

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

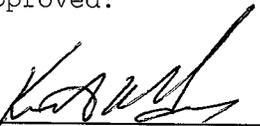
13-0487R

RESOLUTION AWARDING A CONTRACT TO VONCO V DULUTH, LLC TO PERFORM DEMOLITION, TRANSPORTATION, DISPOSAL AND SITE RESTORATION SERVICES.

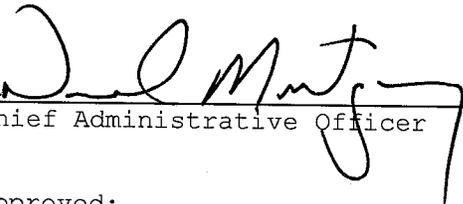
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to contract with VONCO V Duluth, LLC for certain demolition, transportation, disposal and site restoration services to be provided in accordance with a Special Environmental Project set forth in a Stipulation Agreement to be executed by VONCO V Duluth, LLC and the Minnesota Pollution Control Agency, a copy of which is attached hereto as Attachment A.

Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

CD KH:bel 09/13/2013

STATEMENT OF PURPOSE: This resolution approves a contract with VONCO V Duluth, LLC for demolition, transportation, disposal and site restoration services to be provided for the City of Duluth at no cost to the city and in accordance with a Special Environmental Project set forth in a Stipulation Agreement to be executed by VONCO V Duluth, LLC and the Minnesota Pollution Control Agency. Pursuant to the Stipulation Agreement, VONCO V Duluth, LLC is to complete the required services in connection with the Special Environmental Project by October 31, 2015.

Because the services are to be provided by VONCO V Duluth, LLC at no cost to the City of Duluth, no bidding process was required.



# Minnesota Pollution Control Agency

Mankato Office | 12 Civic Center Plaza | Suite 2165 | Mankato, MN 56001-8704 | 507-389-5977

800-657-3864 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us) | Equal Opportunity Employer

September 4, 2013

Mr. Vaughn Veit, Manager  
Vonco V Duluth, LLC  
14000 Veit Place  
Rogers, MN 55374

RE: Stipulation Agreement - Vonco V Duluth, LLC

Dear Mr. Veit:

Enclosed is a Stipulation Agreement (Agreement) between the Minnesota Pollution Control Agency (MPCA) and Vonco V Duluth, LLC (Regulated Party) and one original and two additional signature pages. Sections of the Agreement have been revised, based on discussions with your negotiations team over the last several months.

Please review the Agreement carefully and if you have any comments or concerns, please contact Cory Boeck at 507-344-5253. However, if the Agreement is acceptable to you, please **sign** and **date** all **three** signature pages and return them to Cory Boeck at the MPCA by September 12, 2013. Assuming the Regulated Party signs the Agreement, it will be submitted for approval to the MPCA Commissioner or designee. A signed copy will be returned to you for your records after the Commissioner's or the Commissioner's designee's approval.

CB:czh

Enclosure

cc: Ian Vagle, Veit (w/enclosure)  
Steve Halgren, Veit (w/enclosure)  
Ann Cohen, Attorney General's Office (w/enclosure)  
Kathleen Winters, MPCA General Counsel  
Steve Giddings, MPCA (w/enclosure)  
Scott Parr, MPCA (w/enclosure)  
Enforcement Data Coordinator - Enforcement Database Tracking 15453 (w/enclosure)  
Anne Moore, MPCA (w/enclosure)

## Attachment A

August 30, 2013

Vonco V, LLC will perform demolition, transportation, disposal and site restoration services to the City of Duluth as its Supplemental Environmental Project associated with the September \_\_, 2013 Stipulation Agreement. The services provided to the City of Duluth will occur at some of the following address (subject to change but with approval from the MPCA) –

Address	Property ID
21 E 9TH ST	010-1350-09230
3215 ELM ST	010-0440-00390
4109 GRAND AVE	010-0480-00350
1724 E 5TH ST	010-1480-07450
121 E 7TH ST	010-1350-01450
822 & 824 E 2ND ST	010-3830-05550
3221 CHESTNUT ST	010-0330-00630
1114 E 10TH ST	010-0500-02080
824 E 7TH ST	010-3850-03770
3406 W 1ST ST	010-4580-00840
43 PIEDMONT AVE	010-1120-05920
7445 E SUPERIOR ST	010-0280-00590
1624 SUNDBY RD	010-2710-04555
614 N 7TH AVE E	010-3490-00110
911 N 23RD AVE W	010-4050-00040
225 E 4TH ST	010-0990-00290
1117 W 2ND ST	010-1160-00430
6303 NASHUA ST	010-2660-02180
641 N 59TH AVE W	010-4520-09510
17 S 63RD AVE W	010-4540-02030
1889 LESTER RIVER RD	010-2690-01386
3607 PIEDMONT AVE	010-0265-00020

These services will be completed by October 31, 2015. Vonco V, LLC will submit invoices for the work performed using the time and material rates attached.

**Project Name: MPCA/CITY OF DULUTH RESIDENTIAL REMOVAL**

**Property Address: TBD**

**Contractor: VEIT**

**Date: August 30, 2013**

<u>Activity</u>	<u>Unit Rate</u>	<u>Unit Cost</u>
<b>General Conditions/Project Startup</b>		
Project Manager	Hour	\$ 170.00
Permits (Demolition, Hydrant, Erosion)	Lump Sum	Market Rate
Mobilization - Lowboy (union driver)	Hour	\$ 220.00
Mobilization - Boom Truck (union driver)	Hour	\$ 195.00
Supervision (union)	Hour	\$ 130.00
<b>Environmental</b>		
Regulated Waste Survey	Lump Sum/Address	\$ 675.00
Asbestos Removal - Subcontractor	Lump Sum	Market Rate
Regulated Waste Removal - Subcontractor	Lump Sum	Market Rate
MSW Removal - Labor	Hour	\$ 80.00
MSW Disposal	Ton	\$ 60.00 plus taxes
Tank Removal	Lump Sum	Market Rate
Asbestos Disposal	Ton	\$ 50.00 plus taxes
<b>Demolition</b>		
Catepillar 330 Backhoe (machine and union operator)	Hour	\$ 250.00
Catepillar 320 Backhoe (machine and union operator)	Hour	\$ 200.00
Catepillar Skidsteer (machine and union operator)	Hour	\$ 138.00
Laborer (union)	Hour	\$ 76.00
Debris Disposal	Ton	\$ 37.50 plus taxes
Concrete Disposal	Ton	\$ 5.00
Tractor w/Demolition Trailer	Hour	\$ 165.00
Roll Off Truck	Hour	\$ 125.00
Dump Truck (Quint or Quad)	Hour	\$ 125.00
<b>Site Restoration</b>		
Catepillar Skidsteer (machine and union operator)	Hour	\$ 138.00
Backfill	CY	\$ 12.00
Topsoil	CY	\$ 25.00
Seed - Subcontractor	Lump Sum	Market Rate
Erosion Control - Subcontractor	Lump Sum	Market Rate
<b>Miscellaneous</b>		
Utility Disconnects - (Water and Sewer - Veit can perform)		Above Machine or Labor Rates
Street Restoration For Utility Disconnects - Asphalt	Lump Sum	Market Rate
Street Restoration For Utility Disconnects - Concrete Class 5	Lump Sum	Market Rate
Well Abandonment - Subcontractor	Ton	\$ 9.00
Electricity Disconnect	Lump Sum	Market Rate
Consumables (appliances, e-waste, etc)	Lump Sum	Market Rate

**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF: Vonco V Duluth, LLC**

**STIPULATION AGREEMENT**

**Part 1. PARTIES.** This Stipulation Agreement (“Agreement”) applies to and is binding upon the following parties:

- a. Vonco V Duluth, LLC (“Regulated Party”); and
- b. The Minnesota Pollution Control Agency (“MPCA”), which is authorized to enter into this Agreement under Minn. Stat. §§ 115 and 116.

Unless specified otherwise in this Agreement, where this Agreement identifies actions to be taken by the MPCA, the Commissioner or the Commissioner’s designees shall act on the MPCA’s behalf.

**Part 2. PURPOSE AND SCOPE OF STIPULATION AGREEMENT.** The purpose of this Agreement is to resolve the alleged violations set out in Part 4 of this Agreement by specifying actions the Regulated Party agrees to undertake. By entering into this Agreement, the Regulated Party is settling a disputed matter between itself and the MPCA and does not admit that the alleged violations set out in Part 4 of this Agreement occurred. However, the Regulated Party agrees that the MPCA may rely upon the alleged violations set out in Part 4 as provided in Part 9 of this Agreement. Except for the purposes of implementing and enforcing this Agreement, nothing in this Agreement constitutes an admission by any Party, or creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim of or legal action brought by a person who is not a party to this Agreement. All citations are to the latest codification of the cited material unless otherwise indicated.

**Part 3A. BACKGROUND.** The following is the background of this Agreement:

- a. The Regulated Party has owned or operated the Vonco V Duluth Industrial Landfill and Transfer Station (SW-536) (Facility) since 2000.
- b. The Facility is located on a 74.5-acre site at 1100 West Gary Street in Duluth, Minnesota (“Site”). Approximately 10.4 acres of the Site are currently developed as a construction and

demolition debris ("C&D") landfill. New phases of the landfill will be developed to accept industrial solid waste ("ISW") and will be composite-lined. The Facility includes a waste transfer station that the Regulated Party uses to screen waste prior to disposal, although at the time of the inspection described below, it was not being used to screen waste; however, the waste-screening area, located at the working face, was being used.

c. On March 30, 2012, the Regulated Party's environmental consultants notified the MPCA that on March 26 and 27, 2012, the Regulated Party had conducted a waste characterization study of the C&D landfill consisting of seven borings, and that "unacceptable wastes," as defined in the Facility permit, were documented at each boring.

d. On May 10, 2012, the MPCA conducted an inspection of the Facility that identified the violations described in Part 4 below.

e. On May 11, 2012, the MPCA conducted an inspection of the Facility in the presence of Ian Vagle of Vonco V Duluth, LLC. During this inspection, the MPCA inspector also viewed the transfer station building. Although the transfer station building was not in use at the time of the inspection, a broken floor tile was located outside the door of the building. The Regulated Party staff immediately wet and bagged and removed this floor tile material at the direction of the MPCA.

f. Following this inspection, the MPCA requested closure of the Facility due to conditions observed during the inspection involving mismanagement of asbestos waste, and the Regulated Party agreed to closure of the Facility until the conditions could be addressed.

g. On May 11, 2012, the MPCA submitted samples of material that it had collected during its inspection for analysis with regard to asbestos content.

h. Between May 11 and 12, 2012, the Regulated Party applied intermediate cover over the entire C&D landfill, including the South Slope Area.

i. On May 12, 2012, the MPCA determined that the conditions observed during the May 10 and 11, 2012, inspections related to inadequate cover had been remedied, and that the Facility could be reopened.

j. On May 16, 2012, the MPCA received results confirming that of four samples collected, three tested positive for asbestos.

k. On June 4, 2012, the MPCA sent the Regulated Party a Notice of Violation (NOV).

l. On June 22, 2012, the Regulated Party responded to the NOV.

m. On August 15, 2012, the MPCA was informed that the Regulated Party had dumped 6.25 tons of mixed municipal solid waste (MSW) generated at the Facility at 1 Industrial Park Road, Wrenshall, Minnesota, which is a residence, not a facility authorized to accept the waste. Upon being notified of the incident by the MPCA, the Regulated Party immediately retrieved the MSW and transported it to a facility that is permitted to accept the waste.

n. On October 9, 2012, the Regulated Party further responded to the NOV.

**Part 3B. STATEMENT OF THE REGULATED PARTY.** The Regulated Party has provided the following statement. The MPCA takes no position on this Statement.

The Regulated Party has not been cited for a violation at the Facility during its period of operation until the incidents detailed in this Agreement. The Regulated Party self-reported issues with unacceptable waste in the landfill, and has always been responsive and cooperative with the MPCA, including its request to temporarily close the Facility. The Regulated Party has assigned staff to teach solid waste landfill compliance classes for the MPCA. The Regulated Party believes that the incidents alleged in this Agreement are isolated incidents and are not consistent with the Regulated Party's general operating standards.

**Part 4. ALLEGED VIOLATIONS.** The MPCA alleges that the Regulated Party has violated the following requirements of statute, rule, and/or permit condition:

a. **Minn. R. 7035.2535, GENERAL SOLID WASTE MANAGEMENT FACILITY REQUIREMENTS, subp 4.** General inspection requirements include the information required in items A to E.

A. The owner or operator must inspect the facility for malfunctions, deterioration, or discharges that may result in either the release of pollutants to the environment or a threat to human health. The owner or operator must conduct these inspections according to the schedule developed under item B.

D. The owner or operator must remedy any deterioration or malfunction of equipment or structure within two weeks after an inspection, or as approved by the commissioner based on the nature of the problem, availability of materials, and other factors that influence repair efforts.

**PERMIT SW-536, August 5, 2011.**

**1. TOTAL FACILITY.**

**1.4 Operating and Maintenance Criteria**

**1.4.12 The permittee must perform general inspections in accordance with Minn. R. 7035.2535, subp. 4.**

On May 10 and 11, 2012, the MPCA inspected the Facility and determined that there were conditions that were not in compliance with rule or the facility permit and which constituted malfunctions and deterioration of the Facility, in particular unacceptable waste and exposed asbestos. The Regulated Party indicated in daily inspections reports that the Facility was in compliance. The Regulated Party either failed to conduct the required inspections or conducted inspections that were deficient.

**b. Permit SW-536, August 5, 2011, DEMOLITION DEBRIS DISPOSAL AREA DD 001.**

**2.2 Operating and Maintenance Criteria.**

**2.2.17 Non-Acceptable/Prohibited Wastes.**

**2.2.18 The facility may not accept any material that is unrecognizable, unless that material was crushed, pulverized or otherwise processed at a permitted solid waste transfer facility prior to delivery to the facility.**

The following materials are considered to be non-acceptable or prohibited wastes:

**2.2.19 Adhesives (including applicators, containers, tubes); agricultural chemicals or containers; animal carcasses, parts or rendering and slaughterhouse wastes; appliances (including white goods and brown goods); ashes or wastes that could spontaneously combust or ignite other wastes due to high temperatures; batteries; caulking (including applicators, containers, tubes); recyclable cardboard; rolls of carpet and padding from construction and replacement or remodeling projects; chemical containers; epoxy (including applicators, containers, tubes); fluorescent tubes and ballasts; food waste; foundry waste; furniture and mattresses; glue (including applicators, containers, tubes); hazardous waste; high-intensity discharge lamps; household refuse or garbage; infectious waste; liquids (any type); machinery or engine parts; medical waste; mercury containing wastes (thermostats, switches); paints,**

thinners, solvents, varnishes (including applicators, brushes, cans, containers, filters, dust collectors); PCB containing wastes; pesticide containers; petroleum products, containers or filters (including oil, grease, fuel); radioactive wastes; resins - epoxy or fiberglass (including applicators, containers, tubes); sandblasting waste; sealants (including applicators, containers, tubes); septic tank pumpings; sludges (including ink, lime, wood, sewage or paper); tar (including applicators, containers, tubes); tires; treated lumber (including decking, railroad ties, etc.); vehicles; and yard waste.

On May 10, 2012, the MPCA conducted an inspection at the Facility and documented several unacceptable wastes in Phases 2, 3 and 4, including pieces of what appeared to be railroad ties, telephone poles, household refuse and garbage (including food wastes, a diaper, a telephone, and a car seat), rolls of carpet and padding, caulk tubes, adhesive buckets, pieces of tires, and a large amount of recyclable cardboard. The Regulated Party is prohibited from accepting the listed items for disposal at the Facility.

**c. Minn. R. 7035.2535, GENERAL SOLID WASTE MANAGEMENT FACILITY REQUIREMENTS.**

Subp. 5. Industrial solid waste management. All industrial solid waste delivered to a solid waste management facility must be managed by the owner or operator to protect human health and the environment. The industrial solid waste management plan required under part 7001.3300 must address items A to C, except that the industrial solid waste management plan for a municipal solid waste combustor ash land disposal facility need not comply with items B and C.

B. The plan must address how the following categories of waste will be managed to comply with the requirements of item A, subitems (2) and (2) asbestos.

**PERMIT SW-536, August 5, 2011.**

**1. TOTAL FACILITY**

**1.2.1 Permit Documents**

**1.2.4 3 Industrial Solid Waste Management Plan - Industrial Landfill, Carlson Professional Services, May 16, 2011. Industrial Solid Waste Management Plan – Revision 2 Vonco V – Duluth, Asbestos-Containing Material Guidance for Landfill Disposal.**

### 1.3 Disposal Requirements

The Following procedures must be followed for proper delivery and inspection of regulated ACM loads.

- Asbestos must be covered with six (6) inches of compacted, non-asbestos containing material or soil as soon as practical, but no later than, the end of the working day. The ACM will be covered prior to compaction to prevent the release of the asbestos fibers as well as to protect the waste so that non-friable ACM does not become subject to forces that will crumble or pulverize it, converting it to a friable state.
- d. **Minn. R. 7011.9920, which incorporates by reference the requirements of Title 40 Code of Federal Regulations (CFR) 61.154, STANDARD FOR ACTIVE WASTE DISPOSAL SITES.**

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under §61.149, 61.150, or 61.155 shall meet the requirements of this section:

- (c) Rather than meet the no visible emission requirement of paragraph (a) of this section, at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

- (1) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material.

On May 10 and 11, 2012, the MPCA conducted an inspection at the Facility and documented an area approximately 400 feet x 60 feet containing pockets of exposed asbestos-containing material (ACM) on the south-facing slope of Phases 2 and 3. The ACM was dry and no longer in leak-tight containers. The MPCA staff was informed by the Regulated Party that the ACM had been exposed and in the condition observed for one week. The Regulated Party failed to cover the ACM with six inches of cover at the end of each working day for at least seven working days. On May 11, 2012, the MPCA also noted that there was a floor tile outside the door of the transfer station building that appeared to have been broken by vehicles driving over it. It is unknown how long the broken tile had been at that location.

- e. **Minn. R. 7011.9920, which incorporates by reference the requirements of Title 40 Code of Federal Regulations (CFR) 61.154, STANDARD FOR ACTIVE WASTE DISPOSAL SITES.**

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under

§ 61.149, 61.150, or 61.155 shall meet the requirements of this section:

- (f) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

**PERMIT SW-536, August 5, 2011.**

b. TOTAL FACILITY

2.2 Permit Documents

1.2.4 3 Industrial Solid Waste Management Plan – Industrial Landfill, Carlson Professional Services, May 16, 2011.  
Industrial Solid Waste Management Plan – Revision 2  
Vonco V – Duluth Asbestos-Containing Material Guidance for Landfill Disposal.

2.3 Disposal Requirements

The following procedures must be followed for the proper delivery and inspection of regulated ACM loads:

- The location, depth, area and volume of ACM disposed of in the landfill must be recorded.

On May 10 and 11, 2012, the MPCA conducted an inspection at the Facility and documented an area, approximately 400 feet x 60 feet, that contained pockets of exposed ACM on the south-facing slope of Phases 2 and 3. The Regulated Party informed the MPCA that it was unaware that ACM was located in that area of the Facility. The Regulated Party failed to record the location of ACM waste at the Facility.

f. **Minn. R. 7035.0800, COLLECTION AND TRANSPORTATION OF SOLID WASTE.**

Subp. 1. OWNER'S OR OCCUPANT'S DUTY. The owner and occupant of any premises, business establishment, or industry and/or the refuse collection service are responsible for the satisfactory collection and transportation of all solid waste accumulated at a premise, business establishment, or industry to a solid waste disposal, transfer, or processing facility that is authorized to accept the waste.

On August 15, 2012, the MPCA was informed that the Regulated had dumped approximately 6.25 tons of municipal solid waste (MSW) that had been generated at the Facility at 1 Industrial Park Road, Wrenshall, Minnesota, which is a residence, and not a facility authorized to accept

the waste. The Regulated Party failed to transport solid waste to a facility that is permitted to accept the waste.

**Part 5. CIVIL PENALTY.**

The Regulated Party agrees to pay \$60,000 to the MPCA as a civil penalty for the violations alleged in Part 4 within 30 days after the effective date of this Agreement. Payment of the penalty amount of \$60,000 is to be by check or money order payable to the Minnesota Pollution Control Agency.

The check must be mailed to: Fiscal Services - 6<sup>th</sup> Floor, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; or to make an Electronic Payment, contact Carl Agerbeck, MPCA Fiscal Services, at 651-757-2182.

If the Regulated Party fails to make the required payment within 45 days after the Effective Date of this Agreement, the Regulated Party agrees to pay a late payment charge in an amount equal to 10 percent of the unpaid civil penalty. Sixty days after the Effective Date of this Agreement, the Regulated Party agrees to pay an additional late charge in an amount equal to 20 percent of the unpaid civil penalty. If the payment, including late charges, is not received by the MPCA within 60 days after the Effective Date of this Agreement, the MPCA may immediately exercise any and all administrative and judicial remedies available to it to collect the amount due. The Regulated Party agrees to pay and shall also be indebted to the MPCA for its attorneys' fees and cost incurred by the MPCA in connection with its collection of the amounts owed pursuant to this Agreement.

**Part 5B. SUPPLEMENTAL ENVIRONMENTAL PROJECT.**

a. The Regulated Party has proposed and the MPCA accepts a proposal to perform a Supplemental Environmental Project (SEP) at a cost to the Regulated Party of at least \$400,000. The SEP consists of the abatement, demolition, and disposal of structures located in the city of Duluth as outlined in Attachment A. The Regulated Party shall document the cost of the work it performs pursuant to the cost chart included in Attachment A. The Regulated Party shall complete the SEP by October 31, 2015. The SEP shall be completed in accordance with all applicable rules and regulations. The Regulated Party shall complete the SEP in accordance with Attachment A.

The Regulated Party shall receive no payment or other compensation for the work performed in completion of the SEP. The Regulated Party shall maintain copies of all invoices, contracts, manifests, receipts, and any and all other documentation of the actual costs the Regulated Party incurs in completing the SEP.

b. If the Regulated Party completes the SEP by October 31, 2015, and the Regulated Party has spent less than \$400,000 completing the SEP OR if the Regulated Party abandons the SEP for any reason prior to spending \$400,000, the Regulated Party shall pay to the MPCA an additional civil penalty calculated as follows: \$400,000 minus the cost of work performed on the SEP (calculated using the cost chart in Attachment A) multiplied by 0.6. If the Regulated Party abandons the SEP prior to beginning the work, the Regulated Party shall pay to the MPCA an additional civil penalty of \$240,000. Payment shall be made within 30 days of completion or abandonment of the SEP. Payment shall be made in the same manner and subject to the same conditions as payment of the civil penalty as provided in Part 5A.

**Part 6. REGULATED PARTY REQUIREMENTS.** The Regulated Party agrees to the following requirements:

a. Immediately, cover all exposed ACM and waste at the Facility.

...This action has been completed.

b. Within 10 days of the Effective Date of this Agreement, the Regulated Party shall submit a letter withdrawing its request for a contested case hearing on the draft Administrative Order dated November 14, 2012.

c. Within 60 days of the Effective Date of this Agreement, submit an application to modify the Facility permit to include the requirement that the Regulated Party construct an enhanced final cover system. The application shall include the following:

- Specifications for a final cover system on Phases 1, 2, 3 and, 4 that must include a 12-inch soil buffer layer, a 40-mil linear low-density polyethylene (LLDPE) geomembrane, a minimum one-foot sand drainage layer with a permeability greater than  $1 \times 10^{-3}$  cm/sec, and a top layer at least 18-inches thick, of which at least the upper six inches is topsoil.

- A proposal for installation of a temporary plastic cover system for portions of Phases 1, 2, and 3 that will, at a minimum, cover the area of the waste investigation borings. This temporary cover system will be installed by November 15, 2013.
- Drawings and plans showing the enhanced final cover system that will be in place on October 31, 2015. To be approved, the enhanced final cover system must be in place, at a minimum, over portions of Phases 1, 2, 3 and 4 by October 31, 2015.

Following approval of the amendment by the MPCA, the Regulated Party shall implement the approved cover system according to the approved plans and schedule.

d. Within 60 days of the Effective Date of this Agreement, submit an application to modify the Facility permit to provide for the installation and operation of an enhanced groundwater monitoring system. The proposed changes to the groundwater monitoring system shall include the following, at a minimum:

- Installation of, at a minimum, one down gradient groundwater monitoring well;
- Beginning in the Spring of 2014, and for a three-year period, conduct enhanced groundwater monitoring in all permit-designated groundwater monitoring wells. Enhanced groundwater monitoring will include laboratory analysis of all permit-required analyses plus semi-volatile organic compounds (SVOCs) and metals (*specifically molybdenum/Target*) per event. After three years, a report must be submitted to the MPCA that summarizes the past three years of data and analysis of the expanded list of groundwater parameters. After reviewing the submittal, the MPCA will determine if continuing the expanded list of groundwater parameters will be required.

Following approval of the amendment by the MPCA, the Regulated Party shall implement the installation and sampling of the groundwater monitoring wells as provided in the approved plans.

e. Within 30 days of the Effective Date of this Agreement, submit a draft letter to the MPCA for review and approval that will be mailed to all persons and companies that dispose of solid waste at the Facility. To be approved, the letter must inform all customers what is acceptable for disposal at the Facility and the consequences for attempting to dispose unacceptable items.

...This action has been completed.

f. Within five days after obtaining the MPCA's approval of the letter described in e. above, the Regulated Party shall send the letter to its current customers and provide the MPCA with documentation that the letter has been sent, including a list of persons receiving the letter. Thereafter, the Regulated Party shall provide a copy of this letter to all new commercial customers of the Facility.

...This action has been completed.

g. Within 30 days of the Effective Date of this Agreement, submit any permit amendments as provided in Minn. R. 7001.0190 necessary to conform the permit to the current ownership and operation of the Facility, including adding any corporations that are current land owners (with appropriate signatures by corporate officials), or by conforming land records to reflect current ownership. All owners, landowners, and operators must be named permittees.

**Part 7. PENALTIES FOR VIOLATIONS OF THIS AGREEMENT.**

a. If the Regulated Party fails to comply with requirements of Part 6 of this Agreement, the Regulated Party shall pay to the MPCA a penalty in the amount of \$500.00 per requirement for each day of failure.

b. Penalties for failure to comply with requirements of Part 6 of this Agreement shall accrue from the date the Regulated Party was to have fulfilled the requirement until the Regulated Party fulfills the requirement. Penalties shall not accrue while the MPCA considers a timely extension request under Part 12 or during dispute resolution under Part 10 unless the MPCA determines that the Regulated Party filed the request or initiated dispute resolution solely for purposes of delay. If the Regulated Party does not pursue dispute resolution under Part 12 for denial of a timely extension request, penalties shall accrue from the date the extension request is denied by the MPCA Case Contact. If the Regulated Party pursues dispute resolution for denial of an extension request and does not file a timely challenge in a court of competent jurisdiction as provided by Part 10, penalties shall accrue from the date of a Commissioner's dispute resolution decision against the Regulated Party until the Regulated Party fulfills the requirement that is the subject of the extension request.

c. The Regulated Party shall pay a penalty under this Part within 30 days after receiving written notice from the MPCA that the penalty is due, unless the Regulated Party has

challenged the factual basis of a penalty asserted under this Part under the dispute resolution provision of Part 10, in which case the penalty, if still applicable, shall be due with 30 days of final resolution of the dispute under Part 10. The written notice shall specify the provision of the Agreement that the Regulated Party has not fulfilled and indicate the date penalties began to accrue. If the Regulated Party fails to make timely payment, the Regulated Party agrees to pay a late payment charge, in addition to the stipulated penalty, to be assessed as follows. Forty-five days after receipt of written notice, the Regulated Party shall be obligated to pay a late charge in an amount equal to 10 percent of the unpaid stipulated penalty. Sixty days after receipt of written notice, the Regulated Party shall be obligated to pay an additional late charge in an amount equal to 20 percent of the unpaid stipulated penalty.

d. In dispute resolution before the Commissioner under Part 10, the Regulated Party can contest the factual basis for the MPCA's determination that the Regulated Party has not fulfilled a requirement of this Agreement covered by this Part. However, the Regulated Party waives its right to challenge, on legal grounds, the requirement that it pay penalties under this Part.

e. The Regulated Party shall not be liable for payment of penalties for failure to comply with requirements of Part 6 of this Agreement covered by this Part if it has submitted to the MPCA a timely request for an extension of schedule under Part 12 and the MPCA has granted the request. The MPCA's grant of an extension of schedule waives the payment of penalties covered by this Part only on the requirements for which the MPCA granted an extension of schedule and only for the time period specified by the MPCA in the grant of an extension. An extension of schedule for one requirement of Part 6 does not extend the schedule for any other requirement of Part 6.

f. Any requirement of this Agreement may be enforced as provided in Minn. Stat. § 115.071. Payment of a stipulated penalty does not relieve the Regulated Party of its obligation to fulfill and complete requirements under the Agreement and to otherwise comply with the terms and conditions of the Agreement.

**Part 8. COVENANT NOT TO SUE AND RESERVATION OF REMEDIES.** With respect to the Regulated Party, the MPCA agrees not to exercise any administrative, legal or equitable remedies available to the MPCA to address the violations alleged and described in Part 4 and in the June 4, 2012, Notice of Violation issued to the Regulated Party, as long as the Regulated

Party performs according to, and has complied with, the terms and conditions contained in this Agreement. The MPCA agrees that, provided the Regulated Party performs according to and has complied with the terms and conditions contained in this Agreement, the MPCA shall take no further actions to pursue the proposed Administrative Order dated November 12, 2012. The MPCA reserves the right to enforce this Agreement or take any action authorized by law, if the Regulated Party fails to comply with the terms and conditions of this Agreement. Further, the MPCA reserves the right to seek to enjoin violations of this Agreement and to exercise its emergency powers pursuant to Minn. Stat. § 116.11 in the event conditions or the Regulated Party's conduct warrant such action. Nothing in this Agreement shall prevent the MPCA from exercising these rights and nothing in this Agreement constitutes a waiver of these rights. The Regulated Party agrees to waive all claims it may now have, as of the effective date of this Agreement, under Minn. Stat. § 15.472 for fees and expenses arising out of matters leading up to and addressed in this Agreement.

**Part 9. REPEAT VIOLATIONS.** Federal and state environmental programs establish harsher penalties for violations of environmental laws or rules that constitute repeat violations. In a proceeding to resolve alleged violations by the Regulated Party, if any, occurring after the date of the alleged violations set out in Part 4 of this Agreement, the Regulated Party may argue about the extent to which the violations alleged in Part 4 of this Agreement should affect the penalty amount for the later violations, but waives the right: (1) to contend that the violations alleged in Part 4 of this Agreement did not occur as alleged and (2) to require the MPCA to prove the violations alleged in Part 4 of this Agreement.

**Part 10. RESOLUTION OF DISPUTES.** The parties to this Agreement shall resolve disputes that arise as to any part of the Agreement as follows:

a. Either party, acting through its Case Contact (as named in Part 13 below), may initiate dispute resolution by providing to the Case Contact of the other party an initial written statement setting forth the matter in dispute, the position of the party, and the information the party is relying upon to support its position.

The other party, acting through its Case Contact, shall provide a written statement of its position and supporting information to the Case Contact of the initiating party within 14 calendar days after receipt of the initial written statement.

b. If the parties, acting through their Case Contacts, do not reach a resolution of the dispute and reduce such resolution to writing in a form agreed upon by the parties within 21 calendar days after the initiating party receives the statement of position from the responding party, the Commissioner shall issue a written decision resolving the dispute. The written decision may address stipulated penalties assessed pursuant to Part 7. The Commissioner's decision shall be considered a final decision of the MPCA for purposes of judicial review.

c. The Commissioner's decision shall become an integral and enforceable part of this Agreement unless the Regulated Party timely challenges the decision in a court of competent jurisdiction. Failure to timely challenge means the Regulated Party agrees to comply with the MPCA Commissioner's decision on the matter in dispute and to pay any penalties that accrue pursuant to Part 7 for failure to fulfill requirements of this Agreement that are the subject of the dispute resolution. Further, if the Commissioner's decision assesses penalties pursuant to Part 7 of this Agreement, the Regulated Party agrees to and shall pay the amount of penalty determined by the Commissioner within 60 days after receiving the Commissioner's decision.

d. Throughout any dispute resolution, the Regulated Party shall comply with all portions of the Agreement that the MPCA determines are not in dispute.

**Part 11. VENUE.** Actions brought by the MPCA to enforce requirements and terms of this Agreement shall be venued in Ramsey County District Court.

**Part 12. EXTENSION OF SCHEDULES.** If the Regulated Party wants an extension of a deadline included in any schedule under this Agreement, including schedules established by approved submittals, the Regulated Party must request the extension in writing at least 10 days before the scheduled deadline, or as soon as possible before that date if the reason for the extension request arises less than ten days before the deadline.

Each deadline extension request shall separately specify the reason why the extension is needed. No requested extension shall be effective until approved in writing by the MPCA, acting through the MPCA Case Contact or the Commissioner.

The MPCA shall grant an extension only for the period of time the MPCA determines is reasonable under the circumstances. The written approval or grant of an extension request shall be considered an enforceable part of the Agreement.

The Regulated Party has the burden of demonstrating to the satisfaction of the MPCA that the request for the extension is timely, and that good cause exists for granting the extension. Good cause can include, but is not limited to, the following:

a. Circumstances beyond the reasonable control of the Regulated Party; and

b. Delays caused by the MPCA in reviewing timely submittals required by this Agreement, submitted by the Regulated Party in complete and approvable form, which make it not feasible for the Regulated Party to meet the required schedules.

Good cause does not include unanticipated costs, increases in the cost of control equipment, or delays in the MPCA review of submittals when the submittals are not in complete and approvable form.

The Regulated Party may challenge a decision by the MPCA to deny a request for an extension under Part 12.

**Part 13. CASE CONTACT.** The MPCA and the Regulated Party shall each designate a Case Contact for the purpose of overseeing the implementation of this Agreement. The MPCA Case Contact is Cory Boeck. The address and telephone number of the MPCA's Case Contact is: 12 Civic Center Plaza, Suite 2165, Mankato, Minnesota 56001; 507-344-5253. The Regulated Party's Case Contact is Ian Vagle. The address and telephone number of the Regulated Party's Case Contact is: 14000 Veit Place, Rogers, Minnesota 55374; 763-428-2242. Either party may change its designated Case Contact by notifying the other party in writing, within five days of the change. To the extent possible, communications between the Regulated Party and the MPCA concerning the terms and conditions of this Agreement shall be directed through the Case Contacts.

**Part 14. APPLICABLE LAWS AND PERMITS.** This Agreement does not relieve the Regulated Party of the duty to comply with the requirements of all applicable federal, state and local laws and regulations, including without limitation in the Regulated Party's undertaking actions to comply with this Agreement. Except when the MPCA has specifically authorized a different compliance method in Part 6, the Regulated Party must also comply with all applicable permits, orders, stipulation agreements and schedules of compliance. Nothing in this Agreement exempts or relieves the Regulated Party of its obligation to comply with local governmental requirements.

**Part 15. OTHER CLAIMS.** Nothing herein shall release the Regulated Party from any claims, causes of action or demands in law or equity by any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating to the release of any pollutant or contaminant from its operations or from a facility. Neither the Regulated Party nor the MPCA shall be held as a party to any contract entered into by the other party to implement the requirements of this Agreement.

**Part 16. HOLD HARMLESS AGREEMENT.** The Regulated Party agrees to indemnify, save and hold the MPCA, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Regulated Party, its officers, employees, agents, or contractors in implementing the activities conducted pursuant to this Agreement; provided, however, that the Regulated Party shall not indemnify the MPCA or save or hold its employees and agents harmless from any claims or causes of action arising out of the acts or omissions of the MPCA, or its employees and agents.

When the Regulated Party is required to hold the MPCA harmless, the MPCA shall give the Regulated Party notice of any claim or cause of action subject to this Part and the Regulated Party has the right to participate in the defense against any claim or cause of action. No settlement shall be effective against the Regulated Party unless the Regulated Party agrees to the settlement. Nothing herein waives or modifies the provisions of the Minnesota Tort Claims Act, Minn. Stat. §§ 3.732, et seq., and other applicable law.

**Part 17. SUCCESSORS, AGENTS AND CONTRACTORS.** This Agreement shall be binding upon the Regulated Party and its successors and assigns and upon the MPCA, its successors and assigns. If the Regulated Party sells or otherwise conveys or assigns any of its right, title or interest in the Facility, the conveyance shall not release the Regulated Party from any obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the MPCA approves the transfer or assignment. The Regulated Party shall ensure that the Regulated Party's agents, contractors and subsidiaries comply with the terms and conditions of this Agreement.

**Part 18. AMENDMENTS.** Except with respect to extensions of schedules granted under Part 12 and approved submittals under Part 6, this Agreement may be amended only by written agreement between the parties.

**Part 19. EFFECTIVE DATE.** This Agreement shall be effective on the date it is signed by the MPCA.

**Part 20. TERMINATION.** The provisions of this Agreement shall be deemed satisfied and terminated when the Regulated Party receives written notice from the MPCA that the Regulated Party has demonstrated, to the satisfaction of the MPCA, that all terms of the Agreement have been completed. Termination of this Agreement does not release the Regulated Party from any duty to comply with any statutes, rules or permit conditions, whether or not they are cited in this Agreement. The Regulated Party agrees that it shall retain all records related to this Agreement for three years following its termination. Termination of this Agreement does not release the Parties from any provisions intended to have future application, including without limitation Parts 8 (Covenant Not to Sue and Reservation of Remedies), 9 (Repeat Violations) and 16 (Hold Harmless Agreement), which terms shall survive the termination of this Agreement.

**BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY  
TO BIND THE PARTIES THEY REPRESENT**

**MR. VAUGHN VEIT, MANAGER  
VONCO V DULUTH, LLC**

**STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

**JOHN LINC STEIN  
COMMISSIONER**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Date: \_\_\_\_\_