC"), *Commissioner of the Dep't of Planning and Natural Resources v. Century Alumina Co., et al.*, Civ. No. 2005-0062 ("the 2005 Action"), pursuant to the Virgin Islands Water Pollution Control Act, V.I. Code Ann. Tit. 12 § 181 et seq. ("VIWPCA"), the Virgin Islands Oil Spill Prevention and Pollution Control Act, V.I. Code Ann. Tit. 12 § 701 et seq. ("VIOSPPCA"), common law, and Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended ("CERCLA"). On July 30, 2009, the Trustee and the Government filed an amended complaint against the same parties. Through the complaint the Trustee and the Government seek injunctive relief, including abatement of a public nuisance and cessation of further releases of contaminants into the environment, restoration of natural resources, damages, attorneys' fees and costs, and other amounts as may be just and proper relating to the Oil Refinery Property and the Alumina Property. In response to the complaint, Lockheed Martin and other Defendants brought certain counterclaims, cross-claims, and third-party claims.

2. On June 17, 2007, DPNR, acting on behalf of the Virgin Islands, filed a complaint against SCRG pursuant to CERCLA 107(a), *Department of*

Planning and Natural Resources v. St. Croix Renaissance Group, L.L.L.P., et al., Civ. No. 2007-0114 ("the Cost Recovery Action"), to recover past and future Response Costs, including oversight costs and enforcement costs, including attorneys' fees and litigation costs, interest, and such other relief and amounts as may be just and proper due to the alleged release or threatened release of hazardous substances at the Alumina Property. On January 26, 2010, DPNR amended its complaint to assert the same claims against Lockheed Martin, SCA, AWA, VIALCO, and Century (with SCRG, collectively the "Cost Recovery Defendants"). DPNR also sought a declaratory judgment that these parties were jointly, severally and strictly liable to DPNR for all past and future Response Costs. During the course of the Cost Recovery Action, DPNR sought costs for collecting samples and analyzing data, costs to prepare a Draft Remedial Investigation/Feasibility Study ("RI/FS"), costs to conduct bioassays and to prepare baseline risk assessments, oversight costs, enforcement costs, including attorneys' fees and litigation costs, costs for DPNR staff to respond to releases of contaminants into waters of the Virgin Islands and to take enforcement actions, interest, and such other relief and amounts as may be just and proper. In answering the complaint, Lockheed Martin and other Cost Recovery Defendants brought certain counterclaims, cross-claims, and third-party claims. In response to cross-motions for summary judgment by DPNR and the Cost Recovery Defendants, on March 4, 2011, this Court denied DPNR's motion, granted the Cost Recovery Defendants' motion and dismissed the Cost Recovery Action. On June 5, 2013, the U.S. Court of Appeals for the Third Circuit reversed and

remanded the Cost Recovery Action to this Court. Following a hearing on the cross-motions for summary judgment, on October 16, 2013, this Court denied the Cost Recovery Defendants' motions and granted DPNR's summary judgment motion as to DPNR's request for a declaratory judgment pursuant to CERCLA for past and future Response Costs not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

3. On February 16, 2012, this Court entered a consent decree that resolved all claims pending in the 2005 Action and Cost Recovery Action between and amongst Plaintiffs, SCRG, SCA, and AWA ("2012 Consent Decree"). This Court previously granted Century's summary judgment motions and Century is no longer a party to either the 2005 Action or the Cost Recovery Action.

II. FINDINGS

4. The Trustee is the natural resource trustee for the U.S. Virgin Islands, with the authority to coordinate natural resources damage assessment and restoration activities pursuant to CERCLA as necessary. DPNR is the executive department of the Government with the duty and power, *inter alia*, to administer and enforce all laws protecting the Virgin Islands' environment. DPNR incurred Response Costs. The Government of the Virgin Islands, in its *parens patriae* and public trustee capacities, on behalf of the public and its quasi-sovereign interests, may seek the abatement of public nuisances as well as other relief pursuant to Virgin Islands statutory laws and common law.

5. The Plaintiffs have concluded and find that the performance of the Work as provided for in this Consent Decree will provide sufficient remediation and restoration of injured Natural Resources to satisfy Lockheed Martin's several share of any liability that it may have to Plaintiffs for CERCLA Natural Resource Damages at and near to the Alumina Property. The Plaintiffs have concluded and find that the payment of Damages and Response Costs as provided for in this Consent Decree will reimburse the Plaintiffs for past and future Response Costs, including costs of enforcement, among other costs and damages incurred and to be incurred by Plaintiffs.

6. The Plaintiffs have concluded that the remediation and restoration provided by the Work and the payment will not compensate the Plaintiffs for the Non-Settling Party's share of liability to Plaintiffs for Damages and Response Costs and CERCLA Natural Resource Damages at the Alumina Property. While the Work and payment will address remediation and restoration of the Group B Units and Response Costs for these Units, the Work and payment do not fully address compensatory damages for contamination at and originating from the Alumina Facility. Plaintiffs maintain that the Non-Settling Party remains responsible for compensatory damages for contaminating the waters of the Virgin Islands with petroleum, sodium, caustic, bauxite residue, coal ash, and highly contaminated dredge spoils, among other contaminants, and for injuring terrestrial natural resources.

7. This Consent Decree resolves, compromises and settles, among the Settling Parties only: (a) the 2005 Action, (b) the Cost Recovery Action, and

(c) any and all other past, present, and/or future claims by or among the Settling Parties relating to the relief sought in the 2005 Action and the Cost Recovery Action, including remediation, Response Costs, costs of enforcement, attorneys' fees and costs, damages, natural resource damages, including restoration costs, injunctive relief, and other amounts as may be just and proper associated with pollution or contamination alleged to have resulted from the presence of bauxite residue, petroleum, elevated pH, sodium, chloride, hazardous substances, and other pollutants or wastes generated by or associated with the alumina refining processes previously conducted on the Alumina Property, as well as construction of the alumina refinery and all activities and impacts associated with construction and operation of the alumina refinery.

8. Based on the information presently available to them, Plaintiffs believe that the Work will be properly and promptly conducted by Lockheed Martin when conducted in accordance with the requirements of this Consent Decree and its appendices.

9. Lockheed Martin does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor is its entering into this Consent Decree an admission of violation of any law, rule, or regulation, nor shall any statement contained herein be construed to be an admission by Lockheed Martin.

10. The Settling Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Settling Parties in good faith, that implementation of this Consent Decree will

expedite the cleanup and restoration of Natural Resources at the Alumina Property, that settlement of this matter will avoid prolonged and complicated litigation between the Settling Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, with the consent of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, AND DECREED:

III. JURISDICTION

11. This Court has jurisdiction over the subject matter of the 2005 Action and the Cost Recovery Action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the territorial law claims in the 2005 Action pursuant to 28 U.S.C. § 1367, and V.I. Code Ann. Tit. 4 § 32(a). This Court also has personal jurisdiction over Lockheed Martin. Solely for the purpose of this Consent Decree and the underlying complaints, Lockheed Martin waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Lockheed Martin shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

IV. PARTIES BOUND

12. This Consent Decree is entered into voluntarily and applies to and is binding upon the Plaintiffs and upon Lockheed Martin, and its successors and assigns. Any change in ownership or corporate or other legal status of Lockheed Martin, including but not limited to any transfer of assets or real or personal property, shall in no way alter its responsibilities under this Consent Decree.

V. DEFINITIONS

13. Unless otherwise expressly provided herein, the terms used in this Consent Decree that are defined in CERCLA, VIWPCA, and VIOSPPCA, or regulations promulgated thereunder, shall have the meaning assigned them under such statutes or regulations. Whenever the terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

A. "Alumina Property" shall mean the site of the de-commissioned former alumina refinery operations located at 1 Estate Anguilla, Kingshill, St. Croix, U.S. Virgin Islands.

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

C. "CERCLA Natural Resource Damages" shall mean compensation for injury to, destruction of or loss of any and all Natural Resources available under CERCLA, including (1) the reasonable costs of assessment of damages; (2) compensation of loss, injury, impairment, damage, or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources; and (3) costs of restoration, rehabilitation, or replacement of injured Natural Resources or the

acquisition of equivalent resources due to releases of hazardous substances that occurred prior to the date of entry of this Consent Decree and resulted from or are associated with the bauxite refining processes previously conducted on the Property.

D. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, the Consent Decree shall control.

E. "Damages and Response Costs" shall mean (i) any and all of the relief, except CERCLA Natural Resource Damages, sought in the 2005 Action, including injunctive relief (*e.g.*, abatement of the alleged public nuisance and contamination of the waters of the Virgin Islands), remedial relief, compensatory relief, and attorneys fees and costs under territorial law and common law and (ii) Response Costs, including enforcement costs, associated with pollution or contamination that occurred prior to the date of entry of this Consent Decree and resulted from bauxite residue, petroleum, elevated pH, sodium, chloride, and other pollutants or wastes resulting from or associated with the bauxite refining processes previously conducted on the Property and/or construction of the alumina refinery and all activities and impacts associated with construction of the refinery. Damages and Response Costs are not CERCLA Natural Resource Damages.

F. "Date of Lodging" shall mean the date on which this Consent Decree is first filed with the District Court of the Virgin Islands.

G. "Day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, Federal holiday or Virgin Islands holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, Federal holiday or Virgin Islands holiday, the period shall run until the close of business of the next working day.

H. "Group B Units" shall mean the "old" bauxite disposal area ("Area B"), the dewatering pond located on Area B ("Dewatering Pond"), and discharges of groundwater containing site-related contaminants from bauxite processing into the western and northern sides of the Alucroix Channel. As used in this Consent Decree, the term "site-related contaminants" does not include petroleum hydrocarbons.

I. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time interest accrues. The rate of interest is subject to change on October 1 of each year.

J. "Major Corrective Activity(ies)" shall mean those activities providing for closure, remediation and restoration of the Alumina Property as set forth in the Scope of Work and does not include the operation, maintenance, monitoring, and inspection activities that Lockheed Martin is

required to perform under this Consent Decree as set forth in the Scope of Work.

K. "Natural Resources" shall mean land, fish, wildlife, biota air, surface water, ground water, drinking water supplies, wetlands, habitats, species, estuarine and marine environments, wildlife and marine sanctuaries, archaeological, cultural, recreational and other biotic resources, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Virgin Islands, singly or jointly with another person or entity.

L. "Non-Settling Party" shall mean VIALCO.

M. "Oil Refinery Property" shall mean the site of the oil refinery facility located at Limetree Bay, St. Croix, United States Virgin Islands.

N. "Response Action" shall mean any response, removal or remedial action as described in § 107(a)(1-4)(A) and (B) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A) and (B), and as defined in § 101(23)-(25) of CERCLA, 42 U.S.C. § 9601(23)-(25).

O. "Response Costs" shall mean costs of response, as described in § 107(a)(1-4)(A) and (B) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A) and (B), and as defined in § 101(25) of CERCLA, 42 U.S.C. § 9601(25).

P. "S+G" shall mean Smith Gardner, Inc., a consultant engaged by DPNR for the purposes of providing advice and oversight related to the Work.

Q. "Scope of Work" or "SOW" shall mean the scope of work for implementation of Major Corrective Activities and long-term operation, maintenance, monitoring, and inspection thereof, as set forth in Appendix A to this Consent Decree, and any agreed modifications to the SOW made in accordance with this Consent Decree.

R. "Virgin Islands" shall mean the Territory of the United States Virgin Islands and shall include all departments, divisions, administrations, officers, agencies, and trustees of it or its government, including specifically, but without limiting the foregoing, the Trustee, the DPNR and the Attorney General.

S. "Virgin Islands Port Authority" shall mean the Virgin Islands Port Authority.

T. "Virgin Islands Waste Management Authority" shall mean the Virgin Islands Waste Management Authority.

U. "Work" shall mean the studies, the Major Corrective Activities, and the operation, maintenance, monitoring and inspection activities that the Settling Defendant is required to perform under this Consent Decree, as set forth in the SOW.

VI. PERFORMANCE OF WORK BY LOCKHEED MARTIN

14. After the Effective Date of this Consent Decree as provided in paragraph 62, Lockheed Martin shall proceed to perform the Work identified in

the SOW in accordance with the schedule set forth in the SOW and the terms of this Consent Decree.

15. The SOW is incorporated into, forms an integral part of, and is enforceable under this Consent Decree.

VII. PERMITTING

16. Lockheed Martin will confer with representatives of DPNR and of S+G throughout the period of performance of the Work for the purpose of ensuring that it obtains all permits necessary to perform the Work. DPNR and the Government will provide Lockheed Martin with reasonable cooperation so as to avoid delaying the issuance of any such permit(s). If there are delays in issuing permits due to DPNR's or another Government agency's delay in responding to submissions (as opposed to inadequate permit applications) that cause Lockheed Martin to miss one or more deadlines provided for in the SOW, deadlines shall be extended for a period of time no shorter than the period of the Government agency delay.

VIII. INSURANCE AND INDEMNIFICATION

17. Lockheed Martin shall obtain (or require its contractor(s) to obtain) and maintain insurance coverage appropriate and customary for the Work. Any liability insurance policy for the Work shall designate DPNR and SCRG as additional insureds. No later than 15 days before commencing on-site Work identified in the SOW, Lockheed Martin shall secure (or require its contractor(s) to secure), and shall maintain until the date on which DPNR issues a No Further Action determination to Lockheed Martin in accordance with Paragraph 6.a.xiv of

the SOW, commercial general liability insurance with limits of five million dollars ($5,000,000.00), for any one occurrence, and automobile liability insurance with limits of one million dollars ($1,000,000.00), combined single limit, naming DPNR and SCRG as additional insureds. In addition, Lockheed Martin shall satisfy, or shall require that its contractors or subcontractors have similar liability insurance and satisfy all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Lockheed Martin. Upon request, and prior to commencement of on-site Work under this Consent Decree, Lockheed Martin shall make available to DPNR and SCRG evidence of each such insurance policy.

18. Plaintiffs do not assume any liability by entering into this Consent Decree or by virtue of any claim that Lockheed Martin is or might be DPNR's authorized representative to perform Work at the Alumina Property. Lockheed Martin shall indemnify, save and hold harmless, and defend Plaintiffs and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Lockheed Martin, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Further, Lockheed Martin agrees to fund the defense of and to pay the Government all costs Plaintiffs incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against Plaintiffs based on negligent or other wrongful

acts or omissions of Lockheed Martin, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Plaintiffs shall not be held out as a party to any contract entered into by or on behalf of Lockheed Martin in carrying out activities pursuant to this Consent Decree. Neither Lockheed Martin nor any such contractor shall be considered an agent of Plaintiffs. Plaintiffs shall give Lockheed Martin notice of any claim for which Plaintiffs are entitled to a defense by Lockheed Martin and for which they plan to seek indemnification pursuant to this Paragraph, and shall consult with Lockheed Martin prior to settling any such claim.

19. Lockheed Martin covenants not to sue and agrees not to assert any claims or causes of action against Plaintiffs for damages or reimbursement or for set-off of any payments made or to be made to Plaintiffs, arising from or on account of any contract, agreement, or arrangement between Lockheed Martin and any person for performance of Work on or relating to the Alumina Property, including, but not limited to, claims on account of construction delays. In addition, Lockheed Martin shall indemnify and hold harmless Plaintiffs with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Lockheed Martin and any person for performance of Work on or relating to the Alumina Property, including, but not limited to, claims on account of construction delays.

IX. COMMUNICATIONS AND COOPERATION

20. **Regular Meetings**. Representatives of Lockheed Martin and DPNR/S+G will hold meetings on a quarterly basis to present and discuss progress of the Work.

21. **S+G Information**. DPNR agrees to share with Lockheed Martin all information collected and design concepts previously developed by S+G and S.S. Papadopulos & Associates regarding the Alumina Property.

22. **Access and Cooperation by SCRG**. Pursuant to Paragraph 27 of the 2012 Consent Decree and subject to certain liability insurance requirements set forth in the 2012 Consent Decree, SCRG has agreed to cooperate in good faith and to provide DPNR, S+G, Lockheed Martin, and their agents and contractors access to the Property. Such persons shall possess the necessary clearance papers for working within the secure port facility or have an escort with such clearances. Lockheed Martin and SCRG have entered into an access agreement that specifies the terms and requirements necessary in order for Lockheed Martin to access the Property to perform the Work.

23. **Cooperation by Virgin Islands Authorities**. Each of DPNR, the Trustee and the Government shall cooperate in good faith and shall actively seek the cooperation by other agencies and independent authorities of the Government to provide for the use of on-island resources (including but not limited to treated sewage), if technically feasible, in order to effectuate the performance of the Settling Defendant's Work.

X. PAYMENTS TO PLAINTIFFS AND S+G

24. Lockheed Martin will pay to the Government $20,750,000.00 within 30 days of the Effective Date of this Consent Decree pursuant to instructions to be provided by the Government no later than within 20 days of the Effective Date of this Consent Decree.

25. **Interest on Late Payment.** In the event that the payment required under Paragraph 24 is not received when due, Interest shall begin to accrue on the unpaid balance on the day the payment is due through the date of payment and shall continue to accrue on the unpaid balance through the date of payment and shall be paid to the Government pursuant to the instructions provided pursuant to Paragraph 24 above.

26. Lockheed Martin will pay S+G's (and its subcontractors', if any) fees and costs in providing oversight (a) of Major Corrective Activities and (b) of operation, maintenance and monitoring ("OM&M") on behalf of DPNR, the Trustee and the Government until the date on which DPNR issues a No Further Action determination to Lockheed in accordance with Paragraph 6.a.xiv of the SOW. The oversight costs for the Major Corrective Activities and the first two years of OM&M as provided for in the SOW are estimated to be $390,000.00 (in 2014 dollars), which S+G will use its best efforts not to exceed. S+G will invoice on a time and materials basis wherein only actual time and expenses will be charged. S+G shall invoice its fees and costs (including those of its subcontractors on hydrogeology and other issues) directly to Lockheed Martin on a monthly basis. S+G shall make available backup documentation for its

invoices upon request from Lockheed Martin. The estimated amount may only be exceeded due to changes in scope, schedule, and/or category rates and so long as Lockheed Martin is provided with prompt notice of any such changes and at least 60 days' advance notice of S+G invoicing any amounts exceeding the estimate of $390,000.00 (in 2014 dollars). For purposes of this paragraph, S+G shall not increase its category rates by an amount greater than any rate increase to its other clients and, in any event, by more than 4% annually. Lockheed Martin agrees to pay S+G's invoices on a net 60 day basis. If S+G is not timely paid, DPNR may issue a stop work order for some or all Major Corrective Activities ongoing at the Alumina Property without providing any relief for the deadlines contained in this Consent Decree until such payment(s) is/are made.

XI. FUTURE PROPERTY USE

27. Notwithstanding any requirements set forth herein with respect to the performance of the Major Corrective Activity, this Consent Decree does not affect future uses of the Alumina Property. Notwithstanding the foregoing, future activities at the Group B Units shall be limited to those that do not compromise the integrity and effectiveness of the Major Corrective Activity at those units. After selection of the design for the Major Corrective Activity that would require such an activity limitation, DPNR and SCRG, or its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Group B Units shall enter into a mutually acceptable Activity Use Agreement (AUA) substantially similar to the example attached hereto as Appendix B.

XII. REASONABLE EXTENSION AND FORCE MAJEURE

28. Notwithstanding anything in this Consent Decree to the contrary, a reasonable extension for any deadline missed by Lockheed Martin for good cause (including force majeure) shall be granted.

29. For purposes of this Consent Decree, "Force Majeure" is defined as any event arising from causes beyond the control of Lockheed Martin, of any entity controlled by Lockheed Martin, or of its contractors, that delays or prevents the performance of any obligation under this Consent Decree (other than an obligation to pay any sum due) despite Lockheed Martin's best efforts to fulfill the obligation. The requirement to exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure and best efforts to address the effects of any potential Force Majeure (i) as it is occurring and (ii) following the potential Force Majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete any Work or increased cost of performance of the Work or failure to meet the goals set forth in the SOW.

30. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure, Lockheed Martin shall notify DPNR or S+G within 120 hours after it becomes aware that the event might cause a delay. Within seven days thereafter, Lockheed Martin shall provide to DPNR and S+G, in writing, an explanation and description of the reasons for the delay; the anticipated duration

of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; its rationale for attributing such delay to a Force Majeure if it intends to assert such a claim; the proposed extension required to meet the delayed obligation if a claim of Force Majeure is made; and a statement as to whether, in the opinion of Lockheed Martin, such event may cause or contribute to an endangerment to public health, welfare or the environment. To the extent Lockheed Martin claims Force Majeure, it shall include with any notice all available supporting documentation supporting its claim that the delay was attributable to a Force Majeure.

31. In the event of a Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure will be extended by DPNR/S+G for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure shall not, of itself, extend the time for performance of any other obligation. If DPNR/S+G does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, DPNR or S+G will notify Lockheed Martin in writing of the decision within seven (7) days of receipt of its written claim of Force Majeure. If DPNR/S+G agrees that the delay is attributable to a Force Majeure, DPNR or S+G will notify Lockheed Martin in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure. If DPNR or S+G does not respond in writing to Lockheed Martin's notice of a claim of Force Majeure within seven (7) Days of

receiving notice such notice, the claim of Force Majeure is deemed valid and the proposed extension for meeting the delayed obligation shall be deemed approved by DPNR/S+G.

XIII. PERFORMANCE GUARANTEE

32. To ensure that sufficient funds are available from Lockheed Martin to complete its Work obligations as set forth in the SOW, including OM&M following completion of the Major Corrective Activities, Lockheed Martin will arrange for a corporate guarantee of performance of the Work for which it is responsible as set forth in the SOW. The performance guarantee will meet the substantive elements (but need not include the procedural requirements) of the "financial test" as set forth at 40 C.F.R. § 264.143(f) and shall be provided to Plaintiffs within 72 hours of the Effective Date.

33. After DPNR makes a No Further Action determination as provided in paragraph 6.a.xiv of the SOW with respect to the Work performed by Lockheed Martin, Lockheed Martin shall nonetheless be responsible for the performance of all subsequent obligations of maintenance, monitoring and inspection in perpetuity, and has made arrangements for access for this limited purpose with SCRG pursuant to SCRG's obligation to provide access pursuant to Paragraph 27 of the 2012 Consent Decree. In order to meet these requirements, Lockheed Martin has this day entered into a long-term access agreement with SCRG that specifies the terms and requirements necessary for Lockheed Martin to access the Property to perform its ongoing obligations and applies to SCRG and subsequent owners of the Property.

XIV. DISPUTE RESOLUTION

34. If Lockheed Martin disputes the decision of DPNR/S+G on any plan, schedule, report, permit application, or other deliverable submitted to DPNR/S+G under the SOW, a stipulated penalty, or a claim of Force Majeure, or does not receive a response within 15 days of the time for DPNR/S+G to respond pursuant to the SOW, Lockheed Martin may notify DPNR/S+G in writing of such dispute no later than 15 days after it receives written notice of DPNR's/S+G's decision. Lockheed Martin and DPNR/S+G thereafter shall engage in informal negotiations for a period up to, but no longer than, twenty-one (21) days. If Lockheed Martin and DPNR/S+G are unable to resolve the dispute informally, the decision of DPNR/S+G (as originally presented or as DPNR/S+G may revise it during informal negotiations or otherwise) shall become final unless, within ten (10) days after the end of the informal negotiation period, Lockheed Martin provides DPNR/S+G with written notice of a continuing dispute, in which case the Parties shall submit the dispute for resolution to (a) the Honorable Edward N. Cahn or (b) any other arbitrator mutually agreeable to all Parties to the dispute (in either case, the "Arbitrator"). The decision of the Arbitrator shall be binding on the Parties and non-appealable. In resolving any dispute, the Arbitrator will consider the functional purposes set out in this Consent Decree and the SOW, and will afford to the Parties the ability to achieve those purposes in as cost-effective of a manner as possible while still effectively achieving the purposes set out in this Consent Decree and the SOW. The Parties recognize that the Arbitrator may need to employ a neutral technical advisor to assist him in any dispute resolution proceeding. All costs of dispute resolution shall be split

equally between DPNR and Lockheed Martin, except that each party shall bear its own attorneys' fees and costs.

35. If DPNR or S+G finds that Lockheed Martin has failed to comply with its obligations pursuant to this Consent Decree, the SOW, and/or a decision issued pursuant to the Consent Decree and/or SOW, whether DPNR's or S+G's finding stems from a delay in performance, lack of performance, or otherwise by Lockheed Martin, DPNR or S+G may notify Lockheed Martin in writing of the finding that it has failed to perform its duties pursuant to the Consent Decree, SOW, or a decision issued pursuant to the Consent Decree or SOW. DPNR/S+G and Lockheed Martin thereafter shall engage in informal negotiations for a period up to, but no longer than, twenty-one (21) days. If DPNR/S+G and Lockheed Martin are unable to resolve the dispute informally, DPNR or S+G, on behalf of DPNR, may submit the dispute for resolution to (a) the Honorable Edward N. Cahn or (b) any other arbitrator mutually agreeable to all Parties to the dispute (in either case, the "Arbitrator"). The decision of the Arbitrator shall be binding on the Parties and non-appealable. In resolving any dispute, the Arbitrator will consider the functional purposes set out in this Consent Decree and the SOW, and will afford to the Parties the ability to achieve those purposes in as cost-effective of a manner as possible while still effectively achieving the purposes set out in this Consent Decree and the SOW. The Parties recognize that the Arbitrator may need to employ a neutral technical advisor to assist him in any dispute resolution proceeding. All costs of dispute resolution shall be split

equally between DPNR and Lockheed Martin, except that each party shall bear its own attorneys' fees and costs.

XV. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE OR A DECISION OF THE ARBITRATOR UNDER PARAGRAPHS 34 AND 35.

36. Enforcement of the Consent Decree. If DPNR, the Trustee, the Government, and/or Commissioner (collectively referred to as "Plaintiffs") file a motion with the Court to enforce matters not committed to dispute resolution in this Consent Decree or bring an action to enforce this Consent Decree, and Plaintiffs obtain the relief requested in such motion or action, Lockheed Martin shall reimburse DPNR for all reasonable costs of filing such motion or action, including but not limited to reasonable attorneys fees. Notwithstanding any other provisions of this Consent Decree, failure to make the payment due under Paragraph 24 is not a matter of dispute resolution and is a matter that may be brought to the Court unless Plaintiffs choose to rely upon the Dispute Resolution provisions of Section XIV. The Settling Party shall be permitted to seek relief from the Court to enforce all arbitrator decisions issued pursuant to Section XIV.

37. Stipulated Penalties For Failure to Comply With Arbitrator's Decision Under Paragraphs 34 and 35. Lockheed Martin shall be liable for stipulated penalties in the amounts set forth in Paragraph 38 to the Government of the Virgin Islands for failure to comply with any decision and/or schedule set forth by the Arbitrator under Paragraphs 34 or 35.

38. The following stipulated penalties shall accrue per day for any noncompliance with a decision of the Arbitrator under Paragraph 34 or 35 unless excused in writing by the Arbitrator:

Penalty Per Violation Per Day	Period of Noncompliance
$2,500	1st through 14th day
$10,000	15th through 30th day
$15,000	31st day and beyond

39. Once three (3) years have passed after the issuance of the No Further Action determination, enforcement of Lockheed Martin's responsibility for implementation of the Maintenance/Monitoring/Inspection Plan and ongoing operation, maintenance, monitoring and inspection of the Group B Units shall be pursuant to Paragraph 36 of this Consent Decree or DPNR's reserved rights pursuant to Paragraph 46, but not through the Dispute Resolution procedures set forth in Section XIV of this Consent Decree.

40. All penalties shall continue to accrue through the final day of the correction of the noncompliance as determined by the Arbitrator.

41. All penalties accruing under this Section shall be due and payable to the Government of the Virgin Islands within 30 days after Lockheed Martin's receipt from DPNR of a demand for payment of the penalties to the Government. Notwithstanding any other provision of this Consent Decree, the Government may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XVI. DISMISSAL OF PENDING ACTIONS

42. Within 15 days of the date on which the Government receives the payment as provided for in Paragraph 24, the Government and the Trustee will move to dismiss with prejudice their claims against Lockheed Martin in both the 2005 Action and the Cost Recovery Action, and Lockheed Martin will move to dismiss with prejudice its counterclaims, cross-claims, and third-party claims in both the 2005 Action and the Cost Recovery Action.

43. In the event that any of the Settling Parties fails to move to dismiss its claims against all the other Settling Parties, the Virgin Islands Waste Management Authority, and the Virgin Islands Port Authority in a pending action as provided in Paragraph 42, any of the Settling Parties may seek redress from the Court as provided in Paragraph 36, including an order compelling the non-compliant Settling Party to comply with Paragraph 42.

XVII. RELEASE, COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

44. Release. In consideration for the payment required by Paragraph 24, this Consent Decree constitutes a release of all claims for Damages and Response Costs that DPNR, the Trustee, the Commissioner, and the Government have brought or could bring against Lockheed Martin, its predecessors and affiliates, as well as its officers, directors, employees, agents, and insurers. In consideration of the Work Lockheed Martin will perform pursuant to Paragraphs 14 and 15 of this Consent Decree, this Consent Decree constitutes a release of all claims for CERCLA Natural Resource Damages that DPNR, the Trustee, the Commissioner, and the Government have brought or

could bring against Lockheed Martin, its predecessors and affiliates, as well as its officers, directors, employees, agents, and insurers.

45. Covenants Not to Sue. In consideration of the payment that will be made by Lockheed Martin pursuant to Paragraph 24 of this Consent Decree, except as specifically provided in Paragraph 46 (Reservation of Rights by Plaintiffs), Plaintiffs covenant not to sue or to take other civil or administrative action against Lockheed Martin, its successors and assigns, as well as its officers, directors, employees, agents, and insurers, whether in whole or in part for any and all civil or administrative liability to the Virgin Islands with respect to Damages and Response Costs. In consideration of the Work Lockheed Martin will perform pursuant to Paragraphs 14 and 15 of this Consent Decree, except as specifically provided in Paragraph 46 (Reservation of Rights by Plaintiffs), Plaintiffs covenant not to sue or to take other civil or administrative action against Lockheed Martin, its successors and assigns, as well as its officers, directors, employees, agents, and insurers, whether in whole or in part for any and all civil or administrative liability to the Virgin Islands with respect to CERCLA Natural Resource Damages. These covenants not to sue shall take effect upon the date on which the Government receives the payment as provided for in Paragraph 24. Plaintiffs' covenants not to sue are conditioned upon the satisfactory performance by Lockheed Martin of its obligations under this Consent Decree. These covenants not to sue extend only to Lockheed Martin, its successors and assigns, as well as its officers, directors, employees, agents, and insurers, and do not extend to any other person.

46. Reservation of Rights by Plaintiffs. Notwithstanding any other provision of this Consent Decree, Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Lockheed Martin with respect to:

a. claims based on a failure by Lockheed Martin to meet a requirement of this Consent Decree;

b. liability based on Lockheed Martin's transportation, treatment, storage, or active disposal, or the arrangement for the transportation, treatment, storage, or active disposal of wastes at a location other than the Alumina Property within the USVI;

c. criminal liability that is unrelated to implementation of the Work and any of the matters being released by Plaintiffs under this Agreement;

d. liability for violations of federal or territorial law that occur during or after implementation of the Work that are unrelated to implementation of the Work and any of the matters being released by Plaintiffs under this Agreement; and

e. liability arising from future releases or discharges at the Alumina Property after DPNR issues its No Further Action determination as required by the SOW.

47. Covenant Not to Sue Plaintiffs or Related Entities by Lockheed Martin. Lockheed Martin covenants not to sue and agrees not to assert any claims or causes of action against DPNR, the Government, the Trustee, the

Commissioner, the Virgin Islands Waste Management Authority, the Virgin Islands Port Authority, and any other agency or instrumentality of the Government, and their directors, officials, officers, and employees, with respect to the matters addressed in this Consent Decree, including but not limited to any direct or indirect claim for reimbursement of the costs of complying with this Consent Decree.

48. Res Judicata and Other Defenses That May be Asserted by Third Parties. In any subsequent administrative or judicial proceeding initiated by Plaintiffs for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the Alumina Property, the current or future property owners shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by Plaintiff(s) in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraph 45 (Covenants Not to Sue).

XVIII. CONTRIBUTION PROTECTION

49. The Parties agree, and by entering this Consent Decree the Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Lockheed Martin is entitled, as of the Effective Date, to protection from contribution actions or claims to the maximum extent authorized under Section 113(f)(2) of CERCLA, common law, and Virgin Islands law, for all matters

addressed in this Consent Decree, including but not limited to Damages and Response Costs, CERCLA Natural Resource Damages, and injunctive relief. The "matters addressed" in this Consent Decree are (i) CERCLA Natural Resource Damages, (ii) Damages and Response Costs, (iii) injunctive relief, (iv) all Response Actions taken or to be taken and all Response Costs incurred or to be incurred, at or in connection with pollution or contamination in any media, including soils, soil gas, air, and groundwater, alleged to have resulted from the presence of hazardous substances, petroleum, pollutants, contaminants, or wastes, including bauxite residue, generated by or associated with the alumina refining processes previously conducted on the Alumina Property, and (v) any other civil or administrative liability to the Virgin Islands associated with pollution or contamination resulting from hazardous substances, petroleum, pollutants, contaminants, or wastes, including bauxite residue, resulting from or associated with the bauxite refining processes previously conducted on the Alumina Property, as well as construction of the alumina refinery and all activities and impacts associated with construction and operation of the alumina refinery that occurred prior to the date of entry of this Consent Decree, under territorial law (including the common law), CERCLA or any other federal law.

XIX. EFFECT OF SETTLEMENT

50. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes

of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Alumina Property against any person not a Party hereto except as to the Virgin Islands Waste Management Authority and Virgin Islands Port Authority, which are released and for which covenants not to sue have been provided.

XX. COMPLIANCE WITH APPLICABLE LAW

51. All activities undertaken by Lockheed Martin pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and territorial laws and regulations.

XXI. WAIVER OF JUDGMENTS

52. This Consent Decree constitutes a waiver by DPNR, the Trustee and the Government of any portion of any judgment that has been or may be obtained from or against the Non-Settling Party or other persons or entities that may be allocated to Lockheed Martin for which the Non-Settling Party could collect against Lockheed Martin.

XXII. ACCESS TO INFORMATION AND RETENTION OF RECORDS

53. Subject to the limitations set forth in the next sentence, Lockheed Martin shall make available to DPNR/S+G, upon request, for inspection, copying, and/or scanning all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to the implementation of this Consent Decree (which shall be deemed to include all of the historical bauxite refining

owner/operator records currently stored at the Alumina Property but which does not include any documents already obtained in discovery by Plaintiffs in the cases being dismissed pursuant to the Consent Decree), including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, non-privileged correspondence with third parties, and other documents or information regarding the Work. Lockheed Martin shall not be obligated to make available to DPNR/S+G internal communications, briefings, presentations, privileged communications and other records, reports, documents and other information that do not pertain to the Work. Lockheed Martin also shall make available to DPNR/S+G, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

54. Until five years after the issuance of a No Further Action Determination as contemplated by the SOW, Lockheed Martin shall preserve and retain all records and documents in its possession or control and that relate in any manner to the bauxite refining processes previously conducted on the Alumina Property and the performance of the Major Corrective Activity to be undertaken at the Alumina Property pursuant to the SOW, regardless of any corporate retention policy to the contrary.

55. After the conclusion of the document retention period in the preceding paragraph 54, Lockheed Martin shall notify DPNR/S+G at least 90 days prior to the destruction of any such records or documents, and, upon

request by DPNR/S+G, Lockheed Martin shall deliver any such records or documents to DPNR/S+G. If DPNR/S+G requests documents, Lockheed Martin may withhold certain documents, records, or other information that they believe in good faith are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Lockheed Martin asserts such a privilege in lieu of providing records, it shall provide DPNR/S+G with a privilege log that provides sufficient information to DPNR/S+G in order for DPNR's counsel to evaluate the assertion of the privilege. Lockheed Martin may rely upon privilege logs previously prepared for any of the litigation to fulfill the obligation to provide DPNR/S+G with a privilege log. Lockheed Martin shall retain all records that it claims to be privileged until DPNR has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Lockheed Martin's favor. Notwithstanding, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged. Moreover, no claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Alumina Property. If a claim of privilege applies only to a portion of a document requested by DPNR/S+G, the document shall be provided to DPNR/S+G in redacted form to mask the privileged information only.

XXIII. NOTICES AND SUBMISSIONS

56. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to Plaintiffs and Lockheed Martin, respectively:

Virgin Islands:
Vincent F. Frazer, Attorney General, or Successor
Territory of the United States Virgin Islands
488-50C Kronprindsens Gade, GERS Complex
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00802
Tel: 340-774-5666
Fax: 340-774-9710

Alicia Barnes, Commissioner, or Successor
U.S. Virgin Islands Department of Planning & Natural Resources
Foster's Plaza, 398- I Anna's Retreat
St. Thomas, U.S.V.I. 00802
Tel: 340-774-3320
Fax: 340-775-5706

John K. Dema Esquire
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-5008
Tel: 340-773-6142
Fax: 340-773-3944

Lockheed Martin Corporation:
Lockheed Martin Corporation
Attn: Legal Department
6801 Rockledge Drive
Bethesda, MD 20817

XXIV. MODIFICATION

57. Material modifications to this Consent Decree may only be made in writing, signed by Plaintiffs and Lockheed Martin, and shall only be effective upon approval by the Court. Non-material modifications to this Consent Decree shall be in writing and shall be effective when signed by the Attorney General and Lockheed Martin.

XXV. RETENTION OF JURISDICTION

58. The Court shall retain jurisdiction over the 2005 Action and the Cost Recovery Action for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the implementation or enforcement of this Consent Decree.

XXVI. VOIDABILITY

59. In the event that a formal judicial determination is made by this Court or, upon appellate review, by a higher court, that the entry of this Consent Decree shall not be approved, and all applicable appeal periods have expired, this Consent Decree and the settlement embodied herein shall automatically be voided. If this Consent Decree is voided pursuant to this Paragraph, the terms of this Consent Decree may not be used as evidence in any litigation or other proceeding. Effective on the Date of Lodging, all discovery, pleadings, motions, and pre-trial requirements in the 2005 Action and the Cost Recovery Action are stayed with regard to the Settling Parties except as specifically provided otherwise under this Consent Decree.

XXVII. APPENDICES

60. The following appendix is attached to and incorporated into this Consent Decree:

Appendix A is the Scope of Work.

Appendix B is the Activity Use Agreement.

XXVIII. COMMUNITY RELATIONS

61. If requested by DPNR, Lockheed Martin will cooperate with community relations activities. Lockheed Martin will cooperate with DPNR in providing information regarding the Work to the public. As requested by DPNR, Lockheed Martin will cooperate in the preparation of such information for dissemination to the pubic and in public meetings that may be held or sponsored by DPNR to explain activities at or relating to the Alumina Property.

XXIX. EFFECTIVE DATE

62. The "Effective Date" of this Consent Decree shall be the date upon which it is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the docket.

XXX. SIGNATORIES/SERVICE

63. Each undersigned representative of Lockheed Martin and DPNR, Trustee and Government of the Virgin Islands certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

64. Lockheed Martin hereby agrees to support entry of this Consent Decree by this Court and not to challenge any provision of this Consent Decree unless Plaintiffs have notified Lockheed Martin in writing that they no longer support entry of the Consent Decree.

65. Lockheed Martin shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Lockheed Martin with respect to all matters arising under or relating to this Consent Decree. Lockheed Martin hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

XXXI. FINAL JUDGMENT

66. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

67. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among Plaintiffs and Lockheed Martin. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 24th DAY OF July, 2014.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR THE VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND
NATURAL RESOURCES

7/24/2014
Date:

John K. Dema, Esquire
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820

Vincent F. Frazer, Attorney General
Office of the Attorney General
Government of the Virgin Islands
Department of Justice
48B-50C Kronprindsens Gade
GERS Building, Second Floor
St. Thomas, VI 00802

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR THE COMMISSIONER OF THE DEPARTMENT OF PLANNING AND NATURAL RESOURCES, ALICIA V. BARNES, IN HER CAPACITY AS COMMISSIONER AND TRUSTEE FOR NATURAL RESOURCES OF THE TERRITORY OF THE U.S. VIRGIN ISLANDS

7/24/2014
Date:

John K. Dema, Esquire
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820

Vincent F. Frazer, Attorney General
Office of the Attorney General
Government of the Virgin Islands
Department of Justice
48B-50C Kronprindsens Gade
GERS Building, Second Floor
St. Thomas, VI 00802

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS

7/24/2014
Date:

John K. Dema, Esquire
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820

Vincent F. Frazer, Attorney General
Office of the Attorney General
Government of the Virgin Islands
Department of Justice
48B-50C Kronprindsens Gade
GERS Building, Second Floor
St. Thomas, VI 00802

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR LOCKHEED MARTIN CORPORATION

7/24/2014
Date:

John S. Guttmann, Esquire
Beveridge & Diamond, P.C.
1350 I Street, NW, Suite 700
Washington, DC 20005

Kevin A. Rames, Esquire
K.A. Rames, P.C.
2111 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820

Appendix A

SCOPE OF WORK FOR MAJOR CORRECTIVE ACTIVITY AT AND CONCERNING GROUP B UNITS OF THE FORMER ALUMINA REFINERY PROPERTY, ANGUILLA ESTATE, ST. CROIX, U.S. VIRGIN ISLANDS ("ALUMINA PROPERTY")

1. This Scope of Work ("SOW") outlines the Work to be performed by Lockheed Martin at the Alumina Property. The Work outlined is intended to fully implement, monitor and maintain the closure, remediation and restoration ("Major Corrective Activity") required under the Consent Decree in Civ. No. 2005-0062 between and among Lockheed Martin, DPNR, the Trustee and the Government, and shall include the following:

a. Studies as set forth in Paragraph 4, below;

b. The stabilization, recontouring, and closure of the wet-stack bauxite residue disposal area ("Area B") as set forth in this SOW;

c. Remediation and closure of the Dewatering Pond located within Area B (the "Dewatering Pond") as set forth in this SOW;

d. Elimination of discharge of groundwater containing site-related contaminants to the western and northern sides of the Alucroix Channel (For the purposes of this SOW, "site-related contaminants" does not include petroleum hydrocarbons.);

e. Implementation of stormwater management facilities as set forth in this SOW, and;

f. Operation, maintenance, monitoring and inspection of the units following completion of Major Corrective Activities, as set forth in this SOW.

2. The requirements of this SOW will be detailed further in work plans and other documents to be submitted by Lockheed Martin for approval as set forth in this SOW. For the most part, it is not the intent of this SOW to provide task-specific engineering or geological guidance; rather, this SOW provides the agreed framework for performance of the Work. The definitions set forth in Section 13 of the Consent Decree also shall apply to this SOW unless expressly provided otherwise herein.

3. Lockheed Martin is responsible for performing the Work to implement the Major Corrective Activities as set forth in the Consent Decree and herein. Through its

contractor, Smith Gardner, Inc. (S+G), DPNR shall conduct oversight of Lockheed Martin's activities throughout the performance of the Work. As set forth herein, Lockheed Martin shall provide copies of certain deliverables to St. Croix Renaissance Group, LLLP ("SCRG") as owner of the Alumina Property, and DPNR and S+G will consider any comments that SCRG timely provides on those deliverables. Lockheed Martin shall provide financial assistance to DPNR with respect to the oversight activities.

4. Lockheed Martin will be responsible for implementing Major Corrective Activities to address Area B, the Dewatering Pond, and discharges of groundwater containing site-related contaminants into the Alucroix Channel (together, the "Group B Units") on the Alumina Property as follows:

a. **Area B** – Also referred to as the "wet stack" area, is located in the west-southwest portion of the plant property generally between the Upper and Lower Cooling Ponds and the Alucroix Channel. Area B consists of the original Red Mud disposal cells covering about 81 acres, with current surface elevations ranging from approximately 12 to 32 feet above mean sea level. Based upon historical documents, groundwater at the site typically occurs a few feet below land surface and appears to flow toward the Caribbean Sea, with mounding noted primarily at Area B. Area B was used for the disposal of Red Mud that was pumped in slurry form and other plant wastes including coal ash. Use of these cells for Red Mud disposal ended in about 1972. The Red Mud was disposed of within bermed cells at relatively flat slopes. Shortly after cessation of disposal operations in this area, a layer of caliche was placed over the Red Mud and the area was vegetated. There is generally 1 foot of caliche over the northern portion of Area-B (the minimum thickness of caliche encountered was about 6 inches). Over the southern portion of Area-B (where dredged material was placed), there is a crust of caliche/soil of up to 4 feet thick. There are subsurface zones within the Area B red mud where dredged material may still retain a high water content. Based on the generally flat or gently sloping upper portions of Area B, the top surface does not appear to drain to an engineered surface water control feature.

Consequently surface water appears to be limited to localized overland or "sheet" flow especially around the perimeter, and water retained appears to evapotranspirate or infiltrate into the Red Mud.

The goals for Area B are (A) stabilizing the bauxite residue, (B) keeping the bauxite residue in-place, (C) providing long-term, sustainable slopes for proper drainage, soil stabilization, and maintenance of a vegetative cover, (D) substantially reducing surface water infiltration into Area B; (E) providing effective mechanisms for long-term management and maintenance of the residue, including proper drainage as well as a healthy vegetated cover; and (F) elimination of discharges of groundwater containing site-related contaminants into the Alucroix Channel. These goals are intended to provide:

(1) Protection against uncontrolled releases of storm water and/or bauxite residue;

(2) Protection against erosion of the vegetative cover and bauxite residue;

(3) Protection against dusting (wind erosion);

(4) Protection of surface water quality;

(5) Restoration of vegetation on the surface of Area B so that it has a uniform vegetative cover or an equally effective, approved alternative cover system;

(6) Low-maintenance requiring no supplemental watering, fertilization, mowing, or additional work to maintain the vegetative cover or equally effective approved cover;

(7) Protection and long term restoration of areas of the Property down gradient and downslope from Area B; and

(8) Reduced impacts to the groundwater beneath Area B and therefore reduced impacts to the adjacent areas including the Alucroix Channel.

The goals for closing Area B will be accomplished by: (i) conducting the appropriate supplemental pre-design field studies related to all existing (*e.g.*, surface water, subsurface/topographic, and hydrogeologic) conditions that should be considered, (ii) re-contouring, capping and vegetating Area B including any other engineering controls identified in the pre-design and design/permitting process as needed to accomplish the stated goals in such a manner as to (A) provide for both stabilization of the residue disposal area and effective stormwater management; (B) facilitate long-term operation and maintenance ("O&M") of Area B; and (C) co-exist without conflict with the adjacent areas (i.e. Upper Cooling Pond and Settling Basin) as they are being designed and constructed under a separate Consent Decree at the time of this SOW, and (iii) as needed, constructing, cleaning, and maintaining open ditches and catchments surrounding Area B for management of stormwater.

The Area B pre-design studies that are contemplated at this time will include, at a minimum, the following.

A. Obtain current topography of the areas for the Group B major corrective activities.

B. Conduct additional site hydrology and hydraulics evaluations specific to Area B that also address existing/future run-on to, and run-off from, the Area B design. Post-closure uses should be considered, as applicable.

C. Determine, through field study, all existing conditions and properties relevant to evaluating alternative remediation/closure designs, waste limit determinations (through test pits or similar means), conduct

additional drilling/sampling/testing to confirm all material thicknesses, waste depths, groundwater conditions (*e.g.*, water levels, gradients, quality, seasonal fluctuations, relationship to the discharge of groundwater containing site-related contaminants), and short-term/long-term stability. This includes all field and laboratory geotechnical, hydrogeologic and analytical testing for material properties needed for evaluating alternative closure designs as well as surface and subsurface groundwater conditions/properties, as appropriate. Also conduct a radiological survey to measure radon and gamma radiation at and above the ground surface to supplement the radiological survey results conducted previously.

D. Conduct borrow studies (both on and off the property) for acquiring additional soils and/or fill materials needed for implementation of the selected design.

E. Conduct all studies necessary to obtain the required Virgin Islands State Historic and Preservation Office approvals, Coastal Zone Management permits, Territorial Pollutant Discharge Elimination System permits, Fish & Wildlife approvals, and all other required DPNR permits and approvals for all areas (on-site and off-site) to be affected by work.

F. Conduct the necessary revegetation studies (as needed to augment the studies conducted and findings associated with the Group A Unit work) associated with the expected final cover/cap design specific to Area B conditions. This includes any compatibility testing associated with anticipated geosynthetic and natural materials.

b. **Dewatering Pond** – Located on the southeastern portion of Area B, the Dewatering Pond covers about 12 acres and received at least subsurface drainage from Area B and likely surfacewater runoff. The majority of the subsurface drainage water resulted from the

consolidation of the Red Mud and other wastes (through leaching). Coal ash and other wastes were deposited directly into the Dewatering Pond. Repeated evaporative loss of liquid from this pond has led to an increase in the concentration of the contaminants beyond that found in the Red Mud. Coal (bottom) ash was disposed of in the eastern limits of the pond in the 1980's and 1990's. Water in the pond has elevated concentrations of several site-related groundwater contaminants including both metals and indicator parameters.

The goals for the Dewatering Pond are (A) to prevent wildlife and people from being exposed to the pond's water, including during hurricanes and major storm events that can mobilize the water and sediments in the pond; (B) to prevent wildlife and people from being exposed to the pond's sediments, and (C) to eliminate infiltration from the Dewatering Pond to groundwater and the Alucroix Channel.

The goals for closing the Dewatering Pond will be accomplished by conducting the appropriate and necessary pre-design studies to supplement existing data adequate for closing/remediating the pond as part of the Area B remediation.

The Dewatering Pond pre-design studies that are contemplated at this time will include, at a minimum, the following.

A. Obtain current topography of the areas for the work including bathymetry in water-covered areas and survey data for all existing structures associated with the pond inlets/outlets.

B. Conduct additional site hydrology and hydraulic evaluations related to existing as well as future inflows and discharges from the pond, consistent with alternative closure designs. Consider the post-closure uses, accordingly.

C. Determine relevant existing conditions, including transects of sediments and ash thickness in the base of the pond, verify the

existence of subsurface drainage piping from Area B, the pond inflow/outflow structures and verify the connection of the pond water levels with groundwater levels in Area B. This includes all field and laboratory geotechnical, hydrogeologic and analytical testing for material properties needed for evaluating alternative closure designs as well as surface and subsurface groundwater conditions/properties, as appropriate.

D. Conduct borrow studies (both on and off the property) for acquiring additional soils, and/or fill materials as needed to address alternative remediation/closure designs.

E. Conduct all studies necessary to obtain the required Virgin Islands State Historic and Preservation Office approvals, Coastal Zone Management permits, Territorial Pollutant Discharge Elimination System permits, Fish & Wildlife approvals, and other required DPNR permits and approvals for all areas to be affected by site and off-site work.

F. Conduct the necessary studies associated with the anticipated final remediation/closure design specific to the Dewatering Pond (if not closed similarly to, and in coordination with, Area B). This includes any compatibility testing associated with anticipated geosynthetic and natural materials and addressing stability of the pond, as appropriate.

G. Conduct the necessary due diligence and studies (sampling, analysis, and pilot studies) for treating the water removed from the Dewatering Pond as part of remediation and closure. This work must adequately address the treatment and final discharge of removed water through a facility permitted by DPNR to receive such contaminated water that is compatable with that plant's process so as to not violate that facility's discharge permit.

H. Conduct the necessary studies to assess the properties of any sediments removed from the Dewatering Pond and the appropriate methods of removal, handling, managing and disposal of these sediments in accordance with all applicable DPNR and federal requirements.

In the event that the Dewatering Pond is used as an erosion/sedimentation control feature during Area B remediation/closure, Lockheed Martin shall be responsible for addressing any increased amounts of contaminated water and sediments in the Dewatering Pond. Subject to the results of pre-closure studies to be performed as part of the design process, sediments in the Dewatering Pond may be left in place as part of the closure.

c. Groundwater Discharge – Groundwater discharges to the Aluxroix Channel along its western and northern sides.[1] The northern portion of the channel was dredged into the Kingshill Aquifer and as a result groundwater discharge from the Kingshill Aquifer is focused in this portion of the Channel. Manifestations of historic groundwater discharge containing contaminants from the Property are visible in the northern end of the Channel. The goal for this Unit is to eliminate or reduce to the extent necessary for protection of ecological resources the discharge of groundwater containing site-related contaminants to the western and northern sides of the Alucroix Channel. (For the purposes of this SOW, "site-related contaminants" does not include petroleum hydrocarbons into the Alucroix Channel. Contaminants discharging into the Channel that

[1] The western side of the Alucroix Channel where groundwater discharge occurs with site-related constituents, based on available data, extends from the northern end of the channel to the Lower Cooling Pond.

originated on or or are due to contamination on the neighboring oil refinery property are NOT considered "site-related contaminants.")

This goal is to be achieved by conducting a baseline study to evaluate the current state of the groundwater discharge and characterize and quantify groundwater discharge to the Alucroix Channel of site-related contaminants, and, within two years of the completion of the construction of the remedial measures in Area A, Area B and the Dewatering Pond that are intended to substantially reduce infiltration of site-related contaminants to the groundwater, conduct appropriate and necessary pre-design studies of all groundwater discharge that contains site-related contaminants. These studies are intended to supplement existing data adequate for design and sufficient to implement an appropriate protective remedy that will be at least as effective as pumping/treating or an equivalent, alternative remedy that will reduce groundwater discharges to the extent necessary for the protection of ecological resources.

Groundwater Discharge Baseline Studies — The groundwater discharge baseline studies that are contemplated at this time will include, at a minimum, the following:

A. Install, rehabilitate, or replace wells as needed to characterize groundwater discharge to the Alucroix Channel:

   a. Completion of at least three (3) deep boreholes with continuous logging for a complete characterization of the stratigraphy along the northern and western boundaries of the Alucroix Channel.

   b. Completion of sufficient monitoring wells to characterize the quantity and quality of groundwater discharge to the

Channel. The boreholes referenced in 4.c.E.a may be completed as monitoring wells for this purpose.

c. Three (3) rounds (3 months apart, minimum) of groundwater level measurements in lagoonal clays and Kingshill aquifer (during wettest and driest months) and of groundwater sampling in all wells with analytical testing for relevant water quality indicator and site-related contaminants.

B. Assess hydrogeologic conditions by conducting hydraulic testing and/or lab testing, or other tests as appropriate, to assess the hydrogeologic conditions in the area along the northern and western boundaries of the Alucroix Channel for purposes of estimating the source and volume of groundwater discharging to the Channel with site-related contaminants.

Groundwater Discharge Pre-Design Studies – The groundwater discharge pre-design studies that are contemplated at this time will include, at a minimum, the following:

A. Determine all relevant existing conditions to address alternative remedial designs to adequately address groundwater discharge of site-related contaminants along the northern and western boundaries of the Alucroix Channel, all field and laboratory geotechnical, hydrogeologic and analytical testing for material properties needed for evaluating alternative remediation designs as well as surface and subsurface groundwater conditions/properties, as appropriate.

B. Conduct all studies necessary to obtain the required Virgin Islands State Historic and Preservation Office approvals, Coastal Zone Management permits, Territorial Pollutant Discharge Elimination System permits, Fish & Wildlife approvals, and other required

DPNR permits and approvals for all areas to be affected by site and off-site work.

C. Conduct the necessary studies associated with the anticipated final remediation/closure design specific to the groundwater discharge. This includes any compatibility testing associated with anticipated geosynthetic and natural materials, as appropriate.

D. Conduct the necessary due diligence and studies (sampling, analysis, and pilot studies) required to implement an appropriate protective remedy. Subject to the results of the studies to be performed as part of the design process, this work must adequately address the treatment and final discharge of removed water, if appropriate, through a facility permitted by DPNR to receive such contaminated water that is compatable with that plant's process so as to not violate that facility's discharge permit.

E. Conduct geotechnical borings in the area along the northern and western boundaries of the Alucroix Channel.

F. Assess hydrogeologic conditions by conducting hydraulic testing and/or lab testing, or other tests as appropriate, to assess the hydrogeologic conditions in the area along the northern and western boundaries of the Alucroix Channel for purposes of designing an appropriate protective remedy.

G. Subject to the findings of the pre-design studies and selected remedial options, conduct, if necessary, pilot tests for final design and for demonstrating effectiveness of a protective remedy.

Pursuant to the terms of an Activity Use Agreement ("AUA") required by Paragraph 27 of the Consent Decree, future development and/or use of the remediated/restored/closed Area B and Dewatering Pond, as well as other areas that become part of the Major Corrective Activity remedial

designs, will be limited to activities that do not compromise the integrity of the closed/restored/remediated units unless an alternative, equally protective use is proposed by Lockheed Martin, SCRG, or a subsequent owner, operator or tenant of the Alumina Property and accepted in writing by DPNR.

All work undertaken by Lockheed Martin, and the resulting remedial designs, operations, inspections, monitoring, and maintenance shall not interfere with SCRG's reasonable and permitted operating needs on the property. The phrase "SCRG's reasonable and permitted operating needs" means SCRG's (or a subsequent owner or operator) and their commercial tenants' operations and use of the property in compliance with all applicable laws and permits.

The proposed location(s) for placement of any bauxite residue, coal ash, or other wastes to be relocated under the Group B Major Corrective Activities will be identified in the Pre-Design Work Plan.

Pursuant to the terms of an AUA required by Paragraph 27 of the Consent Decree, future use of any portions of the Group B Units will be limited to activities that do not compromise the integrity of the remedial closure design's cover unless an alternative use is accepted in writing by DPNR. Any future alternative, equally protective use proposed by Lockheed Martin, SCRG, or a subsequent owner, operator or tenant of the Alumina Property must be accepted in writing by DPNR prior to implementation of such use.

5. **Scope of Responsibilities for Group B Units**

a. A waiver of penalties for past and future TPDES permit violations for pH will be afforded until DPNR issues a No Further Action Determination to Lockheed Martin for the Group B Units in accordance with Paragraph 6.a.xiv below and the permitted pH limit has been restored after the completion of the construction process. Until DPNR issues such No Further Action Determination, any penalties for noncompliance with the effluent limit for pH under the TPDES permit up to that point will be considered waived and discharged in full because the construction and implementation is being performed in part to prevent future violations.

b. DPNR, the Government, and the Trustee will continue to pursue a resolution of their ongoing disputes with the Non-Settling Parties. The pursuit of a resolution of the ongoing disputes with the Non-Settling Parties will not alter or expand the duties of the Lockheed Martin set forth in this SOW or in the Consent Decree. Lockheed Martin shall have no responsibility to DPNR, the Government or the Trustee beyond the requirements of this SOW and the Consent Decree.

c. Lockheed Martin shall have no responsibility for, or obligation to incorporate into any document or Work provided for in this SOW or under the Consent Decree, any change in law or term of a permit, license or other authorization applicable to the Alumina Property, if such change in law or term occurs after the Effective Date of the Consent Decree, unless a permit must be modified to bring it into compliance with the Virgin Islands Water Pollution Control Act or Clean Water Act. For illustration purposes only, if an effluent limitation in SCRG's TPDES permit changes after the Court enters the Consent Decree, Lockheed Martin shall not be required to incorporate such change in any subsequent document or Work for which it is responsible under this SOW or the Consent Decree. The phrase "change in law" as set forth above does not include orders, if any, issued to Lockheed Martin by the U.S. Environmental Protection Agency.

6. **Schedule For Implementation of Group B Requirements**

a. **Schedule For Implementation of Group B Requirements:**

i. Within 150 days of the Effective Date of the Consent Decree, after consultation with SCRG, Lockheed Martin will submit to DPNR and S+G with a copy sent to SCRG a Pre-Design Work Plan and Schedule for conducting (i) all necessary and appropriate engineering and geotechnical/hydrogeological/groundwater discharge studies to evaluate elements necessary for Major Corrective Activity design and implementation, (ii) pilot studies to evaluate alternatives for re-vegetation, cover materials, and soil amendments needed as part of the final cover systems for Area B and possibly the Dewatering Pond to the extent the studies performed by St. Croix Alumina do not provide sufficient data or are inappropriate for this Group B application; and (iii) studies (including those groundwater discharge baseline studies referenced in Paragraph 4.c) to evaluate the current state of the groundwater discharge into the western and northern sides of the Alucroix Channel; and (iv) pilot studies to evaluate alternative measures to control groundwater discharge, which pilot studies are to be conducted within two years of the completion of the construction of the remedial measures in Area A, Area B and the Dewatering Pond that are intended to substantially reduce infiltration of site-related contaminants to the groundwater. Lockheed Martin shall provide reports, technical memoranda, and/or written updates to DPNR/S+G during the conduct of the work/studies to provide a demonstration of progress and results for review. In accordance with 27 V.I.C. §286, all reports, plans, and specifications must be signed/sealed by a Professional Engineer licensed in the U.S. Virgin Islands. DPNR/S+G shall provide comments that shall be discussed and integrated into the work by Lockheed Martin and its consultants. If SCRG submits written comments on the Pre-Design Work Plan and Schedule within 30

days of its submittal to DPNR/S+G, such comments will be considered by DPNR and S+G.

ii. Within 30 days of submission of such Pre-Design Work Plan and Schedule, Lockheed Martin will meet with DPNR/S+G and SCRG to discuss the specifics of the Pre-Design Work Plan and Schedule. DPNR/S+G shall provide written comments to Lockheed Martin on the draft Pre-Design Work Plan and Schedule either during or within 15 days of such meeting.

iii. Within 45 days after Lockheed Martin receives written comments from DPNR/S+G, after consultation with SCRG, Lockheed Martin will submit a revised Pre-Design Work Plan and Schedule to DPNR and S+G addressing their comments. Lockheed Martin will copy SCRG on this submittal and if SCRG submits written comments within 15 days of the submittal to DPNR/S+G, such comments will be considered by DPNR and S+G.

iv. DPNR/S+G shall make a decision to approve or comment further on the revised Pre-Design Work Plan and Schedule within 30 days of receipt. Once the Pre-Design Work Plan and Schedule are approved in writing by DPNR/S+G, Lockheed Martin shall undertake the work approved in the Pre-Design Work Plan pursuant to the approved Schedule.

v. No less frequently than once per quarter, Lockheed Martin will schedule meetings with and provide written status reports to DPNR/S+G and SCRG to assess progress, and DPNR/S+G and SCRG will provide review and comments throughout the conduct of the work set forth in the Pre-Design Work Plan. At DPNR's sole discretion, SCRG may be invited to participate in these quarterly meetings.

vi. Once Lockheed Martin's work provided for in the Pre-Design Work Plan is completed, after consultation with SCRG, Lockheed Martin will submit to DPNR and S+G with a copy sent to SCRG within 30 days either

(i) a revised Pre-Design Work Plan and Schedule to allow for further study (in which case the steps in Paragraph 6.a.i.-v will be repeated), or (ii) a plan and schedule for preparing a design and specifications for the corrective action for the Group B Units. Within 45 days of submission of the plan and schedule for the design and specifications, Lockheed Martin will meet with SCRG and DPNR/S+G to discuss the specifics of the plan and schedule. DPNR/S+G shall provide written comments to Lockheed Martin on the draft plan and schedule within 15 days of such meeting. Lockheed Martin will either (i) prepare a revised plan and schedule or (ii) proceed with preparing the design and specifications following written approval of the plan and schedule by DPNR/S+G.

vii. In accordance with the approved design plan and schedule, Lockheed Martin will prepare and submit for review design and specification documents. Within 45 days of submission of such documents, Lockheed Martin will meet with DPNR/S+G and SCRG to discuss the design and specification documents. DPNR/S+G shall provide written comments to Lockheed Martin on the design and specification documents either during or within 15 days of such meeting.

viii. Within 45 days after Lockheed Martin receives written comments from DPNR/S+G, after consultation with SCRG, Lockheed Martin will submit revised design and specification documents addressing DPNR's/S+G's comments. Lockheed Martin will copy SCRG on this submittal and if SCRG submits written comments within 15 days of the submittal to DPNR/S+G, such comments will be considered by DPNR and S+G.

ix. DPNR/S+G shall make a decision to approve or comment further on the design and specification documents within 30 days of receipt. Within 120 days of the written approval of the design and specification documents by DPNR/S+G, Lockheed Martin shall award a contract for implementation of the work.

x. No less frequently than once per quarter, Lockheed Martin will schedule meetings with and provide status reports to DPNR/S+G and SCRG to assess progress, and DPNR/S+G and SCRG will provide review and comments throughout the conduct of the work set forth in the approved design and specification documents. Lockheed Martin will submit a written monthly progress report to DPNR and S+G, with a copy sent to SCRG as the property owner, during any period of construction activity on the Property.

xi. Within 45 days after construction of Major Corrective Activities in Area B and the Dewatering Pond is complete, Lockheed Martin shall submit to DPNR and S+G with a copy sent to SCRG a Maintenance/Monitoring/Inspection Plan.

xi. Within 60 days after construction of Major Corrective Activities in Area B and Dewatering Pond is complete, and after consultation with SCRG, Lockheed Martin shall submit to DPNR and S+G with a copy sent to SCRG an As-Built Implementation Report. The report will evaluate and demonstrate compliance with each of the goals outlined herein and in the Implementation Plan. If SCRG believes the As-Built Implementation Report demonstrates material non-compliance with any goals outlined herein or in the approved design and specification documents, it may submit written comments to DPNR and S+G, with a copy sent to Lockheed Martin, identifying the basis for its belief of material non-compliance. If SCRG submits written comments within 30 days of submittal of the As Built Implementation Report to DPNR/S+G, such comments will be considered by DPNR and S+G.

xii. DPNR/ S+G shall make a decision to approve or provide comments on the Maintenance/Monitoring/Inspection Plan and As-Built Implementation Report within 30 days of receipt of each such document. Once DPNR/S+G approves in writing both the Maintenance/Monitoring/Inspection Plan and As-Built Implementation

Report, Lockheed Martin shall implement the Maintenance/Monitoring/Inspection Plan and submit quarterly maintenance/monitoring/inspection reports to DPNR and S+G, with a copy sent to SCRG, demonstrating that the goals for closure/remediation/restoration have been met. The first of such reports shall be submitted 90 days after approval of both the Maintenance/Monitoring/Inspection Plan and As-Built Implementation Report.

xiii. Within eighteen months of the approval of the As-Built Implementation Report in accordance with Section 2.c.xii above or the approval of a similar as-built implementation report for the Group A Units, whichever is later, Lockheed Martin shall submit to DPNR, S+G, and SCRG a Work Plan and Schedule for pre-design studies of any groundwater discharges that contain site-related contaminants.

A. Within 30 days of submission of this Groundwater Discharge Pre-Design Work Plan and Schedule, Lockheed Martin will meet with DPNR/S+G and SCRG to discuss the specifics of the Seeps Work Plan and Schedule. DPNR/ S+G shall provide written comments to Lockheed Martin on the draft Groundwater Discharge Work Plan and Schedule either during or within 15 days of such meeting.

B. Within 45 days after Lockheed Martin receives written comments from DPNR/S+G, Lockheed Martin will submit a revised Groundwater Discharge Pre-Design Work Plan and Schedule to DPNR and S+G addressing their comments. Lockheed Martin will copy SCRG on this submittal and if SCRG submits written comments within 15 days of the submittal to DPNR/S+G, such comments will be considered by DPNR and S+G.

C. DPNR/S+G shall make a decision to approve or comment further on the revised Groundwater Discharge Pre-Design Work Plan and Schedule within 30 days of receipt. Once the Groundwater Discharge Pre-Design Work Plan and Schedule are approved in writing by DPNR/S+G, Lockheed Martin shall undertake the work approved in the Groundwater Discharge Pre-Design Work Plan pursuant to the approved Schedule.

D. No less frequently than once per quarter, Lockheed Martin will schedule meetings with and provide written status reports to DPNR/S+G and SCRG to assess progress, and DPNR/S+G will provide review and comments throughout the conduct of the work set forth in the Groundwater Discharge Pre-Design Work Plan and Schedule.

E. Once Lockheed Martin's work provided for in the Groundwater Discharge Pre-Design Work Plan and Schedule is completed, Lockheed Martin will submit within 30 days to DPNR and S+G with a copy sent to SCRG either (i) a revised Groundwater Discharge Pre-Design Work Plan and Schedule to allow for further study (in which case the steps in Paragraph 2.c.xiii.A-D will be repeated), or (ii) a plan and schedule for preparing a design and specifications for any corrective action for the groundwater discharge that are necessary and appropriate.

F. Within 45 days of submission of any such plan and schedule for the design and specifications, Lockheed Martin will meet with SCRG and DPNR/S+G to discuss the specifics of any such plan and schedule. DPNR/S+G shall provide written comments to Lockheed Martin on any such draft plan and schedule within 15 days of such meeting. Lockheed Martin will either (i) prepare a revised plan and schedule or (ii) proceed with preparing the

design and specifications following written approval of the plan and schedule by DPNR/S+G.

G. In accordance with the approved plan and schedule, Lockheed Martin will prepare and submit for review design and specification documents addressing groundwater discharge. Within 45 days of submission of such documents, Lockheed Martin will meet with DPNR/S+G and SCRG to discuss the design and specification documents. DPNR/S+G shall provide written comments to Lockheed Martin on the design and specification documents either during or within 15 days of such meeting.

H. Within 45 days after Lockheed Martin receives written comments from DPNR/S+G, Lockheed Martin will submit revised design and specification documents addressing DPNR's/S+G's comments. Lockheed Martin will copy SCRG on this submittal and if SCRG submits written comments within 15 days of the submittal to DPNR/S+G, such comments will be considered by DPNR and S+G.

I. DPNR/S+G shall make a decision to approve or comment further on the design and specification documents within 30 days of receipt. Within 120 days of the written approval of the design and specification documents by DPNR/S+G, Lockheed Martin shall award a contract for implementation of the Seeps work.

J. No less frequently than once per quarter, Lockheed Martin will schedule meetings with and provide status reports to DPNR/S+G and SCRG to assess progress, and DPNR/S+G will provide review and comments throughout the conduct of the work addressing groundwater discharge. Lockheed Martin will submit a written monthly progress report to DPNR and S+G,

with a copy sent to SCRG, during any period of construction activity on the Property.

K. Within 60 days after construction of work addressing groundwater discharge is complete, and after consultation with SCRG, Lockheed Martin shall submit to DPNR and S+G (with a copy to SCRG) an As-Built Implementation Report addressing the groundwater discharge. The report will evaluate and demonstrate compliance with each of the goals outlined herein associated with groundwater discharge. If SCRG believes the As-Built Implementation Report demonstrates material non-compliance with any goals outlined herein or in the design and specification documents, SCRG may submit written comments to DPNR and S+G, with a copy sent to Lockheed Martin, identifying the basis for its belief of material non-compliance. If SCRG submits written comments within 30 days of submittal of the As Built Implementation Report to DPNR/S+G, such comments will be considered by DPNR and S+G.

L. Within 45 days after construction of work addressing groundwater discharge is complete, Lockheed Martin shall submit to DPNR and S+G a revised Maintenance/Monitoring/Inspection Plan incorporating Maintenance/Monitoring/Inspections associated with the groundwater discharge. Lockheed Martin will copy SCRG on this submittal and if SCRG submits written comments within 30 days of the submittal to DPNR/S+G, such comments will be considered by DPNR and S+G.

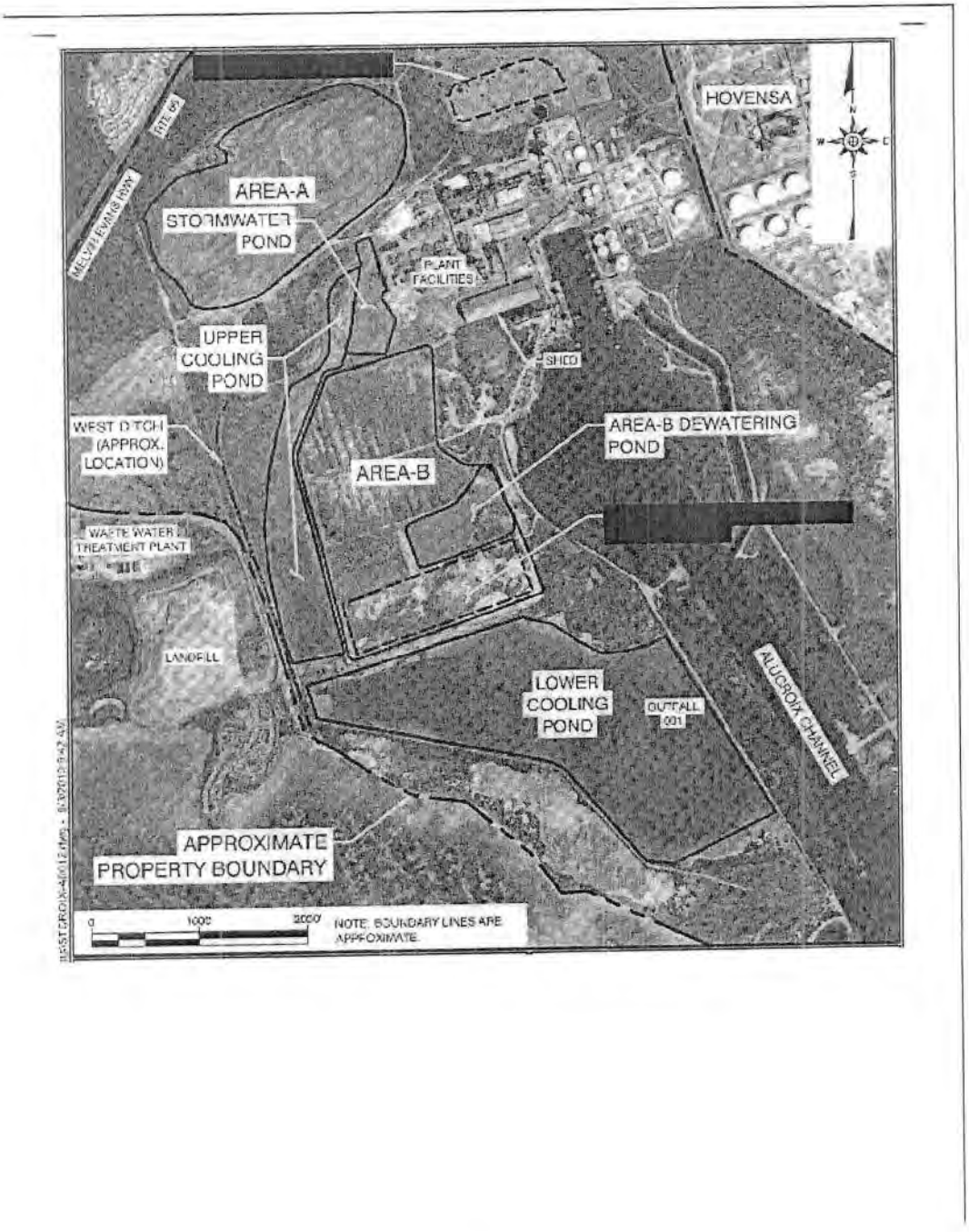
xiv. After Lockheed Martin submits eight (8) successive quarterly maintenance/monitoring/inspection reports demonstrating to DPNR/S+G that the specific criteria for closure/remediation/restoration set forth in the

DPNR/S+G-approved Maintenance/Monitoring/Inspection Plans for all Group B units (including groundwater discharge) have been achieved, DPNR shall issue a No Further Action determination with respect to Lockheed Martin's Major Corrective Activity obligations at the Property.

xv. Once DPNR issues a No Further Action determination to Lockheed Martin, Lockheed Martin's only ongoing obligation shall be implementation of the post-closure/remediation/restoration aspects of the Maintenance/Monitoring/Inspection Plan and ongoing operation, maintenance, monitoring and inspection of the Group B Units as contemplated in the Maintenance/Monitoring/Inspection Plan.

7. **Exhibit A** attached hereto represents the approximate geographic extent of Area B, the Dewatering Pond, and the Alucroix Channel.

Exhibit A


HOVENSA
AREA-A
STORMWATER POND
MELVIN EVANS HWY
PLANT FACILITIES
UPPER COOLING POND
SHCD
WEST DITCH (APPROX. LOCATION)
AREA-B
AREA-B DEWATERING POND
WASTE WATER TREATMENT PLANT
LANDFILL
LOWER COOLING POND
OUTFALL 001
ALUCROIX CHANNEL
APPROXIMATE PROPERTY BOUNDARY
0
1000
2000
NOTE: BOUNDARY LINES ARE APPROXIMATE.

Appendix B

ACTIVITY USE AGREEMENT

THIS ACTIVITY USE AGREEMENT ("AUA"), is made this _____ day of _____, 2014, by the St. Croix Renaissance Group, LLLP, ("SCRG") and the Virgin Islands Department of Planning and Natural Resources ("DPNR") regarding real property owned by SCRG and located at 1 Estate Anguilla, Kingshill, St. Croix, U.S. Virgin Islands ("Property").

WHEREAS, the Property contains a disposal area known as Area B and an associated pond known as the Dewatering Pond (collectively, Area B and the Dewatering Pond are referred to herein as the "Group B Units").

WHEREAS, SCRG acquired the Property in 2002 for the purpose of commercial/industrial development and reuse, including the land containing the Group B Units.

WHEREAS, under a February 16, 2012 a consent decree entered by the United States District Court for the District of the Virgin Islands, SCRG agreed to cooperate and permit access to the Group B Units for planned remedial and restoration activities by non-settling parties (*e.g.*, Lockheed Martin) and their contractors.

WHEREAS, under a July 2014 consent decree with the government of the United States Virgin Islands and entered by the United States District Court for the District of the Virgin Islands, Lockheed Martin agreed to conduct Major Corrective Activities with respect to the Group B Units.

WHEREAS, Lockheed Martin has since conducted the required Major Corrective Activities for the Group B Units and this work included an engineered barrier (*i.e.*, a designed cover) on the Group B Units ("Group B Units Engineered Barrier"). **[modify as appropriate once remedy selected and work completed]**

WHEREAS, SCRG and DPNR recognize for the Group B Units Engineered Barrier to remain effective its integrity must not be disturbed by future commercial/industrial use of Area B.

WHEREAS, DPNR understands that SCRG may wish to use the surface of the Group B Units for commercial/industrial purposes.

WHEREAS, SCRG understands that DPNR wants SCRG to take into account and protect the integrity of the Group B Engineered Barrier in SCRG's future uses of and activities on the Group B Units.

WHEREAS, SCRG has elected to cooperate with DPNR's request.

WHEREAS, SCRG intends and agrees to bind future owners of the Property to the provisions set forth herein if SCRG transfers some or all of the Property to a different owner.

NOW, THEREFORE, the recitals set forth above are incorporated by reference as if fully set forth herein, and SCRG and DPNR agree as follows:

1. SCRG hereby agrees to the following for itself and its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Property or the holder of any portion thereof or interest therein.

2. Attached as Exhibit A are site maps that show the legal boundary of the Group B Units and the Group B Engineered Barrier(s), and any physical features and boundaries of the area to which this AUA applies and within which SCRG will not conduct activities that affect the integrity of the Group B Units Engineered Barrier.

3. SCRG represents and warrants it is the current owner of the Property and has the authority to record this AUA on the chain of title for the Property with the Recorder of Deeds Office.

4. This AUA is binding on SCRG, its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Property or the holder of any portion thereof or interest therein.

5. This AUA shall apply against the Property and allow for the maintenance and integrity of the Group B Engineered Barrier to remain effective, and shall not be released until there is no longer a need for the Group B Engineered Barrier. Any change or release from this AUA will not be effective until a release or modification is filed on the chain of title for the Property.

6. In the event SCRG proposes an activity change that may affect the integrity of the Group B Units Engineered Barrier, SCRG shall submit a detailed written description of the activity change to a designated DPNR representative prior to implementation of the activity change and seek DPNR's written concurrence that the change is equally effective as the Group B Units Engineered Barrier, and DPNR shall apply reasonable and standard engineering principles in its review and use its best efforts to respond within 60 days of receipt of SCRG's written submission. If SCRG disputes the decision of DPNR, or does not receive a written response within 60 days, SCRG may notify DPNR in writing of such dispute no later than 15 days after it receives DPNR's written decision or within 75 days of SCRG's submission to DPNR. SCRG and DPNR thereafter shall engage in informal negotiations for a period up to, but no longer than, twenty-one (21) days. If SCRG and DPNR are unable to resolve the dispute informally, the decision of DPNR (as originally presented or as DPNR may revise it during informal negotiations or otherwise) shall become final unless, within ten (10) days after the end of the informal negotiation period, SCRG provides DPNR with written notice of a continuing dispute, in which case SCRG and DPNR shall submit the dispute for resolution to (a) Eric D. Green of Resolutions, LLC or (b) any other arbitrator mutually agreeable to SCRG and DPNR (in either case, the "Arbitrator"). The decision of the Arbitrator shall be binding on the Parties and non-appealable. The Parties recognize that

the Arbitrator may need to employ a neutral technical advisor to assist him/her in any dispute resolution proceeding. All costs of dispute resolution shall be paid by SCRG and not by DPNR, the Government, or the Trustee, except where the Arbitrator concludes that the decision of DPNR that is the subject of the dispute was arbitrary and capricious (as that phrase in the Administrative Procedures Act has been interpreted by the federal courts with jurisdiction over the Property), in which case DPNR or the Government shall be responsible for a share of the costs equal to that of SCRG.

7. Expressly subject to paragraphs 6 and 10 herein, DPNR will not use the Group B Engineered Barrier or this AUA as a reason to deny any future development activity proposed by SCRG.

8. Nothing in this agreement shall be deemed to limit SCRG's reasonable and permitted operating uses and needs on the Property except for the commitment to not compromise the integrity of the Group B Units Engineered Barrier. The phrase "SCRG's reasonable and permitted operating needs" means SCRG's (or a subsequent owner's or operator's) and their commercial tenants' operations and use of the property in compliance with applicable laws and permits.

9. Notwithstanding any other term of this agreement, nothing in this agreement shall be deemed to limit, restrict or amend any statutory, regulatory, access, permitting or enforcement authority by DPNR, including, but not limited to, its authority under the Coastal Zone Management Act.

10. This AUA does not create a perpetual easement on the Property for any person, entity or government.

11. The effective date of this AUA shall be the date that it is officially recorded in the chain of title for the Property to which the AUA applies.