

JOINT PETITION
EXHIBIT 2

Private Sale Motion
(Part 2)

**Form of Exhibit D to
Asset Purchase Agreement**

**EASTMAN BUSINESS PARK
UTILITY SERVICES AGREEMENT**

THIS UTILITY SERVICES AGREEMENT (this “**Agreement**”) having an effective date of _____, 2013 (the “**Effective Date**”) is entered into by and between:

RED-ROCHESTER, LLC, a Delaware limited liability company having offices at _____, Rochester, New York _____ (herein “**SUPPLIER**”);

And

EASTMAN KODAK COMPANY, a New Jersey corporation having offices at 343 State Street, Rochester, New York 14650 (herein, together with its successors or assigns, “**CUSTOMER**”).

WHEREAS, SUPPLIER is authorized by order of the Public Service Commission of the State of New York (“**Public Service Commission**”) in Case _____, effective _____, 2013 (the “**PSC Order**”) to provide certain “**Services**” (as defined below) to the “**EBP Utility Services Territory**” (as defined below); and

WHEREAS, CUSTOMER owns or leases property in the EBP Utility Services Territory; and

WHEREAS, CUSTOMER acknowledges it has been advised by SUPPLIER that CUSTOMER has certain rights to acquire Regulated Services from providers other than SUPPLIER; and

WHEREAS, CUSTOMER desires to purchase and receive the Services from SUPPLIER; and

WHEREAS, SUPPLIER desires to sell and provide the Services to CUSTOMER; and

WHEREAS, the Parties desire to set forth the terms and conditions that will apply to SUPPLIER’s provision of the Services to CUSTOMER under this Agreement;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE I — DEFINITIONS

- 1.1** “**Affected Party**” means a Party claiming that a Force Majeure Event has occurred and affects such Party’s ability to perform its obligations under this Agreement.
- 1.2** “**Agency**” has the meaning given to that term in **Section 3.2.1**.
- 1.3** “**Agreement**” has the meaning given to that term in the preamble.
- 1.4** “**Applicable Laws**” means all statutes, laws, ordinances, regulations, rules, licenses, permits, decrees, directives and other requirements.
- 1.5** “**Applicable Requirements**” has the meaning given to that term in **Section 3.2.1**.

1.6 “**Asset Purchase Agreement**” means the Asset Purchase Agreement dated December ___, 2012 between SUPPLIER and Eastman Kodak Company.

1.7 “**Baseline Outage**” means, during the relevant time period prior to the Effective Date, any failure or omission by Eastman Kodak Company for any reason to provide any Service to the applicable Delivery Point up to the quantity required to be provided or any interruption in the provision of any Service to the applicable Delivery Point up to the quantity required to be provided, including omission or interruption caused by rejection of such Service upon a failure or omission to meet any required specifications; provided, any such failure or omission to provide Service or interruption in Service shall not constitute a Baseline Outage (i) if it relates to the provision of any Service other than electric service or compressed air service and (a) it does not exceed fifteen (15) minutes in duration with respect to any single occurrence, and (b) not more than one such occurrence occurs during any rolling twenty-four (24) hour period, or (ii) to the extent it is caused by a Force Majeure Event.

1.8 “**Billing Month**” means the period commencing at the time on the day the Meters are read in one month and terminating at the time on the day the Meters are read in the following month. The timing of Meter readings is determined by SUPPLIER and shall occur on or around the 25th day of each calendar month.

1.9 “**Binding Quality Specifications**” means those specifications relating to each Utility Service as so labeled and more fully described in **SCHEDULE D** and **SCHEDULE F**, which SUPPLIER shall be bound to provide at all times.

1.10 “**Blanket Amendment**” has the meaning given to that term in **Section 14.4**.

1.11 “**Building**” means a building located in the EBPUS and listed on **SCHEDULE A** attached hereto as a location to which one or more Services are provided or any new building to which SUPPLIER provides services pursuant to **Section 4.1**.

1.12 “**Chilled Water Return**” has the meaning given to that term in **Section 4.4**.

1.13 “**Closing Date**” has the meaning given to that term in the Asset Purchase Agreement.

1.14 “**Condensate**” has the meaning given to that term in **Section 4.3**.

1.15 “**Condensate Return System**” has the meaning given to that term in **Section 4.3**.

1.16 “**Confidential Information**” has the meaning given to that term in **Section 9.1**.

1.17 “**Conforming Contract**” means (i) this Agreement, (ii) any contract resulting from a partial assignment of this Agreement, and (iii) a contract with respect to the delivery of Services by SUPPLIER between SUPPLIER and an EBPUS Customer where under such contract (a) the EBPUS Customer participates in the quarterly cash flow sharing as described in **Section 4** of **SCHEDULE C**, and (b) the pricing terms and conditions are otherwise substantially consistent with those in **SCHEDULE C**.

1.18 "Continuous Meter" means a meter for any service that transmits use in one-hour or shorter increments to SUPPLIER's central computers.

1.19 "Contract Demand" means, with respect to each Delivery Point, the Delivery Point Peak Demand for such Delivery Point or such higher amount of demand as is requested by CUSTOMER and accepted by SUPPLIER as contemplated by **Section 4.1**, and represents the minimum units of Service SUPPLIER agrees to provide to such Delivery Point for the relevant contracted Service during one hour, as specified in **SCHEDULE D** for Regulated Services and in **SCHEDULE F** for Unregulated Services. For clarity, SUPPLIER will deliver more units than the Contract Demand upon CUSTOMER's use, up to system delivery limits, but will not be contractually responsible for more than the Contract Demand.

1.20 "Control Center" means SUPPLIER's 24 hour control room that can currently be reached at telephone number (585) ____ - ____, which number may be changed by SUPPLIER from time to time by giving written notice of the new number to CUSTOMER.

1.21 "Coordination Committee" has the meaning given to that term in **Section 4.5**.

1.22 "Covered Real Property" means (i) the Permanent Easement Area (as defined in the Asset Purchase Agreement) and that portion of Blanket Utility Easement Area (as defined in the Asset Purchase Agreement) (a) on which Facilities are located as of the Effective Time, or (b) adjacent to the land described in clause (a) and reasonably required to be accessed by SUPPLIER to operate, maintain, repair or replace the Facilities as they exist as of the Effective Time, and (ii) any land required to be accessed by SUPPLIER in connection with the construction or installation of any New or Modified Facilities, including the surface and subsurface elements of such properties and the soils and groundwater present at the Covered Real Property, and any references to items "on the Covered Real Property" shall include all items at, in, on, upon, over, across, under and within the Covered Real Property.

1.23 "CUSTOMER" has the meaning given to that term in the preamble.

1.24 "CUSTOMER Indemnified Parties" has the meaning given to that term in **Section 13.5.1**.

1.25 "CUSTOMER Proof Window" means, with respect to any Service in connection with any Shortfall, the period between (i) the date that is ten (10) years prior to the occurrence of such Shortfall, and (ii) the EIS Date with respect to such Service; provided, there will be no CUSTOMER Proof Window with respect to such Service after ten (10) years has elapsed from the EIS Date with respect to such Service.

1.26 "Delivery Point" means the point at which CUSTOMER takes responsibility for the receipt of Utility Services at a Service Location, or with respect to Condensate Return and Chilled Water Return, the point at which SUPPLIER takes responsibility for receipt of the commodity being returned. Unless otherwise noted in **SCHEDULE A** attached hereto, the Delivery Point for each Utility Service provided to a particular Service Location shall be at the point of connection on CUSTOMER's side of the applicable Meter for such Utility

Service at such Service Location. Each Delivery Point provides a single Service, and for clarity, all terms that include the words "Delivery Point" refer to one specific Service unless otherwise stated.

1.27 "Delivery Point Peak Demand" means, (i) for calendar years 2013 and 2014, the amount noted in **SCHEDULE D** for Regulated Services or **SCHEDULE F** for Unregulated Services or such other number as is requested by CUSTOMER and accepted by SUPPLIER, and (ii) for any calendar year after 2014, means the maximum delivery of the applicable Utility Service during one any one hour period during the prior calendar year in the case of each Delivery Point with a Continuous Meter. For each Delivery Point without a Continuous Meter, the Delivery Point Peak Demand shall be equal to the quotient of (i) the total consumption of service at such Delivery Point during the prior twelve (12) Billing Months, divided by (ii) the EBP Load Factor for the applicable Utility Service for the calendar year in which the Billing Month for which such Delivery Point Peak Demand is being determined occurs.

1.28 "Discharge Point" has the meaning given to that term in **Section 3.2.2.1**.

1.29 "Eastman Kodak Company" means Eastman Kodak Company, a New Jersey corporation with offices at 343 State Street, Rochester, New York 14650.

1.30 "EBP Load Factor" means, for each metered Service for each calendar year, the quotient of (i) the total consumption during the prior calendar year's twelve (12) Billing Months at all delivery points of all EBPUST Customers with Continuous Meters, divided by (ii) the result of (a) the sum of the non-coincident highest one-hour total consumption of such metered Service at the same delivery point in the prior calendar year's twelve (12) Billing Months, multiplied by (b) the number of hours in the same twelve (12) Billing Months.

1.31 "EBP Utility Service Territory" or "EBPUST" means the manufacturing and industrial park to which SUPPLIER is authorized by the PSC Order to provide electric, steam, natural gas and potable water commodity and distribution services, which is located in the Town of Greece and the City of Rochester, New York, and is more particularly depicted on a map that was filed with the Public Service Commission in Case 04-M-0388.

1.32 "EBPUST Customer" means any owner or tenant of property within the EBPUST to whom SUPPLIER provides Services, whether or not such owner or tenant is a Participating Customer.

1.33 "Effective Date" has the meaning given to that term in the preamble.

1.34 "Effective Time" has the meaning given that term in the Asset Purchase Agreement.

1.35 "EIS" means the Energy Information System acquired by SUPPLIER pursuant to the Asset Purchase Agreement, together with any replacement to such Energy Information System installed by SUPPLIER during the Fixed Data Period.

1.36 "EIS Date" means, with respect to a Service, the earliest date for which information is available for such Service in the EIS from such date through the Effective Date.

1.37 "Environment" means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land, including land surface or subsurface strata, including all fish, plant, wildlife, and other biota and any other environmental medium or natural resource.

1.38 "Environmental Disturbance" means any planned construction or maintenance activity by SUPPLIER that has the potential to result in an environmental liability or require Remediation.

1.39 "Environmental Laws" means all Applicable Laws regarding pollution or protection of the Environment, public health, the conservation and management of land, natural resources and wildlife or human health or the Occupational Safety and Health Act (only as it relates to Hazardous Substances), including Applicable Laws regarding Releases or threatened Releases of Hazardous Substances or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Substances. "Environmental Laws" include the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.) ("RCRA"), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) (only as it relates to Hazardous Substances).

1.40 "Excluded Shortfall" means (i) any Shortfall that affects ten percent (10%) or more of all delivery points of all EBPUS Customers, (ii) any Shortfall to the extent attributable to the failure by SUPPLIER to operate the Facilities in accordance with Prudent Utility Practices (as such term is defined in the Asset Purchase Agreement) from and after the Effective Time, or (iii) any Shortfall resulting from the application of the Load Shedding Schedule.

1.41 "Excused Shortfall" means any (i) Grace Period Shortfall, (ii) Shortfall to the extent caused by a Force Majeure Event affecting SUPPLIER, to the extent provided in **Section 14.9** of this Agreement, (iii) Shortfall Due to Data Insufficiency, or (iv) Shortfall at a Delivery Point having a duration shorter than the applicable Shortfall Historic Level with respect to such Delivery Point.

1.42 "Extended Force Majeure Event" has the meaning given to that term in **Section 14.9.7**.

1.43 "Fixed Data Period" means, with respect to a Service, the ten (10) year period commencing with the EIS Date with respect to such Service.

1.44 "Force Majeure Event" means any event or circumstance that is unforeseeable, is beyond the reasonable control of the Affected Party, and prevents the Affected Party from performing its obligations under this Agreement, including, to the extent they satisfy such standard, the following: acts of God, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, volcanoes, storms, floods, civil disturbances, sabotage and strikes, lockouts, labor disturbances, any interruption in the quantity or quality of natural gas or electricity deliveries to SUPPLIER that compromises SUPPLIER's ability to fulfill its obligations under this Agreement, or any Shortfall caused by the act or failure to act of any EBPUST Customer.

1.45 "Governmental Authority" means any United States federal, state or local governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

1.46 "Grace Period Shortfall" means a Shortfall in the provision of any Service other than electric service or compressed air service where (i) such Shortfall does not exceed fifteen (15) minutes in duration with respect to any single occurrence, and (ii) not more than one such Shortfall occurs during any rolling twenty-four (24) hour period.

1.47 "Hazardous Substances" means (a) any petroleum, petroleum products, asbestos or asbestos-containing material, radioactive materials or substances, urea formaldehyde foam insulation, polychlorinated biphenyls, transformers or other equipment that contains polychlorinated biphenyls; and (b) any chemicals, materials, substances or waste defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants" or "hazardous air pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law.

1.48 "Industrial Sewer" means the industrial sewer system owned by SUPPLIER running through Eastman Business Park and ultimately connected to, and including, SUPPLIER's Kings Landing Waste Water Treatment Facility.

1.49 "Industrial Water" means water which is gathered directly from the source, treated and delivered entirely by SUPPLIER for use at EBPUST for certain industrial and other purposes.

1.50 "Internal Condensate System" has the meaning given to that term in **Section 4.3**.

1.51 "KWIC Profiles" has the meaning given to that term in **Subsection 3.2.2.1**.

1.52 "Load Shedding Schedule" has the meaning given to that term in **Section 2.7**.

1.53 "Losses" has the meaning given to that term in **Subsection 13.5.1**.

1.54 "Meter" means the device, and associated totalizing equipment and appurtenances, that is used to measure CUSTOMER's consumption of one or more of the Services.

1.55 “New or Modified Facilities” means pipes, wires, lines, Meters, and related fixtures and facilities and any other utilities equipment (including generating equipment) that are used to produce or supply the Services to the Premises and that are constructed, installed, modified, or repaired by SUPPLIER after the date hereof.

1.56 “Nominal Quality Specifications” means those specifications relating to each Utility Service as so labeled and more fully described in **SCHEDULE D** and **SCHEDULE F**, which SUPPLIER shall endeavor to provide at all times.

1.57 “Operating Dividend” means the quarterly billing credit to be provided to Participating Customers pursuant to **Section 4.9** of **SCHEDULE C**.

1.58 “Participating Customers” means EBPUS T Customers who are parties to Conforming Contracts.

1.59 “Party” or “Parties” means CUSTOMER or SUPPLIER individually or collectively.

1.60 “Potential Historical Shortfall” means a period of time of at least twenty-four (24) hours during the CUSTOMER Proof Window with respect to which CUSTOMER is unable to demonstrate that such Service was available to CUSTOMER within any portion of such period or was not available within any portion of such period due to a Force Majeure Event, which demonstration may be made, among other means, by providing business records maintained in the ordinary course showing that CUSTOMER was consuming such Service or conducting operations dependent on the availability of such Service.

1.61 “Premises” means each of the Service Locations, and the land owned by CUSTOMER on which the Service Locations are situated, in the EBPUS T; provided, the Premises shall not include any land over which SUPPLIER has a permanent easement.

1.62 “RED” means Recycled Energy Development, LLC, a Delaware limited liability company, with offices located at 640 Quail Ridge Drive, Westmont, Illinois 60559 or an affiliate thereof, excluding RED-Rochester, LLC.

1.63 “RED Management Fee” has the meaning given to that term in **Section 5.3.1**.

1.64 “Regulated Services” means electric services, steam services and delivery of potable water services and natural gas from third party suppliers.

1.65 “Regulated Services Specifications” has the meaning given to that term in **Section 2.2**.

1.66 “Release” means any release, deposit, migration, dispersal, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Substance on or into the Environment or within any building, structure, facility or fixture, provided, however, that “Release” shall not include any release that is in compliance with applicable Environmental Laws or an applicable environmental permit which has been issued by a Governmental Authority.

1.67 "Remediation" means action of any kind required by any Applicable Law or order of a Governmental Authority to address a Release, the threat of a Release or the presence of Hazardous Substances at the Covered Real Property or at an off-site location as a result of migration from the Covered Real Property including any or all of the following activities to the extent they relate to or arise from the presence of a Hazardous Substance at the Covered Real Property or such off-site location: (a) monitoring, investigation, assessment, treatment, cleanup, containment, removal, mitigation, response or restoration work; (b) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such activity; (c) preparing and implementing any plans or studies for any such activity; (d) obtaining a written notice from a Governmental Authority with jurisdiction over the Covered Real Property or such off-site location under Environmental Law that no additional work is required by such Governmental Authority; (e) the use, implementation, application, installation, operation or maintenance of remedial action on the Covered Real Property or such off-site location, remedial technologies applied to the surface or subsurface soils, excavation and off-site treatment or disposal of soils, systems for long term treatment of surface water or ground water, engineering controls or institutional controls; and (f) any other activities required under Applicable Law to address the presence or Release of Hazardous Substances at the Covered Real Property or such off-site location.

1.68 "Remediation Costs" means reasonable out-of-pocket costs incurred by SUPPLIER associated with any requirement to test, manage or conduct Remediation at/on the Covered Real Property which arises from any disturbance after the Effective Time of any soil or other environmental condition existing at the Effective Time to the extent that (i) SUPPLIER is not obligated to bear such costs pursuant to **Section 5.9(b)(iv)** or **(vi)** of the Asset Purchase Agreement, and (ii) such costs exceed any insurance proceeds to which SUPPLIER is entitled with respect to such activities or Remediation.

1.69 "Remediation Allocation Percentage" means, with respect to each Participating Customer for Remediation Costs incurred in any Billing Month, the percentage obtained by dividing (i) the total amounts billed to such Participating Customer before taxes for the immediately preceding three Billing Months, excluding any amounts billed pursuant to **Section 4.1**, by (ii) the total amounts billed to all Participating Customers before taxes for the immediately preceding three Billing Months, excluding any amounts billed pursuant to **Section 4.1** or any corresponding provision of any Conforming Contract.

1.70 "Service Location" means a Building or Stand-Alone Service Location.

1.71 "Services" means Utility Services and Sewer Services.

1.72 "Sewer Services" means industrial wastewater treatment services.

1.73 "Shortfall" means any failure or omission of SUPPLIER for any reason (including any Force Majeure Event) to provide any Service to the applicable Delivery Point up to the Contract Demand or any interruption in the provision of any Service to the applicable Delivery Point up to the Contract Demand, including omission or interruption caused by rejection by CUSTOMER upon a failure or omission to meet any Binding Quality Specifications.

1.74 "Shortfall Due to Data Insufficiency" means any Shortfall during the first seven hundred thirty (730) days after the Effective Time that (a) with respect to quantity occurs at a Delivery Point from which (i) Eastman Kodak Company did not maintain metering for at least seven hundred thirty (730) days immediately preceding the Effective Time, or (ii) Eastman Kodak Company maintained metering for seven hundred thirty (730) days immediately preceding the Effective Time but observed aggregate metering outages during that period in excess of one hundred sixty-eight (168) hours; and (b) with respect to quality means any failure to provide service meeting Nominal Quality Standards prior to SUPPLIER establishing Binding Quality Standards.

1.75 "Shortfall Historic Level" means (a) for any Delivery Point with respect to which Eastman Kodak Company did not maintain metering for at least seven hundred thirty (730) days immediately preceding the Effective Time or maintained such metering but observed aggregate metering outages in excess of one hundred sixty-eight (168) hours during that seven hundred thirty (730) day period, the sum of (i) the longest Shortfall other than an Excused Shortfall or Excluded Shortfall observed during the seven hundred thirty (730) days immediately following the Effective Time, plus (ii) fifteen (15) minutes, or (b) for any Delivery Point with respect to which Eastman Kodak Company maintained metering for at least seven hundred thirty (730) days prior to the Effective Time and has not had aggregate metering outages in excess of one hundred sixty-eight (168) hours during that period, the sum of (i) the longest Baseline Outage observed during the seven hundred thirty (730) days immediately preceding the Effective Time, plus (ii) fifteen (15) minutes. Notwithstanding clauses (a)(ii) and (b)(ii) of this **Section 1.73**, the fifteen (15) minute addition noted in such clauses shall not apply to Electricity and Compressed Air.

1.76 "Stand-Alone Service Location" means a location in the EBPUS and listed on **SCHEDULE A** attached hereto as a "Stand-Alone Service Location" to which one or more Utility Services are provided.

1.77 "SUPPLIER" has the meaning given to that term in the preamble.

1.78 "SUPPLIER EHS" means SUPPLIER's Environmental Health and Safety Organization at the following address: _____,
Attention: _____, which address may be changed by SUPPLIER from time to time by giving written notice of the new address to CUSTOMER.

1.79 "SUPPLIER Indemnified Parties" has the meaning given to that term in **Subsection 13.5.2**.

1.80 "SUPPLIER SPDES Permit" has the meaning given to that term in **Subsection 3.2.2.6**.

1.81 "SUPPLIER SPDES Permit Modification" has the meaning given to that term in **Section 3.2.2.6**.

1.82 "Term" means the term of this Agreement, consisting of the "Initial Term", the "First Renewal Term", the "Second Renewal Term" and any "Renewal Term", as each of

such terms are defined in **Section 11.1** hereof, subject to the rights of the Parties to terminate this Agreement set forth in Article XI and elsewhere herein.

1.83 "Terminable Shortfall" means a Shortfall, other than an Excused Shortfall, with respect to a Service (a) lasting for the longer of (i) seven (7) continuous days after notice thereof has been given by CUSTOMER to SUPPLIER, (ii) five (5) percent longer than the longest continuous Baseline Outage or Shortfall other than an Excused Shortfall or Excluded Shortfall that SUPPLIER can document from information in the EIS to have occurred for that Service at any Delivery Point during the Fixed Data Period or, if such Shortfall occurs prior to the end of the Fixed Data Period, from the EIS Date for such Service through the occurrence of such Shortfall, or (iii) if such Shortfall occurs prior to the end of the Fixed Data Period, five (5) percent longer than the longest Potential Historical Shortfall during the applicable CUSTOMER Proof Window, or (b) comprising at least four (4) Shortfalls, other than Excused Shortfalls, having a duration of more than twenty four (24) continuous hours each with an aggregate duration over any continuous twelve (12) month period that is greater than the greater of (i) fourteen (14) days, (ii) if such Shortfall occurs after the end of the Fixed Data Period, five (5) percent longer than the longest duration of any combination of four (4) or more Baseline Outages or Shortfalls other than Excused Shortfalls or Excluded Shortfalls that SUPPLIER can document from information in the EIS to have occurred for that Service at any Delivery Point during any continuous twelve (12) month period during the Fixed Data Period, or (iii) if such Shortfall occurs before the end of the Fixed Data Period, five (5) percent longer than the longest duration of any combination, occurring during any continuous twelve (12) month period, of four (4) or more (A) Baseline Outages or Shortfalls other than Excused Shortfalls or Excluded Shortfalls with individual durations of more than twenty four (24) hours that SUPPLIER can document from information in the EIS to have occurred for that Service at any Delivery Point from the EIS Date for such Service through the occurrence of such Shortfall, and/or (B) Potential Historical Shortfalls during the applicable CUSTOMER Proof Window.

1.84 "Transferred Delivery Points" has the meaning given to that term in **Section 12.2**.

1.85 "Unregulated Services" means chilled water, Industrial Water, demineralized water, high purity water, fire protection water, compressed air, nitrogen, 9°F brine, and -95°F brine.

1.86 "Unregulated Services Specifications" has the meaning given to that term in **Section 2.4**.

1.87 "Utility Rights Agreement" means the Utility Rights Agreement dated _____, 2013 between SUPPLIER and Eastman Kodak Company, as such Utility Rights Agreement may be amended from time to time.

1.88 "Utility Services" means Regulated Services and Unregulated Services.

ARTICLE II — UTILITY SERVICES TO BE PROVIDED

2.1 Regulated Service. Except as otherwise provided in **Section 4.1.1** hereof, as described in **SCHEDULE B** attached hereto or during the occurrence of any Shortfall with respect thereto, CUSTOMER agrees to purchase CUSTOMER's full requirements for Regulated Services at the Premises during the Term from SUPPLIER. SUPPLIER agrees to supply and deliver CUSTOMER's full requirements for Regulated Services at the Premises.

2.2 Regulated Services Specifications. The specifications for the Regulated Services to be provided by SUPPLIER to the Premises are set forth in **SCHEDULE D** attached hereto (the "**Regulated Services Specifications**").

2.3 Unregulated Services. Except as otherwise provided in **Section 4.1.1** hereof, as described in **SCHEDULE E** attached hereto or during the occurrence of any Shortfall with respect thereto, CUSTOMER agrees to purchase CUSTOMER's full requirements for Unregulated Services at the Premises during the Term from SUPPLIER. SUPPLIER agrees to supply and deliver CUSTOMER's full requirements for Unregulated Services at the Premises. CUSTOMER acknowledges and agrees that Industrial Water shall not be used for drinking or food preparation purposes, and that CUSTOMER shall maintain the existing signage warning system to identify sources, and the required limitations on the use of, Industrial Water within the Premises. CUSTOMER acknowledges that, notwithstanding any provision in this **Section 2.3** or **SCHEDULE F**, SUPPLIER's provision of any Unregulated Service is not subject to the supervision and oversight of the Public Service Commission.

2.4 Unregulated Services Specifications. The specifications for the Unregulated Services to be provided by SUPPLIER to the Premises are set forth in **SCHEDULE F** (the "**Unregulated Services Specifications**").

2.5 Delivery Points. SUPPLIER shall be responsible for delivering the Utility Services to CUSTOMER at the Delivery Points. Title to and control of the commodities represented by the Utility Services will transfer from SUPPLIER to CUSTOMER at the Delivery Points; provided, however, that in the case of steam commodity and chilled water, CUSTOMER's title to and control over the steam commodity and chilled water after delivery by SUPPLIER is subject to and limited by the obligations of CUSTOMER in **Sections 4.3** and **4.4** hereof to return the Condensate and Chilled Water Return to SUPPLIER.

2.5.1 Delivery Infrastructure: SUPPLIER shall, at SUPPLIER's sole cost and expense except as otherwise provided in **ARTICLE VI**, maintain in good working order and repair all elements of the utility distribution systems for each of the Utility Services which are located on the SUPPLIER side of the Delivery Points, regardless of whether any Delivery Point is located on the property owned or leased by CUSTOMER. CUSTOMER shall, at its sole cost and expense, be responsible to maintain in good working order and repair, and consistent with the reasonable or necessary delivery requirements of SUPPLIER, all elements of the delivery infrastructure for each of the Utility Services which are located on the CUSTOMER side of the Delivery Points. In addition, notwithstanding anything

to the contrary herein, CUSTOMER shall be responsible: (i) to maintain any containment backflow preventers located on the Industrial Water supply pipes at the wall service connections of each Building, and (ii) to conduct annual testing of such backflow preventers, the results of which tests shall be reported promptly in writing to SUPPLIER. Furthermore, CUSTOMER agrees to maintain signs on all fixtures which supply Industrial Water anywhere in any Building (including without limitation locker room showers, hose stations and sinks) providing "NON-POTABLE WATER — DO NOT DRINK". SUPPLIER and CUSTOMER acknowledge that nothing in this Agreement is intended to transfer or otherwise affect the ownership of utility assets (including without limitation the electric switch room, steam and water pipes and valves, wires, manholes, condensate return tanks and pumps, controls and pipe support infrastructure) constituting the utility distribution system serving any Service Location or any utility plans or drawings of utility distribution system assets. CUSTOMER and SUPPLIER agree to maintain updated originals of all utility plans and drawings owned by them, respectively, with respect to the Service Locations and the Premises, and the Parties further agree to share with each other any utility plans and drawings owned by them which are reasonably required by the other Party in order to carry out such other Party's obligations pursuant to this Agreement. Each of CUSTOMER and SUPPLIER hereby releases the other Party and agrees to hold the other Party harmless from any damages suffered by the Party receiving the utility plan or drawing (the "Receiving Party") which arises as a result of the plan or drawing being inaccurate and the Receiving Party acting in reliance on the accuracy of such plan or drawing. CUSTOMER and SUPPLIER further acknowledge and agree that they will each participate in the "Dig Safely New York" program with respect to all underground facilities located at the Premises and owned or leased by CUSTOMER or SUPPLIER, respectively.

- 2.5.2 CUSTOMER's Obligation to Request Lock Out/Tag Out:** Whenever CUSTOMER, CUSTOMER'S employees, contractors or agents, in carrying out CUSTOMER's responsibilities under Section 2.5.1 above or otherwise, shall find it necessary to maintain, modify or replace a circuit which is located in the delivery infrastructure on the CUSTOMER side of a Delivery Point, CUSTOMER shall, in the case of a non-emergency situation, request at least two (2) business days prior to commencing any such work that SUPPLIER lock out and tag out electrical service of the circuit in the high-voltage electrical switch room in order to ensure the safety of the Delivery Point of that circuit. If an emergency situation exists as determined by CUSTOMER, then such two-day advance notice provision shall not apply and SUPPLIER shall respond expeditiously without delay to provide lock-out/tag-out service in the affected high-voltage switch room. Any lock-out/tag-out request from CUSTOMER to SUPPLIER (whether or not in the context of an emergency) shall be made by telephone to the Control Center.
- 2.5.3 SUPPLIER's Right of Access to the Premises:** CUSTOMER will provide SUPPLIER and SUPPLIER's employees, contractors and agents reasonable access to the Premises with reasonable advance notice to CUSTOMER for the

purpose of reading Meters, collecting samples of Industrial Water delivered to the Premises for testing purposes, inspecting the Utility Services delivery infrastructure in the Premises and maintaining SUPPLIER'S delivery infrastructure as contemplated in **Section 2.5.1** hereof. Without limiting the foregoing, SUPPLIER's rights of access to the Premises shall include 24 hour per day access to the Delivery Points, the Condensate Return System, all high-voltage electric switch rooms located in the Buildings, and such other rooms as are identified on **SCHEDULE G** attached hereto and made a part hereof, as well as access via existing manholes to any high-voltage electric duct banks located at or beneath the Premises. In addition, in any circumstance determined by SUPPLIER to constitute an emergency, and upon such notice as is practicable under the circumstances, SUPPLIER shall have the right to enter the Premises for the purpose of inspecting delivery infrastructure, conducting emergency repairs or attending to other exigent circumstances arising from the provision of Utility Services hereunder. Furthermore, in order to assure the safety and reliability of the delivery of Utility Services to the Premises, SUPPLIER shall have the right from time to time to restrict CUSTOMER and any third party's access to portions of the Premises in which the Delivery Points, Meters or significant items of utility delivery infrastructure are located, provided that no such restrictions shall unreasonably interfere with CUSTOMER's use of the Premises or the operation of CUSTOMER's business. The portions of the Premises to which such access restrictions shall apply as of the Effective Date are specified on **SCHEDULE G** attached hereto and made a part hereof. The access rights granted to SUPPLIER under this **Section 2.5.3** will remain in effect for so long as SUPPLIER's delivery infrastructure remains connected to the Premises, and may not be revoked or terminated by CUSTOMER, nor shall CUSTOMER take any action that would impede, restrict, diminish or otherwise interfere with any of the rights granted SUPPLIER in this **Section 2.5.3**. The provisions of this **Section 2.5.3** shall survive the expiration, cancellation or any termination of this Agreement.

2.5.4 SUPPLIER's Right to Install New or Modified Distribution Facilities at the Premises: In the event that SUPPLIER reasonably determines (in order to accommodate operation of SUPPLIER's existing utility distribution system or to accommodate increased demands of CUSTOMER as contemplated in **Section 4.1** hereof) that it is necessary to modify the distribution system to the Premises for any Service, CUSTOMER shall grant to SUPPLIER any additional easement or permanent access rights and shall cooperate with SUPPLIER to make available space in the Building or elsewhere on the Premises to accommodate the necessary modifications, provided that such modifications to the distribution system do not materially adversely affect CUSTOMER's use of the Premises or the operation of CUSTOMER's business. In the case of electric service, CUSTOMER shall make available to SUPPLIER space in the Building to be reasonably agreed upon by CUSTOMER and SUPPLIER to locate a new load center, transformer or other installation if determined to be necessary by SUPPLIER.

2.6 Utility Service Curtailment and Interruption. Any one or more of the Utility Services may be curtailed or interrupted at any time by reason of accident or of repairs,

alterations or improvements necessary for SUPPLIER to perform SUPPLIER's obligations under this Agreement, or as necessary to ensure the safety, reliability and integrity of the utility systems that are owned or controlled by SUPPLIER, or by strikes or lockouts, or by reason of operation of law, or causes beyond the reasonable control of SUPPLIER. In particular, CUSTOMER acknowledges that an interruption in Service (including without limitation electric service) will be required at least once every five (5) years to allow SUPPLIER to conduct routine system maintenance (including without limitation maintenance on an electric load center) which is necessary to ensure the continued safety, reliability and integrity of SUPPLIER's utility systems. Any interruptions or curtailments of Utility Services to a Building which are planned by SUPPLIER to conduct maintenance shall occur outside normal business hours (i.e. 8 am to 5 pm, local time), and upon not less than five (5) days prior written notice from SUPPLIER to CUSTOMER of such interruption or curtailment. However, no such interruption of Service shall render SUPPLIER liable to CUSTOMER for damage, direct or consequential, nor shall any such interruption relieve CUSTOMER from performance by CUSTOMER of CUSTOMER's obligations under this Agreement, except as otherwise provided in **Section 3.6 of SCHEDULE C**.

2.7 Load Shedding Schedule. Within six (6) months following the Effective Date, SUPPLIER shall develop, in consultation with the Coordination Committee, a schedule defining the order in which electric loads will be taken off line in the event of a partial curtailment of electric service (the "**Load Shedding Schedule**"), which Load Shedding Schedule and any amendment thereto shall become effective when approved by the Coordination Committee in accordance with **Section 4.5**. Until the initial Load Shedding Schedule shall have been adopted, the schedule used for such purpose by Eastman Kodak Company prior to the Effective Date shall constitute the Load Shedding Schedule. In the event there is insufficient electric capacity to meet the electricity needs of all customers of SUPPLIER at any time, SUPPLIER agrees to take power loads off line in accordance with the then-current Load Shedding Schedule, subject to safety and reliability concerns based on the circumstances giving rise to the curtailment. With the approval of the Coordination Committee, SUPPLIER may develop schedules with respect to Services other than electricity that serve the same purpose as the Load Shedding Schedule. CUSTOMER shall keep SUPPLIER informed of the contents of and all material changes to its load management plans and provide an estimate of anticipated changes in December for each ensuing year's operations.

2.8 Restoration of Service. Where any curtailment or interruption occurs, SUPPLIER agrees to apply commercially reasonable efforts to restore the curtailed or interrupted Services at the Premises as quickly as possible, provided that CUSTOMER acknowledges that, where the event or circumstances causing such curtailment or interruption affect one or more buildings other than the Building in the EBP Utility Service Territory, SUPPLIER shall be entitled to conduct such restoration efforts in the manner, in SUPPLIER's reasonable judgment under the circumstances, designed to best achieve the objective of restoring Service to the most users as quickly as reasonably possible; and further provided, that in no case shall SUPPLIER's obligations under this **Section 2.8** be construed as requiring SUPPLIER to restore any one or more of any affected Services when such restoration may/or would result in curtailment or interruption of any Service of any kind elsewhere in the EBP Utility Service Territory or when such restoration may/or would result

in physical danger, harm, or damage to any person or property, including without limitation any property that is necessary to ensure the safety, reliability or integrity of SUPPLIER's utility systems. In the event of an unplanned Service interruption, upon telephonic request from CUSTOMER made to the Control Center, SUPPLIER shall provide a status update on SUPPLIER's efforts to restore any curtailed or interrupted Services to the Premises.

2.9 Quality Specifications. SUPPLIER shall review historical data and collect new data regarding process capability by Service and by delivery points of all Participating Customers, and shall analyze and use such data to convert all Nominal Quality Specifications to Binding Quality Specifications by negotiating in good faith an amendment to this Agreement with CUSTOMER for such purpose as soon as practical, but in no case by later than 730 days after the Effective Date.

ARTICLE III — SEWER SERVICES TO BE PROVIDED

3.1 Sewer Services. Subject to the terms and conditions of this Article III, from and after the Effective Date, SUPPLIER hereby agrees to provide to CUSTOMER, and CUSTOMER agrees to use, the Sewer Services; including, without limitation, sewer capacity in and the right to remain connected to, and to discharge into and to use, the Industrial Sewer.

3.2 Compliance with Applicable Requirements.

3.2.1 General. From and after the Effective Date, CUSTOMER shall at all times comply with all Applicable Laws imposed or implemented by federal, state or local governmental authorities or agencies (collectively, the "Agency") applicable to CUSTOMER's use of and discharge into the Industrial Sewer, as well as any additional, reasonable requirements imposed by SUPPLIER on all users of the Industrial Sewer, or specifically with regard to CUSTOMER, including without limitation the requirements of **Section 3.2.2.1** with respect to SUPPLIER's pre-approval of discharges into the Industrial Sewer (collectively, the "Applicable Requirements").

3.2.2 Industrial Sewer Compliance.

3.2.2.1 Approved Discharges. Without limiting the generality of the foregoing, CUSTOMER and SUPPLIER acknowledge that as of the Effective Date, CUSTOMER's approved discharges into the Industrial Sewer are characterized on the previously approved KWIC Profiles dated _____, a complete copy of which has been provided to SUPPLIER by CUSTOMER on or before the Effective Date (the "**KWIC Profiles**"), which provide complete descriptions of the approved discharges for each discharge point (a "**Discharge Point**") at the Premises. CUSTOMER shall not, at any time, discharge to the Industrial Sewer at any Discharge Point any effluent in an amount or of a type or characteristic which is not approved for such Discharge Point as set forth in the KWIC Profiles, unless such effluent is authorized in the manner described below. If CUSTOMER desires to make any new discharge or any change to an approved discharge to the Industrial Sewer at any Discharge

Point, CUSTOMER shall provide written notice of the proposed new discharge or change to an approved discharge to the SUPPLIER EHS no later than thirty (30) days prior to the proposed date of implementation of any such proposed change. In the case of non-routine emergency events, SUPPLIER and CUSTOMER will make reasonable efforts to expedite the approval process to enable discharge as soon as practical and will not enforce such 30-day notice requirement. Such changes shall be implemented by CUSTOMER only after obtaining the prior written approval of SUPPLIER, which approval SUPPLIER may withhold if SUPPLIER reasonably determines that such changes will potentially have an adverse effect on the Industrial Sewer; potentially affect compliance with Applicable Laws or Applicable Requirements; or in any manner potentially increase SUPPLIER'S cost of providing Sewer Services, including without limitation cost of compliance. SUPPLIER shall promptly make its determination regarding whether CUSTOMER's proposed change would have any such effect on the Industrial Sewer or SUPPLIER'S Sewer Services, and SUPPLIER shall notify CUSTOMER within thirty (30) Business Days after CUSTOMER's notice of a proposed change whether such change is approved. If SUPPLIER does not approve or disapprove any proposed changes within the thirty (30) Business Day period described above, SUPPLIER shall be deemed to have disapproved such change. All such approved changes shall be incorporated by SUPPLIER into a revised waste characterization profile, a copy of which shall be provided by SUPPLIER to CUSTOMER upon request by CUSTOMER and supersede the relevant KWIC Profiles or waste characterization profile.

3.2.2.2 CUSTOMER Reporting and Other Obligations. As a further condition of SUPPLIER's providing CUSTOMER the right to remain connected to and use the Industrial Sewer hereunder, and without limiting CUSTOMER's compliance and reporting obligations set forth in any other provisions of this Article III, CUSTOMER hereby agrees that: (i) CUSTOMER shall promptly provide to SUPPLIER any and all documents or information reasonably required by SUPPLIER, and shall fully cooperate with SUPPLIER as and when reasonably requested, to the extent necessary to allow SUPPLIER to comply with all Applicable Laws relating to the provision of Sewer Services at the Premises, including those requirements imposed under the Supplier SPDES Permit, Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.); and (ii) CUSTOMER shall not conduct CUSTOMER's activities on the Premises in a manner which would cause SUPPLIER to violate SUPPLIER's obligations under the SUPPLIER SPDES Permit. In addition, on an annual basis, CUSTOMER shall submit to SUPPLIER EHS a written review of all chemical substances contained in CUSTOMER's discharges to the Industrial Sewer during the preceding calendar year versus its KWIC Profile or, if superceded, by its waste characterization profile, and certify that the review is true and accurate.

3.2.2.3 Notification of Noncompliance and Unlawful Discharges. CUSTOMER shall promptly provide written notice to SUPPLIER of any known

material non-compliance by CUSTOMER with Applicable Requirements or Applicable Laws related to the use of the Industrial Sewer by notice to SUPPLIER EHS. In addition, CUSTOMER shall immediately notify the Control Center of any discharges or spills into the Industrial Sewer which are in violation of Applicable Requirements, Applicable Laws or this Agreement.

3.2.2.4 Reporting Requirements. CUSTOMER shall promptly supply SUPPLIER EHS with copies of all correspondence, notices, reports and submissions to be made by CUSTOMER, on or after the Effective Date, to any Agency relating to the Industrial Sewer and at such time as such is supplied to any Agency. CUSTOMER shall also promptly notify SUPPLIER of any written allegations or complaints of non-compliance to CUSTOMER from any Agency or person, with respect to discharges into the Industrial Sewer.

3.2.2.5 Inspection Rights; CUSTOMER Cooperation with Sewer Investigations. SUPPLIER, and SUPPLIER's authorized representatives (the "SUPPLIER Representatives"), shall have the right from time to time to enter upon and inspect any portion of the Premises which discharges effluent into the Industrial Sewer, including but not limited to the Buildings or the other structures located on the land or to be constructed thereon, and the business operations of CUSTOMER, upon no less than two (2) Business Days' prior oral notice (at (585)722-2121 and in the event such number changes, CUSTOMER shall provide SUPPLIER with written notice thereof) or written notice (except in the case of an emergency or if SUPPLIER reasonably suspects CUSTOMER is then in breach of its obligations under **Subsection 3.2.2.3**) and in such a manner so as not to interfere unreasonably with the conduct of CUSTOMER's business, to investigate CUSTOMER's compliance with Applicable Requirements or any other requirement of this **Section 3.2**. During such inspections, SUPPLIER and the SUPPLIER Representatives shall have the right, but not the obligation, to take such samples and conduct such tests with respect to CUSTOMER's effluent as SUPPLIER may determine, in SUPPLIER's sole discretion, to be necessary or advisable to determine CUSTOMER's compliance with Applicable Requirements or any other requirement of this **Section 3.2**. If SUPPLIER plans to conduct sampling of CUSTOMER's effluent, CUSTOMER shall be provided reasonable advance notice of such sampling and the nature of the testing to be conducted, and CUSTOMER shall be entitled to conduct split samples, at CUSTOMER's sole cost and expense. In addition to the foregoing, CUSTOMER shall cooperate with any investigation of the Industrial Sewer conducted by SUPPLIER or any Agency having jurisdiction with respect thereto, which cooperation shall include, without limitation, sharing information about the nature of CUSTOMER's operations at, and use of, the Property, and any substances used by CUSTOMER at the Property; provided that, in addition to the terms of the confidentiality provisions in **Article IX**, SUPPLIER agrees to enter into a reasonable confidentiality agreement with respect to any of CUSTOMER's proprietary information which may be requested as part of the investigation.

3.2.2.6 SUPPLIER Compliance Obligations. SUPPLIER shall comply with all Applicable Laws, including the SUPPLIER SPDES Permit (as defined below), relating to the monitoring, operation and maintenance of the Industrial Sewer and the "SUPPLIER Sewer Mains" (as defined below) associated with the Industrial Sewer, except for CUSTOMER'S responsibilities provided for in this Agreement and including without limitation this **Section 3.2.2.6**. SUPPLIER shall comply with the DEC State Pollutant Discharge Elimination System Permit regulating the discharge of certain substances via the Sewer (the "**SUPPLIER SPDES Permit**"), including without limitation, any analysis and certifications required thereby; provided that CUSTOMER shall promptly provide to SUPPLIER any and all documents or information reasonably requested by SUPPLIER and shall fully cooperate with SUPPLIER as and when requested to the extent necessary to allow SUPPLIER to comply with the SUPPLIER SPDES Permit or other Applicable Laws; and further provided that CUSTOMER shall comply with and implement, in its operations at the Premises, the Best Management Practices Plan and Spill Prevention Plan, Mercury Minimization Plan and other plans required by any DEC State Pollutant Discharge Elimination System Permit held by CUSTOMER, or, if CUSTOMER does not hold such a permit, the SUPPLIER SPDES Permit. SUPPLIER shall be responsible for, and agrees to maintain, continue and use commercially reasonable efforts to renew during the Term, the SUPPLIER SPDES Permit and any variances to the SUPPLIER SPDES Permit required to permit CUSTOMER to discharge into the Sewer, if any. If any renewal, modification, amendment, expiration, termination or other change to the SUPPLIER SPDES Permit (a "**SUPPLIER SPDES Permit Modification**"), as proposed, sought, requested or required by an Agency or SUPPLIER, may in any way potentially impact, restrict or modify CUSTOMER's discharge, SUPPLIER shall promptly notify CUSTOMER and provide CUSTOMER with all documents and information related to such SUPPLIER SPDES Permit Modification. In the event of any SUPPLIER SPDES Permit Modification, SUPPLIER hereby consents to CUSTOMER's participation in, at CUSTOMER's own cost, any administrative, judicial or other proceeding or action with respect to any such SUPPLIER SPDES Permit Modification.

3.3 Maintenance of Sewer Infrastructure. SUPPLIER shall, at SUPPLIER's sole cost and expense except as otherwise provided in **Section 6.1**, maintain in good working order and repair all elements of the facilities and infrastructure used to provide the Sewer Services which are located on the SUPPLIER side of the Discharge Points, regardless of whether any Discharge Point is located on the property owned or leased by CUSTOMER. CUSTOMER shall, at its sole cost and expense, be responsible to maintain in good working order and repair all elements of the facilities and infrastructure used to access the Sewer Services which are located on the CUSTOMER side of the Discharge Points.

ARTICLE IV — COVENANTS RELATING TO SERVICES

4.1 Installation of New or Modified Facilities. If CUSTOMER in good faith wants to increase CUSTOMER's Contract Demand of any Service or obtain any Service at additional Delivery Point(s), CUSTOMER may request that SUPPLIER increase its contractual

obligations to provide the relevant Service to the relevant existing or proposed Delivery Point(s) by submitting a written request to SUPPLIER pursuant to the notice provisions of this Agreement. Within five (5) business days after receipt of such request, SUPPLIER shall respond in writing and either (i) accept CUSTOMER's request, in which case the Contract Demand shall be immediately increased or Service shall be immediately available to the requested additional Delivery Point(s) or (ii) indicate that meeting the request may require SUPPLIER to construct, install and operate New or Modified Facilities. In the latter case, SUPPLIER will advise CUSTOMER in writing within sixty (60) days if it is technically feasible to construct, install and operate the requested New or Modified Facilities. If it is technically feasible, SUPPLIER will provide to CUSTOMER a written, good faith estimate of the costs to construct and install the New or Modified facilities, which costs will include Remediation Costs and other environmental compliance costs required by such construction and installation. Upon receipt of SUPPLIER's written estimate, if CUSTOMER determines to proceed with the construction or installation of the New or Modified Facilities, SUPPLIER and CUSTOMER shall finalize and execute a separate written and binding agreement that will provide that CUSTOMER shall pay the entire cost of such New or Modified Facilities, including related Remediation Costs and other environmental compliance costs, if any, regardless of whether such cost exceeds SUPPLIER's good faith estimate thereof, all or a portion of which costs may be subject to pre-payment by CUSTOMER, and will describe the other terms and conditions under which the New or Modified Facilities will be constructed and installed.

4.1.1 Supplemental Service. If (i) SUPPLIER determines that the construction and installation of New or Modified Facilities requested by CUSTOMER to provide an increase in Contract Demand and/or new Delivery Points are not technically feasible; (ii) CUSTOMER has disclosed a written offer from another provider to provide and/or has disclosed projections relating to the self-generation of the Services represented by CUSTOMER's request to increase Contract Demand and/or new Delivery Points at a lower lifecycle cost than offered by SUPPLIER inclusive of likely Operating Dividends and projected costs for which CUSTOMER would be responsible pursuant to **Section 4.1**, and such disclosed offer is subject to comparable or superior standards of delivery to those found in this Agreement (to the extent provided by another provider), including but not limited to reliability standards, and SUPPLIER has been given a reasonable opportunity to match that lower cost and failed to do so, then CUSTOMER shall have the right to obtain and/or self-generate up to the quantity of such Service by which CUSTOMER requested to increase the Contract Demand and/or serve additional Delivery Points from a source other than SUPPLIER or by producing such Service itself, provided that if obtained from another source such source provides supply on terms substantially similar to those disclosed to SUPPLIER. If CUSTOMER actually contracts with another source of supply for the provision of such Service, CUSTOMER shall have the right, subject to SUPPLIER's consent, to terminate this Agreement to the extent that it relates to such Service in its entirety. Otherwise, CUSTOMER shall have no obligation to purchase its full requirements for such Service from SUPPLIER so long as the Services used and not purchased from SUPPLIER (i) does not exceed the quantity of such Service

by which CUSTOMER requested to increase the Contract Demand, or (ii) are consumed at the proposed Delivery Point(s) that are not served by SUPPLIER.

4.1.2 Reduction in Contract Demand. CUSTOMER shall have the right to reduce its Contract Demand to any level equal to or greater than the Delivery Point Peak Demand with respect to any Service at any Delivery Point by giving SUPPLIER written notice of such reduction not later than December 1st of any calendar year, which reduction shall be effective with the start of the ensuing calendar year after such notice is given. In the event that CUSTOMER has discontinued or materially reduced production at facilities served by one or more Delivery Points and gives SUPPLIER a written request to reduce Contract Demand at such Delivery Points to levels below the Delivery Point Peak Demand, SUPPLIER will grant such requested change prior to the end of the current year, or as the case may be prior to the actual reduction of the prior twelve (12) Billing Periods peak demand, but only for a month following the month that SUPPLIER has signed contracts for new or increased Contract Demand at existing Delivery Points for the Service in question that were not taken into account in preparing the relevant Annual Calculation Worksheet (as defined in **SCHEDULE C**), and such reduction of Contract Demand will not reduce the total Contract Demand from all EPBUST Customers (including new EPBUST Customers) for that Service for the calendar year in question.

4.2 SUPPLIER shall have the right to replace low pressure steam supply with hot water supply, at SUPPLIER's expense, provided the modification satisfies CUSTOMER's thermal requirements.

4.3 Condensate Return. CUSTOMER agrees to maintain the existing building and process condensate collection systems located at the Premises and on the CUSTOMER side of the applicable Delivery Point (each, an "**Internal Condensate System**") in such a manner so as to cause condensate (the "**Condensate**") to be returned to SUPPLIER on a mass basis equal to the amount of steam delivered on a mass basis to the extent reasonably practicable based on the nature, condition and design of the Internal Condensate Systems as of the Effective Date. CUSTOMER shall be responsible to deliver the Condensate to SUPPLIER at the Delivery Point(s) identified in **SCHEDULE A** (which Delivery Points and the utility condensate collection receiver located adjacent thereto are referred to herein as the "**Condensate Return System**"), and in accordance with the specifications set forth in **SCHEDULE H** attached hereto. The cost of maintaining, repairing and replacing the Internal Condensate System which captures the Condensate and delivers the Condensate to the Condensate Return System shall be the sole responsibility of CUSTOMER. The Condensate Return System and distribution assets necessary to return the Condensate from the applicable Delivery Point to SUPPLIER's steam generating facilities shall be maintained by SUPPLIER at SUPPLIER's sole cost and expense. CUSTOMER acknowledges that CUSTOMER's failure to return the Condensate as required under this **Section 4.3** may significantly increase the cost to SUPPLIER of producing and delivering the steam service to CUSTOMER at the Premises, and accordingly, CUSTOMER agrees that if CUSTOMER fails to provide the Condensate to SUPPLIER at the Condensate Return System as required, SUPPLIER shall be entitled to add to each monthly invoice and to collect as additional

charges from CUSTOMER SUPPLIER's additional direct costs incurred to deliver the steam service to the Premises as a result of CUSTOMER's failure to deliver the Condensate, and CUSTOMER shall be responsible to pay such additional charges to SUPPLIER upon written demand therefor (provided that such additional amounts may be included by SUPPLIER in SUPPLIER's monthly invoice).

4.4 Chilled Water Return. CUSTOMER agrees to maintain the existing chilled water return system located at the Premises in such a manner so as to cause the chilled water delivered to the Premises to be returned (the "**Chilled Water Return**") to SUPPLIER in amounts consistent with the design and performance of the existing Chilled Water Return system as of the Effective Date. CUSTOMER shall be responsible to deliver the Chilled Water Return to SUPPLIER using the existing pipes and delivery system, and shall be deemed to have delivered title to and control over the Chilled Water Return to SUPPLIER at the Delivery Point(s) identified in **SCHEDULE A**, and in accordance with the specifications set forth in **SCHEDULE H** attached hereto. The cost of maintaining, repairing and replacing the portion of the chilled water system within the Premises to the applicable Chilled Water Return Delivery Point shall be the sole responsibility of CUSTOMER. The distribution assets necessary to return the Chilled Water Return from the applicable Chilled Water Return Delivery Point to SUPPLIER's chilled water generating facilities shall be maintained by SUPPLIER at its sole cost and expense. CUSTOMER acknowledges that its failure to return the Chilled Water Return as required under this **Section 4.4** may significantly increase the cost to SUPPLIER of producing and delivering the chilled water service to CUSTOMER at the Premises, and accordingly, CUSTOMER agrees that if it fails to provide the Chilled Water Return to SUPPLIER as required hereunder, SUPPLIER shall be entitled to prepare a good faith estimate of the additional costs, including make-up water, chemicals, cooling energy, water treatment and a reasonable estimate of overhead incurred by it as a result of CUSTOMER's failure to deliver the Chilled Water Return, and CUSTOMER shall be responsible to pay such good faith estimate to SUPPLIER upon written demand therefor. In addition, if CUSTOMER shall fail to promptly commence and, within ten (10) days after notice from SUPPLIER, to remedy the failure to deliver Chilled Water Return as required hereunder, and provided that in the case of such failure to deliver Chilled Water Return which cannot, with due diligence, be remedied within a period of ten (10) days, CUSTOMER shall have such additional time to remedy same as may reasonably be necessary to effect such remedy, so long as CUSTOMER commences remedying such failure to deliver Chilled Water Return within the ten (10) day period and proceeds with due diligence to remedy such failure to deliver Chilled Water Return after receipt of said notice; then SUPPLIER shall have the right upon prior written notice to CUSTOMER to access the Premises in order to repair the Chilled Water Return capture and delivery system and otherwise to cause the necessary steps to be taken to restore such Chilled Water Return delivery, and any and all reasonable out-of-pocket costs incurred by SUPPLIER in doing so shall be promptly reimbursed by CUSTOMER upon written demand therefor. CUSTOMER agrees to cooperate with SUPPLIER to open and close winter bypass valves in the fall and spring when requested to do so by SUPPLIER.

4.5 Coordination Committee. A committee (the "**Coordination Committee**") shall be established and shall be composed of at least one representative (or a proxy) appointed by

each Participating Customer who has the experience and training to be able to understand the interface between SUPPLIER and SUPPLIER's utility infrastructure and CUSTOMER's operations and the operational complexities of each. The Coordination Committee shall be the forum for the respective representatives to receive information about any potential changes to the system, any planned outages, updated forecasts of likely Operating Dividends, and other general information about the system. SUPPLIER will also use the Coordination Committee meetings as a forum to discuss plans to improve system reliability and efficiency and seek non-binding ideas from Participating Customers regarding such improvements. The Parties acknowledge that the Coordination Committee shall act in an advisory role only and that nothing herein shall restrict SUPPLIER from taking any specific action or require SUPPLIER to take any specific action in connection with the provision of the Services or related to the operations of its business, except that SUPPLIER shall not without approval of the Coordination Committee: (i) pay RED to provide any services not covered by the RED Management Fee (and, in such case, the Coordination Committee must approve the scope of the services to be provided and the cost thereof), (ii) adopt or amend the Load Shedding Schedule, (iii) enter into any contract to provide Services at the EBPUST other than a Conforming Contract, or (iv) undertake any investments which are primarily intended to increase the fuel or operating efficiency within the EBPUST if SUPPLIER projects that Remediation Costs related to such investment that would not be excepted from Section 6.2 by any of Section 6.2.1, 6.2.2 or 6.2.3 would reasonably be greater than twenty-five percent (25%) of the total anticipated capital expenditures for such investment.

4.5.1 SUPPLIER shall, upon the reasonable request of the Coordination Committee, provide each member of the Coordination Committee with information concerning SUPPLIER's operations, costs, fuel purchases, routine maintenance schedules, major maintenance schedules, emergency plans and measures to mitigate disruptions and improve the efficiency with which Services are provided. SUPPLIER shall periodically provide suggestions to the Coordination Committee identifying how Participating Customers can positively impact the Operating Dividend. Designated representatives of the Coordination Committee or professional advisers retained by the Coordination Committee shall have the right, not more frequently than once per year, to audit the books, records and operating data of SUPPLIER used to determine the Operating Dividends or any charges or Remediation Costs billed to Participating Customers.

4.5.2 Subject to the express duties and obligations set forth in this Agreement, the Coordination Committee shall provide for effective cooperation and interchange of information between Participating Customers as a group and SUPPLIER. The establishment of the Coordination Committee and the duties, functions and responsibilities assigned to it herein shall not constitute the authority to modify any of the terms, covenants or conditions of this Agreement except as expressly provided in Section 14.4.

4.5.3 The Coordination Committee shall meet on an as needed basis, but not less than quarterly. The Coordination Committee shall institute rules and policies for the conduct of business by the Coordination Committee.

4.5.4 If any action taken by the Coordination Committee shall be deemed to require a vote, the affirmative vote of a majority of the voting power of all representatives shall be decisive except where a greater vote is otherwise provided in this Agreement. For purposes of any action taken by the Coordination Committee, the representative (or representatives collectively) of each Participating Customer shall have voting power equal the Allocation Percentage (as defined in **SCHEDULE C**) of such Participating Customer.

ARTICLE V — CHARGES FOR SERVICES

5.1 Pricing. CUSTOMER agrees to pay SUPPLIER for the Services including any increased Contract Demand or new Delivery Points requested by CUSTOMER as provided for in **Section 4.1** or any decreased Contract Demand requested in **Section 4.1.2** in the amounts computed in accordance with the price and quantity provisions included in **SCHEDULE C** attached hereto and made a part hereof, which is entitled "Service Rate Calculations". CUSTOMER acknowledges that the method of determining the charges for Services described in such **SCHEDULE C** has been negotiated at arms' length and represents the agreement of the Parties with respect to the determination of the price for the Services provided hereunder by SUPPLIER. Accordingly, CUSTOMER agrees that CUSTOMER shall not challenge, before the Public Service Commission or any court or other administrative or governmental tribunal or any arbitrator, as unfair or inappropriate the method set forth in such **SCHEDULE C** of determining the amounts to be paid by CUSTOMER for the Services. SUPPLIER agrees not to make any Non-Compliance Investment (as defined in **SCHEDULE C**) unless SUPPLIER projects in good faith that such Non-Compliance Investment will result in an increase of the Operating Dividend (as defined in **SCHEDULE C**) on a cumulative basis over the three (3) year period following the commercial operation date of the improvement funded by such Non-Compliance Investment. SUPPLIER agrees to use commercially reasonable efforts to minimize the actual, delivered price per MMBtu of all fuel purchased by SUPPLIER for use in providing the Services, taking into account safety, reliability, maintenance and backup concerns related to the amount and nature of fuel consumed and applicable regulatory requirements.

5.2 Taxes. Any and all sales taxes, utility gross receipts taxes or similar taxes or charges imposed on the delivery and/or sale of the Services or on SUPPLIER's revenues or income derived from the sale, transportation, transmission or distribution of the Services, whether imposed by law upon SUPPLIER or CUSTOMER, shall be the responsibility of CUSTOMER. Such taxes shall be paid by CUSTOMER either within twenty (20) days after invoice thereof from SUPPLIER or, if possible, directly by CUSTOMER to the appropriate taxing jurisdiction. Notwithstanding the foregoing, SUPPLIER, RED and their affiliates shall be solely responsible for any and all income taxes payable by them in connection with the delivery and/or sale of the Services or any profit therefrom.

5.3 RED Management Fee.

5.3.1 CUSTOMER acknowledges that SUPPLIER will obtain certain management services from RED, which will be paid monthly and reset at the beginning of each calendar year as an annual amount equal to one million three-hundred thousand

dollars (\$1,300,000) multiplied by the Inflation Index Amount with respect to such calendar year as defined in **SCHEDULE C** (the "**RED Management Fee**").

5.3.2 RED will provide SUPPLIER with general management, accounting services, management of the annual audit of financial records, support for human resources management, corporate information technology management, environmental health and safety management, engineering and operations review, internal legal review, insurance sourcing and management, sourcing and management of outside professional services, public affairs support, support in interfacing with governmental agencies, marketing support, investor and lender relationship management and such other general management support as required for efficient dispatch of SUPPLIER obligations. RED shall not be obligated to provide detailed engineering, outside legal advice, conduct of the annual audit or other outside professional services. In the event that RED does not provide any services required to be provided by it pursuant to this **Section 5.3.2**, RED shall reimburse SUPPLIER for any costs incurred by SUPPLIER to perform such services itself or obtain such services from a third party and such reimbursement shall not constitute "Revenues" for purposes of **SCHEDULE C**.

5.4 New or Modified Facilities. CUSTOMER shall bear the costs for construction or installation of any New or Modified Facilities requested by CUSTOMER pursuant to **Section 4.1** and approved by SUPPLIER in accordance with **Sections 1.1, 2.1, 3.1, 4.1, 5.1, 6.1, 7.1 or 8.1 of SCHEDULE D** or **Sections 1.1, 2.1, 3.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1 or 13.1 of SCHEDULE F** to serve CUSTOMER's operations at the Premises. Prior to constructing, installing or operating any New or Modified Facilities requested by CUSTOMER pursuant to **Section 4.1**, CUSTOMER and SUPPLIER shall execute a separate written agreement that provides for their respective rights and obligations as described in **Section 4.1** hereof.

ARTICLE VI — REMEDIATION COSTS

6.1 Remediation Costs. Remediation Costs resulting from SUPPLIER's construction and installation of New or Modified Facilities for CUSTOMER pursuant to **Section 4.1** will be paid by CUSTOMER.

6.2 Payment of Other Remediation Costs. CUSTOMER shall pay its share of any other Remediation Costs as calculated in **Section 6.4** incurred by SUPPLIER, except for:

- 6.2.1** Remediation Costs paid by, or for which SUPPLIER is entitled to reimbursement from any EBPUST Customer pursuant to a provision corresponding to **Section 4.1** in a Conforming Contract or such similar provisions as may be contained in contracts of EBPUST Customers who are not Participating Customers;
- 6.2.2** Remediation Costs incurred in connection with the modification or expansion of SUPPLIER's facilities for the purpose, in whole or in part, of providing revenue-generating Utility Services outside the EBPUST;

- 6.2.3** Remediation Costs resulting from SUPPLIER's repair or maintenance activities for which SUPPLIER has been reimbursed pursuant to **Section 5.9** of the Asset Purchase Agreement; and
- 6.2.4** Remediation Costs incurred in connection with an investment requiring Coordination Committee approval if such approval was not obtained prior to entering into any commitment to make such investment.
- 6.3 Notice of Environmental Disturbance.** Prior to any Environmental Disturbance on any property owned or leased by CUSTOMER, SUPPLIER shall notify CUSTOMER of the affected property to be disturbed and shall comply with any applicable soil management requirements and/or Environmental Laws in connection with activities related to such Environmental Disturbance.
- 6.4 Allocation of Remediation Costs.** CUSTOMER's share of the Remediation Costs payable pursuant to **Section 6.2** shall be based upon its respective Remediation Allocation Percentage with respect to such Remediation Costs. SUPPLIER shall invoice CUSTOMER for its share of the Remediation Costs incurred as a part of normal monthly bills in the invoice for the Billing Month immediately following the Billing Month in which such Remediation Costs were incurred.
- 6.5 Limitation on Direct Liability for Remediation.** Except as provided in this **Article VI**, CUSTOMER shall have no liability under this Agreement for any Remediation Costs incurred by SUPPLIER; provided, CUSTOMER acknowledges such costs may affect the amount of the Operating Dividend available.

ARTICLE VII — METERING

- 7.1 Metering.** Consumption of each of the Utility Services by CUSTOMER shall be determined based on the measurements logged by Meters that are currently installed or that will be installed by SUPPLIER. SUPPLIER will install, own, operate and maintain a separate Meter for each type of Utility Service that is provided to each Delivery Point. Each Meter will measure the amount of each Service delivered by SUPPLIER to the Delivery Point for that Utility Service. SUPPLIER will be responsible for reading each Meter except as provided for in **Section 7.6** below. CUSTOMER shall be deemed to have consumed Sewer Services in an amount equal to the metered amount of Industrial Water consumed by CUSTOMER.
- 7.2 Meter Facilities.** CUSTOMER agrees to provide sufficient and readily accessible space for the installation, operation, access and repair of any Meter.
- 7.3 Meter Seal.** SUPPLIER may seal or lock any Meter or Meter installation. Without regard to whether a Meter is sealed or locked, no person except a duly authorized employee, contractor or designee of SUPPLIER shall be permitted to break or replace a seal or lock on any Meter, or to alter or change a Meter or its connections or location.

7.4 Meter Relocation. If at any time after the installation of any Meter, conditions are changed so that a Meter's location becomes unsuitable, SUPPLIER shall have the right to move the Meter and any associated equipment, fixtures or facilities to a new location which is mutually agreeable to the Parties. If the change in conditions is due to action on the part of CUSTOMER, CUSTOMER shall bear the cost of relocating such Meter as described in this **Section 7.4**.

7.5 Meter Testing. If CUSTOMER makes a written request that any Meter be tested, SUPPLIER shall test such Meter as soon as practicable and provide the test results in writing to CUSTOMER. SUPPLIER may test any Meter at its own volition and, if it does so, shall provide the test results in writing to CUSTOMER. Where any such test reveals that a Meter is not functioning within the limits of its calibration specifications, SUPPLIER shall repair or replace the inaccurate Meter at its sole cost and expense and any replacement shall be of a model and type that has at least the same degree of reliability and accuracy as the original Meter. SUPPLIER shall reimburse CUSTOMER for any and all overcharges, and CUSTOMER shall pay SUPPLIER for any and all undercharges, attributable to a Meter not functioning within the limits of its calibration specifications, which overcharges and undercharges shall be estimated in accordance with **Section 7.6**. Where any such test requested by CUSTOMER in a writing addressed and sent as described in this Agreement reveals that the Meter requested to be tested by CUSTOMER is functioning within its calibration specifications, CUSTOMER shall bear the costs and expenses of such test. In all other circumstances, SUPPLIER shall bear the cost of any Meter test. In no event shall either Party be responsible for repaying undercharges or overcharges for a period greater than ninety (90) days prior to the date of notice addressed and sent as described in this Agreement that Customer believes the Meter readings are incorrect or the date on which SUPPLIER tests a Meter at its own volition, as applicable. Except as provided in this **Section 7.5** and notwithstanding **Section 7.6** SUPPLIER shall not be entitled to bill or collect any charges for any Services with respect to any Billing Period unless such charges are included in the initial invoice issued by SUPPLIER with respect to such Billing Period.

7.6 Estimated Usage. Should any Meter for any reason fail to register the full usage, or register excessive usage, of a Service at the Premises for any period of time, or if the actual usage of a Service cannot be obtained for any reason, the usage of such Service may be reasonably estimated by SUPPLIER on the basis of available data, and CUSTOMER will be billed accordingly. Where such estimated usage occurs, SUPPLIER shall notify CUSTOMER at the time of billing for the applicable period of such estimated usage, and such notice shall identify the period of such estimated usage and the usage estimated for each such period. Thereafter, CUSTOMER shall have a period of ninety (90) days following receipt of the invoice to request a written description of the basis of such estimate; provided that any such request shall be by a writing addressed and sent as described in this Agreement; and further provided that CUSTOMER shall not have the right to withhold payment of its invoice containing Services charges based on estimated usage so long as such estimate has been made by SUPPLIER in good faith. SUPPLIER will respond to any such request within thirty (30) days in a writing that shall be addressed and sent as described in this Agreement. If the estimated usage which formed the basis for any bill prepared in accordance with this **Section 7.6** was not a reasonable estimate of actual usage, then the appropriate refund to CUSTOMER or additional charges due to SUPPLIER shall be

included as a credit or additional charge in the next monthly invoice to CUSTOMER. SUPPLIER shall use commercially reasonable efforts to repair or replace any Meter that is inoperable or otherwise not functioning within its calibration specifications so as to minimize the need for estimating the usage of Services and shall, in any event, do so as necessary to prevent the need to estimate usage of a particular Service at a particular Delivery Point for a period of more than ninety (90) days after the inoperable or malfunctioning Meter is first identified. Upon the written request of CUSTOMER, SUPPLIER will use commercially reasonable efforts to install Meters to measure usage of Utility Services where such usage is not then measured.

7.7 Additional Meters. Should any Meter for any reason fail to register the full usage, or register SUPPLIER has the right to install at its sole cost and expense new meters to measure usage of any Services where such usage is not then measured.

7.8 CUSTOMER Information. SUPPLIER agrees to provide CUSTOMER with access to SUPPLIER's Energy Information System with respect to CUSTOMER's Delivery Points and, if SUPPLIER replaces such system, SUPPLIER agrees to replace such system with a successor that is reasonably acceptable to CUSTOMER.

7.9 Installation of Continuous Metering Capability. Supplier agrees to use commercially reasonable efforts to convert all Meters with respect to Peak Demand Based Services to Continuous Meters within twelve (12) months after the Effective Time.

ARTICLE VIII — PAYMENT

8.1 Billing Period. SUPPLIER and CUSTOMER agree that each Billing Month shall constitute a billing cycle.

8.2 Invoices. Invoices for Services rendered shall be issued after each billing cycle. Each invoice shall itemize the amount of each Service rendered during the applicable Billing Month and may not be issued prior to the end of such Billing Month. Such itemization shall be pursuant to the data measured and reported by the affected Meter or, where usage is estimated, as described in Section 7.6.

8.3 Payment. All payments for Services provided by SUPPLIER under this Agreement shall be made net twenty (20) days from the invoice date. In the event that CUSTOMER fails to make payment of all or any part of an invoice as described in this Section 8.3, SUPPLIER may, but shall not be obligated to, issue a second invoice for any outstanding amount.

8.4 Late Payment. Any amount not paid by twenty (20) days from the invoice date for such Service or Services shall be late, and shall be subject to a late charge equal to one and a half percent (1.5%) per month of any unpaid amount.

8.5 Discontinuance of Services for Late Payment. In the event that CUSTOMER fails to make payment within ninety (90) days after the invoice date for any Service or Services,

SUPPLIER may, in its discretion, discontinue provision of any or all Services to the Premises on three (3) business days' notice if such payment is not made within such three (3) day period; provided, no Service or Services may be discontinued based on a failure by CUSTOMER to pay any amount being disputed by CUSTOMER in good faith. If SUPPLIER discontinues any Service or Services pursuant to this **Section 8.5**, SUPPLIER shall not thereby be deemed to have breached SUPPLIER's obligations to CUSTOMER under this Agreement or under the Public Service Law or its implementing regulations, or to have otherwise harmed or caused harm to CUSTOMER in any regard. In addition, SUPPLIER's discontinuance of any Service pursuant to this **Section 8.5** shall not relieve CUSTOMER of CUSTOMER's duties and obligations under this Agreement, and such discontinuance shall be in addition to any other legal or equitable remedies available to SUPPLIER. In the event that SUPPLIER has discontinued any Service or Services pursuant to this **Section 8.5**, SUPPLIER shall resume such Service or Services promptly following payment by CUSTOMER of any amounts due for Services that have been invoiced by SUPPLIER prior to such discontinuance of such Service or Services inclusive of any interest due on late charges pursuant to **Section 8.4**; provided, if SUPPLIER has discontinued any Service or Services to CUSTOMER pursuant to this **Section 8.5** two or more times in any twenty-four (24) month period, SUPPLIER may also require, as a condition to resumption of the provision of Services, that Customer prepay for a period of twelve (12) Billing Months commencing with the Billing Month in which the Services are resumed on or prior to the first day of each such Billing Month an amount equal to the projected charges for Services that will be incurred during such Billing Month (in which case SUPPLIER shall have the right to discontinue Services on or after the first day of each such Billing Month if the projected charges for such Billing Month are not paid to SUPPLIER on or before the first day of such Billing Month and prior to such discontinuance).

ARTICLE IX — CONFIDENTIAL INFORMATION

9.1 During the Term, certain information that is considered proprietary or confidential may be disclosed or exchanged between the Parties. The term "**Confidential Information**" shall mean information disclosed hereunder by one Party to the other Party in accordance with the following procedure:

- 9.1.1** When disclosed in writing, Confidential Information shall be labeled as being confidential;
- 9.1.2** When disclosed orally, Confidential Information shall be identified as confidential at the time of disclosure, with subsequent confirmation to the other Party in writing within thirty (30) days after disclosure, identifying the date and type of information disclosed.
- 9.1.3** In addition, the existence and terms and conditions of this Agreement (including without limitation the amount of the charge rates and total charges for Services) shall be deemed to be Confidential Information and shall be treated as such by each Party.

9.2 The rights and obligations of the Parties with respect to Confidential Information shall survive termination or expiration of this Agreement for one (1) year. Each Party shall hold in confidence the other's Confidential Information, shall disclose such information only to those persons whose work in connection with this Agreement requires such disclosure, and shall not, without the prior written consent of the other Party, disclose such information to any person except its own employees, contractors, attorneys, accountants and consultants who have a need to know and are bound to keep such information confidential, and shall not use the other's Confidential Information for any purpose except to perform its obligations under this Agreement; provided, however, CUSTOMER may disclose, to the extent that such disclosure is reasonably necessary, the Confidential Information to any person with whom CUSTOMER is discussing any sale, lease or other transaction concerning the Premises, and to such person's employees, contractors, attorneys, accountants and consultants, so long as such person has agreed in writing to comply with this **Section 9.2** and to cause its employees, contractors, attorneys, accountants and consultants who receive Confidential Information to comply with this **Section 9.2**. These obligations shall not apply to any Confidential Information to the extent that it:

- 9.2.1** is or becomes a matter of public knowledge through no fault of the receiving Party;
- 9.2.2** is lawfully in the possession of the receiving Party in written or other recorded form before the time of disclosure by the disclosing Party;
- 9.2.3** is lawfully acquired by the receiving Party from a source that is not under obligation to the disclosing Party regarding disclosure of such information;
- 9.2.4** is disclosed by the disclosing Party to any third party on a non-confidential basis; or;
- 9.2.5** is required to be disclosed by operation of law, including, without limitation, regulatory or governmental rules requiring approval prior to marketing products, or is developed by the receiving Party independently of the providing or receiving of the Services.

ARTICLE X — REPRESENTATIONS AND WARRANTIES

10.1 CUSTOMER acknowledges that CUSTOMER has been advised by SUPPLIER that CUSTOMER has the right to acquire Regulated Services from providers of utility services other than SUPPLIER. Notwithstanding this right CUSTOMER, subject to the other terms and conditions of this Agreement, represents and warrants that CUSTOMER has elected to purchase CUSTOMER's full Regulated Service requirements for the Premises from SUPPLIER and SUPPLIER agrees to provide those requirements in accordance with the terms of this Agreement for each Regulated Service to each Delivery Point as specified in **SCHEDULE D** and any amendments thereto.

ARTICLE XI — TERM AND TERMINATION RIGHTS

11.1 Term. This Agreement shall become effective on the Effective Date and, unless sooner terminated as provided herein, shall continue for a period of twenty (20) years following the Effective Date (the “**Initial Term**”). This Agreement shall automatically renew upon the expiration of the Initial Term for an additional period of ten (10) years following the expiration of the Initial Term (the “**First Renewal Term**”) unless CUSTOMER gives notice to SUPPLIER at least two (2) years prior to the expiration of the Initial Term that it elects to cause this Agreement not to renew. This Agreement shall automatically renew upon the expiration of the First Renewal Term for an additional period of ten (10) years following the expiration of the First Renewal Term (the “**Second Renewal Term**”) unless CUSTOMER gives notice to SUPPLIER at least two (2) years prior to the expiration of the First Renewal Term that it elects to cause this Agreement not to renew. Upon the expiration of the Second Renewal Term and each subsequent Renewal Term (as hereinafter defined), as applicable, this Agreement shall be automatically renewed for an additional period of five (5) years (each, a “**Renewal Term**”) unless either Party gives notice to the other Party at least two (2) years prior to the expiration of the Second Renewal Term or Renewal Term, as applicable, that it elects to cause this Agreement not to renew. If this Agreement is not renewed at the expiration of the Initial Term, the First Renewal Term, the Second Renewal Term or any Renewal Term pursuant to this **Section 11.1**, the cost of obtaining alternative services shall be the sole responsibility of CUSTOMER, except that SUPPLIER shall be responsible, at SUPPLIER’s sole cost and expense, for disconnecting the Premises from SUPPLIER’s utility delivery systems and shall cooperate with CUSTOMER and any replacement provider to effect a smooth and efficient transition of the provision of Services by SUPPLIER to such replacement provider.

11.2 CUSTOMER’s Termination Rights. CUSTOMER shall have the right to cease obtaining any one or more of the Services from SUPPLIER if a Terminable Shortfall has occurred with respect to such Service, or a Shortfall attributable to a Force Majeure Event has occurred with respect to such Service and SUPPLIER has failed to demonstrate commercially reasonable efforts to restore such Service. In addition to the right to cease obtaining a Service affected by any of the conditions in this **Section 11.2**, CUSTOMER shall have the right to cease to obtain any other Service or Services if the replacement of the Service affected by any of the conditions in this **Section 11.2** and such other Service or Services in the aggregate can be achieved more efficiently by replacing such other Service or Services in conjunction with the replacement of the Service affected by any of the conditions in this **Section 11.2**.

11.3 Termination Mechanics. CUSTOMER may exercise its right to cease to obtain a Service pursuant to **Section 11.2** by giving notice of such termination to SUPPLIER, which notice shall specify each Service that is ceasing to be provided or obtained and the basis therefor. CUSTOMER or SUPPLIER, as applicable, may exercise its right to terminate this Agreement pursuant to **Section 14.9** by giving notice of such termination to the other Party, which notice shall specify that such termination is based on an Extended Force Majeure Event. Upon the giving of such notice, this Agreement shall terminate with respect to the affected Service or Services (or in its entirety if terminated pursuant to **Section 14.9**),

subject to the obligations of the Parties under this **Section 11.3**. If this Agreement is terminated in whole or in part pursuant to **Section 11.2** or **14.9**:

11.3.1 the cost of obtaining alternative services shall be the sole responsibility of CUSTOMER, except that SUPPLIER shall be responsible, at SUPPLIER's sole cost and expense, for disconnecting the Premises from SUPPLIER's utility delivery systems;

11.3.2 SUPPLIER shall, upon the request of CUSTOMER, use commercially reasonable efforts to continue to provide in accordance with the terms of this Agreement all or any part of the affected Services for a period of up to twenty-four months (as requested by CUSTOMER) to allow CUSTOMER to find suitable replacement for the Services and shall cooperate with CUSTOMER and any replacement provider to effect a smooth and efficient transition of the provision of such Services by SUPPLIER to such replacement provider; and

11.3.3 All obligations accrued by either Party under this Agreement that relate to the period prior to such termination or for Services provided after such termination pursuant to **Section 11.3.2** shall survive such termination and shall be paid or performed in accordance with the terms and conditions of this Agreement as though no such termination had occurred.

ARTICLE XII — ASSIGNMENT OF THIS AGREEMENT

12.1 Assignment of Agreement or Transfer of Delivery Points by CUSTOMER. Without the consent of SUPPLIER, CUSTOMER may assign this Agreement or its rights and obligations hereunder with respect to one or more of the individual Delivery Points (i) to an unrelated third party, (ii) to any parent, subsidiary or affiliate of CUSTOMER, or (iii) to any succeeding entity upon consummation of a plan of reorganization or liquidation by CUSTOMER in its pending bankruptcy proceeding; provided, in each case, that the assignee assumes in writing all of the obligations and duties of CUSTOMER corresponding to the assignment. CUSTOMER shall give SUPPLIER written notice of any assignment of this Agreement or any of its rights and obligations hereunder at least ten (10) days preceding such assignment. Upon the effective date of any assignment by CUSTOMER (other than an assignment pursuant to clause (ii) above), SUPPLIER agrees that SUPPLIER shall look solely to the assignee for performance of the obligations assumed by such assignee, and CUSTOMER shall be automatically released without any further action by CUSTOMER or SUPPLIER from any and all liability for the continued performance of such obligations. In the case of an assignment by CUSTOMER pursuant to clause (ii) above, CUSTOMER shall not be released from CUSTOMER's liabilities or obligations under this Agreement as a result of such assignment or any assumption by the assignee in connection therewith. Any attempted assignment by CUSTOMER in contravention of the above shall be null and void and of no force or effect.

12.2 In the case of an assignment by CUSTOMER of its rights and obligations under this Agreement with respect to less than all of CUSTOMER's Delivery Points, CUSTOMER

shall designate each Delivery Point of CUSTOMER for each Service being assigned to the assignee in connection with such partial assignment (the "**Transferred Delivery Points**"). From and after such partial assignment, CUSTOMER's Contract Demand shall be reduced by the Contract Demand associated with the Transferred Delivery Points and assignee's Contract Demand shall equal (or, if assignee is already a Participating Customer, increased by) the Contract Demand associated with the Transferred Delivery Points. Concurrently with the effective date of such assignment, assignee and SUPPLIER shall execute an agreement reflecting the assignment of the Transferred Delivery Points and amendments to **SCHEDULES A, D and F** as applicable, which agreement will have the same terms and conditions as this Agreement with the exception that (i) the assignee will be identified as the party to the agreement and (ii) Schedules A, D and F to this Agreement will be modified to delete matters not relating to the Transferred Delivery Points. Concurrently with the effective date of such assignment, CUSTOMER and SUPPLIER shall execute an amended and restated Agreement that will only be updated to reflect the deletion from **SCHEDULES A, D and F** of matters related to the Transferred Delivery Points.

12.3 Notwithstanding the above, in the event that CUSTOMER makes an assignment, in whole or in part, to an unrelated third party and said unrelated third party assignee seeks Delivery Points in addition to those identified in **SCHEDULE A** or requests an increase to Contract Demand of Delivery Points in **SCHEDULE A**, then, for purposes of determining the charges for Services delivered to such additional Delivery Points or for a requested increase in Contract Demand only (and not for purposes of determining the charges for any other Services delivered to or Contract Demand of such assignee) shall be subject to (i) block schedule charges determined in accordance with **SCHEDULE I** in place of the application of the Overhead Percent (as defined in **SCHEDULE C**) and (ii) "Non-Kodak" will be placed in the "Customer Type" in cell B50 of the Annual Calculation Worksheet (as defined in **SCHEDULE C**) pursuant to Section 3.1(v) of **SCHEDULE C**. CUSTOMER agrees to make any assignment of this Agreement to an unrelated third party subject to this **Section 12.3**. For the avoidance of doubt, SUPPLIER shall be obligated to continue to provide such unrelated third party assignee those Services and Contract Demand levels being provided to CUSTOMER at the effective time of the assignment on the same terms and pricing as such Services and Contract Demand are being provided to CUSTOMER under this Agreement for the balance of the Term of this Agreement (including any Renewal Terms).

12.4 Assignment by SUPPLIER. SUPPLIER may assign this Agreement without CUSTOMER's consent to any third party which acquires all or substantially all of SUPPLIER's assets, whether by merger, reorganization, acquisition, sale or otherwise, provided that the acquisition of such assets shall have been approved by the Public Service Commission. In addition, SUPPLIER may partially assign this Agreement with respect to one or more, but less than all, of the Services provided hereunder to any third party which acquires all or substantially all of that portion of the business assets of SUPPLIER used to provide such Service or Services, provided that either: (i) the acquisition of such assets shall have been approved by the Public Service Commission; or (ii) SUPPLIER agrees not to be released from its liability for the performance of this Agreement. Upon the effective date of any such partial assignment by SUPPLIER, CUSTOMER agrees that (except in the case of an agreement to the contrary by SUPPLIER pursuant to clause (ii) of the preceding

sentence) CUSTOMER shall look solely to SUPPLIER's assignee for performance of the Services to which the assignment applies, and CUSTOMER shall release SUPPLIER from any and all liability for the continued performance of this Agreement with respect thereto. Without the consent of CUSTOMER, SUPPLIER (a) may assign this Agreement to a direct or indirect subsidiary of RED, or (b) may make a collateral assignment, pledge, mortgage or grant of a security interest to any lender (or collateral agent or similar fiduciary for the benefit thereof) in connection with the financing of capital improvements to assets used by SUPPLIER to provide Services.

ARTICLE XIII — LIABILITY, INSURANCE AND INDEMNIFICATION

13.1 Insurance.

13.1.1 SUPPLIER and CUSTOMER shall each, at their own cost and expense, maintain and keep in force at all times during the Term:

- (i) Commercial General Liability Insurance, including coverage for Products/Completed Operations and Contractual Liability, covering all claims for personal injury, death or property damage occurring on, in or about the Buildings, Premises and, in the case of SUPPLIER, EBPUS, with a limit of liability of not less than ten million dollars (\$10,000,000) per occurrence and aggregate combined single limit for bodily injury and property damage; and
- (ii) Worker's Compensation Insurance covering all claims under applicable Workers' Compensation statutes or any similar statutes or requirements.

13.1.2 If either SUPPLIER or CUSTOMER contracts with any third party to perform maintenance activities or any other activity, or permits such party to conduct any of maintenance activities or any other activity of any kind on the Premises or in the Buildings, SUPPLIER or CUSTOMER, as the case may be, shall be responsible for the acts of such party in accordance with the provisions of this Agreement, and SUPPLIER and CUSTOMER, as the case may be, shall bear all responsibility for assuring the adequacy of any insurance carried by such party. The amount of such insurance carried by such Person shall not limit SUPPLIER's or CUSTOMER's respective liability hereunder.

13.1.3 CUSTOMER and SUPPLIER shall also maintain and keep in force at all times during the Term, all risk property damage insurance covering all property of CUSTOMER or SUPPLIER, respectively, located at or serving the Premises, including equipment, machinery, stock supplies and leasehold improvements, for the full replacement value of such property.

13.1.4 CUSTOMER and SUPPLIER shall be required to name each other as an "Additional Insured" on each of the applicable policies named herein.

13.2 Mutual Release and Waiver of Subrogation. SUPPLIER and CUSTOMER hereby waive on behalf of themselves and their respective insurers, any claims that either

actually may have against the other for loss or damage covered under the respective insurance policies required under **Section 13.1**. It is understood that this waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault, neglect or negligence of either SUPPLIER or CUSTOMER and whether or not insurance is in force. If required by policy conditions, each Party shall secure from its insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other Party.

13.3 Limitation of SUPPLIER's Liability. SUPPLIER shall not be liable for any personal injury, death, or property damage to any person or entity (including CUSTOMER or any other Customer Indemnified Parties) resulting in any way from: (i) the interruption or failure of SUPPLIER to provide any Service hereunder, or (ii) CUSTOMER's use of any Service on the Premises on the downstream, CUSTOMER-side of the applicable Delivery Points, unless and only to the extent caused by the gross negligence or willful misconduct of SUPPLIER, and provided that the limitations of **Section 13.4** of this Agreement shall apply to and limit the liability of SUPPLIER under this **Section 13.3**.

13.4 Consequential Damages. It is specifically agreed and understood that neither Party will be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith in contract or in tort (including negligence), under any warranty, or otherwise, including without limitation CUSTOMER's failure to accept or SUPPLIER's failure to deliver, Services at any time. This **Section 13.4** shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise. Nothing in this **Section 13.4** shall affect any right of CUSTOMER under **Section 3.6** of **SCHEDULE C**.

13.5 Indemnification.

13.5.1 By SUPPLIER. Subject to the limitations set forth in **Sections 13.2, 13.3** and **13.4**, SUPPLIER shall indemnify, defend, and hold harmless CUSTOMER, its members, directors, officers, shareholders, employees, contractors and agents (together, the "**Customer Indemnified Parties**") from and against any and all claims, demands, administrative or judicial proceedings, costs, expenses (including reasonable attorneys' fees and expenses), liabilities, damages, judgments, or awards (together, "**Losses**") asserted against, resulting from, imposed upon or incurred by any Customer Indemnified Party by reason of or resulting from: (i) Losses of any person or entity (including Customer Indemnified Parties) arising directly or indirectly, out of the negligence or willful misconduct of SUPPLIER or any Supplier Indemnified Party in connection with the Services or this Agreement, or the default of SUPPLIER under this Agreement (other than interruptions of Services or Customer's use of Services, SUPPLIER's responsibilities for which are specifically and solely addressed by **Section 3.6** of **SCHEDULE C**); or (ii) Losses of third parties or its contractors of agents, for personal injury, death, or property damage arising, directly or indirectly, out of the provision of the Services under this Agreement on or after

the Effective Date, except in the case of either (i) or (ii) above, to the extent caused by the negligence or willful misconduct of CUSTOMER, any other Customer Indemnified Party or the person or entity suffering the Losses.

13.5.2 By CUSTOMER. Subject to the limitations set forth in **Sections 13.2 and 13.4**, CUSTOMER shall indemnify, defend, and hold harmless SUPPLIER, its members, managers, officers, employees, contractors and agents (together, the **"Supplier Indemnified Parties"**) from and against any and all Losses asserted against, resulting from imposed upon or incurred by any Supplier Indemnified Party by reason of or resulting from: (i) Losses of any person or entity (including the Supplier Indemnified Parties) arising, directly or indirectly out of the negligence or willful misconduct of CUSTOMER or any Customer Indemnified Party in connection with the Services or the default by CUSTOMER under this Agreement; or (ii) Losses of third parties or its contractors or agents, for personal injury, death, or property damage, arising directly or indirectly, out of the ownership, management, operation or maintenance of the Premises other than distribution systems for the Services on the CUSTOMER side of the applicable Delivery Points, except in the case of either (i) or (ii) above to the extent caused by the negligence or willful misconduct of SUPPLIER, any other Supplier Indemnified Party or the person or entity suffering the Losses.

ARTICLE XIV — GENERAL TERMS AND CONDITIONS

14.1 Notice and Communications. All notices and other communications required or permitted under this Agreement must be in writing and will be delivered personally or sent by commercial courier, or by postage prepaid certified mail return receipt requested or by registered mail or by facsimile, at the option of the sending Party. All communications must be sent to, and shall be effective on the date of the delivery at, the receiving Party's address indicated below. Such addresses may be changed by submitting a notice as provided in this **Section 14.1** to the other Party.

Communications to SUPPLIER:

RED-Rochester, LLC

123 Main Street

Rochester, NY 14652-3709

Attn:

Facsimile: () ____ - _____

Communications to CUSTOMER:

Eastman Kodak Company

343 State Street

Rochester, NY 14650

Attn:

Facsimile: () ____ - _____

With a copy to:

RED-Rochester, LLC

640 Quail Ridge Drive

Westmont, IL 60559

Attn: General Counsel

Facsimile: (630) 590-6037

With a copy to:

Eastman Kodak Company

343 State Street

Rochester, NY 14650

Attn:

Facsimile: () -

14.2 Survival. The following provisions shall survive termination of this Agreement: **Article IX**, Confidential Information; **Article X**, Representations and Warranties; **Article XI**, Term and Termination Rights; **Article XIII**, Liability, Insurance and Indemnification; and this **Article XIV**, General Terms and Conditions.

14.3 Conflicts in Documentation. In the event that a conflict arises between this Agreement and any purchase order, separate agreement or schedule implementing this Agreement, the terms of this Agreement shall prevail, unless such purchase order, agreement or schedule by its terms modifies this Agreement, describes the scope of such modification, and is agreed to in a separate writing by a duly authorized representative of each Party.

14.4 Amendments. No addition to, deletion from or modification of any of the provisions of this Agreement shall be binding upon the Parties unless such deletion, addition or modification is made in writing and is signed by a duly authorized representative of each Party; provided, however, if an amendment (which may include an amendment to the Spreadsheet as defined in **SCHEDULE C**) has been approved with respect to all Conforming Contracts by (i) SUPPLIER, (ii) representatives of the Coordination Committee representing at least two-thirds of the voting power of all representatives of the Coordination Committee, and (iii) the then-current beneficiary of the rights granted by SUPPLIER under the Utility Rights Agreement (a "**Blanket Amendment**"), then this Agreement shall be amended as provided in the Blanket Amendment; provided further, that (a) unless approved by at least ninety percent (90%) of the voting power of all representatives of the Coordination Committee, no Blanket Amendment may be adopted prior to the later of (1) the fifth (5th) anniversary of the Effective Date, or (2) the date by which SUPPLIER has made new capital investments after the Effective Date of at least thirty million dollars (\$30,000,000) in the Facilities for the purpose of insuring the long-term viability of the Facilities; (b) a Blanket Amendment may only become effective on January 1st of a calendar year and must be approved by all necessary parties no later than June 30th of the preceding calendar year; (c) a Blanket Amendment may not become effective earlier than two (2) years after the last Blanket Amendment became effective; (d) each Blanket Amendment must amend each Conforming Contract in an identical manner; (e) no Blanket Amendment may have a materially disproportionate adverse impact

on any Participating Customer or group of Participating Customers as compared to the impact of such Blanket Amendment on all Participating Customers taken as a whole except that a change to the manner in which charges for Services are calculated may have such a disproportionate impact so long as (1) the change is reasonably designed to (A) address unintended anomalies in the rates for Services due to changes over time in volumes, the composition of EBPUST Customers, developments in technology, the cost of providing the Services and other similar factors, (B) align the respective costs of Services more closely with both (x) prevailing rates in the Rochester, New York area for comparable services, and (y) SUPPLIER's costs in providing the Services, or (C) increase the efficiency of the provision of Services as measured by an increase in the total projected Operating Dividend as defined in **SCHEDULE C** hereto not attributable to an increase in total charges to EBPUST Customers, or (2) the adversely affected Participating Customer or group of Participating Customers can substantially mitigate the disproportionate impact of such change by taking actions that are commercially reasonable; (f) no Blanket Amendment shall change CUSTOMER's Overhead Percent (or otherwise impose a block schedule charge of the type in **SCHEDULE I**) or allocate any depreciation charge to CUSTOMER or otherwise seek to reconcile CUSTOMER's charge structure with that of other Participating Customers without CUSTOMER's consent; and (g) for avoidance of doubt, any charges for Remediation Costs pursuant to **Section 6.1** do not constitute an amendment to this Agreement and are therefore subject to neither this **Section 14.4** nor any Blanket Amendment approval as provided for herein.

14.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous discussions, representations, understandings, and agreements of the Parties with respect thereto.

14.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which shall together constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

14.7 Complaints and Dispute Resolution Procedures. Complaints about any Service, Services, or other issues shall first be made in writing and submitted pursuant to the notice provisions of **Section 14.1** hereof. Any such written complaints shall be brief and shall state the nature of the dispute, the relevant facts, and the desired relief. SUPPLIER shall promptly investigate any such complaint in a fair manner, and report the results in writing to CUSTOMER. If SUPPLIER's investigation resolves the complaint in whole or in part in SUPPLIER's favor, and if the complaint involves a Regulated Service, SUPPLIER shall inform CUSTOMER of the availability of the Public Service Commission's complaint handling procedures. SUPPLIER will not terminate service to CUSTOMER during the pendency of a complaint before SUPPLIER or the Public Service Commission, provided that CUSTOMER shall pay the undisputed portion of any outstanding bill as well as all bills for current or subsequent usage during such pendency. If either party is unsatisfied by the results of this dispute resolution procedure, then the affected Party has the right to petition to the Public Service Commission for relief with respect to disputes involving Regulated Services (subject to **Section 5.1**) or to pursue its other legal remedies with respect to disputes involving Unregulated Services or Sewer Services.

14.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without consideration of the conflicts of laws principles thereof. The Parties expressly consent to the jurisdiction of the Public Service Commission or its successor agency (except to the extent otherwise provided herein with respect to pricing methodology, Unregulated Services or Sewer Services) as well as of the courts of the State of New York as to any issues related to this Agreement, including the validity, enforceability or interpretation thereof. The Parties expressly consent and agree that any dispute under this Agreement involving Regulated Services other than pricing methodology, after the dispute resolution procedures set forth in **Section 14.7** of this Agreement have been exhausted, shall be brought initially in a formal proceeding before the Public Service Commission or any successor agency.

14.9 Force Majeure.

14.9.1 No Party shall be liable for, or be in default under this Agreement as a result of such Party's failure or inability to perform any of its obligations hereunder, other than any obligation to pay money, to the extent that (i) such failure or inability is caused by a Force Majeure Event; and (ii) the Affected Party complies with the provisions of this **Section 14.9**.

14.9.2 The Affected Party shall give notice to the other Party promptly after becoming aware of a Force Majeure Event, giving details of the circumstances constituting the Force Majeure Event and the likely adverse effect and duration thereof, if reasonably known, and shall keep the other Party informed of any changes in such circumstances, including when such Force Majeure Event ends and, if different, when the Affected Party ceases to be affected by such Force Majeure Event. Each Party shall attempt in good faith to give the other Party notice of any events of which the notifying Party is aware which may be reasonably expected, with the lapse of time or otherwise, to become a Force Majeure Event. Following the receipt of a notice given pursuant to this **Section 14.9.2**, the Parties shall consult in good faith to assess the Force Majeure Event and any ways in which it may be mitigated or avoided.

14.9.3 The rights and obligations of the Parties under this Agreement shall be suspended in whole or in part, as the circumstances may require, to the extent that the ability of a Party to perform its relevant obligations hereunder is materially and adversely affected by a Force Majeure Event.

14.9.4 Suspension of any obligation as a result of a Force Majeure Event shall be of no greater extent than reasonably required considering the nature and extent of the Force Majeure Event, and shall not affect any rights or obligations which may have accrued prior to such suspension.

14.9.5 The Affected Party shall make all commercially reasonable efforts to remedy the circumstances constituting the Force Majeure Event and to mitigate the adverse effects of the Force Majeure Event. If the Force Majeure Event affects only some

rights and obligations of an Affected Party, any other rights or obligations of such Affected Party shall not be affected by the Force Majeure Event. In addition:

14.9.5.1 The Affected Party shall prepare as soon as practicable, but no later than five days following the Affected Party's notice to the other Party of the Force Majeure Event, a detailed plan to be provided to the other Party for the other Party's review and comment setting forth Affected Party's mitigation actions undertaken to date, and any additional or continuing mitigation actions proposed to be taken by the Affected Party;

14.9.5.2 The Affected Party shall furnish weekly reports to the other Party regarding its progress in overcoming the adverse effects of such Force Majeure Event; and

14.9.5.3 The Affected Party shall afford the other Party reasonable facilities for obtaining further information about the Affected Party's progress in overcoming the Force Majeure Event.

14.9.6 When the Affected Party is able, or would have been able if it had complied with its obligations under **Section 14.9.5**, to remedy or otherwise terminate the Force Majeure Event, the Affected Party promptly shall give Notice to the other Party that the period of force majeure relating to the Force Majeure Event shall be deemed to have ended and that the Affected Party is able to resume its performance of the suspended obligation, and shall resume such performance.

14.9.7 If, notwithstanding the efforts of the Affected Party to mitigate the adverse effects of the Force Majeure Event as described in **Section 14.9.5**: (i) the adverse effects of such Force Majeure Event render the Affected Party substantially unable to comply with its material obligations hereunder, or to obtain the benefits of the transactions contemplated hereby, so that the commercial purposes of this Agreement are substantially frustrated, and (ii) such adverse effects continue for a period in excess of twelve (12) months, then an "**Extended Force Majeure Event**" shall be deemed to have occurred. Upon the occurrence of an Extended Force Majeure Event, regardless of whether CUSTOMER or SUPPLIER is the Affected Party, then, by thirty (30) days notice to the other Party, (a) CUSTOMER may terminate this Agreement, or (b) if such Extended Force Majeure Event continues for an additional six (6) months (for a total of eighteen (18) months), SUPPLIER may terminate this Agreement, in each case pursuant to the procedures set forth in **Section 11.3**.

14.10 Use of Other Party's Name. Except as necessary to perform their obligations under this Agreement, neither Party may make any reference to the other Party, its trademarks or trade names in advertising, public announcements or promotional materials without express written permission from the other Party.

14.11 Severability. If any provision of this Agreement is held to be unenforceable under then current laws, the enforceability of the remaining provisions shall not be affected

thereby, and in lieu of each such unenforceable provision the parties shall negotiate to add a provision as similar terms to such unenforceable provision as may be possible.

14.12 Independent Contractor. SUPPLIER and CUSTOMER shall act as independent contractors and nothing herein shall be construed to make either party or any of their employees, officers, directors or representatives, the agent, employee, partner or servant of the other party.

14.13 Non-Waiver. Failure by either Party at any time to require strict performance of any of the provisions herein shall not waive or diminish a Party's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any obligation, term or condition of this Agreement shall not be deemed as a further or continuing waiver of any other term, provision or condition of this Agreement. A Party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and signed by a duly authorized representative of the Party making such waiver.

14.14 Article and Section Headings. Headings for articles and sections are for convenience only and shall not affect the interpretation of this Agreement.

14.15 Agreement Binding on Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns.

Accepted and Agreed:

RED-ROCHESTER, LLC

By_____

Title_____

Date_____

Accepted and Agreed:

EASTMAN KODAK COMPANY

By_____

Title_____

Date_____

SCHEDULE A

Service Locations and Delivery Points

<u>Service</u>	<u>To Building</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Location</u>	<u>Comments</u>
<u>Steam—260 psig</u>					
260psig	53	26 06 0— 1	— E	B-53	
260psig	53	26 02 0— 3	— E	B-53	Normally Closed
260psig	218	Customer Side of FR-72		B-218	
260psig	308	26 00 0— 4	— N	B-308	Normally Closed
260psig	325	At Valve *		B-325	Downstream of FR-37
260psig	317	26 02 0— 2	— N	B-317	
260psig	317	26 00 0— 2	— N	B-317	
260psig	349	26 01 0— 9	— N	B-349	
260psig	333	26 01 0— 7	— N	B-333	Normally Closed
260psig	605	26 00 0— 3	— S	B-605	Normally Closed
260psig	610	26 01 0— 5	— S	B-610	
<u>Steam—140 psig</u>					
140psig	337	Customer Side of FR-19		B-337	Shutoff Valve 140-025-M in B-304
140psig	304	14 02 0— 0	— N	B-304	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
140psig	305	14 03 0- 8	- N	B-305	
140psig	319	14 01 0- 2	- N	B-319	
140psig	308	14 01 0- 3	- N	B-308	
140psig	320	14 01 0- 7	- N	B-320	
140psig	Distilli ng	At elbows near M68		B-321	Shutoff Valve 140-024-M near B-321
140psig	318	14 00 0- 2	- N	B-318	
140psig	317	14 01 0- 5	- N	B-317	
140psig	317	14 00 0- 4	- N	B-317	
<u>Steam—135 psig</u>					
135psig	14	Customer Side of FR-30		B-31	Shutoff Valve 005 & 030 in B-31
135psig	53	13 02 5- 9	- E	B-53	
135psig	53	13 15 5- 0	- E	B-53	
135psig	53	13 01 5- 5	- E	B-53	
135psig	53	13 16 5- 0	- E	B-53	
<u>Steam—70 psig</u>					
70psig	38	70 11 - 7	- E	B-38	
70psig	35	70 05 - 3	- E	B-35	
70psig	35	70 05	-	B-35	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		-	5	E	
70psig	42	70 -	10 1	- E	B-42
70psig	42	70 -	03 4	- E	B-42 Normally Closed
70psig	59	70 -	09 6	- E	B-59
70psig	59	70 -	09 7	- E	B-59
70psig	30	70 -	04 8	- E	B-30 Normally Closed
70psig	30	70 -	06 2	- E	B-30
70psig	30	70 -	06 3	- E	B-30
70psig	30	70 -	08 7	- E	B- 30/28All ey
70psig	30	70 -	12 1	- E	B- 30/28All ey
70psig	30	70 -	04 6	- E	B- 30/28All ey
70psig	28	70 -	04 9	- E	B- 30/28All ey
70psig	54	70 -	13 6	- E	B-54
70psig	82A	70 -	09 3	- E	B-82C
70psig	82D	70 -	09 1	- E	B-82D
70psig	148	70 -	08 1	- V	B-148

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
70psig	117	70 —	03 6	— V	B-117
70psig	120/12 1	70 —	01 5	— V	B-120
70psig	107	70 —	00 8	— V	B-107
70psig	142	70 —	05 4	— V	B-142
70psig	112	70 —	05 1	— V	B-112
70psig	114	70 —	01 3	— V	B-114
70psig	218	70 —	02 2	— X	B-218
70psig	205	70 —	01 9	— X	B-205
70psig	205	70 —	00 5	— X	B-205
70psig	205	At Valve *		B-205	3"East Leg near 004
70psig	205	At Valve *		B-205	12"West Leg near 004
70psig	205	At Valve *		B-205	8"West Leg between 004&012
70psig	205	B205-Side of Tee W. of 012			for (10" To 4th N.A.) + (6"East Leg) to B-205
70psig	211	70 —	02 1	— X	B-211
<u>Steam—Low Pressure</u>					
LP	35	LP —	11 3	— E	B-35
LP	42	LP —	39 3	— E	B-42
LP	42	LP —	38 9	— E	B-42

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
LP	42	LP 39 - 0	- E	B-42	
LP	42	LP 39 - 1	- E	B-42	
LP	59	At Bldg Wall before first take-off		B-42	Shutoff Valve LP-205-E on B- 42
LP	38	LP 37 - 7	- E	B-38	
LP	14	LP 06 - 1	- E	B-7	
LP	14	LP 05 - 7	- E	B-14	
LP	2	LP 12 - 6	- E	B-2	
LP	6	LP 13 - 4	- E	B-2	
LP	6	LP 07 - 8	- E	B-6	
LP	6 Leg	At Tee Upstream of LP-078- E			Leg upstream of LP-078-E
LP	6	LP 05 - 9	- E	B-6	
LP	6	LP 11 - 4	- E	B-6	
LP	30	LP 05 - 1	- E	B-30	(loop)
LP	30	LP 05 - 2	- E	B-30	Normally Closed (loop)
LP	30-B	At Tee Upstream of LP-147- E			Leg upstream of LP-147-E
LP	30	LP 14 - 7	- E	B-30	(loop)
LP	30	LP 13	-	B-30	Normally Closed (loop)

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		— 7	E		
LP	30	LP 41 — 6	— E	B-30	
LP	28	LP 04 — 9	— E	B-30/28 Alley	
LP	26	At Bldg Wall		B-1/26 Alley	Shutoff Valve LP-079-E in Alley
LP	29(V10 0)	At Bldg Wall		B-30/29 Alley	Shutoff Valve LP-100-E in Alley
LP	29	LP 13 — 2	— E	B-29	(loop)
LP	29	LP 08 — 2	— E	B-29	Normally Closed (loop)
LP	29(N.E nd)	At Valve *		B-29	Leg upstream of LP-127-E
LP	29	LP 12 — 8	— E	B-29	(loop)
LP	29	LP 12 — 0	— E	B-29	Normally Closed (loop)
LP	29	LP 08 — 5	— E	B-29	
LP	29	LP 27 — 5	— E	B-29	
LP	12	At Bldg Wall		B-29	Shutoff Valve LP-091-E on B- 29
LP	8	LP 04 — 6	— E	B-8	
LP	56	LP 26 — 7	— E	B-56	
LP	56	LP 27 — 6	— E	B-56	
LP	56	LP 27 — 7	— E	B-56	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
LP	56	LP 03 - 7	- E	B-56	
LP	56 NW	At Valve *		B-56	Leg Next to LP-037-E
LP	18	LP 04 - 3	- E	B-18	Normally Closed (loop)
LP	46	LP 44 - 4	- E	B-46	
LP	54	Customer Side of FR-62		B-27	Shutoff Valve LP-130-E on B-27
LP	47	LP 38 - 1	- E	B-47	
LP	53	LP 09 - 5	- E	B-53	
LP	53	LP 12 - 2	- E	B-53	
LP	53	LP 27 - 3	- E	B-53	
LP	82A	LP 27 - 0	- E	B-82D	
LP	82C	LP 09 - 6	- E	B-82C	
LP	82D	LP 26 - 4	- E	B-82D	
LP	119	LP 06 - 1	- V	West Pipe Bent	
LP	119	LP 06 - 2	- V	B-119	
LP	103	LP 00 - 8	- V	B-103	
LP	112	LP 00 - 7	- V	B-112	
LP	107	LP 00 - 6	- V	B-107	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
LP	136	LP 06 - 0	- V	B-136	
LP	120	LP 01 - 5	- V	B-120	
LP	120	LP 01 - 6	- V	B-120	
LP	120	LP 02 - 6	- V	B-120	
LP	117	LP 07 - 4	- V	B-117	
LP	117	LP 02 - 1	- V	B-117	
LP	148	LP 10 - 4	- V	B-148	
LP	218	LP 00 - 9	- X	B-218	
LP	337	At Bldg Wall		B-337	Shutoff Valve LP-004-M near B-304
LP	339	At Bldg Wall		B-339	Shutoff Valve LP-100-M in B-304
LP	304	LP 10 - 1	- M	B-304	
LP	304	LP 06 - 0	- M	B-304	
LP	303	LP 02 - 3	- M	B-303	
LP	301	LP 04 - 2	- M	B-301	
LP	M5	LP 04 - 8	- M	M5	
LP	M30	LP 03 - 8	- M	M30	
LP	308	Customer Side of FR-54		B-309	Shutoff Valve LP-003-M in B-

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
					309
LP	M28	LP 00 - 7	- N	M28	
LP	320	LP 09 - 7	- N	B-320	
LP	319	LP 01 - 6	- N	B-319	
LP	319	LP 13 - 1	- N	B-319	
LP	350	LP 09 - 5	- N	B-350	
LP	318	LP 01 - 5	- N	B-318	
LP	325	LP 02 - 4	- N	B-325	
LP	Distilli ng	Customer Side of FR-38		B-321	
LP	317	LP 13 - 2	- N	B-317	
LP	317	LP 01 - 1	- N	B-317	
LP	317	LP 03 - 0	- N	B-317	
LP	317	LP 09 - 9	- N	B-317	
LP	326	LP 02 - 7	- N	B-326	
LP	326	LP 04 - 0	- N	B-326	
LP	326	LP 04 - 4	- N	B-326	
LP	349	LP 03 - 5	- N	B-349	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
LP	333	At Bldg Wall		B-326	Shutoff Valve LP-039-M at B-326
<u>Condensate Return</u>					
Cond	All	Customer side of "Return System"			
NOTE: Excluding exception below, "Return System" to include conductivity probe/meter(s), receiver(s), pump(s), discharge shutoff valve(s) and loop seals. Piping of condensate from Building to Return System is Customer's responsibility.					
Cond	48	Loop Seal		B-48	Upstream of CO-125-E and CO-126-E
Cond	18	Loop Seal		B-18	Upstream of CO-208-E and CO-203-E
Cond	110	Loop Seal		B-110	Upstream of CO-036-W
Cond	214	Loop Seal		B-214	Upstream of CO-009-X and CO-010-X
Cond	214	Loop Seal		B-214	Upstream of CO-011-X
Cond	313	Loop Seal		B-313	Upstream of CO-058-M
Cond	313	Loop Seal		B-313	Upstream of CO-059-M
Cond	507	Loop Seal		B-507	Upstream of CO-003-S
Cond	508	Loop Seal		B-508	Upstream of CO-004-S
Cond	642	Loop Seal		B-642	Upstream of CO-005-S
Cond	605	Loop Seal		B-605	Upstream of CO-006-S
Cond	605	Loop Seal		B-605	Upstream of CO-030-S
Cond	605	Loop Seal		B-605	Upstream of CO-007-S
Cond	605	Loop Seal		B-605	Upstream of CO-008-S
Cond	601	Loop Seal		B-601	Upstream of CO-033-S and CO-034-S
Cond	610	Loop Seal		B-610	Upstream of CO-028-S and CO-029-S

South 35F Chilled Water

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>		<u>Acceptance Point/ Return Valve Number</u>		<u>Approx. Valve Locatio n</u>	<u>Comments</u>
CW	12	40	07	-		B-12 & B-30	Return Shutoff Valve 40-077-E @ B-30
		-	6	E	At Valve		
CW	29	40	09	-		B-29	B-12 Supplied through Valves 078/079
		-	5	E			
CW	29	40	09	-		B-29	
		-	1	E			
CW	29	40	09	-		B-29	
		-	6	E			
CW	29	40	10	-		B-29	
		-	2	E	At Bldg Wall		Return Downstream of FR-8
<u>40F Chilled Water</u>							
CW	14	At Bldg Wall		At Bldg Wall		B-31	Shutoff Valves 40-151-E/40-150-E in B-31
				4	1		
CW	6	40	13	-	0	3	
		-	5	E	-	4	-E B-6
				4	2		
CW	6	40	22	-	0	2	
		-	9	E	-	8	-E B-6
				4	3		
CW	6	40	30	-	0	0	
		-	7	E	-	6	-E B-6
				4	1		
CW	59	40	13	-	0	3	
		-	1	E	-	0	-E B-59
				4	1		
CW	59	40	17	-	0	7	
		-	5	E	-	4	-E B-59
				4	1		
CW	42	40	13	-	0	3	
		-	7	E	-	6	-E B-42
				4	1		
CW	42	40	16	-	0	6	
		-	5	E	-	4	-E B-42

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>		<u>Acceptance Point/ Return Valve Number</u>			<u>Approx. Valve Locatio n</u>	<u>Comments</u>
				4	1			
		40	19	-	0	9		
CW	42	-	1	E	-	0	-E	B-42
				4	2			
		40	24	-	0	4		
CW	35	-	5	E	-	6	-E	B-35 (Valves 297/296 considered Mains)
				4	2			
		40	23	-	0	3		
CW	35	-	3	E	-	2	-E	B-35
				4	2			
		40	23	-	0	3		
CW	35	-	5	E	-	4	-E	B-35
				4	3			
		40	32	-	0	2		
CW	35	-	7	E	-	6	-E	B-35
				4	1			
		40	17	-	0	7		
CW	35	-	9	E	-	8	-E	B-35
CW	26	At Bldg Wall		At Bldg Wall			B-1/26 Alley	Shutoff Valves 40-053-E/40- 054-E in Alley
				4	4			
		40	41	-	0	1		
CW	38	-	9	E	-	8	-E	B-38
				4	2			
		40	25	-	0	5		
CW	28	-	1	E	-	2	-E	B-30/28 Alley
				4	1			
		40	10	-	0	0		
CW	28	-	7	E	-	6	-E	B-30/28 Alley
				4	0			
		40	04	-	0	4		
CW	30	-	5	E	-	6	-E	B-30
				4	2			
		40	21	-	0	1		
CW	30	-	9	E	-	8	-E	B-30
				4	4			
CW	30			-	0	8	-E	B-30
		40	48	-	0			

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		- 5	E - 4		
			4 2		
		40 22	- 0 2		
CW	30	- 1	E - 0	-E B-30	
			4 2		
		40 20	- 0 0		
CW	30	- 7	E - 6	-E B-30	
			4 2		
		40 27	- 0 7		
CW	12	- 7	E - 6	-E B-12	
			4 2		
		40 27	- 0 7		
CW	12	- 9	E - 8	-E B-12	
			4 2		
		40 28	- 0 8		
CW	12	- 1	E - 0	-E B-12	
CW	8	At Bldg Wall	At Bldg Wall	B-31	Shutoff Valves 40-031-E/40-032-E in B-31
CW	56	S. of Tee W. of Valve 481	S. of Tee W. of Valve 480	B-56	Main also feeds B-61
			4 3		
		40 32	- 0 2		
CW	47	- 7	E - 8	-E B-47	Normally Closed
CW	47	At Bldg Wall	At Bldg Wall	B-53 Alley	Shutoff Valves 40-413-E/40-412-E in B-53 Alley
			4 1		
		40 10	- 0 0		
CW	E20/54	- 9	E - 8	-E E20	
			4 2		
		40 23	- 0 4		
CW	E20/54	- 9	E - 0	-E E20	Normally Closed
			4 3		
		40 31	- 0 1		
CW	54	- 3	E - 2	-E B-54	
			4 3		
		40 45	- 0 5		
CW	53	- 5	E 4 4	-E B-53	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
			- 4		
			4 0		
		40 00	- 0 1		
CW	53	- 9	E - 0	-E	B-53
			4 0		
		40 06	- 0 6		
CW	53	- 9	E - 8	-E	B-53
CW	53	At Bldg Wall	At Bldg Wall		West Feed off Main - No Shutoff Valves
			4 4		
		40 42	- 0 2		
CW	53	- 7	E - 6	-E	B-53
			4 2		
		40 23	- 0 3		
CW	82D	- 1	E - 0	-E	B-82D
			4 3		
		40 32	- 0 2		
CW	82D	- 5	E - 4	-E	B-82D
			4 3		
		40 36	- 0 6		
CW	82C	- 3	E - 2	-E	B-82C
			4 3		
		40 36	- 0 6		
CW	83	- 7	E - 6	-E	B-83 (loop)
			4 2		
		40 26	- 0 7		
CW	83	- 9	E - 0	-E	B-83 (loop)
			4 4		
		40 43	- 0 3		
CW	110	- 5	V - 4	-W	B-110
			4 4		
		40 43	- 0 3		
CW	117	- 9	V - 8	-W	B-117
			4 4		
		40 44	- 0 4		
CW	120	- 1	V - 0	-W	B-120

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>		<u>Acceptance Point/ Return Valve Number</u>			<u>Approx. Valve Locatio n</u>	<u>Comments</u>
				4	4			
		40	43	-	0	3		
CW	D97	-	7	V	-	6	-W	D97
				4	4			
		40	42	-	0	3		
CW	112	-	5	V	-	4	-W	B-112
CW	319	At Valve *		At Valve *			B-319	Leg on East End North Side
				4	5			
		40	57	-	0	7		
CW	319	-	5	N	-	4	-M	B-319
				4	5			
		40	22	-	0	5		
CW	350	-	9	N	-	8	-M	B-350
				4	5			
		40	52	-	0	2		
CW	325	-	5	N	-	4	-M	B-325
				4	5			
		40	56	-	0	6		
CW	318	-	3	N	-	2	-M	B-318
				4	6			
		40	63	-	0	4		
CW	317	-	3	N	-	4	-M	B-317
				4	5			
		40	51	-	0	1		
CW	317	-	7	N	-	6	-M	B-317
				4	5			
		40	51	-	0	1		
CW	317	-	0	N	-	1	-M	B-317 (loop)
CW	317	At elbows near M43		At elbows near M43			B332	(loop)
				4	5			
		40	57	-	0	0		
CW	326	-	8	N	-	6	-M	B-326
				4	5			
				0	0			
CW	326			-	7	-M	B-326	Recirc Valve

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>		<u>Acceptance Point/ Return Valve Number</u>			<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		40	50	-	4	5		
		-	5	N	0	0		
CW	326	-	5	N	-	4	-M	B-326
		40	54	-	4	5		
		-	5	N	0	4		
CW	326	-	5	N	-	4	-M	B-326
		40	55	-	4	5		
		-	3	N	0	5		
CW	326	-	3	N	-	2	-M	B-326
		40	60	-	4	6		
		-	7	N	0	0		
CW	349	-	7	N	-	8	-M	B-349
		40	52	-	4	5		
		-	7N	N	0	2		
CW	349	-	7N	N	-	6	-M	B-349
		40	52	-				
CW	349	-	7S	N				B-349
<u>Open 40F Kodak Water</u>								
		40	39	-				
		-	9	E				B-30
CW	30	-	9	E				
		40	39	-				
		-	5	E				B-30
CW	30	-	5	E				
		40	38	-				
		-	8	E				B-30
CW	30	-	8	E				
<u>9F Calcium Chloride Brine</u>								
			04	-	0			
		9-	4	E	9	4		
9F	59	9-	4	E	-	3	-E	B-59
			01	-	0			
		9-	1	E	9	1		
9F	38	9-	1	E	-	2	-E	B-38
			05	-	0			
		9-	5	E	9	5		
9F	30	9-	5	E	-	6	-E	B-30

<u>Service</u>	<u>To Bullding</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Location</u>	<u>Comments</u>
			08 — 9 8 — 4 —E	B-30	Normally Closed (loop)
9F	30	9—	3		
			08 — 9 8 — 6 —E	B-30	
9F	30	9—	5		
			08 — 9 8 — 2 —E	B-30	(loop)
9F	30	9—	1		
			05 — 9 5 — 4 —E	B-28	
9F	30	9—	3		
			05 — 9 5 — 1 —E	B-28	Normally Closed
9F	28	9—	2		
<u>—95F Methylene Chloride Brine</u>					
—95F	53	At Elbows Where Lines Drop to B-53 Roof			Shutoff Valves near B-27
<u>Compressed Air</u>					
CA	14	At Bldg Wall			B-31 Shutoff Valve PL-201-E in B-31
		PL	08 — 2 E	B-35	
CA	35	—			
		PL	08 — 6 E	B-35	
CA	35	—			
		PL	24 — 8 E	B-42	
CA	42	—			
		PL	08 — 9 E	B-59	
CA	59	—			
CA	26	At Bldg Wall			B-6 Shutoff Valves PL-054-E in B-6
CA	6 NE	At Valve *			B-6
CA	6 NE	At Valve *			B-6
CA	6 NE	At Valve *			B-6
CA	6 SW	At Valve *			B-6

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		PL 19 - 1	- E		
CA	6			B-6	
CA	12	At Bldg Wall		B-30	Shutoff Valve PL-009-E by B-30
CA	38	At Bldg Wall		B-30/29 Alley	Shutoff Valve PL-316-E in B- 30/29 Alley
		PL 09 - 0	- E		
CA	29			B-29	
CA	29 NW	At Bldg Wall			No Shutoff Valve
CA	29	At Bldg Wall		B-30	Shutoff Valve PL-022-E by B-30
CA	29	At Bldg Wall		B-30	Shutoff Valve PL-014-E by B-30
		PL - 21	- E		
CA	29			B-29	
		PL - 23	- E		
CA	29			B-29	
		PL - 24	- E		
CA	29	At Bldg Wall		B-30	Shutoff Valve PL-015-E by B-30
		PL 17 - 5	- E		
CA	29			B-29	
		PL 11 - 2	- E		
CA	29			B-29	
		PL 22 - 2	- E		
CA	29			B-29	
		PL 19 - 3	- E		
CA	30			B-30	
		PL 31 - 0	- E		
CA	30			B-30	
		PL 11 - 0	- E		
CA	30			B-30	(loop)
		PL 10 - 8	- E		
CA	30			B-30	(loop)

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
CA	30	PL 02 - 0	- E	B-30	
CA	30B	At Valve *		B-30	
CA	28	PL 11 - 1	- E	B-28	
CA	8	PL 06 - 7	- E	B-8	
CA	56	PL 18 - 5	- E	B-56	
CA	46	PL 16 - 5	- E	B-46	Rich Water Pits
CA	E7	PL 29 - 3	- E	E-7	Air Shed South of E-7
CA	E7	PL 29 - 5	- E	E-7	Air Shed South of E-7
CA	54	At Valve *		B-54	Main Shutoff 096 in B-27
CA	54	At Valve *		B-54	Main Shutoff 095 in B-27
CA	54	PL 02 - 9	- E	B-54	Normally Closed
CA	53	PL 30 - 3	- E	B-53	
CA	82C	PL 22 - 1	- E	B-82C	
CA	82D	PL 21 - 7	- E	B-82D	
CA	82A	PL 22 - 4	- E	B-82A	
CA	119	PL 07 - 2	- V	B-119	
CA	114	PL 05 - 7	- V	B-114	
CA	112	PL 05	-	B-112	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		- 8	V		
CA	107	PL 06 - 0	- V	B-107	
CA	120	PL 07 - 3	- V	B-120	
CA	117	PL 11 - 7	- V	B-117	
CA	117	PL 11 - 8	- V	B-117	
CA	148	PL 04 - 8	- V	B-148	
CA	148Lug ger	PL 06 - 9	- V		Lugger South of B-148
CA	218	PL 02 - 1	- X	B-218	
CA	205	At Valve *		B-205	East Leg N. of FR14
CA	205	At Valve *		B-205	West Leg N. of FR14
CA	205	At Valve *		B-205	East Leg N. of 012
CA	205	B205-Side of Tee W. of B211 Takeoff			for (Leg to 4th N.A.) to B-205
CA	214N W	At Valve *		B-214NW	
CA	211SW	At Valve *		B-211SW	
CA	211	At Bldg Wall		B-205	
CA	337	Customer Side of FR-143		B-337	Shutoff Valve PL-087-M in B304
CA	339	Customer Side of FR-132		B-339	Shutoff Valve PL-086-M in B304
CA	305	PL 07 - 3	- V	B-305	
CA	304	PL 09 - 6	- V	B-304	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		PL 09 -			
CA	304	- 7 N		B-304	
		PL 02 -			
CA	303	- 6 N		B-303	
		PL 02 -			
CA	M5	- 5 N		M5	
CA	308	At Bldg Wall		B-309	
		PL 10 -			
CA	M51	- 8 N		M51	Normally Closed
		PL 02 -			
CA	M28	- 2 N		M28	
CA	320	At Valve *		B-320	West of FR64
		PL 12 -			
CA	329	- 2 N		B-329	Normally Closed
		PL 11 -			
CA	329	- 9 N		B-329	
		PL 11 -			
CA	329	- 6 N		B-329	
		PL 11 -			
CA	329	- 5 N		B-329	
		PL 08 -			
CA	350	- 2 N		B-350	
		PL 08 -			
CA	350	- 1 N		B-350	
		PL 09 -			
CA	318	- 1 N		B-318	
		PL 00 -			
CA	318	- 7 N		B-318	
		PL 09 -			
CA	325	- 3 N		B-325	
CA	332	Customer Side of FR-134		B-332	
CA	317			B-317	
		PL 01 -			

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		- 0 N			
CA	317	PL 03 -		B-317	
		- 4 N			
CA	317	PL 02 -		B-317	
		- 0 N			
CA	317	PL 02 -		B-317	
		- 9 N			
CA	326	Customer Side of FR-78		B-326	
		PL 07 -			
CA	326	- 0 N		B-326	
		PL 06 -			
CA	326	- 7 N		B-326	
		PL 06 -			
CA	326	- 8 N		B-326	
		PL 04 -			
CA	349	- 9 N		B-349	
		PL 10 -			
CA	349	- 5 N		B-349	
CA	605W	At Valve *		B-605	2" Leg in West Section
<u>Nitrogen</u>					
		N 02 -			
N	14	- 2 E		B-14	
		N 01 -			
N	6	- 5 E		B-6	
		N 01 -			
N	30	- 8 E		B-30	
		N 09 -			
N	38	- 7 E		B-38	
		N 02 -			
N	35	- 6 E		B-35	
		N 10 -			
N	35	- 2 E		B-35	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
N	42	N 03 - 3	- E	B-42	
N	59	N 02 - 4	- E	B-59	
N	53	At Tee at B-53 Downstream of N-110-E		B-54	Shutoff Valve N-110-E by B-54
N	53	N 10 - 2	- E	B-53	
N	E40	N 10 - 0	- E	E-40	
N	112	N 00 - 9	- V	B-112	
N	115/14 2	N 01 - 0	- V	B-112	
N	119	N 01 - 4	- V	B-119	
N	121	N 02 - 5	- V	B-120	
N	121	N 02 - 8	- V	B-121	
N	117	N 03 - 5	- V	B-117	
N	148	N 05 - 2	- V	B-148	
N	218	N 00 - 2	- X	B-218	
N	337	Customer Side of FR-69		B-337	
N	304	N 17 - 8	- N	B-304	
N	305	At Valve *		B-305	
N	308	N 00 - 9	- N	B-308	
N	308	N 01	-	B-308	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		- 0	N		
N	320	N 01 - 8	- N	B-320	
N	M68	Customer Side of FR-65		B-M68	
N	350	N 18 - 1	- N	B-350	
N	Oil Heater	At Valve *			Oil Heater near B-352
N	325	At Bldg Wall		B-325	
N	318	N 12 - 5	- N	B-318	
N	317	N 02 - 7	- N	B-317	
N	317	N 02 - 6	- N	B-317	
N	317	N 02 - 5	- N	B-317	
N	317	N 16 - 7	- N	B-317	
N	349	N 12 - 1	- N	B-349	
<u>Natural Gas</u>					
NG	56	G 00 - 3	- E	B-56	
NG	31	G 00 - 5	- E	B-31	[Carestream's RTO for B-14 located in B-31]
			- N		
			(U		
NG	319	G 30 - 5	G)	B-319	Underground

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
NG	RTO	G 01 - 8	- M	B-318	
NG	318	G 30 - 6	(U G)	B-318	Underground
NG	Oil Heater	G 01 - 9	- M		Oil Heater near B-352
<u>Demineralized Water</u>					
Demin	350	D M 00 - 4	- M	B-350	
Demin	325	D M 09 - 3	- M	B-325	
Demin	322	At Valve *		M68	
Demin	317	D M 00 - 8	- M	B-317	
Demin	317	D M 09 - 5	- M	B-317	
Demin	317	Customer Side of FR-133		B-317	
Demin	326	D M 00 - 7	- M	B-326	
<u>High Purity Water</u>					
HP Water	6	H 14 P- 8	- 4 E - 9	-E	B-6
HP Water	6	H 03 P- 0	- E		B-2

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
HP Water	30	H 15 P- 1	- E At Bldg Wall	B-30	Return Shutoff Valve HP-166-E by B-1
HP Water	30	At FR-6			Leg on East Side - No Shutoff Valve
HP Water	38	H 16 P- 5	- E - 4 -E	B-38	
HP Water	29	At FR-14 Valves			B-29
HP Water	35	H 18 P- 2	- E	B-35	
HP Water	42	H 12 P- 7	- E - 7 -E	B-42	
HP Water	59	At FR-138 Valve			B-59
HP Water	53	H 15 P- 6	- E	B-53	
HP Water	82C	H 05 P- 1	- E	B-82C	
HP Water	82D	H 05 P- 0	- E	B-82D	
HP Water	82A	H 05 P- 4	- E	B-82A	
<u>Industrial (Kodak) Water</u>					
KW	29	K W 00 - 4	- E	B-29	
KW	29	K W 17 - 7	- E	B-29	
KW	38	K W 13 - 8	- E	B-38	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		K W	20	—	
KW	12	—	4	E	B-12
		K W	40	—	
KW	12	—	3	E	B-12
		K W	40	—	
KW	26	—	4	E	B-26
		K W	37	—	
KW	59	—	7	E	B-59
		K W	35	—	
KW	59	—	2	E	B-59
		K W	20	—	
KW	42	—	7	E	B-42
		K W	08	—	
KW	42	—	8	E	B-42
		K W	17	—	
KW	35	—	9	E	B-35
		K W	36	—	
KW	30	—	6	E	B-30
		K W	18	—	
KW	30	—	0	E	B-30
		K W	02	—	
KW	30	—	3	E	B-30
		K W	00	—	
KW	28	—	8	E	B-28

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
KW	6	K W 05 — 6	— E	B-6	
KW	6	K W 38 — 5	— E	B-6	
KW	6	K W 40 — 7	— E	B-6	
KW	14	K W 23 — 4	— E	B-14	
KW	56	K W 05 — 7	— E	B-56	
KW	8	K W 03 — 6	— E	B-8	
KW	47	K W 41 — 3	— E	B-47	
KW	53	K W 18 — 4	— E	B-53	
KW	53	K W 22 — 8	— E	B-53	
KW	53	K W 22 — 9	— E	B-53	
KW	53	K W 08 — 2	— E	B-53	
KW	53	K W 16 — 9	— E	B-53	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		K			
		W	16	—	
KW	54	—	7	E	B-54
		K			
		W	26	—	
KW	82C	—	4	E	B-82C
		K			
		W	39	—	
KW	82D	—	7	E	B-82D
		K			
		W	09	—	
KW	82A	—	2	E	B-82A
		K			
		W	26	—	
KW	82A	—	0	E	B-82A
KW	119	At Bldg Wall		B-101	Shutoff Valve KW-074-W near B-101
		K			
		W	09	—	
KW	114	—	1	V	B-114
		K			
		W	06	—	
KW	103	—	2	V	B-103
		K			
		W	21	—	
KW	112	—	4	V	B-112
		K			
		W	17	—	
KW	D25	—	4	V	D25
		K			
		W	06	—	
KW	107	—	4	V	B-107
		K			
		W	09	—	
KW	115	—	3	V	B-115
		K			
KW	120	W	14	—	B-120

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		- 5	V		
		K			
		W 12	-		
KW	120	- 4	V	B-120	
		K			
		W 10	-		
KW	120	- 1	V	B-120	
		K			
		W 18	-		
KW	117	- 2	V	B-117	
		K			
		W 12	-		
KW	148	- 7	V	B-148	
		K			
	148Lug	W 15	-		
KW	ger	- 2	V		Lugger South of B-148
		K			
		W 06	-		
KW	218	- 9	X	B-218	
		K			
		W 02	-		
KW	205	- 9	X	B-205	
		K			
		W 04	-		
KW	205	- 5	X	B-205	
		K			
		W 31	-		
KW	337	- 5	N	B-337	
		K			
		W 31	-		
KW	339	- 3	N	B-339	
		K			
		W 20	-		
KW	304	- 7	N	B-304	
		28	-		
KW	303	K 6	N	B-303	
		W			

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		-			
		K			
		W	29	-	
KW	M5	-	2	N	M5
		K			
		W	00	-	
KW	308	-	1	N	B-308
		K			
		W	27	-	
KW	M51	-	9	N	M51
		K			
		W	31	-	
KW	M53	-	6	N	M53
		K			
		W		-	
KW	322	-	14	N	B-322
		K			
		W	01	-	
KW	Stills	-	5	N	B-322 Stills
		K			
		W	18	-	
KW	320	-	7	N	B-320
		K			
		W	02	-	
KW	320	-	5	N	B-320
		K			
		W	13	-	
KW	305	-	8	N	B-305
		K			
		W	15	-	
KW	319	-	8	N	B-319
		K			
		W	16	-	
KW	319	-	1	N	B-319
		K	16	-	
KW	319	W	8	N	B-319

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		-			
		K			
		W	29	-	
KW	350	-	5	N	B-350
		K			
		W	16	-	
KW	318	-	3	N	B-318
		K			
		W	22	-	
KW	325	-	0	N	B-325
		K			
		W	12	-	
KW	317	-	9	N	B-317
		K			
		W	34	-	
KW	317	-	5	N	B-317
		K			
		W	34	-	
KW	317	-	2	N	B-317
		K			
		W	17	-	
KW	317	-	2	N	B-317
		K			
		W	19	-	
KW	317	-	9	N	B-317
		K			
		W	23	-	
KW	317	-	1	N	B-317
		K			
		W	21	-	
KW	326	-	0	N	B-326
		K			
		W	28	-	
KW	326	-	2	N	B-326
		K	24	-	
KW	349	K	6	N	B-349
		W			

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		-			
KW	349N W	At Bldg Wall			
		K			
		W	27	-	
KW	333	-	6	N	B-333
KW/FD	605	Fire Valve 54047		B-605	Cross-connect to Fire Main
<u>Drinking Water</u>					
		D			
		W	21	-	
DW	38	-	4	E	B-38
		D			
		W	31	-	
DW	29	-	8	E	B-29
		D			
		W	18	-	
DW	12	-	3	E	B-12
		D			
		W	01	-	
DW	12	-	2	E	B-12
DW	12N	At Bldg Wall			No Shutoff Valve
		D			
		W	21	-	
DW	26	-	8	E	B-26
		D			
		W	35	-	
DW	59	-	1	E	B-59
		D			
		W	05	-	
DW	42	-	9	E	B-42
		D			
		W	12	-	
DW	35	-	2	E	B-35
		D			
DW	30	W	36	-	B-30

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		- 8	E		
		D			
		W 41	-		
DW	30	- 7	E	B-30	
		D			
		W 05	-		
DW	28	- 2	E	B-28	
		D			
		W 38	-		
DW	6	- 6	E	B-6	
		D			
		W 17	-		
DW	6	- 5	E	B-6	
		D			
		W 21	-		
DW	56	- 1	E	B-56	
		D			
		W 03	-		
DW	8	- 9	E	B-8	
		D			
		W 00	-		
DW	48	- 5	E	B-48	Normally Closed
		D			
		W 40	-		
DW	E20/54	- 8	E	E20	
		D			
		W 41	-		
DW	47	- 2	E	B-47	
		D			
		W 18	-		
DW	53	- 5	E	B-53	
DW	119	At Bldg Wall		B-101	Shutoff Valve DW-170-W near B-101
		D			
		W 12	-		
DW	148	- 5	V	B-148	

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		D W	18 -	- V	
DW	117	-	3	V	B-117
		D W	13 -	- V	
DW	120	-	3	V	B-120
		D W	06 -	- V	
DW	103	-	1	V	B-103
DW	214	At Bldg Wall (CSH-side of Bridge)			B-205
DW	205N	At Valve *			B-205 North Leg N. to B-205
		D W	11 -	- N	
DW	301	-	6	N	B-301
		D W	00 -	- N	
DW	308	-	7	N	B-308
		D W	18 -	- N	
DW	320	-	8	N	B-320
		D W	02 -	- N	
DW	320	-	6	N	B-320
		D W	15 -	- N	
DW	319	-	7	N	B-319
		D W	29 -	- N	
DW	350	-	7	N	B-350
		D W	13 -	- N	
DW	305	-	9	N	B-305
		D W	21 -	- N	
DW	325	-	9	N	B-325

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		D			
		W	17	—	
DW	315	—	1	N	B-315
		D			
		W	16	—	
DW	318	—	7	N	B-318
		D			
		W	11	—	
DW	313	—	8	N	B-313
		D			
		W	13	—	
DW	313	—	0	N	B-313
		D			
		W	12	—	
DW	317	—	8	N	B-317
		D			
		W	20	—	
DW	317	—	0	N	B-317
		D			
		W	23	—	
DW	317	—	2	N	B-317
		D			
		W	20	—	
DW	326	—	9	N	B-326
		D			
		W	28	—	
DW	326	—	1	N	B-326
		D			
		W	24	—	
DW	326	—	9	N	B-326
		D			
		W	24	—	
DW	349	—	7	N	B-349
		D			
		W	27	—	
DW	333	—	7	N	B-333

<u>Service</u>	<u>To Buildin g</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Locatio n</u>	<u>Comments</u>
		D W -	35 2 N		
DW	340			B-340	

Fire Protection Water

Fire Water	All	All PIV and PIVA Valves near Building Walls	PIV is Post Indicator Valves
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**Valves to be identified and labeled*

SCHEDULE B

Exceptions for Purchase of Regulated Services

Certain electricity currently supplied by RG&E for parking lots

Certain electricity currently supplied by RG&E for traffic signals

Potable water that is separately and directly supplied by Monroe County Water Authority or the City of Rochester to CUSTOMER and not delivered to a Delivery Point

SCHEDULE C

Service Rate Calculations

1. **OVERVIEW.** For the provision of the Services by SUPPLIER to CUSTOMER, CUSTOMER shall pay to SUPPLIER the amounts determined pursuant to **Section 3** of this **SCHEDULE C** with respect to each Billing Month. On a quarterly basis, SUPPLIER will calculate the amount of cash available, if any, for distributions as Preferred Returns and Operating Dividends pursuant to **Section 4** of this **SCHEDULE C**.
2. **DEFINITIONS.** For purposes of this **SCHEDULE C** (and where referenced in the Agreement) the following terms shall have the meanings set forth below. If a defined term is not defined in this **SCHEDULE C**, it shall have the meaning given to it in the Agreement.

"Allocation Percentage" means, with respect to each Participating Customer for each calendar quarter, the percentage obtained by dividing (i) the total payments received from such Participating Customer under such Participating Customer's Conforming Contract excluding those payments made pursuant to **Sections 4.1, 6.1 and 8.4** of such Conforming Contract (or provisions corresponding thereto, as applicable) for the Billing Months included in such calendar quarter, by (ii) the total payments received from all Participating Customers for the Billing Months excluding those payments subject to **Sections 4.1, 6.1 and 8.4** of such Participating Customers' Conforming Contracts (or provisions corresponding thereto, as applicable) for the Billing Months included in such calendar quarter.

"Annual Calculation Worksheet" means, with respect to any calendar year, the tab in the Spreadsheet titled "Annual Calculation Worksheet", as populated pursuant to **Section 3.1** of this **SCHEDULE C** with respect to such calendar year.

"Arrears Balances" means the sum of: (i) any Preferred Return Shortfall from a prior calendar quarter to the extent not previously paid pursuant to **Section 4.8**, and (ii) any payments made by SUPPLIER Owners or affiliated companies to cover any shortfall in operating costs and/or debt service obligations during periods prior to the current calendar quarter to the extent not previously reimbursed by SUPPLIER or paid pursuant to **Section 4.8**, together with interest on the amounts described in clauses (i) and (ii) outstanding from time to time at a rate of seven percent (7%) per year. If any payments described in clause (ii) of this definition have not been reimbursed or paid within six (6) months after the date on which such payments were made, SUPPLIER may, at SUPPLIER's sole discretion, at any time thereafter elect to treat such payments and any interest accrued thereon as a capital investment (which shall thereafter constitute a Compliance Investment or Non-Compliance Investment, as applicable) as of the date of such election, in which case such amount shall then cease to be an Arrears Balance.

"Base Amount" has, with respect to CUSTOMER, the meaning given to that term in **Section 3.3** of this **SCHEDULE C** and means, with respect to each other Participating Customer, the amount characterized as the "Base Amount" in the Conforming Contract to which such Participating Customer is a party.

"Billing Demand" means, for each EBPUS Customer with respect to each Peak Demand Based Service, for any calendar year after 2014, the sum of (i) the peak one-hour supply of

such Peak Demand Based Service to all of such EBPUST Customer's delivery points with Continuous Meters, plus (ii) the Delivery Point Peak Demand for all of such EBPUST Customer's delivery points without Continuous Meters, plus (iii) the total Delivery Point Delta Capacity with respect to all of such EBPUST Customer's delivery points. This will remain constant over a given calendar year unless CUSTOMER exercises its right as described in **Section 4.1.2** of the Agreement to reduce its Contract Demand permanently, in which case CUSTOMER's Billing Demand will be reduced in the Billing Month following the time such exercise occurs.

"Billing Month Worksheet" means, with respect to any Billing Month, the tab in the Spreadsheet titled "Billing Month Worksheet", as populated pursuant to **Section 3.2** of this **SCHEDULE C** with respect to such Billing Month, where the tab in such Spreadsheet titled "Annual Calculation Worksheet", has also been populated pursuant to **Section 3.1** of this **SCHEDULE C** with respect to the calendar year in which such Billing Month occurs.

"Compliance Capital Investment" means any investment in the Facilities by SUPPLIER for the purpose of complying with present or future governmental requirements, improving safety or improving reliability and that is not a Non-Compliance Investment.

"Compliance Investments" means Compliance Capital Investments and the contributions made by SUPPLIER Owners to (i) provide funding of working capital; (ii) fund any investments or escrow amounts required by government agencies; and (iii) provide initial funding for any debt service reserves or maintenance reserves required by and funded from proceeds of Facility Loans. Compliance Investments expressly exclude Non-Compliance Investments.

"Debt Service Payments" means, with respect to any calendar year, the total interest and principal, plus any fees and/or penalties, paid by SUPPLIER on any Facility Loans during such calendar year, including payments funded with releases from any debt service reserve accounts and including amounts distributed to another person for the purpose of making such payments.

"Debt Service Reserve Payments/Releases" means, with respect to any calendar quarter, any increase or decrease during such calendar quarter in the balance of any debt reserve account reasonably required to be established and maintained by any Facility Loans, including any payments made during such calendar quarter to fund any prior shortfalls in such debt service reserve accounts and any cash released from debt service reserve accounts.

"Delivery Point Delta Capacity" means the amount, if any, by which Contract Demand exceeds Delivery Point Peak Demand for a specific delivery point.

"Facilities" means those capital assets purchased by SUPPLIER pursuant to the Asset Purchase Agreement plus any subsequent modifications, expansions or improvements thereto.

"Facility Loans" means any loans (i) that are (a) debt obligations of SUPPLIER, and (b) are secured by SUPPLIER's assets used in whole or in part to provide Services to EBPUST Customers and/or cash flows from EBPUST Customers, and (ii) the proceeds of which are used solely for the capital improvements to the Facilities and associated transaction costs, funding of reserves and required escrow accounts, maintenance of the Facilities, working capital and/or to reduce Net Equity PP&E.

“Inflation Index Amount” with respect to any calendar year means the amount obtained from the following formula:

$$[0.35 * (\text{PPI} / 179.9)] + [0.65 * (\text{CPI} / 248.494)] - (1.01^{(y-2012)}) + 1$$

where:

- y = the year for which the Inflation Index Amount is being calculated
- PPI = the Producer Price Index-Commodities, not seasonally adjusted, finished goods less food and energy, 1982 = 100, Series ID#WPUSOP3500, as reported by the United States Department of Labor, Bureau of Labor Statistics, as replaced or revised in accordance with **Section 5.3** of this **SCHEDULE C**, published in December of the calendar year prior to calendar year y (which will contain data for the month of November of such prior calendar year)
- CPI = the Consumer Price Index for all Urban Consumers (CPI-U), not seasonally adjusted, Northeast urban, all items less food and energy, 1982-1984=100, Series ID #CUUR0100SA0L1E, as reported by the United States Department of Labor, Bureau of Labor Statistics, as replaced or revised in accordance with **Section 5.3** of this **SCHEDULE C**, published in December of the calendar year prior to calendar year y (which will contain data for the month of November of such prior calendar year)

“Liquidated Damages Shortfall” has the meaning given to that term in **Section 3.6** of this **SCHEDULE C**.

“Maintenance Reserve Payments/Releases” means, with respect to any calendar quarter, any increase or decrease during such calendar quarter in the balance of any maintenance reserve account reasonably required to be established and maintained by any Facility Loans, including any payments made during such calendar quarter to fund any prior shortfalls in such maintenance reserve accounts and any cash released from such maintenance reserve accounts.

“Major Utility Service” means steam, chilled water and electrical service, each taken as a whole, inclusive of all pressures (steam), temperatures (chilled water) and voltages (electrical service) as appropriate.

“MMBtus” means millions of British thermal units. Where used to describe a quantity of fuel, this is on a lower heating value (LHV) basis (as applicable) unless otherwise noted.

“Net Compliance PP&E” means, for any calendar quarter, the difference between (i) the sum of the Un-depreciated Amount of all Compliance Investments made prior to such calendar quarter, minus (ii) the cumulative proceeds, if any, received by SUPPLIER and distributed to SUPPLIER Owners from the sale of Facilities acquired with Compliance Investments, but only to the extent that the proceeds from such sale have not been recognized as Revenue.

“Net Equity PP&E” means, for any calendar quarter, (i) the sum of (a) the Total Depreciable Capital, and (b) the weighted average during such calendar quarter of all cash contributed by SUPPLIER Owners from the Effective Time forward to fund working capital, maintenance or

debt service reserves, vendor deposits or escrow accounts, minus (ii) the weighted average during such calendar quarter of all Facility Loans outstanding during such quarter, minus (iii) the weighted average during such calendar quarter of all distributions by SUPPLIER to SUPPLIER Owners from the Effective Time forward other than pursuant to **Sections 4.2 through 4.12** inclusive or payments representing a reimbursement of any payments described in clause (ii) of the definition of Arrears Balances.

"Non-Compliance Investment" means any investment in the Facilities by SUPPLIER projected to have, at the time of the commitment to make such investment, an inherent economic return to SUPPLIER, without regard to any economic return that would be generated if such investment were treated as a Compliance Investment.

"Operating Cost" means, with respect to any calendar quarter, (i) all cash expenses reasonably incurred by SUPPLIER in the course of operating the Facilities including (a) fuel expenses, (b) other non-fuel consumable expenses, (c) operations labor expenses, (d) insurance expenses, (e) property and gross receipts taxes, (f) a management fee payable to RED pursuant to **Section 5.3** of the Agreement, and (g) expenses associated with any third party professional services reasonably required for SUPPLIER to fulfill its legal and contractual obligations to its customers, investors, and Governmental Authorities, and (ii) any liquidated damages credits given by SUPPLIER to any Participating Customer with respect to Billing Months during such calendar quarter.

"Overhead Charge" has the meaning given to that term in **Section 3.4** of this **SCHEDULE C**.

"Overhead Percent" means 0%.

"Peak Demand Based Services" means services including each type of steam service, electricity, each type of brine service and chilled water.

"Preferred Return" means, with respect to any calendar quarter, one-twenty-fourth ($1/24^{\text{th}}$) of the Net Equity PP&E for such calendar quarter.

"Preferred Return Shortfall" means, with respect to any calendar quarter, the amount, if any, by which the cash remaining after collections and payments provided for under **Sections 4.1 through 4.6** inclusive of this **SCHEDULE C** is less than the Preferred Return for such calendar quarter.

"Revenues" means, with respect to any calendar quarter, the sum of (i) all cash received by SUPPLIER during such calendar quarter from (a) Participating Customers, (b) EBPUST Customers who are not Participating Customers, and (c) other third parties in connection with the sale of services or environmental attributes by SUPPLIER, plus (ii) all proceeds received by SUPPLIER during such calendar quarter in connection with the sale of any assets to the extent that such proceeds have not been (a) reinvested in the Facilities, (b) used to repay Facility Loans, (c) used to satisfy a senior lien that results in a reduction of Net Equity PP&E or (d) distributed to SUPPLIER Owners.

"Spreadsheet" means the Microsoft Excel spreadsheet named "USA utility service charges workbook 11-28-12.xlsx" that includes a tab titled "Annual Calculation Worksheet" and a tab titled "Billing Month Worksheet" in the form saved on the disk attached to this Agreement.

"SUPPLIER Owners" means the holders of the membership interests or other equity interests in SUPPLIER.

"Total Depreciable Capital" means, for any calendar quarter, the sum of (i) the Un-depreciated Amount of the total payment made by SUPPLIER to CUSTOMER pursuant to the Asset Purchase Agreement allocated to Purchased Assets (as defined in the Asset Purchase Agreement) that are depreciable under United States generally accepted accounting principles, and (ii) the weighted average balance of the Un-depreciated Amounts of all Compliance Capital Investments and Non-Compliance Investments made by SUPPLIER (determined by dividing the sum of the Un-depreciated Amounts of Compliance Capital Investments and Non-Compliance Investments as of the beginning and the end of such calendar quarter by two (2)).

"Un-depreciated Amount" means, at any time, the portion of a Compliance Capital Investment or Non-Compliance Investment that has not then been depreciated. Compliance Capital Investments and Non-Compliance Investments shall be depreciated on a quarterly, straight line basis over sixty (60) quarters, with the depreciation for the calendar quarter in which the Compliance Capital Investment or Non-Compliance Investment is made being pro rated based on the date the investment is made.

"Unit" means, with respect to each Service, the unit of measurement set forth in column B of the Annual Calculation Worksheet of the Spreadsheet with respect to such Service.

3. **DETERMINATION OF PRICE PAYABLE FOR SERVICES.** The Base Amount payable by CUSTOMER to SUPPLIER for Services shall be determined as follows:

3.1 **Creation of Annual Calculation Worksheet.** With respect to each calendar year, the Spreadsheet shall be populated as follows to create an Annual Calculation Worksheet for such calendar year:

- (i) **Determination of Projected Volumes.** Prior to the commencement of each calendar year, SUPPLIER will survey all EBPUST Customers to estimate expected consumption by such EBPUST Customers of each Service during such calendar year. The results of this survey, adjusted by SUPPLIER to reflect the best judgment of SUPPLIER acting in good faith, of volumes of each Service to be provided to EBPUST Customers during such calendar year and specified in Units, will be input into the row (between rows 4 and 20, inclusive) corresponding to such Service in column D of the Annual Calculation Worksheet.
- (ii) **Determination of Billing Demand.** For calendar years 2013 and 2014, input zero (0) in cells B57, B61, B65, B69, B73, B77, B81 and B85.¹ Prior to commencement

¹ Explanatory Note: Placing zeros in the relevant cells for calendar years 2013 and 2014 will cause the Billing Month Worksheet to allocate aggregate fixed charges on the basis of the estimated consumption input into column D of the Annual Calculation Worksheet instead of on the basis of Billing Demand.

of each calendar year after 2014, SUPPLIER will determine, for each Peak Demand Based Service, the aggregate Billing Demand with respect to such Peak Demand Based Service for all EBPUST Customers and the Billing Demand with respect to such Peak Demand Based Service for CUSTOMER and such amounts will be input into cells B56 and B57 (LP steam), B60 and B61 (70 steam), B64 and B65 (140 steam), B68 and B69 (260 steam), B72 and B73 (electricity), B76 and B77 (chilled water), B80 and B81 (9°F brine), and B84 and B85 (-95°F brine), respectively. These amounts will be updated during the calendar year for calendar years after 2014 if the Billing Demand of CUSTOMER changes during such calendar year.

- (iii) **Inflation Index Amount.** The Inflation Index Amount for such calendar year will be input into cell B35 of the Annual Calculation Worksheet.
- (iv) **Customer Type:** The "Customer Type" should be input as "Kodak" in cell B50 of the Annual Calculation Worksheet.
- (v) **Fixed Grid Connection Cost:** The grid connection cost that SUPPLIER will be charged by its electricity supplier will be input into cell B41 of the Annual Calculation Worksheet.
- (vi) **Real Estate Tax Amount:** The real estate tax assessed on the Transferred Land (as defined in the Asset Purchase Agreement) or allocated to the Permanent Easement Area, Buildings or Building Use Easement Area (as such terms are defined in the Asset Purchase Agreement) during the immediately preceding calendar year should be input in cell B52 of the Annual Calculation Worksheet.
- (vii) **Severance Cost Amount:** The following costs associated with severance payments, if any, to SUPPLIER employees who were employed by Eastman Kodak Company immediately prior to the Effective Time and were then terminated for other than cause by SUPPLIER within the first twelve (12) months after the Effective Time: (a) \$0 for the first four such employees so terminated and (b) 50% of the associated severance costs for each additional such employee so terminated. The costs so incurred from the Effective Time through December 31, 2013 should be entered into cell B54 of the Annual Calculation Worksheet for calendar year 2014, and the costs so incurred from January 1, 2014 through the first anniversary of the Effective Time should be entered into cell B54 of the Annual Calculation Worksheet for calendar year 2015. For clarity, no severance cost incurred after the first anniversary of the Effective Date will be entered into the Annual Calculation Worksheet for calendar year 2015 and \$0 shall be entered into cell B54 of the Annual Calculation Worksheet for all calendar years starting with calendar year 2016.

3.2 Creation of Billing Month Worksheet. With respect to each Billing Month, the Billing Month Worksheet and Annual Calculation Worksheet shall be populated as follows:

- (i) **Aggregate Actual Volumes for all EBPUST Customers.** The aggregate actual volume for each Service provided by SUPPLIER to all EBPUST Customers during the Billing Month as specified in Units will be input into the row (between rows 4

and 20, inclusive) corresponding to such Service in column C of the Billing Month Worksheet.

- (ii) **Actual CUSTOMER Volumes.** The actual volume for each Service provided by SUPPLIER to CUSTOMER during the Billing Month as specified in Units will be input into the row (between rows 4 and 20, inclusive) corresponding to such Service in column D of the Billing Month Worksheet.
 - (iii) **Natural Gas Cost.** The actual, delivered price stated in dollars per MMBtu of all natural gas purchased by SUPPLIER during the calendar month that ends during such Billing Month will be input into cell B26 of the Billing Month Worksheet.
 - (iv) **Total Fuel Cost.** The actual, delivered price stated in dollars of all fuel purchased by SUPPLIER during the calendar month that ends during such Billing Month will be input into cell B28 of the Billing Month Worksheet.
 - (v) **Total Fuel Purchased.** The total MMBtus of fuel purchased by SUPPLIER during the calendar month that ends during such Billing Month will be input into cell B29 of the Billing Month Worksheet.
 - (vi) **Purchased Electricity Rate.** The average rate per MWh at which SUPPLIER was charged by its electricity suppliers for capacity and delivery charges during the calendar month that ends during such Billing Month will be input into cell B43 of the Billing Month Worksheet.
 - (vii) **Potable Water Rate.** The rate at which SUPPLIER was charged for potable water by Monroe County Water Authority or its successor water distribution company for provision and delivery of water on the invoice issued by Monroe County Water Authority or its successor during such Billing Month will be input into cell B32 of the Billing Month Worksheet.
 - (viii) **Net Compliance PP&E.** The Net Compliance PP&E for the calendar quarter in which the Billing Month occurs will be input into cell B37 of the Annual Calculation Worksheet.
- 3.3 **Base Amount for Services.** The base amount payable by CUSTOMER to SUPPLIER for each Service for a Billing Month (for all Services in the aggregate, the “**Base Amount**”) shall be the amount contained in the row (between rows 4 and 20, inclusive) corresponding to such Service in column L of the Billing Month Worksheet for such Billing Month after the relevant Annual Calculation Worksheet and such Billing Month Worksheet have been populated in accordance with Sections 3.1 and 3.2 of this SCHEDULE C.
- 3.4 **Billed Amount.** The monthly bill submitted to CUSTOMER will show (a) the Base Amount itemized by Services delivered, (b) an overhead charge, equal to the Base Amount multiplied by the Overhead Percent (the “**Overhead Charge**”), (c) any additional charges pursuant to Sections 4.1, 6.1 and 8.4 of the Agreement, (d) any positive or negative adjustments pursuant to Section 7.6 of the Agreement, and (e) any credits due to CUSTOMER pursuant to Section 3.6 or 4.9 of this SCHEDULE C.
- 3.5 **Fire Protection Water.** In the event of a fire, accidental discharge, or other emergency, or any sprinkler test performed by CUSTOMER, CUSTOMER’s insurer or other third-party on CUSTOMER’s behalf (each, an “**Emergency Use**”) in which more than a *de minimis* amount of water not captured by a Meter (“**Fire Protection Water**”) is used by

CUSTOMER, CUSTOMER shall pay for CUSTOMER's usage of Fire Protection Water in connection with the Emergency Use (this payment is in addition to amounts payable for fire access as determined pursuant to **Sections 3.1** through **3.3** of this **SCHEDULE C**). SUPPLIER shall bill CUSTOMER for Fire Protection Water based on the estimated consumption in thousand gallons (Kgal) of Fire Protection Water at an amount equal to cell B50 of the Billing Month Worksheet for the Billing Month in which such Emergency Use occurs after the relevant Annual Calculation Worksheet and such Billing Month Worksheet have been populated in accordance with **Sections 3.1** and **3.2** of this **SCHEDULE C**. CUSTOMER shall have the right, at CUSTOMER's expense, to verify the charges and calculations set forth in each invoice relating to Fire Protection Water. SUPPLIER shall provide CUSTOMER, upon request, copies of information in SUPPLIER's possession relating to the measurement of CUSTOMER's consumption of Fire Protection Water and SUPPLIER's computation of charges with respect thereto.

- 3.6 **Liquidated Damages Credit.** The parties hereby agree that if a Shortfall, other than an Excused Shortfall, occurs with respect to a Major Utility Service (a "**Liquidated Damages Shortfall**"), SUPPLIER will provide liquidated damages to CUSTOMER in the form of a billing credit, on the invoice for the Billing Month in which such Liquidated Damages Shortfall occurs, in an amount equal to One Thousand Dollars (\$1,000) per affected Delivery Point for every six (6) hours that such Liquidated Damages Shortfall exists. For clarity, a Liquidated Damages Shortfall must last for at least six (6) hours before SUPPLIER is obligated to provide any liquidated damages credit and must last for at least an additional six (6) hours before the next One Thousand Dollars (\$1,000) credit will be provided. Furthermore, SUPPLIER shall only be obligated to provide a single One Thousand Dollars (\$1,000) liquidated damages credit per affected Delivery Point per six (6)-hour period when multiple Major Utility Services are experiencing a concurrent Liquidated Damages Shortfall. The liquidated damage credits provided pursuant to this **Section 3.5** shall be CUSTOMER's sole and exclusive remedy for a Shortfall with respect to a Major Utility Service; provided, nothing in this **Section 3.5** shall impair any remedy CUSTOMER may have with respect to such a Shortfall under **Article XI** or any other agreement between CUSTOMER and SUPPLIER.
4. **QUARTERLY CASH FLOW SHARING PAYMENT.** All Participating Customers will participate in a cash flow sharing structure that aligns the interest of Participating Customers and SUPPLIER to minimize the total cost of the Services. Such participation will be determined via a "waterfall" formulation, with each sequential payment made only to the extent that cash is available after repayment of all prior (senior) payments, and will be payable in the form of a quarterly billing credit. The priority of distributions in the waterfall is as follows:
- 4.1 First, SUPPLIER will collect all Revenues;
 - 4.2 Second, SUPPLIER will pay all Operating Costs;
 - 4.3 Third, SUPPLIER will pay Debt Service Payments;
 - 4.4 Fourth, SUPPLIER will deposit or receive Debt Service Reserve Payments/Releases;
 - 4.5 Fifth, SUPPLIER will deposit or receive Maintenance Reserve Payments/Releases;

- 4.6 Sixth, SUPPLIER will, in its reasonable discretion, determine how much cash should be on hand to cover near term working capital needs, and then either (i) obtain additional contributions from SUPPLIER Owners to cover any projected shortfall or distribute to SUPPLIER Owners any excess cash from reducing the working capital requirement, in which case the Net Equity PP&E will be increased or decreased, respectively; provided, SUPPLIER may not make distributions to SUPPLIER Owners that would reduce Net Equity PP&E below zero, or (ii) retain needed extra cash from operating cash flow or release extra cash from reduced working capital needs into this waterfall, in which case the Net Equity PP&E will not be changed;
- 4.7 Seventh, SUPPLIER will distribute the Preferred Return to SUPPLIER Owners;
- 4.8 Eighth, SUPPLIER will pay any outstanding Arrears Balances;
- 4.9 Ninth, SUPPLIER will provide an aggregate Operating Dividend in the form of billing credits to all Participating Customers equal to fifty percent (50%) of any cash remaining after the actions contemplated by **Sections 4.1 through 4.8** inclusive have been completed, which amount shall be credited pro rata to the Participating Customers in accordance with their respective Allocation Percentages for the calendar quarter to which such Operating Dividend relates; and
- 4.10 Any cash remaining after the actions contemplated by **Sections 4.1 through 4.9** inclusive have been completed (after reducing such cash amount by billing credits to be given by SUPPLIER pursuant to **Section 4.9** and corresponding provisions of the Conforming Contracts) shall be distributed to SUPPLIER Owners.
- 4.11 The amount of any billing credit to which CUSTOMER is entitled pursuant to **Section 4.9** of this **SCHEDULE C** shall be determined no later than fifteen (15) days immediately following the calendar quarter to which it relates.
- 4.12 Any billing credit pursuant to **Section 4.9** of this **SCHEDULE C** shall be applied to the invoice for the Billing Month immediately following the calendar quarter to which such billing credit relates and, if such billing credit exceeds the amount otherwise includable in such invoice, the invoice(s) for the next successive Billing Month(s) until such billing credit has been fully utilized.
- 5. **Miscellaneous Calculations.** For purposes of implementing the provisions of this **SCHEDULE C**:
 - 5.1 The number of Units of wastewater treatment and sewer provided to CUSTOMER during any Billing Month shall be deemed to be the number of Units of process water provided to CUSTOMER during such Billing Month. For any calendar year, the number of Units of wastewater treatment and sewer projected to be provided to all EBPUST Customers during such calendar year shall be deemed to be the number of Units of process water projected to be provided to all EBPUST Customers during such calendar year.
 - 5.2 A Billing Month that straddles two calendar quarters shall be deemed to occur in the calendar quarter in which the majority of the days comprising such Billing Month fall.

- 5.3 If the PPI or CPI (as defined in the definition of Inflation Index Amount) at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then the Parties shall negotiate in good faith to agree upon a substitute index or indices which most closely approximate the unavailable index.

6. Other Matters

- 6.1 None of the financial terms used in this document shall be assumed to have meanings consistent with generally accepted accounting principles or other national or international accounting standards except as provided in the definition of Total Depreciable Capital.
- 6.2 Any cash expended by SUPPLIER in providing Services to EBPUS Customers shall be treated as an expense or a capital investment, but in no case may any expenditure be treated as both an expense and a capital investment. If treated as an expense, those charges will be recovered by SUPPLIER as an operating expense during the period incurred to the extent cash is available for reimbursement or during later periods, plus interest earned pursuant to the definition of Arrears Balances if applicable. If treated as a capital investment, those charges will constitute a Compliance Investment or Non-Compliance Investment, as applicable, and be recovered through an increase in the Preferred Return.
- 6.3 SUPPLIER shall not incur, guarantee or encumber the Facilities or its cash flows to secure any debt other than Facility Loans, and shall not incur, guarantee or encumber the Facilities or its cash flows to secure any Facility Loans to the extent such Facility Loans would reduce the Net Equity PP&E below zero. SUPPLIER agrees to cause any reserves maintained by it to be invested as required by the loan documents requiring such reserves or, if the loan documents do not contain any such requirements, SUPPLIER agrees to maintain such reserves only in United States government obligations or investment grade securities.
- 6.4 No capital investment shall constitute a Compliance Investment or Non-Compliance Investment except to the extent it is funded with contributions from SUPPLIER Owners, proceeds from the sale of assets or proceeds of Facility Loans

SCHEDULE D

Specifications for Delivery of Regulated Services

Each Delivery Point is the responsibility of one CUSTOMER, and the metered or estimated Service passing through that Delivery Point shall be the responsibility of that CUSTOMER. The SUPPLIER will work with CUSTOMER to prepare all of the data described in this **SCHEDULE D** for all CUSTOMER Delivery Points that provide Regulated Services in the form of the following table referencing the specification for the relevant Service in **Sections 2 to 9** below and such other information as may be required regarding that Delivery Point. Peak Demand services, as defined in **Schedule C**, require a Contract Demand entry, while other services do not require a Contract Demand entry. For calendar years 2013 and 2014, Contract Demand shall be the amount set forth in the table below or as mutually agreed by SUPPLIER and CUSTOMER. For calendar years after 2014, Contract Demand shall be determined in accordance with the Agreement.

Delivery Point	Regulated Service	Specifications (B)=Binding Specification (N)=Nominal Specification	Contract Demand	Units	Type metering (Continuous, monthly read, estimated)

1. **Sections 2 through 9** of this **SCHEDULE D** describe the specifications for the relevant Services. Specifications designated with a "(B)" are Binding Specifications. Specifications designated with an "(N)" are Nominal Specifications. Service will be provided by SUPPLIER in a manner appropriate to CUSTOMER's needs subject to such specifications and subject to other provisions of this Agreement.

2. **Electric Service.** Electric service will be provided to the Premises at the electric Delivery Points at a nominal 480 volt, three phase alternating current, approximately 60 Hz, with a voltage range of minimum of 440 volts and a maximum of 484 volts, or such other voltage or other conditions as mutually agreed by SUPPLIER and CUSTOMER.

Additionally, electric service will be provided to specific Delivery Points within EBP at a nominal 2300 volt, three phase alternating current, approximately 60 Hz, with a voltage range of minimum of () volts and a maximum of () volts, or such other voltage or other conditions as mutually agreed by SUPPLIER and CUSTOMER.

2.1 Electric Power Factor. Whenever CUSTOMER's Equipment is so operated that the electrical power factor of any load center serving the Premises is less than [85%], CUSTOMER shall remedy that inefficient condition in a manner reasonably acceptable to SUPPLIER by, at CUSTOMER's option, either:

- (a) Installing and maintaining at its own expense on CUSTOMER's side of the Delivery Point power factor corrective equipment reasonably acceptable to SUPPLIER to remedy the condition; or
- (b) Paying to SUPPLIER the actual reasonable cost incurred by SUPPLIER of any power factor corrective equipment installed by SUPPLIER on its side of the Delivery Point to effect such correction.

3. Low Pressure Steam Service. SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of five pounds per square inch (5 psig) with a pressure range of a minimum of 3 psig and a maximum of 15 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.

4. 70 # Steam Service. SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of seventy pounds per square inch (70 psig) with a pressure range of a minimum of 50 psig and a maximum of 90 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.

5. 135# Steam Service. SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of one hundred thirty five pounds per square inch (135 psig) with a pressure range of a minimum of 125 psig and a maximum of 150 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.

6. 140# Steam Service. SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of one hundred forty pounds per square inch (140 psig) with a pressure range of a minimum of 130 psig and a maximum of 200 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.

7. 260# Steam Service. SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of two hundred sixty pounds per square inch (260 psig) with a pressure range of a minimum of 250 psig and a maximum of 300 psig in EBP-E and EBP-W, and a nominal gauge pressure of three hundred pounds per square inch (300 psig) with a pressure range of a minimum 250 psig and a maximum of 340 psig in EBP-X, EBP-M and EBP-S, or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.

8. Potable Water Service. SUPPLIER will provide continuous service to the potable water Delivery Points at a minimum gauge pressure of fifty pounds per square inch (50 psig) and a maximum gauge pressure of one hundred twenty-five pounds per square inch (125 psig).

9. Natural Gas Service. SUPPLIER will provide continuous service to the natural gas Delivery Point at a nominal gauge pressure of ___pounds per square inch (___psig).

SCHEDULE E

Exceptions for Purchase of Unregulated Services

Chilled Water for Building 308

Chilled Water in Building 320

Chilled Water in Building 337 and Building 339

SCHEDULE F

Specifications for Delivery of Unregulated Services

Each Delivery Point is the responsibility of one CUSTOMER, and the metered or estimated Service passing through that Delivery Point shall be the responsibility of that CUSTOMER. The SUPPLIER will work with the CUSTOMER to prepare all of the data described in this **SCHEDULE F** for all CUSTOMER Delivery Points that provide Unregulated Services in the form of the following table, referencing the specification for the relevant Service in **Sections 2** through **14** below and such other information as may be required regarding that Delivery Point. Peak Demand services, as defined in **Schedule C**, require a Contract Demand entry, while other services do not require a Contract Demand entry. For calendar years 2013 and 2014, Contract Demand shall be the amount set forth in the table below or as mutually agreed by SUPPLIER and CUSTOMER. For calendar years after 2014, Contract Demand shall be determined in accordance with the Agreement.

Delivery Point	Unregulated Service	Specifications (B)=Binding Specification (N)=Nominal Specification	Contract Demand	Units	Type metering (Continuous, monthly read, estimated)

1. All items listed in **Sections 2** through **14** of this **SCHEDULE F** describe the specifications for the relevant Services. Specifications designated with a “(B)” are Binding Specifications. Specifications designated with an “(N)” are Nominal Specifications. Service will be provided by SUPPLIER in a manner appropriate to CUSTOMER’s needs subject to such specifications and subject to other provisions of this Agreement.
2. **EBP-E 40 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 40° continuous service with a temperature range of a minimum of 39°F and a maximum of 42°F to the chilled water Delivery Point at a nominal gauge pressure of 95 psig during the months of June, July, August and September and 80 psig during the months of December, January, February and March. (This data is relevant with the EBP-E 40 degree chilled water system only. These parameters vary depending on the system, location and elevation).

3. **EBP-E 37S Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of ___° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
4. **EBP-W 45 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 45° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
5. **B-205 45 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 45° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
6. **EBP-M 40 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 40° continuous service with a temperature range of a minimum of 39°F and a maximum of 42°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
7. **EBP-S 43 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 43° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
8. **EBP-E 9 Degree Brine Service.** SUPPLIER will provide a nominal supply temperature of 9° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the 9 Degree Brine Delivery Point at a nominal gauge pressure of ___ psig.
9. **EBP-E -95 Degree Brine Service.** SUPPLIER will provide a nominal supply temperature of -95° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the EBP-E -95 Degree Brine Delivery Point at a nominal gauge pressure of ___ psig.
10. **Compressed Air Service:** SUPPLIER will provide continuous service to the compressed air Delivery Point at a nominal gauge pressure of seventy-five pounds per square inch **75 psig** with pressure range of a minimum **60 psig** and a maximum of **90 psig** and with a maximum dew point of **55°F**.
11. **Nitrogen Service.** SUPPLIER will provide continuous Nitrogen Service to the nitrogen Delivery Point at a nominal gauge pressure of seventy-five pounds per square inch (75 psig) with a pressure

range of a minimum sixty pounds per square inch (60 psig) and a maximum of one hundred pounds per square inch (100 psig) with a maximum dew point of -100°F.

12. **Industrial Water Service.** SUPPLIER will provide continuous service to the Industrial Water Delivery Points at a minimum gauge pressure of sixty pounds per square inch (60 psig) and a maximum gauge pressure of 100 psig.
13. **High-Purity Water Service.** SUPPLIER will provide continuous service to the High-Purity Water Delivery Points at a minimum gauge pressure of () pounds per square inch (psig) and a maximum gauge pressure of psig.
14. **Demineralized Water Service.** SUPPLIER will provide continuous service to the demineralized water Delivery Points at a minimum gauge pressure of () pounds per square inch (psig) and a maximum gauge pressure of () pounds per square inch (psig).

SCHEDULE G

SUPPLIER'S Rights of Access and

CUSTOMER'S Restricted Access Areas within the Premises

SUPPLIER's Rights of Access. SUPPLIER shall have access to the Premises in accordance with the provisions of **Section 2.5.3** of this Agreement.

CUSTOMER's Restricted Access. Access to the following portions of the Building and the Premises shall be restricted to SUPPLIER's employees and contractors only, and no employee, contractor or other representative of CUSTOMER shall be entitled to access such areas unless and only to the extent authorized in writing by SUPPLIER:

1. Manholes leading to the high-voltage electric duct banks, as well as the duct banks themselves.
2. High-voltage load centers owned by SUPPLIER and immediately adjacent space dedicated to such high-voltage load centers.

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SCHEDULE H

Specifications for Condensate and Chilled Water Return Services

Condensate Return Service: CUSTOMER shall deliver Condensate to the condensate return Delivery Point within below the upper limits and above any lower limits specified in the table below with respect to each parameter.

Parameter	Units	Lower Limit	Upper Limit
Conductivity	Micro-siemens per cm	N/A	10
pH	pH scale	.5	8.5
Non-Volatile Total Organic Carbon	Parts per Million	N/A	2
Hardness (CaCO ₃)	Parts per billion	N/A	500
Calcium	Parts per billion	N/A	200
Magnesium	Parts per billion	N/A	150
Iron	Parts per billion	N/A	200
Copper	Parts per billion	N/A	1

SCHEDULE I

Overhead Charge Calculation

1. OVERVIEW. This **Schedule I** defines the manner in which the Overhead Charge is calculated for the purposes of monthly bill calculations pursuant to **Section 3.4** of **SCHEDULE C** where applicable pursuant to **Section 12.3(i)** of the Agreement.

2. DEFINITIONS. For the purposes of this Schedule I (and where referenced in the Agreement) the following terms shall have the following definitions:

"First Block Tier" means \$500,000 divided by 12 and then multiplied by the Inflation Index Amount.

"Inflation Index Amount" shall have the meaning given to that term in **SCHEDULE C**.

"Second Block Tier" means \$1,500,000 divided by 12 and then multiplied by the Inflation Index Amount.

"Third Block Tier" means \$3,500,000 divided 12 and then multiplied by the Inflation Index Amount.

3. OVERHEAD CHARGE. The Overhead Charge is calculated on a block basis, based on the Base Amount for such month. The Base Amount expressly excludes (i) any additional charges pursuant to **Sections 4.1, 6.1 and 8.4** of the Agreement, (ii) any positive or negative adjustments pursuant to **Section 7.6** of the Agreement, and (iii) any credits due to CUSTOMER pursuant to **Section 3.6 or 4.9** of **SCHEDULE C**. The Overhead Charge for a given month shall equal:

3.1. All amounts in the Base Amount for such month up to the First Block Tier multiplied by 25%, which amount will be added to

3.2. Any amounts in the Base Amount for such month in excess of the First Block Tier up to the Second Block Tier multiplied by 22.5%, which will be added to

3.3. Any amounts in the Base Amount for such month in excess of the Second Block Tier up to the Third Block Tier multiplied by 20%, which will be added to

3.4. Any amounts in the Base Amount for such month in excess of the Third Block Tier multiplied by 10%.

[illegible]

	Aggregate Actual Volumes for all EBPUST Customer	Customer A's Actual CUSTOMER Volumes	Customer A's Peak Demand Percentages	Adjusted Fuel Usage Rate	MWh used per sold unit	Variable Fuel Charge	Electricity Charge	General	Depreciation	Base Amount for Services	Base Rates
Unit	MMBtu	MMBtu	MMBtu	MMBtu	MMBtu	\$	\$	MMBtu	MMBtu	Total	Rate
LP Steam	1,174,264	37,806	3.26%	0.000	0.000	\$ 95,721	\$ 28,757	0.000	0.000	\$ 183,212	\$ 10.53
70 Steam	22,815	1,081	4.73%	0.000	0.000	\$ 25,102	\$ 7,541	0.000	0.000	\$ 48,004	\$ 12.06
140 Steam	218,414	8,968	4.10%	0.000	0.000	\$ 19,822	\$ 5,955	0.000	0.000	\$ 37,904	\$ 12.77
260 Steam	248,141	2,024	0.81%	0.000	0.000	\$ 14,366	\$ 4,316	0.000	0.000	\$ 27,513	\$ 13.50
Chilled Water	174,704	27,870	15.95%	0.000	0.000	\$ 26,690	\$ 20,597	0.000	0.000	\$ 92,117	\$ 3.31
Electric	25,011	2,891	11.55%	0.000	0.000	\$ -	\$ 204,457	0.000	0.000	\$ 204,457	\$ 71.46
Compressed Air	184,243	14,610	7.93%	0.000	0.000	\$ 7,523	\$ 16,272	0.000	0.000	\$ 28,292	\$ 0.48
Demin Water	1,287	270	2.09%	0.000	0.000	\$ 437	\$ -	0.000	0.000	\$ 2,648	\$ 11.53
Natural Gas	6,700	370	5.52%	0.000	0.000	\$ -	\$ -	0.000	0.000	\$ 86	\$ 7.74
HP Water	6,243	429	6.87%	0.000	0.000	\$ 1,604	\$ 691	0.000	0.000	\$ 9,440	\$ 21.89
Nitrogen	4,573	4,279	93.57%	0.000	0.000	\$ 4,700	\$ 5,960	0.000	0.000	\$ 12,385	\$ 2.83
9 degF	11,904	1,899	15.95%	0.000	0.000	\$ 929	\$ 1,498	0.000	0.000	\$ 5,547	\$ 3.47
-95 degF	6,365	235	3.69%	0.000	0.000	\$ 1,230	\$ 682	0.000	0.000	\$ 8,193	\$ 24.42
Process Water	145,456	14,345	9.86%	0.000	0.000	\$ 6,090	\$ 3,928	0.000	0.000	\$ 13,721	\$ 0.94
Potable Water	1,817	390	21.46%	0.000	0.000	\$ -	\$ -	0.000	0.000	\$ 86	\$ 1.79
Fire Access	11,194,009	1,118,390	9.99%	0.000	0.000	\$ -	\$ -	0.000	0.000	\$ 5,561	\$ 0.01
WWT & Sewer	145,456	14,345	9.86%	0.000	0.000	\$ 8,397	\$ 5,165	0.000	0.000	\$ 46,122	\$ 3.17
Total						\$ 212,611	\$ 305,819	\$ 149,832	\$ 57,278	\$ 725,289	

Natural Gas Cost (\$/Dth) \$ 7.59

Total Fuel Cost \$ 3,719,529.31

Total Fuel Purchased (MMBtu) 950,000

Fuel Cost (per MMBTU) \$ 4.38

Potable Water Cost (per Kgal) \$ 1.50

Fixed Demand Charge for Electricity: \$ 26.93

Monthly Electric Balance (Annual / 12): \$ 37,605

Monthly Produced Electricity (MWh): 6,532

Monthly Net Purchased Electricity (MWh): 45,137

Monthly Aggregate Electricity Used by the EBPUST (MWh): 1,340

Monthly Unaccounted Electric (Amount): 3.04%

Unaccounted Electric (Percentage): 3.04%

Previous Months Purchased Electricity: \$ 59.49

Fuel Charge Allocated to Electricity of all EBPUST Customers: \$ 1,481,018

Variable Fuel and Purchased Electricity Charges: \$ 1,869,587

Variable Charge for Electricity Used by the Entire Park: \$ 42.36

Weighted Average Cost of Electricity \$ 69.29

Fire Protection Water Amount (kgal)

means variable filled in for each billing month

means for validation only (will not be included in final)

Result of Annual Calculation Sheet/Calculation Based on Annual Calculation Sheet

Explanatory Note: The numbers in this document are representative only and do not reflect actual amounts that will be paid for utility services. As noted in Schedule C to the Utility Services Agreement, data will be input into the underlying spreadsheet and the spreadsheet will calculate the amounts payable based on such data.

**Form of Exhibit E to
Asset Purchase Agreement**

SANITARY AND STORM SEWER AGREEMENT

THIS SANITARY AND STORM SEWER AGREEMENT (this "Agreement"), made and executed this ____ day of _____, 201__ (the "Effective Date"), by and between **EASTMAN KODAK COMPANY**, a New Jersey corporation having an office at 343 State Street, Rochester, New York 14650-0208 ("Supplier") and **RED-ROCHESTER, LLC**, a New York limited liability company having offices at _____ ("Customer").

WITNESSETH

WHEREAS, Customer and Supplier have previously entered into an Asset Purchase Agreement dated as of December ___, 2012 (the "Purchase Agreement"); and

WHEREAS, pursuant to the Purchase Agreement, Supplier has agreed to, among other things, sell and convey to Customer, on the Effective Date, various assets used in connection with the generation, treatment and distribution of certain utilities at the manufacturing and industrial park located in the City of Rochester and Town of Greece and known as Eastman Business Park together with certain other assets and real property interests associated therewith and ancillary thereto, including, without limitation, certain buildings described in the Purchase Agreement (the "Buildings") and easements for certain space to Customer in the buildings known as Eastman Business Park Buildings 12, 31, 42, 46 and 205 (hereinafter, collectively, the "Building Use Easement Area") and certain easements relating to the Buildings and the operation of the utilities (the "Permanent Easement Area"), all as more particularly described in that certain Easement Agreement, dated as of _____, 2013, by and between Supplier and Customer (the Buildings, the Building Use Easement Area and the Permanent Easement Area being the "Premises"); and

WHEREAS, the parties have agreed that subsequent to the "Closing" (as that term is defined in the Purchase Agreement), the Premises shall remain connected to: (i) the sanitary sewer system currently owned by Supplier (the "Supplier Sanitary Sewer"), running through Eastman Business Park and ultimately connecting to a Rochester Pure Waters District sanitary sewer system (the "Public Sanitary Sewer", and together with the Supplier Sanitary Sewer, the "Sanitary Sewer"); and (ii) the storm sewer system currently owned by Supplier (the "Supplier Storm Sewer"), running through Eastman Business Park and ultimately connecting to the public storm water sewer (the "Public Storm Sewer", and together with the Supplier Storm Sewer, the "Storm Sewer"); and

WHEREAS, Supplier and Customer desire to agree upon and set forth their respective rights and obligations with respect to the use of the Sanitary Sewer and the Storm Sewer (each a "Service" and, collectively, the "Services").

NOW, THEREFORE, in consideration of the foregoing and of the material covenants and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Right to Use the Sanitary Sewer and the Storm Sewer. Supplier and Customer hereby agree that subsequent to the Closing, the Premises shall remain connected to the Sanitary Sewer and the Storm Sewer. Supplier and Customer also hereby agree that from and after the date of Closing until such time as this Agreement is terminated in accordance with the provisions hereof with respect to one or more of the Services and sewer connections, Supplier hereby grants to Customer, and Customer's successors and/or assigns, the right to remain connected to and use the Sanitary Sewer and the Storm Sewer, subject to the terms and conditions of this Agreement.

2. Compliance with Applicable Laws and Supplier Requirements.

(a) General. From and after the date of this Agreement, Customer shall at all times comply with all statutes, laws, ordinances, regulations, rules, licenses, permits, decrees, directives and other requirements imposed or implemented by federal, state or local governmental authorities or agencies (collectively, the "Agency") applicable to Customer's use of the Sanitary Sewer and the Storm Sewer, as well as any additional, reasonable requirements of which Customer is given notice imposed by Supplier on all users of the Sanitary Sewer or the Storm Sewer (collectively, the "Applicable Requirements").

(b) Sanitary Sewer Compliance. Without limiting the generality of the requirements of paragraph 2(a) above, Customer shall not permit any discharge to the Supplier Sanitary Sewer which would: (i) cause Supplier to be in violation of the Supplier Sewer Use Permit (as defined in Section 10 below), (ii) be damaging to the components of the Sanitary Sewer, (iii) negatively impact the capacity of the Supplier Sanitary Sewer, or (iv) be in violation of Applicable Laws (as defined in Section 10 below), including but not limited to the Customer Sanitary Sewer Use Permit (as defined below), if any. On or before the date hereof, Supplier shall have provided Customer a copy of the Supplier Sewer Use Permit and any amendments thereto, and shall endeavor to provide to Customer on and after the date hereof copies of any future modifications thereto; provided that Customer shall have no duty to comply with the requirements of any such modifications until Customer shall have received reasonable notice of such requirements by receipt of copies of such modification documents. If the County of Monroe (the "County") at any time following the date of this Agreement determines that a separate sewer use permit for the Premises is required, Supplier shall, at Supplier's sole cost and expense, promptly make application to the County and, thereafter, diligently pursue the issuance of, a separate sewer use permit for the Premises (the "Customer Sanitary Sewer Use Permit"); provided, if a Customer Sanitary Sewer Use Permit is required as a result of changes in the effluent characteristics of discharges by Customer to the Supplier Sanitary Sewer, Customer shall, at Customer's sole cost and expense, promptly make application to the County and, thereafter, diligently pursue the issuance of, the Customer Sanitary Sewer Use Permit. Supplier shall be solely responsible for the renewal of the Customer Sanitary Sewer Use Permit, at Supplier's sole cost and expense; provided, if the Customer Sanitary Sewer Use Permit is required as a result of changes in the effluent characteristics of discharges by Customer to the

Supplier Sanitary Sewer, Customer shall be solely responsible for the renewal of the Customer Sanitary Sewer Use Permit, at Customer's sole cost and expense.

(c) Storm Sewer Compliance. Without limiting the generality of the requirements of paragraph 2(a) above, Customer shall not permit any discharge to the Supplier Storm Sewer which would: (i) cause Supplier to be in violation of any permit currently or in the future applicable to Supplier's discharge of storm water from Eastman Business Park ("Supplier Storm Sewer Permits"), (ii) be damaging to the components of the Storm Sewer, (iii) negatively impact the capacity of the Supplier Storm Sewer, or (iv) be in violation of Applicable Laws, including but not limited to the Customer Storm Sewer Permit (as defined below), if any. Discharges to the Supplier Storm Sewer relating to runoff from other than the Permanent Easement Area shall not be deemed discharges permitted by Customer and Customer shall have no duty, responsibility or liability for the same whatsoever. On or before the date hereof, Supplier shall have provided Customer a copy of the Supplier Storm Sewer Permits and any amendments thereto, and shall endeavor to provide to Customer on and after the date hereof copies of any future modifications thereto; provided that Customer shall have no duty to comply with the requirements of any such modifications until Customer shall have received reasonable notice of such requirements by receipt of copies of such modification documents. If the New York State Department of Environmental Conservation ("DEC") or any other governmental agency or authority at any time following the date of this Agreement determines that a separate storm sewer permit for the Premises is required, Supplier shall, at Supplier's sole cost and expense, promptly make application to the DEC or other appropriate agency and, thereafter, diligently pursue the issuance of, a separate storm sewer permit for the Premises (the "Customer Storm Sewer Permit"); provided, if the Customer Storm Sewer Permit is required as a result of changes in the effluent characteristics of discharges by Customer to the Supplier Storm Sewer, Customer shall, at Customer's sole cost and expense, promptly make application to the DEC or other appropriate agency and, thereafter, diligently pursue the issuance of, the Customer Storm Sewer Permit. Supplier shall be solely responsible for the renewal of the Customer Storm Sewer Permit, at Supplier's sole cost and expense; provided, if the Customer Storm Sewer Permit is required as a result of changes in the effluent characteristics of discharges by Customer to the Supplier Storm Sewer, Customer shall be solely responsible for the renewal of the Customer Storm Sewer Permit, at Customer's sole cost and expense. If at any time after the date of this Agreement the terms and conditions of the Supplier Storm Sewer Permits are modified or new permits or requirements are added and Customer's discharge into the Storm Sewer causes Supplier to be in violation thereof, Supplier shall give Customer written notice of such modification or addition and Customer shall be granted a reasonable period of time to bring its discharges into compliance provided that Customer begins to cure and diligently proceeds to cure upon notice of the non-compliance.

3. Notification of Noncompliance and Unlawful Discharges. Customer shall promptly notify Supplier of any known material noncompliance by Customer with Applicable Requirements, or written allegations or complaints of such noncompliance from any Agency or person, with respect to discharges into the Sanitary Sewer or the Storm Sewer, or otherwise related to the subject of this Agreement. In addition, Customer shall immediately notify Eastman Business Park Communications Center, at (585) 722-2121, of any known discharges or spills into the Sanitary Sewer or the Storm Sewer which are in violation of Applicable Requirements.

4. Reporting Requirements. Customer shall promptly supply Supplier's Health, Safety and Environmental organization with copies of all correspondence, notices, reports and submissions made by Customer to any Agency relating to the Sanitary Sewer or the Storm Sewer.

5. Inspection Rights; Customer Cooperation with Sewer Investigations. Supplier, and Supplier's authorized representatives, shall have the right from time to time to enter upon and inspect the Premises, including but not limited to the structures thereon or to be constructed thereon, and the business operations of Customer, upon no less than two (2) business days' prior oral or written notice (except in the case of an emergency) and in such a manner so as not to interfere unreasonably with the conduct of Customer's business, to investigate Customer's compliance with Applicable Requirements. Customer shall have the right to accompany Supplier or Supplier's representatives during any such inspections. During such inspections, Supplier, and Supplier's representatives, shall have the right, but not the obligation, to take such samples and conduct such tests as Supplier may determine, in Supplier's sole discretion, to be necessary or advisable to determine Customer's compliance with Applicable Requirements. If Supplier plans to conduct sampling of Customer's effluent, Customer shall be provided notice of such sampling, and Customer shall be entitled to conduct split samples, at Customer's sole cost and expense. In addition to the foregoing, Customer shall cooperate with any investigation of the Sanitary Sewers or Storm Sewers conducted by Supplier or any government or regulatory agency having jurisdiction with respect thereto, which cooperation shall include, without limitation, sharing information about the nature of Customer's operations at and use of the Premises, and any substances used by Customer at the Premises; provided that, in addition to the terms of the confidentiality provisions in Section 14 of this Agreement, Supplier agrees to enter into a reasonable confidentiality agreement with respect to any of Customer's proprietary information which may be requested as part of the investigation.

6. Indemnification by Customer. Customer hereby covenants and agrees, at Customer's sole cost and expense, to indemnify, protect, defend and hold harmless Supplier, Supplier's successors and assigns, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, amounts in contribution, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Supplier to the extent resulting from or arising out of the failure of Customer or Customer's agents, servants, employees, contractors, licensees or invitees (collectively, "Customer Agents") to comply with Applicable Requirements, which failure includes any discharge by Customer Agents to the Sanitary Sewer or the Storm Sewer not in compliance with Applicable Requirements. Customer's obligations pursuant to this Section 6 shall include reimbursing Supplier for Supplier's costs to repair or replace, as necessary, any portion of the Supplier Sanitary Sewer or the Supplier Storm Sewer located beyond the boundaries of the Premises to the extent it is damaged by the failure of any Customer Agent to comply with Applicable Requirements.

7. Billing and Payment.

(a) Charge. Customer shall pay to Supplier a monthly charge in the amount of \$4,167.00 for Customer's discharge to the Supplier Sanitary Sewer and the Supplier Storm Sewer (the "Monthly Charge"). In the event of the Dedication (as defined in Section 12) of any portion of the Supplier Sanitary Sewer and/or the Supplier Storm Sewer, the Monthly Charge shall be decreased on a pro rata basis to account for such Dedication.

(b) Invoices. Invoices for the Monthly Charge shall be issued electronically after each month during the Term.

(c) Payment. Customer shall be responsible for payment of the invoices for each month and all payments for Services provided by Supplier under this Agreement shall be made net twenty (20) days from the date of Supplier's electronic invoices for Services. In the event that Customer fails to make payment of all or any part of any invoice as described in this Section 7(c), Supplier may, but shall not be obligated to, issue a second invoice for any outstanding amount.

(d) Late Payment. Any amount not paid by twenty (20) days from the date of Supplier's electronic invoice for Services shall be late, and shall be subject to a late charge equal to 1.5% per month of the total unpaid amount.

(e) Discontinuance of Services for Late Payment. In the event that Customer fails to make payment within ninety (90) days from the date of Supplier's electronic invoice for Services, Supplier may, in Supplier's discretion, discontinue provision of any or all Services to the Premises on ten (10) business days' written notice, provided such payment is not made within such ten (10) business day period. If Supplier discontinues any Service or Services under this Section 7(e), Supplier shall not thereby be deemed to have breached Supplier's obligations to Customer under this Agreement, or to have otherwise harmed or caused harm to Customer in any regard. In addition, Supplier's discontinuance of any Service under this Section 7(e) shall not relieve Customer of Customer's duties and obligations under this Agreement, and such discontinuance shall be in addition to any other legal or equitable remedies available to Supplier.

(f) Annual Adjustment of Services Charges. The Monthly Charge will be reset at the beginning of each calendar year as an annual amount equal to four thousand one hundred sixty seven and 00/100 Dollars (\$4,167.00) multiplied by the Inflation Index Amount with respect to such calendar year as defined in this Section 7.

(g) Calculation of Inflation Index Amount. "Inflation Index Amount" with respect to any calendar year means the amount obtained from the following formula:

$$[0.35 * (\text{PPI} / 177.2)] + [0.65 * (\text{CPI} / 246.246)] - (1.01^{(y-2013)}) + 1$$

where:

y = the year for which the Inflation Index Amount is being calculated

PPI = the Producer Price Index-Commodities, not seasonally adjusted, finished goods less food and energy, 1982 = 100, Series ID#WPUSOP3500, as reported by the United States Department of Labor, Bureau of Labor Statistics, as replaced or revised in accordance with this Section 7, published in December of the calendar year prior to calendar year y (which will contain data for the month of November of such prior calendar year)

CPI = the Consumer Price Index for all Urban Consumers (CPI-U), not seasonally adjusted, Northeast urban, all items less food and energy, 1982-1984=100, Series ID #CUUR0100SA0L1E, as reported by the United States Department of Labor, Bureau of Labor Statistics, as replaced or revised in accordance with this Section 7, published in December of the calendar year prior to calendar year y (which will contain data for the month of November of such prior calendar year)

(h) PPI and CPI Availability. If the PPI or CPI (as defined in the definition of Inflation Index Amount) at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then the Parties shall negotiate in good faith to agree upon a substitute index or indices which most closely approximate the unavailable index.

8. Ownership; Maintenance and Repairs. All portions of the Supplier Sanitary Sewer and Supplier Storm Sewer which are located on or under the Premises, including under the Buildings, shall be and remain the property of Supplier and Supplier shall continue to have the right to use such the same for all purposes of operating the Supplier Sanitary Sewer and the Supplier Storm Sewer. Any waste pipes located wholly in the Buildings shall be the property of Customer. Supplier shall be responsible for all necessary maintenance and repair (including replacement, if necessary) of the Supplier Sanitary Sewer and Supplier Storm Sewer, including those portions located under the Buildings. Customer shall, at Customer's sole cost and expense, perform all necessary maintenance and repair (including replacement, if necessary) of the waste pipes located wholly in the Buildings.

9. Insurance and Indemnification.

(a) Supplier shall not be liable for any personal injury, death, or property damage to any person or entity (including Customer or any other "Customer Indemnified Parties", as hereinafter defined) resulting in any way from: (i) the interruption or failure of Supplier to provide any Service hereunder, or (ii) the Customer's use of the Services, unless and only to the extent caused by the gross negligence or willful misconduct of Supplier, and provided that the limitations of this Section 9(a) shall apply to and limit the liability of Supplier under this Section 9(a).

(b) It is specifically agreed and understood that neither party to this Agreement will be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith, in contract or in tort (including negligence),

under any warranty, or otherwise, including without limitation Customer's failure to accept, or Supplier's failure to deliver, the Services at any time. This Section 9(b) shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise.

(c) Supplier and Customer hereby waive on behalf of themselves and their respective insurers, any claims that either actually may have against the other for loss or damage to their respective property resulting from perils covered by the standard form of all risk property damage insurance, including vandalism and malicious mischief coverage. It is understood that this waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault, neglect or negligence of either Supplier or Customer and whether or not insurance is in force. If required by policy conditions, each party to this Agreement shall secure from its property insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other party to this Agreement.

(d) Supplier and Customer shall each, at their own cost and expense, maintain and keep in force at all times during the term of this Agreement:

(i) Commercial General Liability Insurance, including coverage for Products/Completed Operations and Contractual Liability, covering all claims for personal injury, death or property damage occurring on, in or about the Premises and Eastman Business Park, respectively, with a limit of liability of not less than \$10,000,000 per occurrence and aggregate combined single limit for bodily injury and property damage;

(ii) Employers' Liability coverage with a limit of liability not less than \$1,000,000.00; and

(iii) Worker's Compensation Insurance covering all claims under applicable Workers' Compensation statutes or any similar statutes or requirements.

(e) If either Supplier or Customer contracts with any third party to perform maintenance activities or any other activity, or permits such Person to conduct any of maintenance activities or any other activity of any kind on the Premises or in the Buildings, Supplier or Customer, as the case may be, shall be responsible for the acts of such Person in accordance with the provisions of this Agreement, and Supplier or Customer, as the case may be, shall bear all responsibility for assuring the adequacy of any insurance carried by such Person. The amount of such insurance carried by such Person shall not limit Supplier's or Customer's respective liability hereunder.

(f) Customer and Supplier shall also maintain and keep in force at all times during the term of this Agreement, all risk property damage insurance covering all property of Customer or Supplier, respectively, located at or serving the Premises, including equipment, machinery, stock, supplies and leasehold improvements, for the full replacement value of such property.

(g) Subject to the limitations set forth in Sections 9(a), 9(b) and 9(c) of this Agreement, Supplier shall indemnify, defend and hold harmless Customer, Customer's members, officers, employees, contractors and agents (each, a "Customer Indemnified Party" and together, the "Customer Indemnified Parties") from and against any and all claims, demands, administrative or judicial proceedings, costs, expenses (including reasonable attorneys' fees and expenses), liabilities, damages, judgments or awards (together, "Losses") asserted against, resulting from, imposed upon or incurred by any Customer Indemnified Party by reason of or resulting from: (i) Losses of any person or entity (including Customer Indemnified Parties) arising, directly or indirectly, out of the gross negligence or willful misconduct of Supplier or any Supplier Indemnified Party in connection with this Agreement, or the default of Supplier under this Agreement (other than interruptions of the Services or Customer's use of the Services, Supplier's responsibilities for which are specifically and solely addressed by Section 9(a) hereof); or (ii) Losses of third parties including the employees of Supplier or Supplier's contractors or agents, for personal injury, death, or property damage arising, directly or indirectly, out of this Agreement on or after the Effective Date, except in the case of either (i) or (ii) above, to the extent caused by the gross negligence or willful misconduct of Customer or any other Customer Indemnified Party.

(h) In addition to the indemnification obligations of Customer pursuant to Section 6 of this Agreement, and subject to the limitations set forth in Sections 9(b) and 9(c), Customer shall indemnify, defend, and hold harmless Supplier, Supplier's shareholders, officers, employees, contractors and agents (each, a "Supplier Indemnified Party" and together, the "Supplier Indemnified Parties") from and against any and all Losses asserted against, resulting from, imposed upon or incurred by any Supplier Indemnified Party by reason of or resulting from: (i) Losses of any person or entity (including the Supplier Indemnified Parties) arising, directly or indirectly, out of the gross negligence or willful misconduct of Customer or any Customer Indemnified Party in connection with the Services, or the default by Customer under this Agreement; or (ii) Losses of third parties, including the employees of Customer or Customer's contractors or agents, for personal injury, death, or property damage, arising, directly or indirectly, out of (A) the ownership, management, operation or maintenance of the Premises, or (B) any Sanitary Sewer laterals located on the Premises owned by Customer, except in the case of either (i) or (ii) above to the extent caused by the gross negligence or willful misconduct of Supplier or any other Supplier Indemnified Party.

10. Supplier's Compliance with Applicable Laws; Customer's Cooperation. Supplier shall comply with all statutes, laws, ordinances, regulations, rules, licenses, permits, decrees, directives and other requirements imposed or implemented by federal, state or local Agencies applicable to the Sewers (the "Applicable Laws") relating to the monitoring, operation and maintenance of all portions of the Supplier Sanitary Sewer and the Supplier Storm Sewer. Supplier is solely responsible for complying with County of Monroe Sewer Use Permit No. 158 (the "Supplier Sewer Use Permit"), including without limitation, any analysis and certifications required thereby; provided that Customer shall promptly provide to Supplier any and all documents or information required by Supplier and shall fully cooperate with Supplier as and when requested to the extent necessary to allow Supplier to comply with the Supplier Sewer Use Permit. Supplier is solely responsible for and agrees to maintain, continue and use commercially

reasonable efforts to renew during the term of this Agreement the Supplier Sewer Use Permit and any variances required to permit Customer to discharge into the Sanitary Sewer and the Storm Sewer. If any renewal, modification, amendment, expiration, termination or other change to the Supplier Sewer Use Permit (a "Supplier Sewer Use Permit Modification"), as proposed, sought, requested or required by any Agency or Supplier may in any way potentially impact, restrict or modify Customer's discharge, either in its capacity or characteristics of effluent, or Customer's use charges as provided in Paragraph 7 of this Agreement, Supplier shall promptly notify Customer and provide Customer with all documents and information related to such Supplier Sewer Use Permit Modification.

11. Term and Termination.

(a) Term. This Agreement shall become effective on the Effective Date and, unless sooner terminated as provided herein, shall continue through December 31, 2019 (the "Initial Term"). Upon the expiration of the Initial Term and each subsequent "Renewal Term" (as hereinafter defined), as applicable, this Agreement shall be automatically extended for an additional period of five (5) years (each, a "Renewal Term" and together with the Initial Term, the "Term").

(b) Termination Rights.

(i) Supplier shall have the right at any time after December 31, 2019, upon no less than three (3) years' written notice to Customer, to terminate this Agreement with respect to all or either one of the Services. Upon any such termination, the cost of providing alternative services shall be the sole responsibility of Customer, except that Supplier shall be responsible, at Supplier's sole cost and expense, for disconnecting the Premises from the Supplier Sanitary Sewer or the Supplier Storm Sewer delivery system relating to the terminated services.

(ii) If Customer has disconnected the Premises entirely from the Supplier Sanitary Sewer, then Customer shall have the right at any time, upon notice to Supplier, to terminate this Agreement with respect to the Sanitary Sewer Services, in which event Customer shall reimburse Supplier for Supplier's actual costs that it incurred to disconnect the Premises from the Supplier Sanitary Sewer.

(iii) Supplier may cease providing all or either one of the Services at any time with reasonable notice if for any reason any necessary permit or approval required by law to allow Supplier to provide such Service or Services shall lapse or be revoked, provided that Supplier has used commercially reasonable efforts to continue such Services.

(c) Upon termination of this Agreement in whole, or in part as to either Sanitary Sewer and Storm Sewer Service, Supplier shall grant all easements necessary for the substitute sewer service provider to tie in the Customer Sewer Related Facilities to the substitute sewer service provider's system and ultimately to the Public Sanitary Sewer, the Public Storm Sewer or a public waterway.

12. Transfer of Ownership. Supplier shall have the right to transfer ownership of all or portions of the Supplier Sanitary Sewer and/or the Supplier Storm Sewer to a public authority, including but not limited to the County (a "Dedication"). In the event of a Dedication relating to a portion of the Supplier Sanitary Sewer and/or the Supplier Storm Sewer serving the Premises, (a) the Monthly Charge shall be decreased on a pro rata basis as provided in Section 7(a); (b) Customer shall be responsible for Customer's permit(s) and sewer use charges assessed by such public authority for Customer's use of the dedicated sanitary and/or storm sewer serving the Premises; and (c) Supplier shall be solely responsible, at Supplier's sole cost and expense, for the operation and maintenance of those portions of the Supplier Sanitary Sewer and/or Supplier Storm Sewer serving the Premises and not subject to Dedication, including with respect to (c) of this Section 12, the installation and maintenance of any water meters and backflow preventers required by such public authority in connection with the Dedication. Upon request by Supplier, Customer agrees to cooperate reasonably with Supplier in connection with any Dedication, including but not limited to joining with Supplier in any application or petition for the Dedication. In the event of a Dedication relating to all of the Supplier Sanitary Sewer and the Supplier Storm Sewer serving the Premises, this Agreement shall automatically terminate.

13. Assignments.

(a) By CUSTOMER. Except as provided below, CUSTOMER may not assign this Agreement or any of the benefits hereunder to any third party without the prior written consent of SUPPLIER, which consent shall not be unreasonably withheld, conditioned or delayed.

(i) Assignment to Permitted Assignee. CUSTOMER shall have the right to assign this Agreement and the benefits hereunder (in whole or in part) to a permitted assignee under that certain Utility Rights Agreement dated _____ by and between the Parties without SUPPLIER's prior written consent and upon such assignment SUPPLIER shall look solely to CUSTOMER'S assignee for performance of the obligations of CUSTOMER to which the assignment applies.

(ii) Assignment to Subsidiary, Affiliate or Purchaser. CUSTOMER shall have the right to assign this Agreement and the benefits hereunder (in whole or in part) to any parent, subsidiary or affiliate of CUSTOMER or to any party (other than a permitted assignee pursuant to 13.(a)(i))) that purchases all or a portion of the Premises from CUSTOMER without obtaining the consent of SUPPLIER provided SUPPLIER shall have received either (a) written confirmation from the proposed assignee that it shall assume all of the obligations and duties of CUSTOMER under this Agreement accruing thereafter, or (b) a copy of the agreement between CUSTOMER and the proposed assignee assigning this Agreement and pursuant to which the proposed assignee has agreed to assume all of the obligations and duties of CUSTOMER under this Agreement accruing after the proposed assignment. Upon the effective date of any such assignment by CUSTOMER, SUPPLIER agrees that SUPPLIER shall look solely to CUSTOMER's assignee for performance of the obligations of Customer to which the assignment applies, and SUPPLIER shall release CUSTOMER from any and all liability for such performance.

Any attempted assignment by CUSTOMER in contravention of the above shall be null and void and of no force or effect.

(b) By SUPPLIER. Except as provided below, SUPPLIER may not assign this Agreement or any of the benefits hereunder to any third party without the prior written consent of CUSTOMER, which consent shall not be unreasonably withheld, conditioned or delayed.

(i) Assignment to Purchaser of Business Assets. SUPPLIER may assign this Agreement without CUSTOMER's consent to any third party which acquires all or substantially all of that portion of the business assets of SUPPLIER to which this Agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise, provided that CUSTOMER shall have received either (a) written confirmation from the proposed assignee that it shall assume all of the obligations and duties of SUPPLIER under this Agreement accruing thereafter, or (b) a copy of the agreement between SUPPLIER and the proposed assignee assigning this Agreement and pursuant to which the proposed assignee has agreed to assume all of the obligations and duties of SUPPLIER under this Agreement accruing after the proposed assignment. Upon the effective date of any such assignment by SUPPLIER, CUSTOMER agrees that CUSTOMER shall look solely to SUPPLIER's assignee for performance of the Services to which the assignment applies, and CUSTOMER shall release SUPPLIER from any and all liability for such performance.

Any attempted assignment by SUPPLIER in contravention of the above shall be null and void and of no force or effect.

14. Confidential Information.

(a) During the Term, certain information that is considered proprietary or confidential may be disclosed or exchanged between the parties. The term "Confidential Information" shall mean information disclosed hereunder by one party to the other party in accordance with the following procedure:

(i) when disclosed in writing, Confidential Information shall be labeled as being confidential; and

(ii) when disclosed orally, Confidential Information shall be identified as confidential at the time of disclosure, with subsequent confirmation to the other party in writing within thirty (30) days after disclosure, identifying the date and type of information disclosed.

In addition, the existence and terms and conditions of this Agreement (including without limitation the amount of the Monthly Charge for the Services) shall be deemed to be Confidential Information and shall be treated as such by each party.

(b) The rights and obligations of the parties with respect to Confidential Information shall survive termination or expiration of this Agreement for one (1) year. Each party shall hold in confidence the other's Confidential Information, shall disclose such information only to those persons whose work in connection with this Agreement requires such

disclosure, and shall not, without the prior written consent of the other party, disclose such information to any person except its own employees, contractors, attorneys, accountants and consultants who have a need to know and are bound to keep such information confidential, and shall not use the other's Confidential Information for any purpose except to perform its obligations under this Agreement. These obligations shall not apply to any Confidential Information to the extent that it:

(i) is or becomes a matter of public knowledge through no fault of the receiving party;

(ii) is lawfully in the possession of the receiving party in written or other recorded form before the time of disclosure by the disclosing party;

(iii) is lawfully acquired by the receiving party from a source that is not under obligation to the disclosing party regarding disclosure of such information;

(iv) is disclosed by the disclosing party to any third party on a nonconfidential basis;

(v) is required to be disclosed by operation of law, including, without limitation, regulatory or governmental rules requiring approval prior to marketing products; or

(vi) is developed by the receiving party independently of the providing or receiving of the Services.

15. General Terms and Conditions.

(a) Notices and Communications. All notices and other communications required or permitted under this Agreement must be in writing and will be delivered personally or sent by commercial courier, or by postage prepaid certified mail return receipt requested, or by registered mail or by facsimile, at the option of the sending party. All communications must be sent to, and shall be effective on the date of delivery at, the receiving party's address indicated below. Such addresses may be changed by submitting a notice as provided in this Section 15(a) to the other party.

Communications to Supplier:

Eastman Kodak Company
1669 Lake Avenue
Rochester, New York 14652-3709
Attn.: Manager, Utilities Department
Facsimile: (585) 722-9671

Communications to Customer:

RED-Rochester, LLC
[]
[]
Attn:
Facsimile:

With a copy to:

Eastman Kodak Company
343 State Street
Rochester, New York 14650-0208
Attn: General Counsel
Facsimile: (585) 724-9448

RED-Rochester, LLC
630 Quail Ridge Drive
Westmont, IL 60559
Attn: General Counsel
Facsimile: (630) 590-6037

(b) Conflicts in Documentation. In the event that a conflict arises between this Agreement and any separate agreement, document or schedule implementing this Agreement, the terms of this Agreement shall prevail, unless such agreement, document or schedule by its terms modifies this Agreement, describes the scope of such modification, and is agreed to in a separate writing by a duly authorized representative of each party.

(c) Amendments. No addition to, deletion from or modification of any of the provisions of this Agreement shall be binding upon the parties unless such deletion, addition or modification is made in writing and is signed by a duly authorized representative of each party.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous discussions, representations, understandings, and agreements.

(e) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which shall together constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

(f) Complaints and Dispute Resolution Procedures. Complaints about any Service, Services, or other issues shall first be made in writing and submitted pursuant to the notice provisions of Section 15(a) hereof. Any such written complaint shall be brief, shall state the nature of the dispute, the relevant facts, and the desired relief. Supplier shall promptly investigate any such complaint in a fair manner, and report the results in writing to Customer. Supplier will not terminate any Services to Customer during the pendency of a complaint before Supplier; provided that Customer shall pay the undisputed portion of any outstanding bill for Services as well as all bills for current or subsequent Services received during such pendency.

(g) Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without consideration of the conflicts of laws principles thereof. The parties expressly consent to the jurisdiction of the courts of the State of New York as to any issues related to this Agreement, including the validity, enforceability or interpretation thereof.

(h) Force Majeure. If performance (other than payment) under this Agreement by Supplier or Customer is prevented or delayed by reason of an act of God or public enemy, war, terrorism, government acts or regulations, administrative acts or decisions, fire, flood, embargo, quarantine, epidemic, labor strike or work stoppage by workers, accident, unusually severe weather or other cause similar or dissimilar to the foregoing and beyond the

control of the party affected, and which cannot be overcome by reasonable diligence, such affected party shall be excused from such performance to the extent that it is necessarily prevented or delayed thereby, during the period of any such cause; provided, however, that such excused party shall take all commercially reasonable steps to avoid or remove such causes of its nonperformance and shall continue performance hereunder with dispatch whenever such causes are removed.

(i) Use of Other Party's Name. Except as necessary to perform their obligations under this Agreement, neither party may make any reference to the other party, its trademarks or trade names in advertising, public announcements, or promotional materials without express written permission from the other party.

(j) Severability. If any provision of this Agreement is held to be unenforceable under then current laws, the enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such unenforceable provision the parties shall negotiate to add a provision as similar in terms to such unenforceable provision as may be possible.

(k) Independent Contractor. Supplier and Customer shall act as independent contractors and nothing herein shall be construed to make either party, or any of their employees, officers, directors or representatives, the agent, employee, partner or servant of the other party.

(l) Non-Waiver. Failure by either party at any time to require strict performance of any of the provisions herein shall not waive or diminish a party's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any obligation, term or condition of this Agreement shall not be deemed as any further or continuing waiver of any other term, provision or condition of this Agreement. A party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and signed by a duly authorized representative of the party making such waiver.

(m) Article and Section Headings. Headings for articles and sections are for convenience only and shall not affect the interpretation of this Agreement.

(n) Agreement Binding on Parties. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Supplier and Customer have caused this Agreement to be executed as of the day and year first above written.

EASTMAN KODAK COMPANY

By: _____

Its: _____

RED-ROCHESTER, LLC

By: _____

Its: _____

**Form of Exhibit F to
Asset Purchase Agreement**

SITE SERVICES AGREEMENT

THIS SITE SERVICES AGREEMENT (this "Agreement") having an effective date of _____, 2013 (the "Effective Date") is entered into by and between:

EASTMAN KODAK COMPANY, a New Jersey corporation having offices at 343 State Street, Rochester, New York 14650 (herein "SUPPLIER");

and

RED-ROCHESTER, LLC, a New York limited liability company having offices at _____ (herein "CUSTOMER").

RECITALS

WHEREAS, CUSTOMER, and SUPPLIER have previously entered into an Asset Purchase Agreement dated as of December __, 2012 (the "Purchase Agreement"); and

WHEREAS, pursuant to the Purchase Agreement, SUPPLIER has agreed to, among other things, sell and convey to CUSTOMER, on the Effective Date, various assets used in connection with the generation, treatment and distribution of certain utilities at the manufacturing and industrial park located in the City of Rochester and Town of Greece and known as Eastman Business Park together with certain other assets and real property interests associated therewith and ancillary thereto, including, without limitation, certain buildings described in the Purchase Agreement (the "Buildings") and easements for certain space to CUSTOMER in the buildings known as Eastman Business Park Buildings 12, 31, 42, 46 and 205 (hereinafter, collectively, the "Building Use Easement Area") and certain easements relating to the Buildings and the operation of the utilities (the "Permanent Easement Area"), all as more particularly described in that certain Easement Agreement, dated as of _____, 2012, by and between SUPPLIER and CUSTOMER; and

WHEREAS, SUPPLIER presently provides certain site services at Eastman Business Park for the benefit of the "Premises" (as defined below), and CUSTOMER desires to continue to purchase and receive such services from SUPPLIER after the closing of the transactions contemplated by the Purchase Agreement; and

WHEREAS, the Parties desire to set forth the terms and conditions that will apply to SUPPLIER's provision of such services under this Agreement;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE I -- DEFINITIONS

- 1.1 "Additional Services" has the meaning given to that term in Section 2.2 of this Agreement.
- 1.2 "Agreement" has the meaning set forth in the preamble.
- 1.3 "Building Use Easement Area" has the meaning set forth in the second "WHEREAS" clause.
- 1.4 "Buildings" has the meaning set forth in the second "WHEREAS" clause.
- 1.5 "Confidential Information" has the meaning given to that term in Section 5.1 of this Agreement.
- 1.6 "CUSTOMER" has the meaning set forth in the preamble.
- 1.7 "Customer Indemnified Parties" has the meaning given to that term in Section 8.4(a) of this Agreement.
- 1.8 "Eastman Business Park" means the manufacturing and industrial park owned by SUPPLIER, formerly known as Kodak Park, located in the Town of Greece and the City of Rochester, New York, the boundaries of which may vary from time to time as SUPPLIER sells facilities currently located within Eastman Business Park (excluding Lake Station).
- 1.9 "Effective Date" has the meaning set forth in the preamble.
- 1.10 "EBP Utility Service Territory" has the meaning given to that term in the Utility Services Agreement.
- 1.11 "Initial Term" has the meaning given to that term in Section 6.1 of this Agreement.
- 1.12 "Losses" has the meaning given to that term in Section 8.4(a) of this Agreement.
- 1.13 "Owner" means Kodak Realty, Inc. and any subsequent owner of the Railroad Assets.
- 1.14 "Party" means CUSTOMER or SUPPLIER. "Parties" means CUSTOMER and SUPPLIER.
- 1.15 "Permanent Easement Area" has the meaning set forth in the second "WHEREAS" clause.
- 1.16 "Premises" means the Buildings, the Building Use Easement Area, the Permanent Easement Area and the other improvements on the Permanent Easement Land.
- 1.17 "Purchase Agreement" has the meaning set forth in the first "WHEREAS" clause.

- 1.18 "Railroad Assets" has the meaning given to that term in the Purchase Agreement.
- 1.19 "Railroad Provider" has the meaning given to that term in the Section 2.7(a) of this Agreement.
- 1.20 "Railroad Provision Expiration Date" has the meaning given to that term in Section 2.7(d) of this Agreement.
- 1.21 "Railroad Use Agreement" has the meaning given to that term in the Section 2.7(a) of this Agreement.
- 1.22 "Renewal Term" has the meaning given to that term in Section 6.1 of this Agreement.
- 1.23 "Services" has the meaning given to that term in Section 2.1 of this Agreement.
- 1.24 "SUPPLIER" has the meaning set forth in the preamble.
- 1.25 "Supplier Indemnified Parties" has the meaning given to that term in Section 8.4(b) of this Agreement.
- 1.26 "Term" means the term of this Agreement, consisting of the "Initial Term" and each "Renewal Term" (as those terms are defined in Section 6.1 hereof), subject to the rights of the Parties to terminate this Agreement set forth in Article VI of this Agreement and elsewhere in this Agreement.
- 1.27 "Transfer" means any sale, transfer, assignment, contribution, pledge, donation, granting of any lien, security interest or other encumbrance or other disposition (including by operation of law).
- 1.28 "Utility Services Agreement" means the Utility Services Agreement between SUPPLIER and CUSTOMER dated as of _____, 2013.

ARTICLE II – SERVICES TO BE PROVIDED

2.1 **Site Services.** To the extent SUPPLIER is able to meet CUSTOMER'S requirements for the same, CUSTOMER shall purchase CUSTOMER'S full requirements for the services more particularly described on Schedule A attached hereto and made a part hereof (hereinafter, the "Services") at the Premises during the Term from SUPPLIER. Subject to the limitations set forth in Schedule A, and the other limitations set forth in this Agreement, during the Term, SUPPLIER shall provide CUSTOMER's full requirements for Services at the Premises in compliance with the applicable law.

2.2 **Additional Services.** In the event that at any time during the Term CUSTOMER requires one or more services at the Premises in addition to the Services provided by SUPPLIER (the "Additional Services"), SUPPLIER may, upon advance written request by CUSTOMER, provide

to CUSTOMER a proposal to furnish the Additional Services. If CUSTOMER shall accept SUPPLIER's proposal, SUPPLIER shall provide such Additional Services to CUSTOMER in accordance with such proposal provided CUSTOMER's written acceptance of SUPPLIER'S proposal shall be received by SUPPLIER at least ten (10) Business Days prior to the proposed commencement date of the Additional Services. Notwithstanding the foregoing, nothing in this Section 2.2 shall imply an obligation upon SUPPLIER to furnish any service beyond the Services nor an obligation upon CUSTOMER to purchase such Additional Services from SUPPLIER except to the extent set forth in such proposal accepted by CUSTOMER.

2.3 SUPPLIER's Right of Access to the Premises: CUSTOMER will provide SUPPLIER reasonable access to the Premises for the purpose of providing the Services to the Premises, subject to such reasonable protocols, procedures, rules and regulations as CUSTOMER shall establish from time to time and copies and written notice of which have been provided to SUPPLIER by CUSTOMER. CUSTOMER acknowledges that certain Services to be provided by SUPPLIER pursuant to this Agreement may require SUPPLIER to bring onto the Premises certain large equipment, vehicles or other items which would involve significant additional expense, time or difficulty if SUPPLIER were required to deliver them to the Premises using the public roadways. In addition, in any circumstance determined by SUPPLIER to constitute an emergency, and upon such notice as is practicable under the circumstances, SUPPLIER shall have the right to enter the Premises for the purpose of conducting emergency maintenance or repairs, or attending to other exigent circumstances, arising from the provision of Services hereunder; provided that such access shall not unreasonably interfere with CUSTOMER's use of the Premises or the operation of CUSTOMER's business. The access rights granted to the SUPPLIER under this Section 2.3 will remain in effect throughout the Term, and may not be revoked or terminated by CUSTOMER, nor shall CUSTOMER take any action that would impede, restrict, diminish or otherwise interfere with any of the rights granted SUPPLIER in this Section 2.3.

2.4 Service Curtailment and Interruption: Any one or more of the Services may be curtailed or interrupted at any time by reason of accident or of repairs, alterations or improvements necessary for SUPPLIER to perform SUPPLIER's obligations under this Agreement. In the event of any such curtailment or interruption, SUPPLIER shall inform CUSTOMER of the same by such means as shall allow CUSTOMER to be promptly advised as to the nature and expected duration of such curtailment or interruption.

2.5 Restoration of Service: Where any curtailment or interruption of any Service occurs, SUPPLIER agrees to apply commercially reasonable efforts to restoring the curtailed or interrupted Services at the Premises as quickly as possible.

2.6 Adjustment of Service: SUPPLIER shall have the right, in its reasonable discretion, to modify or adjust the scope, level, amount or timing of a particular Service or the manner in which a Service is provided by SUPPLIER; *provided, however*, that any such modification or adjustment shall not reduce the scope, level, amount or timing of a particular Service or the manner in which a Service is provided by SUPPLIER below that which CUSTOMER reasonably requires to fulfill its obligations to its customers in Eastman Business Park. In addition, if SUPPLIER modifies or adjusts the scope, level, amount or timing of a particular Service or the

manner in which a Service is provided by SUPPLIER pursuant to this Section 2.6, then the Parties shall negotiate in good faith to agree upon a corresponding adjustment to the Services Charge for such Service.

2.7 Railroad Assets:

(a) SUPPLIER agrees to cause Owner to grant to a railroad service provider (a "Railroad Provider") engaged by CUSTOMER from time to time the right to use the Railroad Assets under substantially the same terms and conditions as in that form of Occupancy and Asset Use Agreement attached hereto as Exhibit A (the "Railroad Use Agreement"). CUSTOMER agrees to use commercially reasonable efforts to cause the Railroad Provider to provide rail services within the EBP Utility Service Territory to owners or tenants within the EBP Utility Service Territory. In the event that no Railroad Provider has been engaged by CUSTOMER, SUPPLIER may engage or grant another owner or tenant of the EBP Utility Service Territory the right to engage a Railroad Provider; provided, SUPPLIER or such other owner or tenant must use commercially reasonable efforts to cause the Railroad Provider to provide rail services to CUSTOMER. SUPPLIER agrees not to, and agrees to cause Owner not to, Transfer the Railroad Assets or any portion thereof other than a sale in the ordinary course of business of obsolete or unnecessary Railroad Assets unless, in the instance of a sale by SUPPLIER, SUPPLIER simultaneously Transfers all or substantially all of the Railroad Assets to a single person or entity and such person or entity assumes in writing all of SUPPLIER's obligations under this Section 2.7 or, in the instance of a sale by Owner, Owner simultaneously Transfers all or substantially all of the Railroad Assets to a single person or entity and such person or entity assumes in writing all of Owner's obligations under the Railroad Use Agreement, in a form reasonably acceptable to CUSTOMER.

(b) SUPPLIER hereby unconditionally guarantees to CUSTOMER the full performance by Owner and by Owner's successors or assigns of all of Owner's obligations under the Railroad Use Agreement. This guarantee shall be continuing in nature and shall terminate only upon full performance of all the terms, covenants, and conditions required to be kept, observed, and performed by Owner under the Railroad Use Agreement.

(c) In the event Owner shall fail to pay the cost of any major repair or capital expenditure as provided in such Railroad Use Agreement, and in the further event that SUPPLIER shall fail to pay such cost within twenty (20) days of written demand by CUSTOMER, CUSTOMER shall have the right, but under no circumstances the obligation, to pay such cost and to offset such cost against any amounts otherwise due SUPPLIER hereunder.

(d) The obligations under this Section 2.7 shall automatically expire without any action by the Parties at the time that CUSTOMER no longer requires the delivery of coal to Eastman Business Park (the "Railroad Provision Expiration Date") except that the guarantee of SUPPLIER set forth in Section 2.7(b) shall continue until such time as all of the obligations of Owner that have arisen or accrued prior to the Railroad Provision Expiration Date shall have been fully performed.

ARTICLE III – CHARGES FOR SERVICES

3.1 Pricing: CUSTOMER agrees that the charges for the Services, shall be computed in accordance with the provisions of Schedule B attached hereto and made a part hereof, which is entitled “Services Charges”, and CUSTOMER agrees to pay SUPPLIER for the Services pursuant to the provisions of this Article III and Article IV below.

3.2 Taxes. Any and all sales taxes, utility gross receipts taxes or similar taxes or charges imposed on the delivery and/or sale of the Services, whether imposed by law upon SUPPLIER or CUSTOMER, shall be the responsibility of CUSTOMER. Such taxes shall be collected by SUPPLIER from CUSTOMER by proper invoice and paid over by SUPPLIER to the appropriate taxing jurisdiction. Notwithstanding the foregoing, SUPPLIER shall be solely responsible for any and all income taxes payable by SUPPLIER in connection with the delivery and/or sale of the Services.

ARTICLE IV - PAYMENT

4.1 Invoices: Invoices for Services rendered shall be issued electronically after each month during the Term. Each invoice shall itemize each Service provided during the prior month.

4.2 Payment: CUSTOMER shall be responsible for payment of the invoices for each month and all payments for Services provided by SUPPLIER under this Agreement shall be made net twenty (20) days from the date of SUPPLIER’s electronic invoices for Services. In the event that CUSTOMER fails to make payment of all or any part of any invoice as described in this Section 4.2, SUPPLIER may, but shall not be obligated to, issue a second invoice for any outstanding amount.

4.3 Late Payment: Any amount not paid by twenty (20) days from the date of SUPPLIER’s electronic invoice for Services shall be late, and shall be subject to a late charge equal to 1.5% per month of the total unpaid amount.

4.4 Discontinuance of Services for Late Payment: In the event that CUSTOMER fails to make payment within ninety (90) days from the date of SUPPLIER’s electronic invoice for Services, SUPPLIER may, in SUPPLIER’s discretion, discontinue provision of any or all Services to the Premises on ten (10) business days’ written notice, provided such payment is not made within such ten (10) business day period. If SUPPLIER discontinues any Service or Services under this Section 4.4, SUPPLIER shall not thereby be deemed to have breached SUPPLIER’s obligations to CUSTOMER under this Agreement, or to have otherwise harmed or caused harm to CUSTOMER in any regard. In addition, SUPPLIER’s discontinuance of any Service under this Section 4.4 shall not relieve CUSTOMER of CUSTOMER’s duties and obligations under this Agreement, and such discontinuance shall be in addition to any other legal or equitable remedies available to SUPPLIER.

ARTICLE V -- CONFIDENTIAL INFORMATION

5.1 During the Term, certain information that is considered proprietary or confidential may be disclosed or exchanged between the Parties. The term "Confidential Information" shall mean information disclosed hereunder by one Party to the other Party in accordance with the following procedure:

(a) when disclosed in writing, Confidential Information shall be labeled as being confidential; and

(b) when disclosed orally, Confidential Information shall be identified as confidential at the time of disclosure, with subsequent confirmation to the other Party in writing within thirty (30) days after disclosure, identifying the date and type of information disclosed.

In addition, the existence and terms and conditions of this Agreement (including without limitation the amount of the charge rates and total charges for Services) shall be deemed to be Confidential Information and shall be treated as such by each Party.

5.2 The rights and obligations of the Parties with respect to Confidential Information shall survive termination or expiration of this Agreement for one (1) year. Each Party shall hold in confidence the other's Confidential Information, shall disclose such information only to those persons whose work in connection with this Agreement requires such disclosure, and shall not, without the prior written consent of the other Party, disclose such information to any person except its own employees, contractors, attorneys, accountants and consultants who have a need to know and are bound to keep such information confidential, and shall not use the other's Confidential Information for any purpose except to perform its obligations under this Agreement. These obligations shall not apply to any Confidential Information to the extent that it:

(a) is or becomes a matter of public knowledge through no fault of the receiving Party;

(b) is lawfully in the possession of the receiving Party in written or other recorded form before the time of disclosure by the disclosing Party;

(c) is lawfully acquired by the receiving Party from a source that is not under obligation to the disclosing Party regarding disclosure of such information;

(d) is disclosed by the disclosing Party to any third party on a nonconfidential basis;

(e) is required to be disclosed by operation of law, including, without limitation, regulatory or governmental rules requiring approval prior to marketing products; or

(f) is developed by the receiving Party independently of the providing or receiving of the Services.

ARTICLE VI – TERM, TERMINATION AND SURRENDER RIGHTS

6.1 Term. This Agreement shall become effective on the Effective Date and, unless sooner terminated as provided herein, shall continue through December 31, 2019 (the “Initial Term”). Upon the expiration of the Initial Term and each subsequent “Renewal Term” (as hereinafter defined), as applicable, this Agreement shall be automatically extended for an additional period of five (5) years (each, a “Renewal Term”).

6.2 Early Termination by SUPPLIER. SUPPLIER shall have the right to cease providing, and to terminate this Agreement with respect to, any one or more of the Services to the Premises at any time during the Term if SUPPLIER has decided to permanently cease to provide such Service to all or substantially all of SUPPLIER’s remaining buildings in Eastman Business Park, by delivering written notice of such cancellation to CUSTOMER no less than twelve (12) months prior to the effective date thereof, provided that replacement Service or Services are available to CUSTOMER at the Premises upon the effective date of such termination. In addition, SUPPLIER shall have the right to cease providing any Service, regardless of the availability of alternate services, if SUPPLIER is prevented from continuing to provide such Service by a change in applicable law or regulations, or the application thereof. Upon a termination of Services pursuant to this Section 6.2, the cost of obtaining alternative services after the date of such termination shall be the sole responsibility of CUSTOMER.

6.3 Surrender of Building Use Easement Areas by CUSTOMER. In the event CUSTOMER surrenders the use of all or any portion of the Building Use Easement Area in accordance with the Easement Agreement dated _____, 2012 by and between CUSTOMER and SUPPLIER, SUPPLIER shall adjust the Building Use Fee shown on Schedule B accordingly.

ARTICLE VII – ASSIGNMENT OF THIS AGREEMENT

7.1 By CUSTOMER. Except as provided below, CUSTOMER may not assign this Agreement or any of the benefits hereunder to any third party without the prior written consent of SUPPLIER, which consent shall not be unreasonably withheld, conditioned or delayed.

(a) Assignment to Permitted Assignee. CUSTOMER shall have the right to assign this Agreement and the benefits hereunder (in whole or in part) to a permitted assignee under that certain Utility Rights Agreement dated _____ by and between the Parties without SUPPLIER’s prior written consent and upon such assignment SUPPLIER shall look solely to CUSTOMER’S assignee for performance of the obligations of CUSTOMER to which the assignment applies.

(b) Assignment to Subsidiary, Affiliate or Purchaser. CUSTOMER shall have the right to assign this Agreement and the benefits hereunder (in whole or in part) to any parent, subsidiary or affiliate of CUSTOMER or to any party (other than a permitted assignee pursuant to 7.1(a)) that purchases all or a portion of the Premises from CUSTOMER without obtaining the consent of SUPPLIER provided SUPPLIER shall have received either (a) written confirmation

from the proposed assignee that it shall assume all of the obligations and duties of CUSTOMER under this Agreement accruing thereafter, or (b) a copy of the agreement between CUSTOMER and the proposed assignee assigning this Agreement and pursuant to which the proposed assignee has agreed to assume all of the obligations and duties of CUSTOMER under this Agreement accruing after the proposed assignment. Upon the effective date of any such assignment by CUSTOMER, SUPPLIER agrees that SUPPLIER shall look solely to CUSTOMER's assignee for performance of the obligations of Customer to which the assignment applies, and SUPPLIER shall release CUSTOMER from any and all liability for such performance.

Any attempted assignment by CUSTOMER in contravention of the above shall be null and void and of no force or effect.

7.2 By SUPPLIER. Except as provided below, SUPPLIER may not assign this Agreement or any of the benefits hereunder to any third party without the prior written consent of CUSTOMER, which consent shall not be unreasonably withheld, conditioned or delayed.

(a) Assignment to Purchaser of Business Assets. SUPPLIER may assign this Agreement without CUSTOMER's consent to any third party which acquires all or substantially all of that portion of the business assets of SUPPLIER to which this Agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise, provided that CUSTOMER shall have received either (a) written confirmation from the proposed assignee that it shall assume all of the obligations and duties of SUPPLIER under this Agreement accruing thereafter, or (b) a copy of the agreement between SUPPLIER and the proposed assignee assigning this Agreement and pursuant to which the proposed assignee has agreed to assume all of the obligations and duties of SUPPLIER under this Agreement accruing after the proposed assignment. Upon the effective date of any such assignment by SUPPLIER, CUSTOMER agrees that CUSTOMER shall look solely to SUPPLIER's assignee for performance of the Services to which the assignment applies, and CUSTOMER shall release SUPPLIER from any and all liability for such performance.

Any attempted assignment by SUPPLIER in contravention of the above shall be null and void and of no force or effect.

ARTICLE VIII – LIABILITY, INDEMNIFICATION AND INSURANCE

8.1 Limitation of SUPPLIER's Liability. SUPPLIER shall not be liable for any personal injury, death, or property damage to any person or entity (including CUSTOMER or any other Customer Indemnified Parties) resulting in any way from: (i) the interruption or failure of SUPPLIER to provide any Service hereunder, or (ii) a fire, explosion or any other event, the occurrence of which the Fire Protection and Emergency Services or the Security Services (as those Services are described in Schedule A) were designed to prevent or control, unless and only to the extent caused by the gross negligence or willful misconduct of SUPPLIER, and provided that the limitations of Section 8.2 of this Agreement shall apply to and limit the liability of SUPPLIER under this Section 8.1.

8.2 Consequential Damages. It is specifically agreed and understood that neither Party will be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith, in contract or in tort (including negligence), under any warranty, or otherwise, including without limitation CUSTOMER's failure to accept, or SUPPLIER's failure to deliver, Services at any time. This Section 8.2 shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise.

8.3 Mutual Release and Waiver of Subrogation. SUPPLIER and CUSTOMER hereby waive on behalf of themselves and their respective insurers, any claims that either actually may have against the other for loss or damage to their respective property resulting from perils covered by the standard form of all risk property damage insurance, including vandalism and malicious mischief coverage. It is understood that this waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault, neglect or negligence of either SUPPLIER or CUSTOMER and whether or not insurance is in force. If required by policy conditions, each Party shall secure from its property insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other Party.

8.4 Indemnification.

(a) By SUPPLIER. Subject to the limitations set forth in Sections 8.1, 8.2 or 8.3, SUPPLIER shall indemnify, defend and hold harmless CUSTOMER and CUSTOMER's members (together, the "Customer Indemnified Parties") from and against any and all claims, demands, administrative or judicial proceedings, costs, expenses (including reasonable attorneys' fees and expenses), liabilities, damages, judgments or awards (together, "Losses") asserted against, resulting from, imposed upon or incurred by any Customer Indemnified Party by reason of or resulting from: (i) Losses of any person or entity (including Customer Indemnified Parties) arising, directly or indirectly, out of the gross negligence or willful misconduct of SUPPLIER or any Supplier Indemnified Party in connection with the Services or this Agreement, or the default of SUPPLIER under this Agreement; or (ii) Losses of third parties including the employees of SUPPLIER or its contractors or agents, for personal injury, death, or property damage arising, directly or indirectly, out of the provision of the Services under this Agreement on or after the Effective Date, except in the case of either (i) or (ii) above, to the extent caused by the gross negligence or willful misconduct of CUSTOMER or any other Customer Indemnified Party.

(b) By CUSTOMER. Subject to the limitations set forth in Section 8.2 and 8.3, CUSTOMER shall indemnify, defend, and hold harmless SUPPLIER and SUPPLIER's officers (together, the "Supplier Indemnified Parties") from and against any and all Losses asserted against, resulting from, imposed upon or incurred by any Supplier Indemnified Party by reason of or resulting from: Losses of any person or entity (including the Supplier Indemnified Parties) for personal injury, death, or property damage arising directly from any violation of or failure to observe or perform any condition, provision or agreement of this Agreement on CUSTOMER's part to be observed or performed hereunder.

8.5 Insurance.

(a) SUPPLIER and CUSTOMER shall each, at their own cost and expense, maintain and keep in force at all times during the Term:

(i) Commercial General Liability Insurance, including coverage for Products/Completed Operations and Contractual Liability, covering all claims for personal injury, death or property damage occurring on, in or about the Buildings and Eastman Business Park respectively, with a limit of liability of not less than \$10,000,000 per occurrence and aggregate combined single limit for bodily injury and property damage;

(ii) Employers' Liability coverage with a limit of liability of not less than \$1,000,000; and

(iii) Worker's Compensation Insurance covering all claims under applicable Workers' Compensation statutes or any similar statutes or requirements.

(b) If either SUPPLIER or CUSTOMER contracts with any third party to perform maintenance activities or any other activity, or permits such Person to conduct any of maintenance activities or any other activity of any kind on the Premises or in the Buildings, SUPPLIER or CUSTOMER, as the case may be, shall be responsible for the acts of such Person in accordance with the provisions of this Agreement, and SUPPLIER or CUSTOMER, as the case may be, shall bear all responsibility for assuring the adequacy of any insurance carried by such Person. The amount of such insurance carried by such Person shall not limit SUPPLIER's or CUSTOMER's respective liability hereunder.

(c) CUSTOMER and SUPPLIER shall also maintain and keep in force at all times during the Term, all risk property damage insurance covering all property of CUSTOMER or SUPPLIER, respectively, located at or serving the Premises, including equipment, machinery, stock, supplies and leasehold improvements, for the full replacement value of such property.

ARTICLE IX -- GENERAL TERMS AND CONDITIONS

9.1 Notices and Communications. All notices and other communications required or permitted under this Agreement must be in writing and will be delivered personally or sent by commercial courier, or by postage prepaid certified mail return receipt requested, or by registered mail or by facsimile, at the option of the sending Party. All communications must be sent to, and shall be effective on the date of delivery at, the receiving Party's address indicated below. Such addresses may be changed by submitting a notice as provided in this Section 9.1 to the other Party.

Communications to SUPPLIER:

Eastman Kodak Company
1669 Lake Avenue
Rochester, New York 14652-3709
Attn.: Manager, Utilities Department
Facsimile: (585) 722-9671

Communications to CUSTOMER:

RED-Rochester, LLC
[]
[]
Attn:
Facsimile:

With a copy to:

Eastman Kodak Company
343 State Street
Rochester, New York 14650-0208
Attn: General Counsel
Facsimile: (585) 724-9448

RED-Rochester, LLC
630 Quail Ridge Drive
Westmont, IL 60559
Attn: General Counsel
Facsimile: (630) 590-6037

9.2 Survival. The following provisions shall survive termination of this Agreement: Article VI, Confidential Information; Article VII, Representations and Warranties; Article VIII, Term and Termination Rights; Article X, Liability, Insurance and Indemnification; and this Article XI, General Terms and Conditions.

9.3 Conflicts in Documentation. In the event that a conflict arises between this Agreement and any purchase order, separate agreement or schedule implementing this Agreement, the terms of this Agreement shall prevail, unless such purchase order, agreement or Schedule by its terms modifies this Agreement, describes the scope of such modification, and is agreed to in a separate writing by a duly authorized representative of each Party.

9.4 Amendments. No addition to, deletion from or modification of any of the provisions of this Agreement shall be binding upon the Parties unless such deletion, addition or modification is made in writing and is signed by a duly authorized representative of each Party.

9.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all previous discussions, representations, understandings, and agreements.

9.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which shall together constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

9.7 Complaints and Dispute Resolution Procedures. Complaints about any Service, Services, or other issues shall first be made in writing and submitted pursuant to the notice provisions of Section 9.1 hereof. Any such written complaint shall be brief, shall state the nature of the dispute, the relevant facts, and the desired relief. SUPPLIER shall promptly investigate any such complaint in a fair manner, and report the results in writing to CUSTOMER. SUPPLIER will not terminate any Services to CUSTOMER during the pendency of a complaint before SUPPLIER; provided that CUSTOMER shall pay the undisputed portion of any

outstanding bill for Services as well as all bills for current or subsequent Services received during such pendency.

9.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without consideration of the conflicts of laws principles thereof. The Parties expressly consent to the jurisdiction of the courts of the State of New York as to any issues related to this Agreement, including the validity, enforceability or interpretation thereof.

9.9 Force Majeure. If performance (other than payment) under this Agreement by SUPPLIER or CUSTOMER is prevented or delayed by reason of an act of God or public enemy, war, terrorism, government acts or regulations, administrative acts or decisions, fire, flood, embargo, quarantine, epidemic, labor strike or work stoppage by workers, accident, unusually severe weather or other cause similar or dissimilar to the foregoing and beyond the control of the Party affected, and which cannot be overcome by reasonable diligence, such affected Party shall be excused from such performance to the extent that it is necessarily prevented or delayed thereby, during the period of any such cause; provided, however, that such excused Party shall take all commercially reasonable steps to avoid or remove such causes of its nonperformance and shall continue performance hereunder with dispatch whenever such causes are removed.

9.10 Use of Other Party's Name. Except as necessary to perform their obligations under this Agreement, neither Party may make any reference to the other Party, its trademarks or trade names in advertising, public announcements, or promotional materials without express written permission from the other Party.

9.11 Severability. If any provision of this Agreement is held to be unenforceable under then current laws, the enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such unenforceable provision the parties shall negotiate to add a provision as similar in terms to such unenforceable provision as may be possible.

9.12 Independent Contractor. SUPPLIER and CUSTOMER shall act as independent contractors and nothing herein shall be construed to make either party, or any of their employees, officers, directors or representatives, the agent, employee, partner or servant of the other party.

9.13 Non-Waiver. Failure by either Party at any time to require strict performance of any of the provisions herein shall not waive or diminish a Party's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any obligation, term or condition of this Agreement shall not be deemed as any further or continuing waiver of any other term, provision or condition of this Agreement. A Party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and signed by a duly authorized representative of the Party making such waiver.

9.14 Article and Section Headings. Headings for articles and sections are for convenience only and shall not affect the interpretation of this Agreement.

9.15 Agreement Binding on Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and assigns.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Accepted and Agreed:

EASTMAN KODAK COMPANY

By _____

Title _____

Date _____

Accepted and Agreed:

RED-ROCHESTER, LLC

By _____

Title _____

Date _____

SCHEDULE A

Description of Services

- 1. Security Services.** Subject to the provisions of Section 2.6 hereof, SUPPLIER will provide security services at the perimeter of Eastman Business Park in the manner provided by SUPPLIER from time to time during the Term to other buildings owned by SUPPLIER in Eastman Business Park and to other customers of SUPPLIER in Eastman Business Park. Supplier will provide security badges for CUSTOMER's employees to access the Premises, parking lot gates, and pedestrian turnstiles. Security services shall include parking spaces for CUSTOMER's employees and invitees at Eastman Business Park, which parking spaces shall be allocated and provided to CUSTOMER's employees and invitees in accordance with SUPPLIER's practice with respect to such employees and invitees prior to the closing of the transactions contemplated by the Purchase Agreement. Notwithstanding the above, SUPPLIER agrees to provide such additional parking spaces for such additional employees and invitees as CUSTOMER shall reasonably require from time to time and such parking spaces shall be located such that the same shall be reasonably proximate, when available, to the work location of the vehicle occupants.
- 2. Fire Protection and Emergency Services.** Subject to the provisions of Section 2.6 hereof, SUPPLIER will provide the Premises with fire protection services, hazardous materials release containment services (i.e., spill response) and emergency medical services in the manner provided by SUPPLIER from time to time during the Term to other buildings owned by SUPPLIER in Eastman Business Park and to other customers of SUPPLIER in Eastman Business Park.
- 3. Common Area Maintenance.** Subject to the provisions of Section 2.6 hereof, SUPPLIER will maintain in good condition and repair the common areas appurtenant to or serving the Premises in a manner consistent with SUPPLIER's regular maintenance practices for Eastman Business Park, as they may change from time to time. The common areas appurtenant to or serving the Premises include, among other things, roadways, parking lots, walkways, bridges, gates, fencing, landscaped areas, lighting, corridors, hallways, stairwells, restrooms, and entrances and exits. Subject to the provisions of Section 2.6 hereof, SUPPLIER's maintenance obligations will include snow and ice removal from the common areas consistent with SUPPLIER's snow and ice removal practices in Eastman Business Park, as they may change from time to time. SUPPLIER shall not store removed snow in such a fashion or location as shall interfere with CUSTOMER's operations.

SCHEDULE B

Services Charges

1. 2013 Services Charges. For Services provided during any portion of calendar year 2013, the following rates shall apply to determine the annual charges for the Services (the “Services Charges”):

Services	2013 Annual Service Fee	Monthly Installment of Service Fee
Security Services	\$158,000	\$13,166.66
Fire Protection and Emergency Services	\$183,000	\$15,250.00
Common Area Maintenance	\$500,500	\$41,708.34
Railroad Use Fee	\$260,000	\$21,666.66
Premises Access Fee	\$91,482	7,623.50
TOTAL	\$1,192,982	\$99,415.16

2. Annual Adjustment of Services Charges. The Services Charges will be paid pursuant to the provisions of Article III and Article IV of this Agreement and, subject to the provisions of Section 2.6 hereof, reset at the beginning of each calendar year as an annual amount equal to one million one-hundred ninety-two thousand nine eighty-two hundred dollars (\$1,192,982) multiplied by the Inflation Index Amount with respect to such calendar year as defined in Section 3 of this Schedule B.

3. Calculation of Inflation Index Amount. “Inflation Index Amount” with respect to any calendar year means the amount obtained from the following formula:

$$[0.35 * (PPI / 177.2)] + [0.65 * (CPI / 246.246)] - (1.01^{(y-2013)}) + 1$$

where:

- y = the year for which the Inflation Index Amount is being calculated
- PPI = the Producer Price Index-Commodities, not seasonally adjusted, finished goods less food and energy, 1982 = 100, Series ID#WPUSOP3500, as reported by the United States Department of Labor, Bureau of Labor Statistics, as replaced or revised in accordance with Section 4 of this Schedule B, published in December of the calendar year prior to calendar year y (which will contain data for the month of November of such prior calendar year)
- CPI = the Consumer Price Index for all Urban Consumers (CPI-U), not seasonally adjusted, Northeast urban, all items less food and energy, 1982-1984=100, Series ID #CUUR0100SA0L1E, as reported by the United States Department of Labor, Bureau of Labor Statistics, as

replaced or revised in accordance with Section 4 of this Schedule B, published in December of the calendar year prior to calendar year *y* (which will contain data for the month of November of such prior calendar year)

4. PPI and CPI Availability. If the PPI or CPI (as defined in the definition of Inflation Index Amount) at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then the Parties shall negotiate in good faith to agree upon a substitute index or indices which most closely approximate the unavailable index.

EXHIBIT A

**Occupancy and Asset Use Agreement
(the "Railroad Use Agreement")**

OCCUPANCY AND ASSET USE AGREEMENT

DATED AS OF OCTOBER 4, 2010

BY AND BETWEEN

KODAK REALTY, INC.,

AND

ROCHESTER SWITCHING SERVICES, INC.,

EASTMAN BUSINESS PARK BUILDINGS H-11 AND 207
AND CERTAIN OTHER ASSETS LOCATED AT EASTMAN BUSINESS PARK
ROCHESTER, NEW YORK

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EXHIBITS

- A Map Showing Location of Tracks in the Park
- B Map Showing Location of the Buildings in the Park
- C Loaned Equipment
- D Sold Equipment
- E The Park Consent Decree

APPENDICES

- 1 Capital and Major Repair Plan
 - 2 Scope of Maintenance Services
 - 3 Examples of Major Repairs
-

OCCUPANCY AND ASSET USE AGREEMENT

THIS OCCUPANCY AND ASSET USE AGREEMENT is made and effective as of October 4, 2010 (the "Agreement"), is entered into by and between KODAK REALTY, INC., a New York corporation having its principal place of business at 343 State Street, Rochester, New York 14650 ("Owner"), and ROCHESTER SWITCHING SERVICES, INC., a New York corporation with an office at 1200-C Scottsville Rd., Suite 200, Rochester, NY 14624 ("RSS") and is delivered in accordance with the terms and provisions of that certain Switching Agreement by and between Eastman Kodak Company ("Kodak Co.") and RSS, dated as of September 1, 2010 (the "Services Agreement"), pursuant to which RSS has agreed to provide rail car switching services (the "Switching Services") to Kodak Co. at the industrial park known as Eastman Business Park, located in the Town of Greece and the City of Rochester, County of Monroe, New York, and which park consists of real property and improvements now or formerly owned by Kodak Co. (the "Park").

WHEREAS, Owner is the owner of certain railroad tracks, including rails, cross-ties, sub-grade and other related track structure components (the "Tracks") located in and serving the Eastman Business Park, together with an easement for the right-of-way for the Tracks measuring twelve (12) feet on either side of the centerline of the Tracks; and

WHEREAS, Owner is also the owner of certain equipment used or useful in the providing of the Switching Services, consisting of (i) the locomotives, two-way radio communications equipment, and other equipment listed on EXHIBIT "C" hereto (the "Loaned Equipment"); and (ii) the equipment listed on EXHIBIT "D" hereto (the "Sold Equipment"); and

WHEREAS, Owner owns a leasehold interest in the buildings located at Eastman Business Park known as EBP Building H-11 (the "maintenance-of-way shed") and EBP Building 207 (the "locomotive shop"), (together, the "Buildings" or the "Premises"); and

WHEREAS, as contemplated in the Services Agreement, and in consideration of the mutual covenants set forth herein, Owner desires to grant to RSS (i) the exclusive right to occupy and use the Buildings, (ii) the exclusive right to use the Tracks and the Loaned Equipment; and furthermore, Owner desires to sell the Sold Equipment to RSS, all on the terms set forth herein, and RSS desires to accept such exclusive rights of use and occupancy.

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

1. GRANT OF USE AND OCCUPANCY RIGHTS.

(a) Tracks. Owner shall, without charge, provide RSS with exclusive use and occupancy of all of the Tracks during the term of this Agreement. A map showing the location of the Tracks in the Park is attached hereto as EXHIBIT "A" and made a part hereof. The Tracks are provided by Owner to RSS on an "as-is" basis without warranty of any kind by Owner, and RSS hereby accepts such Tracks in their "as-is" condition on the Commencement Date. Furthermore, RSS acknowledges that the Tracks do not require any major repairs or capital expenditures as of the Commencement Date, for purposes of Section 12(b) hereof. Upon the expiration or sooner

termination of this Agreement, RSS will surrender the Tracks to Owner in as good order and condition as received, less any reasonable wear and tear resulting from proper use.

(b) Loaned Equipment. Owner shall, without charge, provide RSS with exclusive use of all of the Loaned Equipment during the term of this Agreement. The Loaned Equipment is provided by Owner to RSS on an "as-is" basis without warranty of any kind by Owner, and RSS hereby accepts such Loaned Equipment in its "as-is" condition on the Commencement Date. Furthermore, RSS acknowledges that the Loaned Equipment does not require any major repairs or capital expenditures as of the Commencement Date, for purposes of Section 12(c) hereof. Upon the expiration or sooner termination of this Agreement, RSS will immediately return the Loaned Equipment to Owner in as good order and condition as received, less any reasonable wear and tear resulting from proper use.

(c) Buildings. Owner hereby allows RSS the exclusive right to occupy that certain space, consisting of the Premises. A map showing the location of the Buildings in the Park is attached hereto as EXHIBIT "B" and made a part hereof. The Premises shall also include the right to use in common with other occupants of the Park those designated access and common areas and related parking, subject to rules and regulations imposed by Owner or Eastman Kodak, as the owner and operator of the Park. It is understood that the grant of occupancy to RSS herein is in the nature of a license and not intended to convey an interest in real property.

2. TRANSFER OF SOLD EQUIPMENT.

The Sold Equipment is hereby sold and transferred, free and clear of all liens and encumbrances, to RSS by Owner for the total sum of \$10. The Sold Equipment is sold to RSS on an "as-is" basis without warranty of any kind by Owner. Upon the termination or expiration of this Agreement, Owner shall have the right (but not the obligation) to repurchase any or all of the Sold Equipment listed on EXHIBIT "D" from RSS for the total sum of \$10, and if Owner exercises such right (by notice to RSS no later than the effective date of the expiration or termination of this Agreement), RSS shall promptly transfer such equipment to Owner free and clear of all liens and encumbrances on an "as-is" basis without warranty of any kind by RSS.

3. TERM.

(a) Initial Term. The term of this Agreement shall commence on the Effective Date of the Services Agreement (as such Effective Date is defined in the Services Agreement) (the "Commencement Date") and shall end at midnight on the date of expiration or termination of the Services Agreement, unless this Agreement shall be sooner terminated in accordance with the terms hereof or extended during the period of Transition Period Services as contemplated in paragraph (b) of this Section 3 below.

(b) Termination Rights. If, at any time, the Services Agreement between the parties hereto is terminated, whether such termination arises as a result of convenience, if and to the extent provided in such Services Agreement, or as a result of an event of default pursuant to the Services Agreement or otherwise, this Agreement shall terminate as of the later of: (i) the date of such termination of the Services Agreement, or (ii) if RSS continues to provide Switching Services to Kodak Co. during the transition period contemplated by Section 2.8 of the Services

Agreement (the "Transition Period Services"), the date that RSS is no longer required to provide such Transition Period Services. At the election of Owner, RSS shall assign all of its rights and obligations under this Occupancy Agreement to the Successor Supplier, provided that RSS shall have no responsibility to Owner or the Successor Supplier for obligations arising under this Occupancy Agreement subsequent to the date of such assignment. Upon such termination, RSS shall surrender the Premises in accordance with the provisions of Section 27 hereof, and shall surrender and return the Tracks and the Loaned Equipment, respectively, in accordance with the provisions of Section 1 hereof, as soon as possible thereafter.

4. RSS'S USE OF AND ACCESS TO THE PREMISES, TRACKS AND LOANED EQUIPMENT.

(a) Permitted Uses. The Premises shall be occupied, and the Premises, the Tracks and the Loaned Equipment shall be used by RSS for purposes of providing Switching Services to Eastman Kodak, and for related maintenance and repair services, as contemplated in the Services Agreement, and for general office and storage purposes ancillary thereto, and for no other purpose without the prior written consent of Landlord, which may be granted or withheld in Owner's sole discretion. Notwithstanding the foregoing, RSS shall also have the right to use the Tracks to provide switching services to "Connected Customers" without any charge or compensation payable to Owner. "Connected Customers" shall be customers of RSS which own or lease sidings or tracks that are connected to the Tracks with the permission of Owner and who are located on property in or formerly part of the Eastman Business Park. Switching services to Connected Customers will be at the option of RSS, and will be provided pursuant to a contract between RSS and Connected Customer. RSS shall not be liable for any costs incurred by Owner that might result from a recharacterization of RSS's operations as contemplated in Section 8 of the Services Agreement due to RSS providing switching services to Connected Customers; and nor will Owner be liable for any costs incurred by RSS that might result from such a recharacterization. RSS is permitted to use and bring into the Premises or on the Tracks any Hazardous Materials that are currently used or brought into the Premises or on the Tracks by Owner or Kodak Co. in connection with Kodak Co.'s current use of the Premises and the Tracks. RSS shall not bring into or use in, or permit to be brought into or used in, on or around the Premises or the Tracks, any Hazardous Materials (as defined below) which are not currently used by Owner or Kodak Co. in connection with Kodak Co.'s current use of the Premises and the Tracks, unless: (i) such Hazardous Material has been disclosed by RSS to Owner in writing (which writing shall generally describe the amount and nature of the use thereof and include a copy of the RSS's Material Safety Data Sheets or other similar documentation required to be maintained with respect to such material by RSS under applicable law or regulation); and (ii) Owner has granted its written approval, in advance, of the use of such Hazardous Material, which approval may be granted or withheld in Owner's sole discretion. If, at any time during the term of the Agreement, Owner notifies RSS that it is conducting a process or using a material in violation of the provisions of this paragraph (a), RSS shall promptly cease any such process or use.

(b) Restrictions on RSS's Activities. Owner and RSS acknowledge that there are certain restrictions on certain activities of RSS that are in effect due to the particular characteristics of the Premises and the Building or manufacturing complex in which the Premises are located, the exclusive relationships between Owner and third parties, or otherwise. Such

restrictions are more particularly detailed in the Rochester Site Requirements for Contractors and Subcontractors (the "Rochester Site Requirements") promulgated by Owner and attached to the Services Agreement as APPENDIX C. RSS shall comply and shall cause all of its agents, contractors, employees, visitors and any others using the Premises to comply with such site requirements. At any time on reasonable prior notice to RSS, Owner reserves the right to promulgate and enforce additional rules and regulations with respect to RSS's use and occupancy of the Premises.

5. NO RENT OR OTHER FIXED CHARGES.

RSS shall not be responsible for any based or fixed rent or other fixed charges for use of the Premises, the Tracks or the Loaned Equipment.

6. CONDITION OF THE PREMISES; OWNER'S RIGHT TO REQUEST CONSTRUCTION OF ADDITIONAL TRACK.

(a) RSS accepts the Premises in its present, as-is condition. RSS's taking possession of the Premises shall be conclusive evidence as against RSS that the Premises were in good order and satisfactory condition when RSS took possession. No promises of Owner to alter, remodel, repair or improve the Premises and no representations respecting the condition of the Premises have been made by Owner to RSS.

(b) Owner shall have the right during the term of the Agreement to request that RSS design and install additional railroad track at the Park for use in the Switching Services. Upon such request, RSS shall promptly prepare an estimate of the cost of installing such additional track (or cause such estimate to be prepared), and provided that such estimate is approved in writing by Owner, RSS shall undertake to install such track (or cause it to be installed), and shall invoice the cost thereof to Owner. Upon completion of the installation of such additional track, the additional track shall become part of the Tracks for all purposes under this Agreement. Nothing herein shall obligate RSS to maintain, repair or replace any track which is not part of the Tracks.

7. SERVICES.

Owner, in Owner's sole discretion and at Owner's cost and expense, shall provide or cause to be provided those utilities and services reasonably necessary for RSS to use and occupy the Premises and reasonably similar to those utilities and services otherwise provided to the remaining occupants of the Building or to similar buildings used for similar purposes within the Park. Except as otherwise expressly permitted herein, RSS shall have no right to obtain any other utilities or services from anyone other than Owner without first obtaining Owner's written consent. Owner expressly agrees to provide the following services:

(a) Emergency Services. Owner shall provide fire and explosion prevention, pressure vessel safety, fire fighting, hazmat, emergency medical services and related services with respect to the Premises (collectively, the "Emergency Services") throughout the term of this Agreement. In accordance with all of the rules, regulations and procedures established from time to time by Owner, such Emergency Services will continue at the same levels and for the same events as were provided to the Buildings immediately prior to the Commencement Date.

(b) Security. Owner shall provide RSS with perimeter security services (the "Alarm Services") at the Buildings, which Alarm Services shall be provided in the manner and at the times reasonably determined by Owner to be necessary for the adequate protection of the Buildings. In accordance with all of the rules, regulations and procedures of Owner established from time to time, such Alarm Services will continue at the same levels and for the same events as were provided to the Buildings immediately prior to the Commencement Date.

(c) Utilities. Owner shall provide RSS with those utility services (excluding any required to be provided by RSS in Section 7(f) herein) reasonably necessary for RSS's use and occupancy of the Premises.

(d) Trash Removal. Owner shall provide trash and refuse removal services to RSS on the same frequency as such services are provided to other occupants of the Park, which shall consist of the removal from the Buildings by Owner of normal quantities of trash and other non-hazardous materials discarded by RSS, provided that such trash and material is placed by RSS in designated dumpsters or other appropriate receptacles. RSS will segregate trash as reasonably requested by Owner to facilitate recycling as opportunities to recycle are developed by Owner.

(e) Site and Building Maintenance. Owner shall be responsible for maintenance and repair of the following elements of the Buildings during the term hereof: all structural elements of the Building, the exterior of the Building, all Building mechanical systems (including heating, ventilating, air conditioning, plumbing, sprinklers and electric systems), Building equipment maintenance (including engineering support, but excluding maintenance of any Loaned or Sold Equipment, or other equipment used by RSS to provide the Switching Services), together with landscaping and other maintenance services for the grounds and land surrounding the Building including the parking lots and for all common areas of the Park. Except as otherwise provided herein, RSS shall otherwise keep the Premises in good order, condition and repair.

(f) Other Services. RSS, at its sole cost and expense, shall provide the following services to the Premises:

(i) Personal Property. RSS shall be responsible for maintenance and repair of any furniture, fixtures, personal property or installations made by RSS, located within the Building.

(ii) Security. Except for Building perimeter security as described above, RSS shall be responsible for all security (including installation and maintenance of same, subject expressly to the terms of this Agreement including, but not limited to, the provisions of Paragraph 11 herein) for and at the Premises.

(iii) Process Ventilation. RSS shall contract for and be responsible for all air handling for any industrial processes. Any changes required to the Premises as a result of such responsibility shall be made in full compliance with the provisions of Section 11(d) herein.

(iii) Cleaning and Janitorial Services; Hazardous Waste Removal; Removal of Chemically Contaminated Solid Waste. As and to the extent it determines necessary, RSS shall provide cleaning and janitorial services to the Premises. In

addition, RSS shall, in full compliance with all applicable laws, rules, regulations and requirements of any governmental entity and Owner, be responsible for the removal of hazardous substances, hazardous waste and/or chemically contaminated solid waste.

(iv) Hazardous Wastewater. RSS shall, in full compliance with all applicable laws, rules, regulations and requirements of any governmental entity and Owner, be responsible for the removal of hazardous wastewater and/or chemically contaminated liquid waste.

(v) Voice and Data. RSS shall be responsible for obtaining all voice and data telecommunication, information technology and related services.

(g) Interruptions in Service. It is understood that Owner does not warrant that any of the services referred to above, or any other services which Owner may supply, will be free from interruption. RSS acknowledges that any one or more of such services may be suspended by reason of accident or of repairs, alterations or improvements necessary to be made, or by strikes or lockouts, or by reason of operation of law, or causes beyond the reasonable control of Owner. No such interruption of service shall be deemed an eviction or disturbance of RSS's use and possession of the Premises, or any part thereof.

(h) Additional Work or Services. Notwithstanding any other provisions herein, should RSS require any work or services in addition to those described above in this section, Owner may upon advance request by RSS furnish such additional service and RSS agrees to pay Owner hereunder, within fifteen (15) days after receipt of a statement from Owner, such charges as may be agreed on but in no event less than Owner's actual cost plus overhead plus any applicable taxes imposed for the additional services provided. Any such request shall require at least one business day's advance notification.

8. INDEMNIFICATION; WAIVER OF CERTAIN CLAIMS.

(a) RSS shall be solely responsible for, and shall bear all liability, losses, costs, or expenses (including reasonable attorney's fees) resulting from personal injury (including death arising there from) and loss and damage to property caused by the negligence of RSS, its agents or employees, or by the violation by RSS, its agents or employees of any term or provision of this Agreement; provided, if such liabilities are caused by the joint or concurrent negligence of RSS and any third party (other than Owner), RSS shall only be responsible for such liabilities to the extent it is determined to be negligent by final judgment of a court of competent jurisdiction. RSS hereby agrees to indemnify and hold Owner harmless from all such liability, losses, costs or expenses, including reasonable attorneys' fees for which RSS is responsible pursuant to the preceding sentence. Notwithstanding anything to the contrary contained herein, RSS shall not be responsible for, and shall not bear liability, losses, costs, or expenses (including reasonable attorney's fees) resulting from derailments or accidents caused by mechanical failures on Rail Cars owned by, controlled by, or leased to Owner, if any, or for derailments and accidents caused by track failure of the Tracks if the track failure is a result of Owner's failure to approve, as contemplated in Section 12(b) of this Agreement, the making of major repairs or capital expenditures to the Tracks which RSS notifies Owner in writing are required to bring the Tracks

into compliance with one or more material safety requirements contained in the regulations of the Federal Railroad Administration applicable to Class I Track.

(b) Owner shall be solely responsible for, and shall bear all liability, losses, costs, or expenses (including reasonable attorney's fees) resulting from personal injury (including death arising there from) and loss and damage to property caused by or resulting from: (i) the negligence of Owner, its agents or employees, (ii) the violation by Owner, its agents or employees of any term or provision of this Agreement, or (iii) Owner's failure to approve, as contemplated in Section 12(b) of this Agreement, the making of major repairs or capital expenditures to the Tracks which RSS notifies Owner in writing are required to bring the Tracks into compliance with one or more material safety requirements contained in the regulations of the Federal Railroad Administration applicable to Class I Track; provided, if such liabilities are caused by the joint or concurrent negligence of Owner and any third party (other than RSS), Owner shall only be responsible for such liabilities to the extent it is determined to be negligent by final judgment of a court of competent jurisdiction. Owner hereby agrees to indemnify and hold RSS harmless from all such liability, losses, costs or expenses, including reasonable attorneys' fees for which Owner is responsible pursuant to the preceding sentence.

(c) Notwithstanding the provisions of paragraphs (a) and (b) hereof, all liability, losses, costs, or expenses (including reasonable attorney's fees) resulting from personal injury (including death arising there from) or loss or damage to property caused by the joint or concurrent negligence of Owner and RSS shall be borne by each of them to the extent it is determined to be negligent either by agreement between the Parties or by final judgment of a court of competent jurisdiction.

(d) RSS, to the extent permitted by law, waives all claims it may have against Owner, and against Owner's agents, employees and contractors for damages (including indirect and consequential damages) for injuries to person or damage to property sustained by RSS or by any occupant of the Premises, or by any other person, resulting from any part of the Premises or any Building equipment or Building appurtenances becoming out of repair, or resulting from any accident in or about the Premises or resulting directly or indirectly from any act or neglect of RSS, its employees, agents, representatives or contractors or of any other person for whom RSS is responsible, except that this waiver shall not apply to injuries to persons or damage to property to the extent caused by or directly resulting from the negligence or willful misconduct of Owner, its agents, subagents or employees. This waiver, when applicable, shall include not only direct damages but also claims for consequential damages and any claims for abatement of Rent due hereunder, it being intended that this waiver be absolute, except as otherwise expressly provided herein.

9. INSURANCE.

(a) To Be Maintained by RSS. RSS shall, at its expense, procure and maintain during the term of this Agreement the following insurance coverage:

- (i) Workers' Compensation. Insurance protecting RSS and its employees from any and all claims under applicable Workers' Compensation statutes.
- (ii) Employer's Liability. Employer's Liability coverage with a limit of liability not less than \$1,000,000.00 or as otherwise required by law, whichever is higher.
- (iii) Liability. Liability insurance covering all the risks entailed in providing Switching Services with a combined single limit of at least \$5,000,000 per occurrence and \$10,000,000 annual aggregate. Such liability insurance shall include coverage of the contractual liability assumed in this Agreement.
- (iv) Comprehensive Automobile Liability. Comprehensive Automobile Liability Insurance with respect to any and all owned, hired and non-owned vehicles to be used by RSS or any agent, employee or representative of RSS on or about the Premises or in connection with the use of property or any other real property owned by Owner or Kodak Co. with a limit of liability of at least \$1,000,000 per occurrence for any such vehicles not driven inside the fence line of the Park and with a limit of liability for vehicles driven inside the fence line of the Park of not less than required in the Services Agreement.
- (v) Requirements. The insurance required to be maintained hereunder shall be maintained under policies issued by insurers licensed to do business in the State of New York and being of recognized responsibility. RSS's policies evidencing liability coverage shall cover Owner and Kodak Co., and their agents, servants and employees as additional insureds.
- (vi) Certificate of Insurance. RSS shall furnish Owner with a certificate of insurance within ten (10) days before the Commencement Date showing the coverage, clauses and endorsements herein required and thereafter such certificate shall be furnished by RSS to Owner not less than ten (10) days prior to the expiration date of each such policy. Such certificates shall provide that the insurance company will endeavor to provide thirty (30) days written notice of termination or non-renewal to all certificate holders under the policy.
- (vii) Third Parties. If, with the prior approval of Owner (which will not be unreasonably withheld), RSS contracts with any third party to perform any services or permits such a third party to conduct any activity of any kind at the Premises, RSS shall be responsible for the acts of such third party and RSS shall bear all responsibility for assuring the adequacy of any insurance carried by any such third party. The amount of such insurance carried by any third party shall not limit RSS's liability hereunder.
- (viii) No Limitation. The liability of RSS and any third parties relating to RSS shall not be limited to the insurance required to be maintained as part of this Agreement.

(b) To Be Maintained by Owner.

(i) Owner shall, at its expense, procure and maintain during the term of this Agreement Commercial General Liability Insurance, including without limitation Products/Completed Operations and Contractual Liability, covering all claims of damages for all injuries, including death, and all claims on account of property damage with a limit of liability not less than that required in the Services Agreement. Such commercial general liability insurance shall include coverage of the contractual liability assumed in this Agreement.

(ii) Requirements. The insurance required to be maintained hereunder shall be maintained under policies issued by insurers licensed to do business in the State of New York and being of recognized responsibility. Owner's policy evidencing commercial general liability coverage shall cover RSS, and its agents, servants and employees as additional insureds.

(iii) Certificate of Insurance. Owner shall furnish RSS with a certificate of insurance within ten (10) days before the Commencement Date showing the coverage, clauses and endorsements herein required and thereafter such certificate shall be furnished by Owner to RSS not less than ten (10) days prior to the expiration date of each such policy. Such certificates shall provide that the insurance company will endeavor to provide thirty (30) days written notice of termination or non-renewal to all certificate holders under the policy.

(iv) No Limitation. The liability of Owner shall not be limited to the insurance required to be maintained as part of this Agreement.

10. ASSIGNMENT AND SUBLETTING.

This Agreement may not be assigned or any rights to use the Premises or the Tracks transferred or any part thereof (including any portion of the Loaned Equipment) used or occupied by any third party, without the prior written consent of Owner, which consent may be granted or withheld by Owner in its sole discretion, provided, however, that this Agreement may be assigned by RSS without the consent of Owner to any permitted assignee of the Services Agreement. For purposes of this section, the sale to another person or entity of all or substantially all of the assets of RSS's business or a merger or consolidation of RSS into or with another entity or the acquisition of control of RSS, directly or indirectly, by another person or entity shall constitute an assignment of this Agreement. Any attempted assignment or transfer or other agreement in contravention hereof shall be null and void. No transfer of this Agreement shall operate to release RSS from its obligations under this Agreement. Notwithstanding the foregoing, RSS shall be entitled to assign this Agreement without the consent of Owner (but with prior written notice to Owner) to any entity which is a direct or indirect subsidiary or parent company of RSS, or which is controlled by or under common control with RSS, provided that the entity to which the Agreement is assigned has validly assumed all of RSS's obligations under the Services Agreement. RSS agrees to furnish Owner upon demand at any time, such information and assurances as Owner may reasonably request that neither RSS, nor any previously permitted assignee or subtenant, has violated the provisions of this section.

11. **USE OF PREMISES.**

RSS agrees to comply with the following provisions regarding the use of the Premises, the Tracks and the Loaned Equipment.

(a) Compliance with Law. RSS will comply with all requirements of all applicable laws, orders, ordinances and regulations, including environmental laws, regulations or ordinances, of any competent authority which shall impose any duty on RSS with respect to the use or occupancy of the Premises, the Tracks and the Loaned Equipment by RSS. In addition, RSS will not make or permit to be made any use of the Premises, the Tracks or the Loaned Equipment or any part thereof which would violate any of the covenants, agreements, terms, provisions and conditions of this Agreement or any mortgage on the Premises or any portion of the Park of which RSS has received written notice, or which directly or indirectly is forbidden by public law, ordinance or governmental regulation (including, without limitation, all environmental laws, rules, regulations or orders relating to the Premises) or which may be dangerous to life, limb, or property, or which may invalidate or increase the premium cost of any policy of insurance carried on the Premises, the Tracks or the Loaned Equipment or covering their operation, or which will suffer or permit the Premises, the Tracks or the Loaned Equipment or any part thereof to be used in any manner or anything to be brought into or kept therein which, in the reasonable judgment of Owner, would in any way impair or tend to impair the character, reputation or appearance of the Park as a high quality manufacturing park, or which would impair or interfere with or tend to impair or interfere with any of the services performed by Owner or Kodak Co. for the Premises or the Park. Without limiting the generality of the foregoing, RSS and Owner agree that the Tracks shall not be used at any time for the transportation of materials identified as poison inhalation hazards ("PIH") or toxic inhalation hazards ("TIH"), as such terms are defined by the then current version of the US DOT/Transport Canada "Emergency Response Guidebook". In addition to any requirements hereinafter set forth in Sections 18 and 19 of this Agreement, RSS shall also comply with all health, safety and environmental rules, requirements and policies of Owner applicable to the Premises and/or to the Park.

(b) Intentionally Omitted.

(c) Signs. RSS shall not display, inscribe, print, paint, maintain or affix on any place on the exterior of the Buildings nor on the land on which the Buildings or the Tracks are located, nor on any of the Loaned Equipment any sign, notice, legend, direction, figure, or advertisement display materials without first obtaining the written approval of Owner, which approval may be withheld in Owner's sole discretion. All signs must comply fully with all applicable laws, rules and regulations of any governmental authority.

(d) Alterations to the Premises. RSS shall not make, and shall not permit any third party to make, any alterations, improvements, or additions of or to the Premises (collectively, "Alteration") without Owner's advance written consent in each and every instance, which consent may be given or withheld by Owner in its sole discretion. Any request for such consent shall be accompanied by detailed drawings and specifications of the proposed Alterations, together with a description of how the Alterations will be used in, and affect the conduct of, the Switching Services.

(e) Energy Conservation. RSS shall comply with any applicable federal laws, rules, ordinances or administrative enactments on energy conservation, and shall cooperate with energy conservation programs voluntarily implemented by Owner in the Buildings.

(f) Nuisance. RSS shall not use, keep or permit the Premises to be occupied or used in a manner offensive or objectionable to Owner by reason of noise, odors and/or vibrations, or interfere in any way with Owner's business, nor shall any animals or birds be brought in or kept in or about the Premises. Owner acknowledges that the normal noise and other impacts associated with the operation of rail car switching services shall not be deemed a nuisance for purposes of this Agreement.

In addition to any liability for breach of any covenant of this section, RSS shall pay to Owner an amount equal to any increase in insurance premiums payable by Owner, caused by such breach, default or carelessness on the part of RSS.

12. REPAIRS AND MAINTENANCE.

(a) The Buildings. RSS shall provide Owner with prompt written notice of any damage to the Premises caused by the fault or negligence of RSS, its contractors, agents, or employees and Owner shall repair any such damage as soon as possible at the expense of RSS. Subject to complying fully with the requirements of the Rochester Site Requirements, RSS shall be responsible for maintenance and repair of all leasehold improvements within the Premises and RSS's furniture and fixtures located within or about the Premises.

(b) The Tracks. RSS will perform all routine maintenance on the Tracks, which maintenance shall be performed at the sole cost and expense of RSS, except as otherwise provided in the Services Agreement. Major repairs (as defined below) and capital expenditures required to keep the Tracks in good working order as a Class I Track (as defined in the regulations of the Federal Railroad Administration) shall be performed by RSS at the sole cost and expense of Owner and in accordance with the procedures set forth in Section II of Appendix 1 attached hereto and made a part hereof; provided that no such major repairs or capital expenditures shall be made without the prior approval of Owner (which approval shall be in the form of the approval by Owner of a Project Specific Plan for such major repair or capital expenditure, as contemplated in Section I(b) of Appendix 1); and further provided that the cost of any such major repair or capital expenditure which is required as a result of the negligence or wrongdoing of RSS or RSS's employees, agents, contractors or representatives shall be the responsibility of RSS. For this purpose, a major repair to the Tracks shall be any repair without which the Track would fall below the applicable standards for Class I Track (as defined in the regulations of the Federal Railroad Administration) or be unusable, and which is not part of the periodic, routine maintenance to be performed by RSS as contemplated in Appendix 2 hereto. Examples of Track repairs which constitute routine maintenance and repairs which are major repairs are set forth in Appendix 3 attached hereto and made a part hereof. RSS shall submit annually to Owner, in accordance with the process outlined in Appendix 1 attached hereto and made a part hereof, a proposed plan for the major repairs and capital expenditures required to be made to the Tracks during the next calendar year and the next three calendar years, and such plan shall be subject to review and approval by Owner as contemplated in Appendix 1.

(c) The Loaned Equipment and the Sold Equipment. RSS will perform routine maintenance on all Loaned Equipment, including but not limited to the locomotives included in the Loaned Equipment, which maintenance shall be performed at the sole cost and expense of RSS, except as otherwise provided in the Services Agreement. RSS will perform routine maintenance of the Sold Equipment as RSS in its sole discretion determines is necessary and appropriate, at the sole cost and expense of RSS, except as otherwise provided in the Services Agreement. Owner shall not have any responsibility for routine maintenance of Loaned Equipment, or for routine maintenance, other repairs or capital expenditures to the Sold Equipment. Major repairs (as defined below) and capital expenditures required to keep the Loaned Equipment in good working order shall be performed by RSS at the sole cost and expense of Owner and in accordance with the procedures set forth in Section II of Appendix 1; provided that no such major repairs or capital expenditures shall be made without the prior approval of Owner (which approval shall be in the form of the approval by Owner of a Project Specific Plan for such major repair or capital expenditure, as contemplated in Section I(b) of Appendix 1); and further provided that the cost of any such major repair or capital expenditure which is required as a result of the negligence or wrongdoing of RSS or RSS's employees, agents, contractors or representatives shall be the responsibility of RSS. For this purpose, a major repair to the Loaned Equipment shall be any extraordinary repair without which the equipment cannot be used for its intended purpose, and which is not part of the periodic, routine maintenance to be performed by RSS as contemplated in Appendix 2 attached hereto and made a part hereof. Examples of locomotive repairs which constitute routine maintenance, and locomotive repairs which constitute major repairs, for purposes of this Agreement, are set forth in Appendix 3 attached hereto and made a part hereof. RSS shall submit annually to Owner, in accordance with the process outlined in Appendix 1 attached hereto and made a part hereof, a proposed plan for the major repairs and capital expenditures required to be made to the Loaned Equipment during the next calendar year, and such plan shall be subject to review and prior approval by Owner as contemplated in Appendix 1.

13. DESTRUCTION OF PREMISES.

If the Premises or the Tracks shall be damaged by fire or other casualty, Owner shall use commercially reasonable efforts to cause the repair of the damaged portion of the Premises or the Tracks, or arrange for a substitute for such damaged portion, as promptly as reasonably possible.

14. CONDEMNATION.

If the Premises or the Tracks, or any part thereof shall be taken by any public or private authority through condemnation or eminent domain, Owner shall immediately notify RSS in writing, and Owner shall use commercially reasonable efforts to replace or arrange for a substitute for the Premises or the Tracks so taken. The entire amount of any condemnation award related to the value of the Premises or the Tracks shall be the property of and payable to Owner.

15. **CERTAIN RIGHTS RESERVED TO OWNER.**

Owner reserves the following rights:

- (a) Pass Keys and Electronic Access. To have pass keys or electronic access to the Premises at all times.
- (b) Exhibition. To exhibit the Premises to prospective tenants and to any prospective purchaser, mortgagee, or assignee of any mortgage on the Buildings or the Tracks and to others having a legitimate interest during the term hereof.
- (c) Other Access. To enter onto the Premises or the Tracks (or to cause its agents or representatives to enter onto the Premises or the Tracks) to inspect or repair any portions of the Premises or the Tracks.

16. **OWNER'S REMEDIES.**

All rights and remedies of Owner herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law.

(a) Default in RSS Obligations. If RSS defaults in the prompt and full performance of any provision of this Agreement and such default continues for thirty (30) days after notice, or if such default cannot be cured within thirty (30) days, RSS does not commence to cure such default within thirty (30) days and diligently pursue the same to completion thereafter, then and in any such event Owner may, at its election, terminate this Agreement and RSS's right to possession of the Premises. Nothing herein shall be construed so as to relieve RSS of any obligation as provided in this Agreement. Any default by RSS herein shall allow Owner, in addition to all other rights and remedies available to Owner at law or elsewhere, to offset any amounts due and owing Owner from RSS against amounts then or thereafter becoming due from Owner to RSS under the Services Agreement.

(b) Surrender of Possession; Owner's Right to Re-Enter. Upon any termination of this Agreement, RSS shall surrender the right to use and shall vacate the Premises immediately, and Owner shall immediately have the right to reenter the Premises, all in the manner that the Premises is to be surrendered as provided in Section 26 hereof, and Owner shall have the right to enter into and upon the Premises and to expel or remove RSS and any others who may be occupying or within the Premises and to remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer. In connection with such surrender and vacation, RSS will return to Owner all drive-in passes and identification badges provided by Owner. Any costs incurred by Owner in connection with Owner's re-entry into the Premises, Owner's removal of RSS's property therefrom, and Owner's performance of any obligations of RSS hereof in connection with such re-entry, shall be payable by RSS to Owner within fifteen (15) days after the date of Owner's invoice to RSS.

(c) Owner's Right to Perform RSS's Obligations. RSS agrees that if it shall at any time fail to make any payment or perform any other act on its part to be made or performed under this Agreement, Owner may, but shall not be obligated to, and after reasonable notice or

demand and without waiving, or releasing RSS from, any obligation under this Agreement, make such payment or perform such other act to the extent Owner may deem desirable, and in connection therewith, Owner may pay expenses and employ counsel. If legal action is required to enforce performance by RSS of any condition, obligation or requirement hereunder, the costs of such action including attorneys' fees will be paid solely by the party not prevailing in such action. RSS shall reimburse Owner for all sums so paid by Owner and all expenses in connection therewith within fifteen (15) days after the date of Owner's invoice to RSS.

17. **INTENTIONALLY OMITTED.**

18. **ENVIRONMENTAL RESPONSIBILITIES.**

(a) Indemnification by RSS. To the extent that any violation or the environmental condition requiring remediation arose out of or is related to RSS's use of or operation at the Premises or the Tracks occurring after the Commencement Date, RSS shall indemnify, defend and hold Owner, its affiliates, and, if applicable, their respective directors, officers, shareholders, partners, attorneys, accountants, agents and employees and their heirs, successors and assigns harmless from and against any claims, losses, liabilities, charges, actions, suits, proceedings, deficiencies, taxes, interest, penalties and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, removal costs, remediation costs, closure costs, fines, penalties and expenses of investigations and ongoing remediation) relating to or arising out of (i) any violation or alleged violation of any environmental laws, regulations, licenses (including, without limitation, radioactive material licenses), permits or requirements of any governmental authority having jurisdiction over the Premises or the Tracks, including, without limitation, any operations, actions or omissions by RSS which would cause the Park site as a whole (or any part thereof) to be out of compliance with any such law, regulation, license, permit or requirement; or (ii) any requirement to remediate (arising during the term of this Agreement or thereafter) any environmental condition arising out of or relating to RSS's use of or operations at the Premises or the Tracks imposed or required by either a governmental authority having appropriate jurisdiction thereof, including without limitation those requirements imposed under CERCLA or by a third party having an actual or potential interest in the Premises or the Tracks to meet a remediation standard applicable, or relevant and appropriate, to the environmental condition.

(b) Indemnification by Owner. To the extent that any violation or the environmental condition requiring remediation arose out of or is related to Owner's or Kodak Co.'s use of or operation at the Premises or the Tracks prior to the Commencement Date, or of adjacent property occurring after the Commencement Date, Owner shall indemnify, defend and hold RSS, its affiliates, and, if applicable, their respective directors, officers, shareholders, partners, attorneys, accountants, agents and employees and their heirs, successors and assigns harmless from and against any claims, losses, liabilities, charges, actions, suits, proceedings, deficiencies, taxes, interest, penalties and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, removal costs, remediation costs, closure costs, fines, penalties and expenses of investigations and ongoing remediation) relating to or arising out of (i) any violation or alleged violation of any environmental laws, regulations, licenses (including, without limitation, radioactive material licenses), permits or requirements of any governmental authority having jurisdiction over the Premises or the Tracks, including, without limitation, any operations, actions or omissions by Owner or Kodak Co. which would cause the Park site as a whole (or any

part thereof) to be out of compliance with any such law, regulation, license, permit or requirement; or (ii) any requirement to remediate (arising prior to the term of this Agreement) any environmental condition arising out of or relating to Owner's or Kodak Co.'s use of or operations at the Premises or the Tracks imposed or required by either a governmental authority having appropriate jurisdiction thereof, including without limitation those requirements imposed under CERCLA or by a third party having an actual or potential interest in the Premises or the Tracks to meet a remediation standard applicable, or relevant and appropriate, to the environmental condition.

(c) Reporting Requirements. RSS agrees to promptly report to Owner (and, as required by law, to any regulatory agency) any release at the Premises by RSS at the time RSS first becomes aware thereof of any hazardous substance as defined in and required to be reported under any federal, state and local laws including, but not limited to, CERCLA ("Hazardous Materials") and any other release which is required to be reported under Owner's written protocol for the reporting of such releases at the Park, as such written protocol is modified from time to time and which protocol has been delivered to RSS. In addition, RSS shall provide Owner, with copies of any and all material correspondence between RSS and any environmental regulatory agencies of any federal, state or local governmental authorities relating to a violation or alleged violation of environmental laws, rules or regulations by RSS at the Premises. RSS shall not perform any environmental testing at or of the Premises without obtaining Owner's prior written consent, which Owner may withhold in its sole discretion; provided, however, that nothing herein shall prevent RSS from complying with applicable law or requirements of any governmental agency. Any testing required of RSS under the proviso in the immediately preceding sentence shall, at Owner's option, be subject to Owner's control. RSS shall provide Owner with a complete copy of the results of any such tests and any reports analyzing such results.

(d) Environmental Permits. Owner, at RSS's sole cost and expense, shall be responsible to obtain and maintain in place all permits and notifications required by law, regulation, ordinance or other requirement of any governmental authority with respect to waste or other emissions discharged as a result of any of RSS's manufacturing or other processes conducted at the Premises. RSS shall provide to Owner, promptly when requested by Owner, any and all information required by Owner to obtain or maintain any such permits, and RSS shall reimburse Owner for all costs associated with obtaining and maintaining such permits.

19. THE PARK CONSENT DECREE.

(a) Consent Decree. RSS hereby acknowledges that the Premises is a portion of the "the Park Facility" which is the subject of a certain Consent Decree (the "Consent Decree") by and between the United States of America and Eastman Kodak Company entered in the United States District Court for the Western District of New York (Civil Action No. 94-CV-6503T), a copy of which Consent Decree shall, prior to the Commencement Date, be attached hereto as EXHIBIT "E".

(b) Restrictions on RSS's Use. RSS agrees that during the term of this Agreement and in connection with its use and occupancy of the Premises, it shall not have the right to use or to allow the use by any of its successors, assigns, agents, contractors, employees or

representatives of (i) the Park industrial sewer system; or (ii) other Park hazardous treatment, storage or disposal facilities regulated under 40 C.F.R. Parts 264 or 265.

(c) Breach or Default by RSS. If RSS breaches or otherwise defaults in connection with the foregoing provisions of Section 17(b), RSS shall indemnify, protect, defend and save harmless Owner from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Owner, its affiliates and, if applicable, their respective directors, officers, shareholders, partners, attorneys, accountants, agents and employees and their heirs, successors and assigns relating to, resulting from or arising out of such breach or default and RSS shall immediately implement and comply with any and all requirements arising under such Consent Decree by reason of such breach or default.

20. **OWNER'S ACCESS AND ASSESSMENT RIGHTS.**

(a) Owner's Right of Access for Health, Safety and Environmental ("HS&E") Compliance. Owner shall have the right to enter on the Premises and any part thereof, after reasonable notice and at reasonable times, to engage in any activities deemed reasonably necessary by Owner to ensure the compliance of the Premises with applicable health, safety and/or environmental laws, regulations, licenses and permits and any State or Federal order or agreement entered into by Owner relating to the Premises, including the performance of any such activities required to be performed by RSS hereunder or under applicable laws or regulations. Owner shall use all reasonable efforts to minimize any disruption to RSS's business. In the event of a release or other health, safety or environmental emergency at the Premises, Owner shall have the right to enter the Premises for purposes of responding to such release or emergency without giving RSS notice in advance. If Owner is required by law, regulation, ordinance or any order of any governmental authority to grant to any federal, state or local government, or agency thereof, access to the Premises, then such government or governmental agency shall have such right of access notwithstanding anything to the contrary in the Agreement, and the exercise of such access right shall not constitute a breach of this Agreement or an eviction from the Premises. In addition, RSS shall ensure access to the Premises and shall make available any information required by the terms of Sections V and XIX of the Consent Decree to Landlord, the New York State Department of Environmental Conservation, the United States Environmental Protection Agency or any other governmental agency, bureau, department or authority.

(b) Owner's Rights to Perform Health, Safety and Environmental Assessments of the Premises. Upon fourteen (14) days written notice to RSS (or sooner if required by any governmental agency or authority), Owner, acting through its employees, agents or contractors, shall have the right to enter upon the Premises for the purpose of conducting a health, safety and environmental assessment of all or any part thereof. To the extent Owner in its sole discretion does not claim an enforceable attorney-client privilege for any reports of such assessment, copies of any reports prepared by Owner summarizing the results of such assessment shall be made available to RSS. RSS shall notify Owner reasonably in advance of any scheduled or unscheduled visit to or inspection of the Premises or any other portion thereof by representatives

of any federal, state or local regulatory agency, and RSS and Owner shall supply to each other copies of any correspondence which either may have with any such regulators relating to noncompliance or subsurface contamination issues at the Premises. Owner shall have no liability of any kind to RSS, its employees, agents or any other party, associated with Owner's performance of any assessment conducted by or on behalf of Owner as contemplated herein, and neither shall Owner have any responsibility to actually conduct an assessment at any time during the term of the Agreement, and Owner shall have no liability to RSS, its employees, agents or any other party for the failure of Owner to conduct any such assessment.

(c) Inspection of Premises. Owner and its authorized representatives, shall have the right to enter on the Premises and any part thereof, after seventy-two (72) hours written notice and at reasonable time, to engage in any other activities deemed reasonably necessary by Owner including, but not limited to, inspection of the Premises, making any repairs necessary thereto, and causing the Premises to comply fully with all applicable laws and regulations. Owner shall attempt to minimize any disruption to RSS's business. If Owner's access or the access by its representatives is reasonably deemed to be for emergency purposes, no advance notice need be given to RSS. The exercise of the access rights granted to Owner and its representatives hereunder shall not constitute a breach of this Agreement or an eviction from the Premises.

21. RSS'S SAFETY MANAGEMENT PROCEDURES.

RSS will conduct its operations at the Premises and on the Tracks in a manner that is suitable (in Owner's reasonable judgment): (a) to prevent fire, explosion and the release of toxic materials from RSS's equipment located in and operations conducted in the Premises or at the Tracks; and (b) to meet all applicable regulatory requirements.

If Owner notifies RSS in writing that Owner has determined that an unsafe condition or operating procedure exists in the Premises or at the Tracks, RSS shall immediately take appropriate corrective action in order to reasonably satisfy Owner that such unsafe condition or procedure has been corrected, which action may include in appropriate circumstances the suspension of one or more of RSS's procedures in the Premises or at the Tracks. If a procedure has been suspended pending correction of an unsafe condition or procedure, RSS shall determine, and obtain Owner's written approval of, the conditions which must be satisfied by RSS prior to restarting the suspended procedure, and no such procedure shall be restarted until such required corrective actions have been completed to the reasonable satisfaction of Owner.

If a safety incident occurs as a result of operations by RSS in or RSS's occupancy of the Premises or the Tracks, crisis management and community response, including media communications, shall be the responsibility of RSS. However, RSS shall notify Owner of any such incident no later than the time that community responders are notified, and Owner shall have the right to participate in any incident response and public communication resulting from RSS's activities.

22. NOTICES AND CONSENTS.

All notices, demands, requests or consents (collectively, "Notice") relating to this Agreement which may or are required to be given by either party to the other shall be in writing

and shall be considered properly delivered if by overnight delivery service addressed as set forth below on the day intended for delivery or if delivered by registered or certified mail, return receipt requested, addressed as set forth below on the third business day following such mailing. Any such Notice shall be addressed as follows:

- (a) if to RSS, to the Premises, with a copy to:

Rochester Switching Services, Inc.
1200-C Scottsville Road, Suite 200
Rochester, NY 14624
Attention: President

with a copy to:

Genesee & Wyoming Inc.
66 Field Point Road, 2d Floor
Greenwich, CT 06830
Attention: General Counsel

- (b) if to Owner:

Kodak Realty, Inc.
343 State Street
Rochester, New York 14650-0208
Attention: Mark R. Wright, Vice President

The parties may by written notice to the other designate a different person or entity to receive notices hereunder and/or a different address or addresses. If the term RSS as used in this Agreement refers to more than one person any Notice given as aforesaid to any one of such persons shall be deemed to have been duly given to RSS.

23. LOCKS AND KEYS.

No additional locks or similar devices shall be attached to any exterior door or window at the Premises without Owner's prior written consent and no keys for any exterior door other than those provided by Owner shall be made. If Owner consents to the installation of additional locks or similar devices, RSS shall provide Owner with copies of keys, electronic access or other access through such devices. If more than two keys for one lock are desired, Owner will provide same upon payment by RSS. All keys must be returned to Owner at the expiration or termination of this Agreement.

24. FORCE MAJEURE.

Except as to the payment of Rent or other monies due under this Agreement, neither party shall be responsible for delays or inability to perform its obligations hereunder for causes beyond the reasonable control of such party including acts of other tenants, governmental restriction, regulation or control, labor dispute, accident, mechanical breakdown, shortages or inability to

obtain labor, fuel, steam, water, electricity or materials, acts of God, enemy action, civil commotion, or fire or other casualty.

25. PARKING.

RSS and its employees, invitees, and guests may use, in common with Owner and other RSSs of the Park, on a non-designated, non-reserved basis, those parking areas which are designated by Owner from time to time for users of the Buildings. RSS's business visitors shall be entitled to use the parking areas generally available to visitors of other occupants of the Buildings throughout the term of this Agreement. Any use of the parking areas shall be in strict compliance with all reasonable rules and regulations of Owner and shall be expressly at the sole risk of RSS and its employees, invitees, and guests.

26. SPECIAL STIPULATIONS.

(a) No Waiver. No waiver of any default of RSS or of Owner hereunder shall be implied from any omission by Owner or RSS, as the case may be, to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated.

(b) Owner. The term "Owner" as used in this Agreement, so far as covenants or agreements on the part of the Owner are concerned, shall be limited to mean and include only the owner or owners of Owner's interest in this Agreement at the time in question, and in the event of any transfer or transfers of such interest, Owner herein named (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved of any claims arising from and after the date of such transfer of all liability from events which occur after the date of transfer. Any such release of Owner under this section shall become effective only at such time as Owner's transferee is deemed to be bound to the terms and provisions of this Agreement. It is understood, however, that Owner shall reimburse RSS for any overpayment of Rent made by RSS prior to the assignment and any prepayment of Rent for months subsequent to the assignment.

(c) Waiver of Right of Redemption. RSS hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of RSS being dispossessed or removed from the Premises because of default by RSS pursuant to the covenants or agreements contained in this Agreement.

(d) Review of Agreement. The parties acknowledge that each party and its respective counsel have reviewed this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

27. SURRENDER OF THE PREMISES.

Upon the expiration or earlier termination or cancellation of this Agreement (the "Termination Date"), RSS shall surrender possession of the Premises broom clean and in as good condition as existed on the Commencement Date, reasonable wear and tear and damage from fire

or other casualty excepted and shall return all keys, identification badges and drive-in passes in its possession. In addition, RSS shall remove all of RSS's equipment and machinery, and any other personal property owned by RSS, from the Premises no later than the Termination Date. If requested by Owner on or before the Termination Date, RSS shall also remove all RSS improvements made to the Premises after the Commencement Date and all process equipment located therein. In addition, upon such termination, cancellation or expiration of this Agreement, RSS shall be responsible for the costs of all closure and post-closure activities which may be required arising from RSS's use of the Premises and the Building and improvements for the conduct of RSS's business.

28. AUTHORITY.

RSS and Owner each warrant and represent that their respective representatives executing this Agreement have full power and authority to execute this Agreement on behalf of RSS and Owner, respectively, and that this Agreement, once executed by the signatory of RSS or Owner, as the case may be, shall constitute a legal and binding obligation of that party and is fully enforceable in accordance with its terms.

29. MECHANIC'S LIENS.

RSS shall indemnify and save harmless Owner against all loss, liability, costs, attorneys' fees, damages or interest charges as a result of any mechanic's lien or any other lien filed against the Premises as a result of any act or omission or as a result of any repairs, improvements, alterations or additions made by RSS or its agents or employees. RSS shall, within sixty (60) days of the filing of any such lien and notice given to RSS, remove, pay or cancel such lien or secure the payment of any such lien or liens by bond or other acceptable security. Owner, at its option, may, but shall not be required to, upon expiration of the sixty (60) day period, pay the lien or bond at its discretion without inquiring into the validity thereof, and RSS shall forthwith reimburse Owner for the total expense incurred by Owner in discharging or bonding the lien as additional rent hereunder, together with interest at the maximum rate permitted by law.

30. MISCELLANEOUS.

(a) Exhibits and Appendices.

(i) Exhibits. Exhibits "A", "B", "C", "D", "E" and "F" are attached hereto and are part of this Agreement.

(ii) Appendices. Appendix 1, 2 and 3 are attached hereto and are part of this Agreement.

(b) Binding Effect. The covenants and agreements herein contained shall bind and inure to the benefit of Owner, its heirs, legal representatives, successors and assigns, and RSS, its heirs, legal representatives, successors and assigns. Notwithstanding the foregoing, RSS shall have no right to assign this Agreement or permit the use or occupancy of the Premises except in strict accordance with the provisions of this Agreement.

(c) Amendments; Partial Invalidity. No addition to, deletion from or modification of any of the provisions of this Agreement shall be binding upon the parties unless made in writing and signed by a duly authorized representative of each party. Any such additions, deletions or modifications shall refer specifically to this Agreement. To the extent consistent with the general intent and spirit of the parties, any provision of this Agreement held invalid shall be deemed severed from this Agreement, and the provision in question shall be deleted or replaced by an interpretation in conformity with law that comes as close as possible to effecting the parties' original intent.

(d) Limitations on Damages. Notwithstanding anything contained herein to the contrary, neither party shall be liable to the other for any consequential, indirect, punitive or special damages.

(e) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of New York without regard to the conflicts of law principles thereof. This Agreement shall be deemed negotiated, executed and delivered within the State of New York.

(f) Relationship of Parties. Nothing in this Agreement shall be construed to constitute the parties as partners, joint ventures or agents of the other. The Parties to this Agreement are entirely independent of one another and have no authority to act on behalf of, or bind, one another in connection with any third party dealings. Matters governing the terms and conditions of employment of RSS's employees, agents, or independent contractors, such as work schedules, wage rates, are wholly the responsibility of RSS. It is expressly understood that Owner shall not in any way be the employer of any employees RSS uses to perform such work.

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same Agreement. Once signed, any copy of this Agreement or attached exhibit that is reliably reproduced may be considered an original.

31. RELOCATION DESIRED BY OWNER.

Throughout the term of this Agreement, Owner shall have the right to relocate RSS as deemed necessary and desired by Owner to reasonably similar space provided that Owner shall provide RSS with at least thirty (30) days prior notice of such relocation. Owner shall be responsible for all reasonable expenses of RSS in effectuating such relocation. Any such relocation shall be memorialized by an amendment to this Agreement reflecting and memorializing such substitute Premises and any other relevant changes herein, which amendment shall be signed by both parties herein.

IN WITNESS WHEREOF, Owner and RSS have signed this Agreement as of the day and year first above written.

KODAK REALTY, INC., OWNER

By: Arline M. Liberti
NAME: Arline M. Liberti
TITLE: Vice President

ROCHESTER SWITCHING SERVICES, INC.

By: _____
NAME: _____
TITLE: _____

GUARANTEE BY EASTMAN KODAK COMPANY

The undersigned hereby absolutely and unconditionally guarantees to Rochester Switching Services, Inc. ("RSS"), its successors and assigns, the full and timely performance by its wholly owned subsidiary, Kodak Realty, Inc. ("Owner"), of all of Owner's obligations and duties under this Occupancy and Asset Use Agreement, and further agrees that, in the event of a default by Owner, RSS shall not be required to first enforce this Agreement against Owner before enforcing this Guarantee directly against the undersigned.

EASTMAN KODAK COMPANY

By: William M. Lane
Its: TREASURER

Dated: October 4, 2010

IN WITNESS WHEREOF, Owner and RSS have signed this Agreement as of the day and
year first above written.

KODAK REALTY, INC., OWNER

BY: _____
NAME: _____
TITLE: _____

ROCHESTER SWITCHING SERVICES, INC.

BY: Raymond A. Goss
NAME: Raymond A. Goss
TITLE: President RSS

GUARANTEE BY EASTMAN KODAK COMPANY

The undersigned hereby absolutely and unconditionally guarantees to Rochester
Switching Services, Inc. ("RSS"), its successors and assigns, the full and timely performance by
its wholly owned subsidiary, Kodak Realty, Inc. ("Owner"), of all of Owner's obligations and
duties under this Occupancy and Asset Use Agreement, and further agrees that, in the event of a
default by Owner, RSS shall not be required to first enforce this Agreement against Owner
before enforcing this Guarantee directly against the undersigned.

EASTMAN KODAK COMPANY

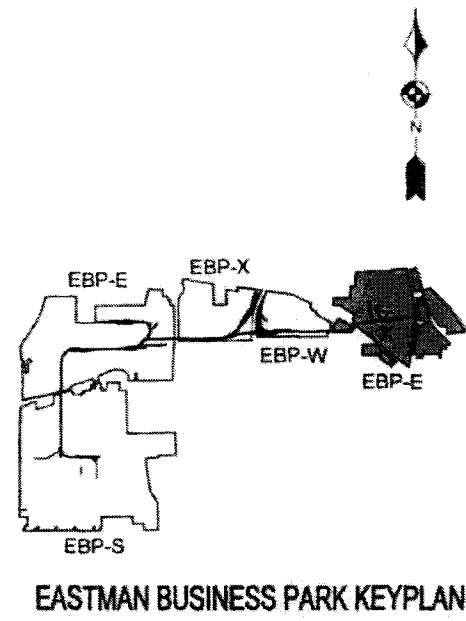
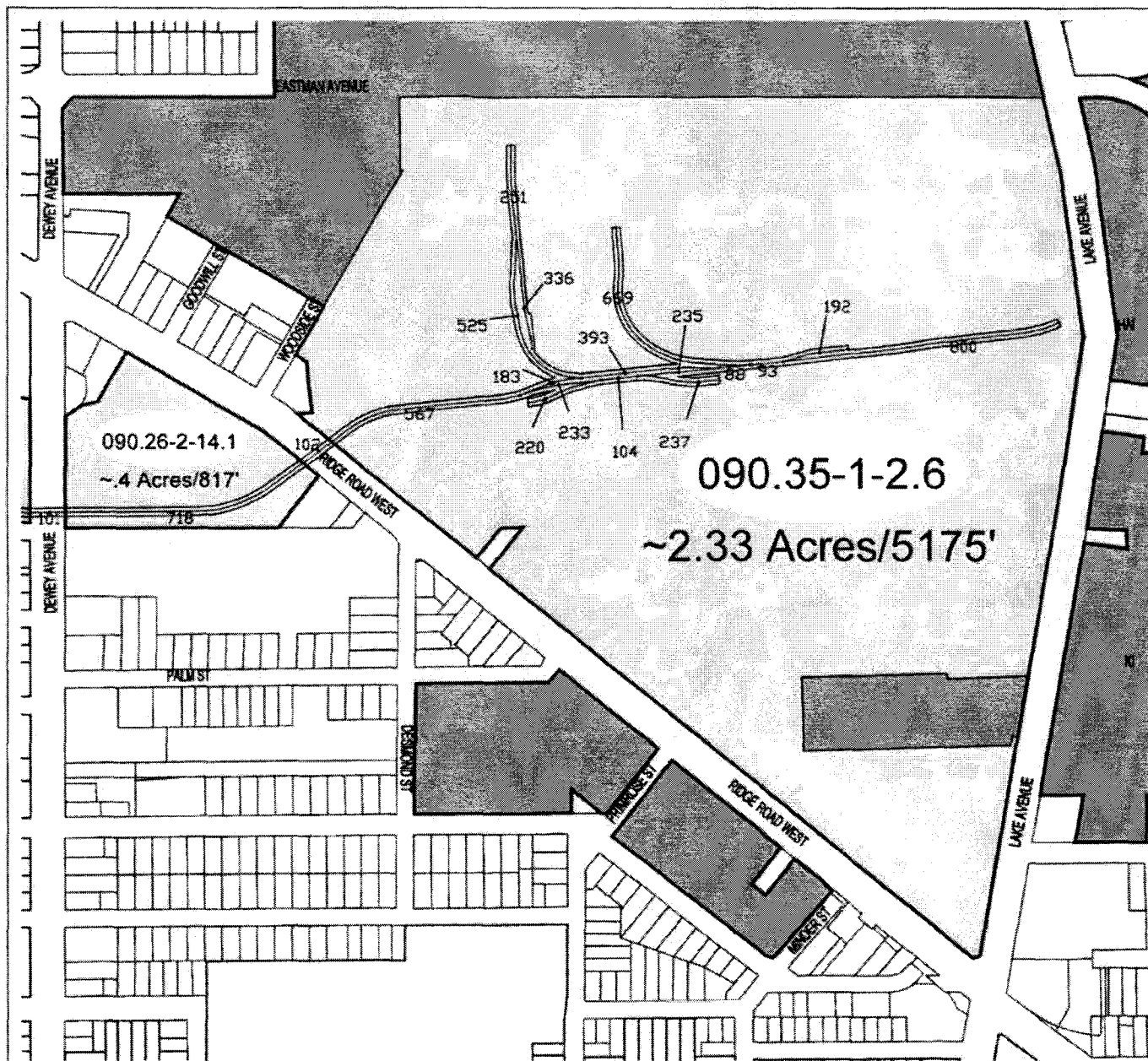
By: _____

Its: _____

Dated: October 4, 2010

EXHIBIT "A"

Map Showing Location of Tracks in the Park



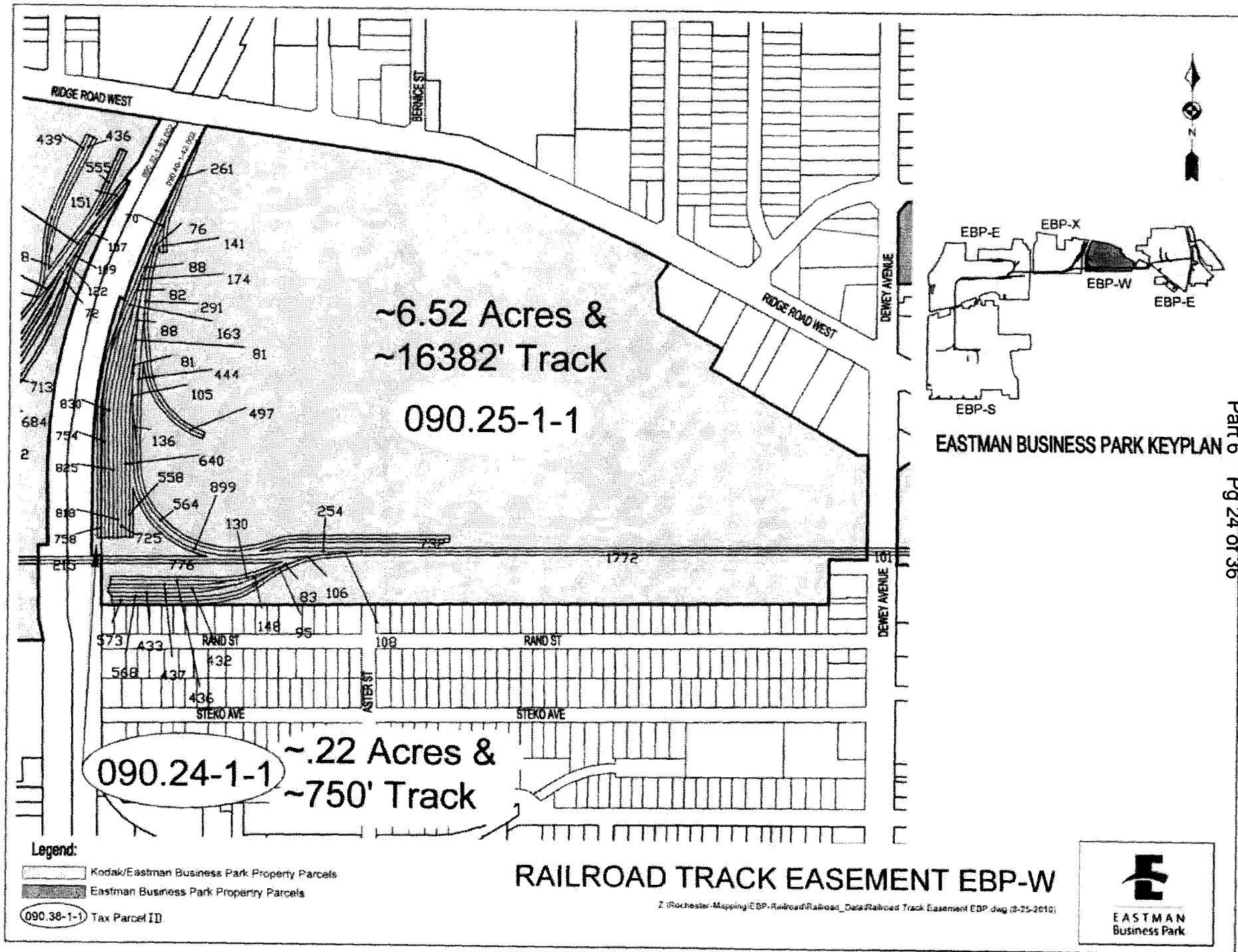
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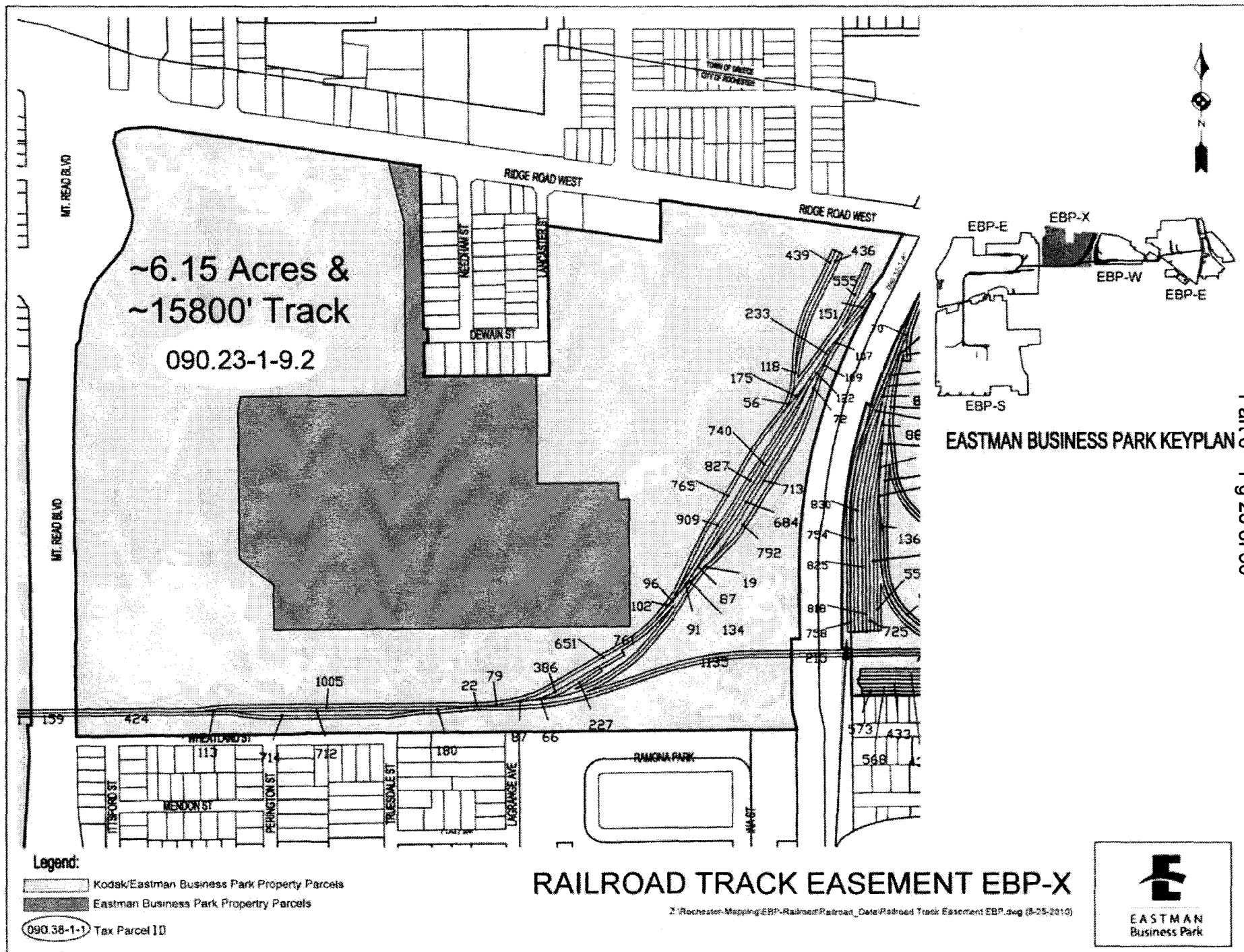
- Kodak/Eastman Business Park Property Parcels
- Eastman Business Park Property Parcels
- 090.38-1-1 Tax Parcel ID

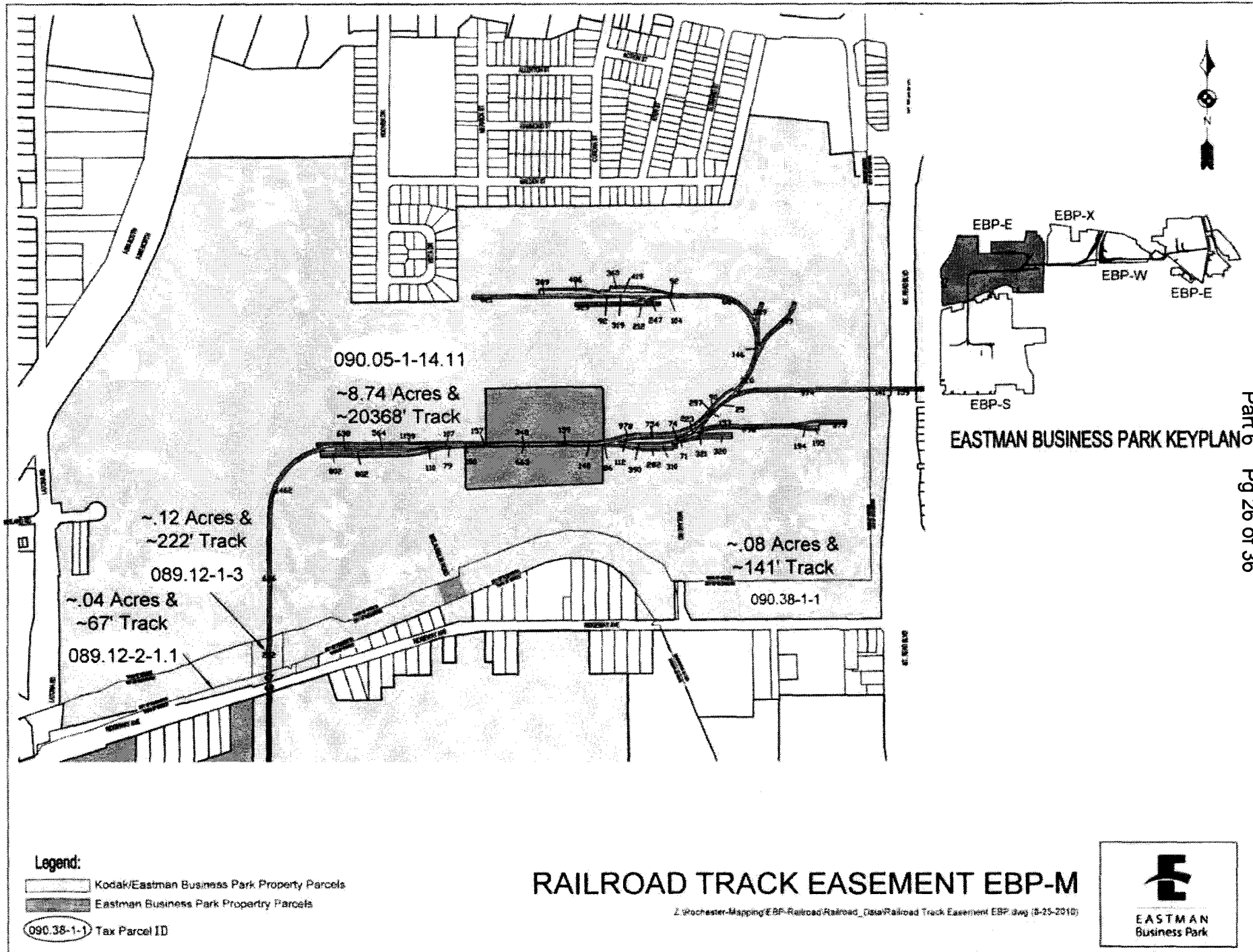
RAILROAD TRACK EASEMENT EBP-E

Z:\Rochester-Mapping\EBP-Railroad\Railroad_Data\Railroad Track Easement EBP.dwg (8-23-2010)









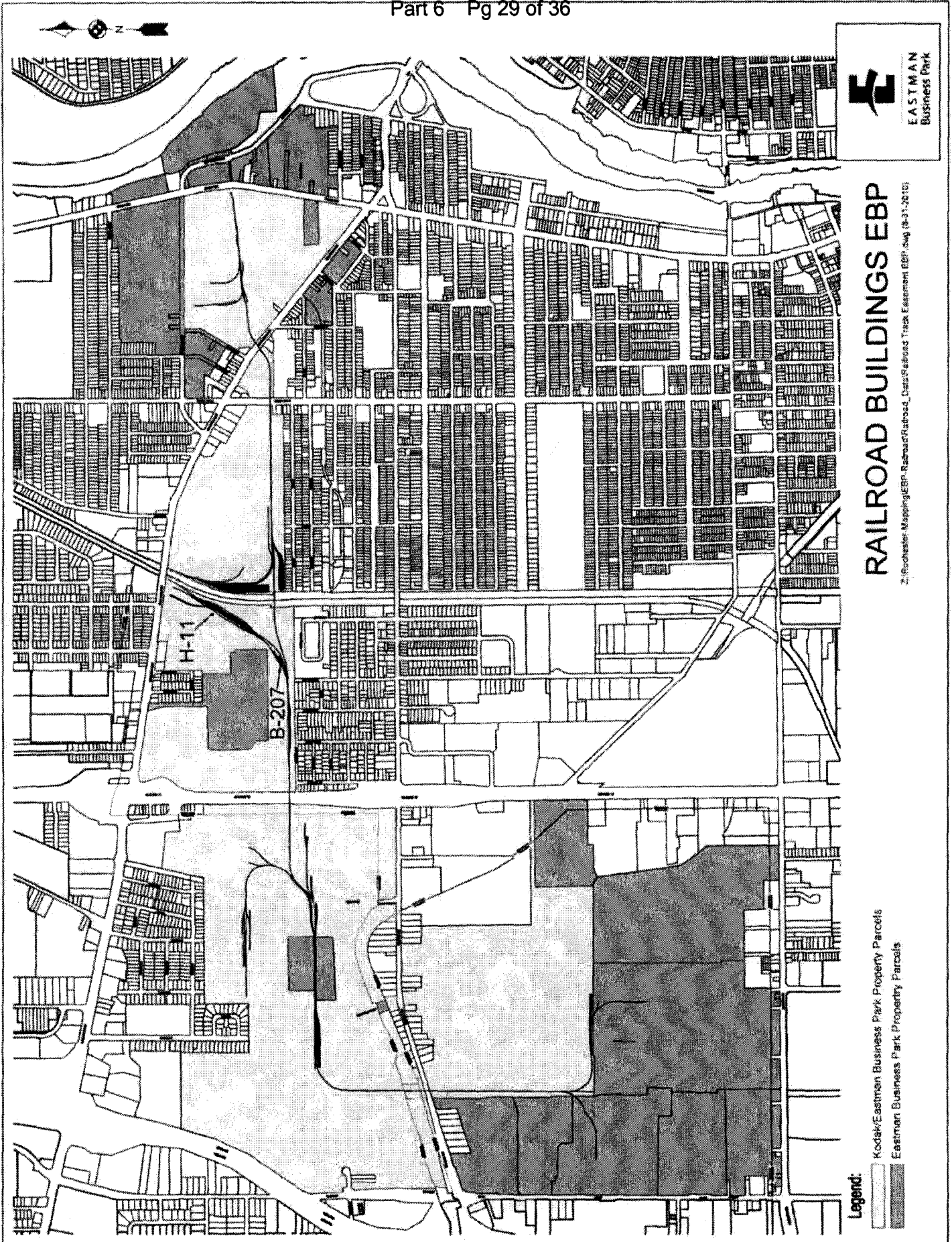
RAILROAD TRACK EASEMENT EBP-M

Z:\Rochester-Mapping\EBP-Railroad\Railroad_Data\Railroad Track Easement EBP.dwg (8-25-2010)



EXHIBIT "B"

Map Showing Location of the Buildings in the Park

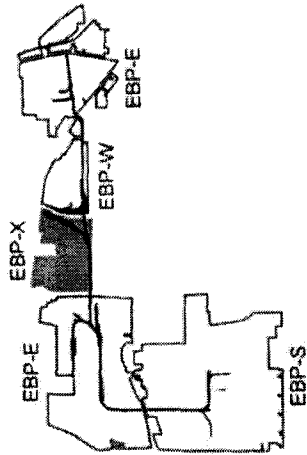
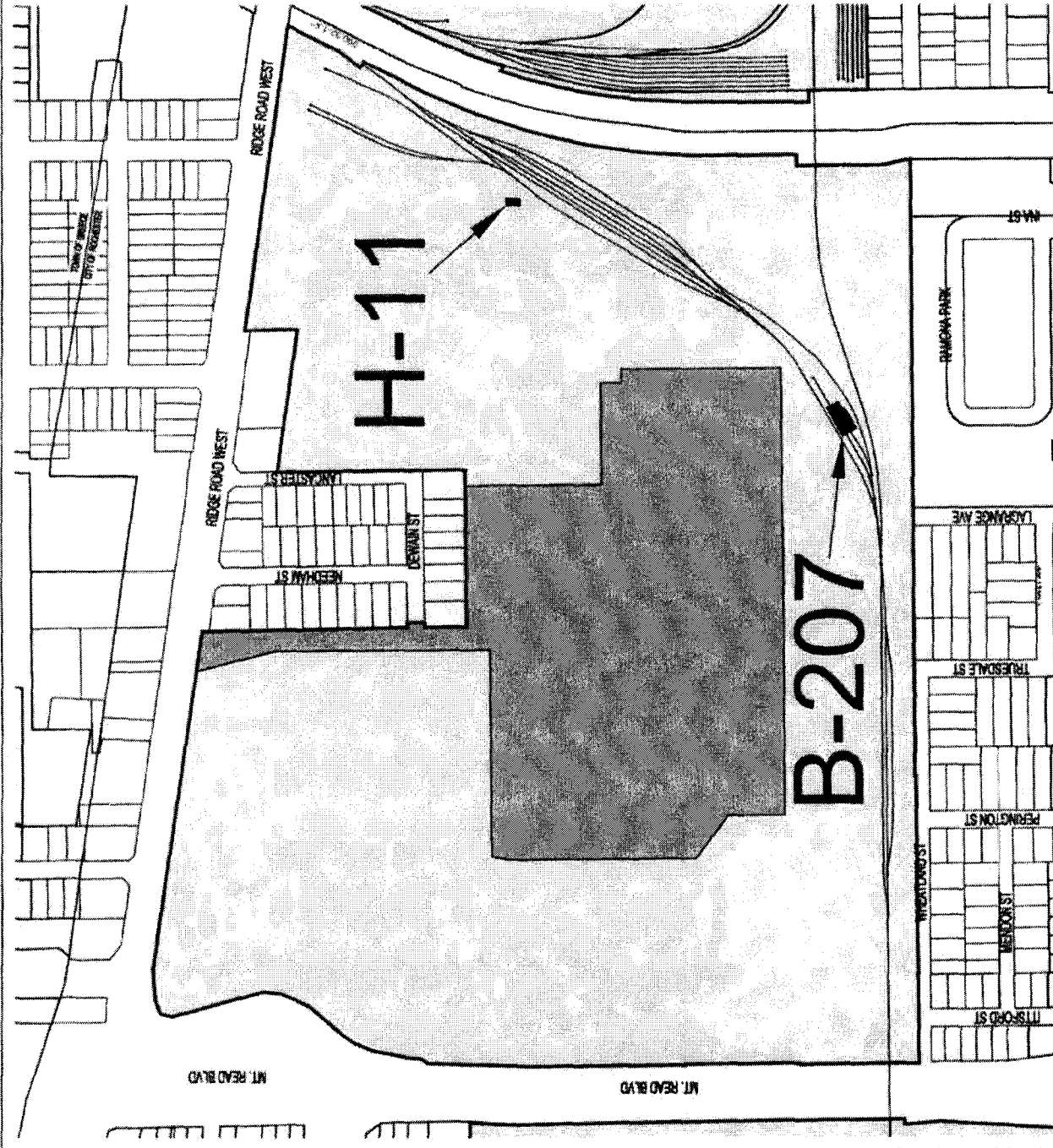




RAILROAD BUILDINGS EBP-X

Z:\Bachster-Mapping\EBP-Railroad\Railroad_Building\EBP.dwg (8-21-2010)

Legend:
 Kodak/Eastman Business Park Property Parcels
 Eastman Business Park Property Parcels



EASTMAN BUSINESS PARK KEYPLAN

Exhibit "C"

The Loaned Equipment, as such term is defined in the second "Whereas" clause of the Agreement, consists of the following:

- **EK Locomotive # 3 (including one hard-wired Motorola 2 way radio)**
Type: SW 1500
Model #: 8227211
Ser #: 71L-127
- **EK Locomotive # 8 (including one hard-wired Motorola 2 way radio)**
Type SW 1000
Model #: D0016610
Ser #: 68L-33
- **EK Locomotive # 10 (including one hard-wired Motorola 2 way radio)**
Model # 9091052
Ser #: 814-49
- **Ballast Regulator (including one hard-wired Motorola 2 way radio)**
Model G2-A
Ser #: 810186
- **Tamper Switch Electromatic Mark II**
Model: ES
Ser #: 108186
- **One Motorola Radio Base Station located at Building 207**
- **Three (3) Motorola portable radios with charges**

EXHIBIT "D"

The Sold Equipment, as such term is defined in the second "Whereas" clause of the Agreement, consists of the following:

- 1. 2005 Ford F 350 4x2 Crew Cab Pickup Truck
Vin #1FTWW30545EA93394
Plate #53443 KA**
- 2. 1999 Case Backhoe 4WD with attachments
Model # 580L Turbo
SER# JJG0247983**
- 3. 1993 Clark Fork Lift
Model# DPS 301
SER # GP138100339265KOF**
- 4. 2000 185 Sullair Air Compressor
Model #185DPQJD Diesel
SER # 004-133365**
- 5. Stumec Geismar Track Drill
Intek I/C 206 Briggs & Stratton 5.5 hp**
- 6. Rotomag Track Drill
SER# 2094
Model # TM1000P4**
- 7. 23 Track Jacks located in Building H-11**
- 8. 1 Hydraulic Track Jack located in Building H-11**
- 9. Husqvarna Track Saw by Geismar located in Building H-11**
- 10. Hydraulic Spike Puller by Stanley
Model SP47 SP48**
- 11. 2 Echo Back Pack Blowers
SER #'s PB651T & PB751T**
- 12. Assorted air driven track maintenance tools located in
Building B207 & H-11**
- 13. 2 Sets of Portable Acetylene Torches located in Building H-11**

14. Abrasive Belt Grinder by Hammond
Model # 600D
SER # 1359
15. Metal Cutting Band Saw by ACRA
Model # RF67RE115
SER# 951243
16. Drill Press Rockwell/ Delta
Model# 15-655
SER# 1705819
17. Milwaukee 5" Sander/ Grinder
Model 6155-20
SER# 4291074
18. Black & Decker 7" Heavy Duty Grinder/Sander
Model# 4057
SER# 4291074
19. Black& Decker ½" Portable Grinder, located in Building B 207
20. Black& Decker ¼" & ½ Drills, located in Building B-207
21. Milwaukee Drill
Model # 6155-20
SER# 532337670
22. Rockwell Bayonet Saw
Model # 548
SER# 2021006
23. Skil Super Easy Circular Saw, located in Building B 207
24. Trinco Dry-Blast
Model# 20/COB
SER# 30406
25. Assorted Hand Tools, Cabinets and Work Benches located in
Building B 207
26. All Assorted Cables, Slings and re-railers for derailments
located in Building H-11
27. Dake Hydraulic Press located in Building B 207

**28. 2 Stil Chain Saws Models 023L & 056AVSUPER located in
Building B 207 & H-11**

29. Diesel Powered Hot/Cold Washer located in Building B-207

**30. 1999 Miller Welder/Generator
Big 50 Diesel EK #D633C
SER # KK133021**

**31. Ford E250 5 Passenger Crew Van
Vin #1FTNE24W15HA50819
Plate #20344 KA**

**32. Forklift EXT Boom Truck Diesel
1986 Placer Forklift
SER # 7033200196**

EXHIBIT "E"

The Park Consent Decree

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
v.
EASTMAN KODAK COMPANY,
Defendant.

CIVIL ACTION NO.

94-CV-6503T

CONSENT DECREE

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EXHIBITS

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I

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
EASTMAN KODAK COMPANY,)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS, The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this matter, pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act ("RCRA") and the Hazardous and Solid Waste Amendments ("HSWA"), 42 U.S.C. §§ 6928(a) and (g) (hereinafter referred to collectively as "RCRA"); and regulations promulgated thereunder, and pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604(e), against Defendant Eastman Kodak Company ("Kodak"), with respect to manufacturing and hazardous waste treatment, storage and disposal operations located in the City of Rochester and Town of Greece, New York, (known as "Kodak Park" and "King's Landing"); and

WHEREAS, the United States in its Complaint seeks, inter

alia, injunctive relief and the imposition of civil penalties for the violations of RCRA and CERCLA alleged in the Complaint; and

WHEREAS, the parties agree and the Court finds that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest; and

WHEREAS, the parties agree that by entering into this Consent Decree the Defendant has not admitted the truth of any allegation in the Complaint except the allegations pertaining to venue and subject matter and personal jurisdiction; and

WHEREAS, the parties, without the necessity of trial or adjudication of any issues of fact or law, and without any admission of liability by the Defendant, consent to entry of the following Consent Decree resolving Plaintiff's claims.

NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED THAT:

I. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Consent Decree or its Attachments that are defined in RCRA, 42 U.S.C. §§ 6901-6991i, or in regulations promulgated under RCRA, 40 C.F.R. Parts 260-280, shall have the meaning assigned to them in RCRA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the

Attachments hereto and incorporated hereunder, the following definitions shall apply:

"Compliance Schedule" shall mean the schedule of work required under this Consent Decree to be completed by Kodak as set forth in Attachment A to this Consent Decree and any modifications thereto made in accordance with this Consent Decree;

"Consent Decree" shall mean this Decree and all Attachments hereto (listed in Section XXIII). In the event of conflict between this Decree and any Attachment, this Decree shall control, except with respect to Section XX (Record Retention) in which case Attachment A shall control;

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

"Defendant" means the Defendant in this action, Eastman Kodak Company;

"EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States;

"Kodak Park Facility" or "Site" means the following manufacturing and hazardous waste treatment, storage and disposal operations owned and/or operated by Defendant Eastman Kodak

Company in Rochester, New York: Kodak Park Main Plant, EPA RCRA I.D. No. NYD980592497, and the King's Landing Wastewater Purification Plant, EPA RCRA I.D. No. NYD000706242;

"LDR" means land disposal restrictions promulgated pursuant to 42 U.S.C. § 6924 and codified at 40 C.F.R. Part 268;

"Notify" and "Submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail or dispatch by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federally or state recognized holiday, the delivery, deposit, or dispatch shall be due on the next business day;

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter;

"Parties" shall mean the United States (Plaintiff) and Eastman Kodak Company (Defendant);

"Plaintiff" shall mean the United States;

"United States" shall mean the United States of America; and

"Work" shall mean all activities Defendant is required to perform under this Consent Decree, together with its Attachments, except those required by Section XX (Record Retention).

II. JURISDICTION

2. This Court has jurisdiction over the subject matter and over the parties pursuant to RCRA §§ 3008(a), 42 U.S.C. § 6928(a), CERCLA § 104(e), 42 U.S.C. § 9604(e), and 28 U.S.C.

§§ 1331, 1345, and 1355. This Court also has personal jurisdiction over the Defendant. The Complaint filed herein states claims for which, if the allegations were proved, relief could be granted. Solely for the purposes of this Consent Decree and the underlying Complaint, Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Defendant with respect to all matters arising under or relating to this Consent Decree. Defendant 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, including, but not limited to, service of a summons.

III. PARTIES BOUND AND NOTICE OF TRANSFER

3. The provisions of this Consent Decree shall apply to and be binding upon the United States and upon Kodak and its officers, agents, successors, assigns, and all persons acting on their behalf. Each party certifies that at least one of its undersigned representatives is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree, to execute it on behalf of that party, and

to legally bind the party on whose behalf he or she executes this Consent Decree.

4. Unless otherwise agreed to by EPA, no change in ownership, corporate, or partnership status relating to the Kodak Park Facility, or conveyance of title, easement, or other interest in the Kodak Park Facility, including but not limited to any lease or transfer of assets or real or personal property, will alter the Defendant's obligation to comply with the requirements of this Consent Decree or to ensure compliance by any successor or assign of the Defendant, regardless of whether the Defendant continues to exist following the transaction.

a. In the event that any such conveyance or lease of Kodak Park property will entail the usage by another person of the Kodak Park industrial sewer system or other Kodak Park hazardous waste treatment, storage, or disposal facilities regulated under 40 C.F.R. Parts 264 or 265, then it shall be Kodak's obligation to require compliance by that person with the relevant portions of Sections I(A), and II through VI of the Compliance Schedule annexed hereto as Attachment A, and to reserve the right to monitor compliance by that person. Kodak shall remain liable to EPA for any stipulated penalties that may accrue due to any non-compliance by that person. Kodak also shall require that such person establish and maintain adequate waste characterization and environmental management programs with respect to the acquired property.

b. In all cases, it shall be Kodak's obligation with respect to any portion of the Kodak Park Facility conveyed or leased to ensure access to property and information pursuant to Sections VI and XIX of this Consent Decree. Any deed, title, or other instrument of conveyance shall contain a notice that the Kodak Park Facility is the subject of this Consent Decree, setting forth the case caption and index number, and the Court having jurisdiction.

5. Defendant shall notify EPA in the manner specified in 40 C.F.R. § 270.72(a)(4) or 40 C.F.R. § 270.40, as applicable, prior to a change in the operational and/or ownership control of any portion of Kodak Park, including but not limited to the conveyance of title, easement, or other interest, including a leasehold interest. This notice shall also include a description of both the current and expected future activities on that portion of the Kodak Park Facility to be conveyed, leased or otherwise alienated. Defendant shall also provide a copy of this Consent Decree to the grantee prior to any such conveyance.

6. Defendant shall provide to each contractor hired to perform any of the Work (as defined above) required by this Consent Decree or its Attachments (and to each person representing the Defendant with respect to the Site or the Work), a copy of all sections of this Decree and/or Attachments relevant to the contractor's employment, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree and its Attachments.

Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Defendant nonetheless shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

IV. GENERAL PROVISIONS

7. Compliance With Applicable Law: All activities undertaken by Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal, state and local laws, permits, and regulations, including, without limitation, federal and state regulations governing the generation, treatment, storage, transport, and disposal of hazardous waste, and the terms and conditions of Defendant's Kodak Park RCRA permit (No. NYD980592497), and any modifications thereto.

8. Permits: Where any portion of the Work requires a federal or state permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

9. The Defendant may seek relief under the provisions of Section XVII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work, provided that Defendant has used due diligence to obtain such permit.

10. This Consent-Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

V. PERFORMANCE OF THE WORK BY DEFENDANT

A. Compliance Schedule

11. Defendant shall comply with the provisions and terms contained in the Compliance Schedule set forth in Attachment A , which is incorporated by reference into this Consent Decree. This Compliance Schedule requires Defendant Kodak to perform various tasks, including, but not limited to, the following:

(1) Perform a waste determination at the point of generation on each solid waste stream generated at Kodak Park and King's Landing, pursuant to 40 C.F.R. § 262.11, 268.7 and 6 NYCRR § 372.2;

(2) Inspect, repair, and upgrade the Kodak Park industrial sewer system; and

(3) Upgrade, operate, and submit permit applications for the multiple hearth incinerator located at Building 95 and used to incinerate wastewater sludge from King's Landing containing hazardous wastes.

B. Management Systems Analysis

12. The Defendant shall comply with the provisions and terms of the "Management Systems Analysis" set forth in Attachment B, which is incorporated by reference into this Consent Decree. This Management Systems Analysis requires Defendant to complete, implement, and document a comprehensive

environmental management program at Kodak Park and King's Landing.

C. Inadequate or Incomplete Performance of the Work

13. If, prior to Defendant's Request for an Acknowledgement of Completion, pursuant to Section XI of this Consent Decree, Plaintiff determines that Defendant's performance of the Work is inadequate or incomplete, EPA will notify Defendant in writing of the activities that must be undertaken to complete the Work, and will set forth in the notice a period for Defendant to satisfactorily complete the Work. Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution).

VI. SITE ACCESS

14. Commencing upon the date of lodging of this Consent Decree, the Defendant agrees to provide the United States and its representatives, including EPA, its employees and authorized agents (including contractors and subcontractors), access at all reasonable times to the Site and any other property owned or controlled by Defendant, or accessible to Defendant by contract, to which access is required for the implementation of this Consent Decree, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;

- c. Conducting investigations relating to the Work;
- d. Obtaining samples relating to the Work;
- e. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendant or its agents related to the Work; and
- f. Assessing Defendant's compliance with this Consent Decree.

15. The activities authorized by this Section include, but are not limited to:

- a. interviewing and obtaining oral, written or recorded statements from personnel involved in work activity required by this Consent Decree, whether such personnel are employed by the Defendant or by its contractors or subcontractors;
- b. inspecting, reviewing, and copying all documents that relate to work activity required by this Consent Decree;
- c. observing, photographing, or otherwise documenting the performance or completion of work activity required by this Consent Decree; and
- d. conducting such other monitoring and investigative activities as EPA deems necessary to monitor the Defendant's work activity required by this Consent Decree.

16. At the time of entering the Kodak Park Facility, EPA employees and representatives shall present valid credentials or other official authorization. The Defendant shall have the right to accompany EPA representatives throughout their presence at the Kodak Park Facility and to monitor and record the investigative activities conducted by EPA, so long as such monitoring or recording does not delay or impede the investigative activities of EPA. If such a recording of EPA's investigatory activities is made, the Defendant shall provide a copy of the recording to EPA.

17. Kodak, upon request at the time of sampling, may obtain splits of any samples taken by the United States or EPA, or their representatives, and upon request shall be provided with copies of the results of sampling, analysis, tests, or other raw data generated as a result of activities authorized under Paragraph 15 of this Consent Decree.

18. Notwithstanding the foregoing Paragraph or any other provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under RCRA, CERCLA and any other applicable statutes, regulations or permits.

VII. CERTIFICATIONS

19. Whenever this Consent Decree or its Attachments requires the Defendant to submit a workplan, study, or report, it shall be signed and certified as accurate by a responsible corporate officer as defined in 40 C.F.R. § 270.11(a)(1), or his duly authorized representative. This certification shall include the following language:

I certify under penalty of law that this document and any attachments to it were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VIII. NOTICES

20. Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the individuals and addresses specified in Paragraphs 21 and 22, below, unless otherwise specified by this Consent Decree. Any correspondence submitted to the government shall include a reference to the case caption and index number of this court action. Any changes in the person designated to send or receive such notice or in the address to which the notice is to be sent shall be provided to the other parties, in writing, in accordance with the requirements of this Section.

21. Any technical reports or data required to be submitted under this Consent Decree shall be submitted to:

(4 copies)

(1 copy)

Branch Chief
U.S. Environmental Protection
Agency - Region II
Hazardous Waste Compliance
Branch
26 Federal Plaza
New York, New York 10278

Enforcement Specialist Office
National Enforcement
Investigations Center
U.S. Environmental Protection
Agency
Building 53, Box 25227
Denver Federal Center
Denver, Colorado 80225

As to the NYSDEC:

Director of Division of
Hazardous Substances Regulation
New York State Department of
Environmental Conservation
Division of Hazardous
Substance Regulation
50 Wolf Road
Albany, New York 12233

Regional Director
Region 8
New York State Department of
Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414

22. The parties designate the following individuals to receive any other notifications or submissions, and to communicate informally about problems incurred or anticipated in meeting the requirements of this Consent Decree and its

Attachments:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, D.C. 20005

Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10278

As to the Defendant:

Director
Environmental, Health and Safety Legal Staff
Eastman Kodak Company
343 State Street
Rochester, New York 14650-0207

23. Such informal communication is intended to facilitate meeting the objectives of this Consent Decree and shall not relieve the parties of the notice and reporting requirements set forth elsewhere in this Consent Decree and its Attachments.

IX. SUBMISSIONS REQUIRING AGENCY APPROVAL

24. After review of any plan, report, schedule or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA shall, in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon

specified conditions; (c) disapprove, in whole or in part, the submission, directing that the Defendant modify the submission; or (d) any combination of the above.

25. In the event of approval or approval upon conditions by EPA, pursuant to Paragraph 24(a), or (b), Defendant shall proceed to take any action required by the plan, report, schedule or other item, as approved by EPA.

26. Upon receipt of a notice of disapproval pursuant to Paragraph 24(c), Defendant shall, within fifteen working days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, schedule or other item for approval. The revised document, if approved by EPA, shall become final. Any stipulated penalties applicable to the submission, as provided in Section XV, shall accrue during the specified period, but shall not be payable unless the resubmission is disapproved due to a material defect as provided in Paragraph 24.

27. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 24(c), Defendant shall proceed, if EPA so directs, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Defendant of any liability for stipulated penalties under Section XV (Stipulated Penalties).

28. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again

require the Defendant to correct the deficiencies, in accordance with the preceding Paragraphs.

29. If upon resubmission, a plan, report, or item is disapproved by EPA due to a material defect, Defendant shall be deemed to have failed to submit such plan, report, or item in a timely and adequate manner, unless the Defendant invokes, in a timely manner, the dispute resolution procedures set forth in Section XVI (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XV (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XV.

30. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon written approval by EPA, be enforceable under this Consent Decree. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, such approval shall be in writing, and the approved portion shall be enforceable under this Consent Decree.

X. EMERGENCY RESPONSE

31. In the event of any action or occurrence during the performance of the Work that causes or threatens a release of hazardous waste or hazardous constituents from the Site that

constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Defendant shall provide oral notice to EPA within one business day, and shall notify EPA in writing within ten (10) days, summarizing the nature, immediacy, and magnitude of the actual or potential threats to human health or the environment. The written notice requirement may be satisfied by sending to the addresses specified in Section VIII (Notices) of this Decree a copy of any notice that includes the required information and that is generated pursuant to a requirement of CERCLA, or pursuant to a state statute, together with a cover letter specifying that the notice is being provided pursuant to this Consent Decree, and including the docket number of this case.

32. The Defendant shall, as soon as possible, submit to EPA for its approval, a plan to mitigate the threat or emergency condition in accordance with all applicable provisions of this Consent Decree and its Attachments. EPA will approve or modify this plan, and the Defendant shall implement this plan as approved or modified by EPA. If EPA determines that quicker action is required, then the Director of the Air and Waste Management Division, Region II, may orally authorize Defendant to act prior to Defendant's making any written submission to EPA. In the case of an extreme emergency, Defendant may act without prior EPA approval; any such unapproved action shall be taken at Defendant's own risk, and Defendant shall be responsible for any

different or additional action subsequently required by EPA to mitigate the threat(s).

33. If EPA determines that activities in compliance or non-compliance with this Consent Decree have caused or may cause a release of a hazardous waste or hazardous constituent, or may pose a threat to human health or the environment, EPA may direct Defendant to stop further implementation of this Consent Decree, or a portion of this Consent Decree, for such period of time as may be needed to abate any such release or threat and/or to undertake any action that EPA determines to be necessary. Any stipulated penalties that accrue as a result of EPA's direction that Defendant stop further implementation of this Consent Decree, or a portion of this Consent Decree, shall accrue during the period of delay, but shall not be payable unless the release or threat is the result of activities not in compliance with this Consent Decree.

34. Subject to the provisions of the foregoing Paragraph and Section XVII (Force Majeure) of this Consent Decree, the existence of emergency conditions shall in no way relieve Defendant from timely implementation of the activities required by this Consent Decree or its Attachments.

35. In the event that Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Defendant shall reimburse EPA for all costs of such action, including but not limited to costs incurred in

connection with hiring contractors and subcontractors, and any enforcement costs.

36. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of any solid waste, hazardous waste or hazardous constituents on, at, or from the Kodak Park Facility.

XI. COMPLETION OF THE WORK

37. Within 90 days after Defendant concludes that all phases of the Work required under Attachment A to this Consent Decree (the "Attachment A Work") have been fully performed, Defendant, if EPA so requests, shall schedule and conduct an inspection of the Kodak Park Facility, to be attended by Defendant and EPA. The New York State Department of Environmental Conservation also shall be invited to attend. Following the inspection, and correction of any problems noted by EPA, Defendant shall submit one or more written reports by registered professional engineers in the relevant technical fields, certifying in compliance with Section VII of this Consent Decree that the Attachment A Work has been completed in full satisfaction of the requirements of Attachment A of this Consent Decree. These reports shall indicate the case name and civil action number, and shall be submitted together with a Request for

Acknowledgement of Completion containing the following statement, signed by a responsible corporate official of Defendant:

"To the best of my knowledge, after thorough investigation in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted, I certify, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, that Kodak has completed in accordance with the Consent Decree the Work set forth in Attachment A of this Consent Decree, and that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

38. If, after review of the written reports and certification, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree and Attachment A hereto, EPA will notify Defendant in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and Attachment A hereto, or will require Defendant to submit a schedule to EPA for approval pursuant to Section IX (Submissions Requiring Agency Approval). Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution).

39. If EPA concludes, based on the initial or any subsequent request for an Acknowledgement of Completion by Defendant, and after a reasonable opportunity for review and comment by the State, that the Attachment A Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Defendant in writing, which notice shall constitute the Acknowledgement of Completion.

XII. ENFORCEMENT COSTS

40. If, following compliance with Paragraph 13 and/or 38, Plaintiff determines that Defendant's performance of the Work remains inadequate or incomplete, Defendant shall reimburse the United States for all costs incurred by or on behalf of the United States in connection with the enforcement of this Consent Decree or the performance of the Work, including but not limited to costs incurred in connection with hiring contractors and subcontractors to review the Kodak Park Facility and to oversee and monitor the Work. The United States will send Defendant a bill detailing such costs and requiring payment. This bill shall include a Regionally-prepared cost summary that includes direct and indirect costs incurred by EPA and DOJ and their contractors on a quarterly basis. Defendant shall make all payments within 30 days of Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 41. The Defendant shall make all payments by certified or cashier's check made payable to "Treasurer, United States of America," and tendered in full to the United States Attorney for the Western District of

New York. A copy of the check and any correspondence from Kodak to the United States Attorney shall be sent to the United States and EPA as provided in Section VIII (Notices).

41. Defendant may contest payment of any costs invoiced under Paragraph 40 on the ground that the United States has made an accounting error. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section VIII (Notices) of this Decree. Any such objection shall specifically identify the contested costs and the basis for objection. In the event of an objection, the Defendant shall within the 30 day period pay all uncontested costs to the United States in the manner described in Paragraph 40. Simultaneously, the Defendant shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested costs. The Defendant shall send to the United States, as provided in Section VIII (Notices) of this Decree, a copy of the transmittal letter and check paying the uncontested costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Defendant shall initiate the Dispute Resolution procedures in Section XVI (Dispute

Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 40. If the Defendant prevails concerning any aspect of the contested costs, the Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 40; any balance of the escrow account shall be disbursed to the Defendant. The dispute resolution procedures set forth in this Paragraph, in conjunction with the procedures set forth in Section XVI (Dispute Resolution), shall be the exclusive mechanisms for resolving disputes regarding the Defendant's obligation to reimburse the United States for its costs in connection with this Consent Decree.

42. In the event that the payments required by Paragraph 40 are not made within 30 days of the Defendant's receipt of the bill, Defendant shall pay interest on the unpaid balance at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. The interest on the United States' costs shall begin to accrue on the date of the Defendant's receipt of the bill, and shall continue to accrue at the rate specified through the date of the Defendant's payment. Such interest shall be compounded each federal fiscal year. Defendant shall also pay a 6% per annum penalty on any principal amount not paid within ninety (90) days of the due date. Payments of interest and

penalties made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Defendant's failure to make timely payments under this Section.

XIII. CIVIL PENALTY

43. Kodak will pay a civil penalty of five million dollars (\$5,000,000) to the United States for the RCRA violations enumerated in the Complaint in this action, and will offset an additional three million dollars (\$3,000,000) in penalties with an agreement to conduct a number of Supplemental Environmental Projects, as set forth in Section XIV, infra.

a. Within ten (10) working days of Defendant's receipt of notice of the lodging of this Consent Decree with the Court, Defendant shall establish an interest bearing escrow account meeting the requirements of this Paragraph in a federally-insured bank duly chartered in the State of New York, and shall remit to that escrow account funds in the amount of \$5,000,000.00.

b. Within the same time frame, Defendant shall send to the United States, by overnight mail directed to the addresses specified in Section VIII (Notices) of this Decree, copies of the documents establishing and funding the escrow account, together with information containing the identities of the bank and of the escrow agent, the bank account under which the escrow account is established, and a bank statement or deposit slip showing the initial balance of the escrow account. The correspondence shall also reference the civil action number of this case, and the Department of Justice ("DOJ") case number (90-7-1-646).

c. All funds paid into the escrow account by Defendant shall remain in escrow and may not be withdrawn by any person except to make the payment required by Paragraph 43(d) of this Decree, unless the Court determines that entry of this Consent Decree is not in the public interest and declines to enter it as an order. If the Court declines to enter the Consent Decree as an order, all sums in the escrow account shall be returned to Defendant, together with any accrued interest thereon.

d. Within ten (10) working days of Defendant's receipt of notice of entry of the Consent Decree by the Court, Defendant shall, through the escrow agent, remit the principal of the escrowed monies to the United States, together with any accrued interest thereon. Payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the Western District of New York, referencing the DOJ Number, 90-7-1-646 and the U.S.A.O. file number 94-V-0715. Payment shall be made in accordance with instructions provided by the Plaintiff to the Defendant upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 4:00 P.M. (Eastern Time) will be credited on the next business day. Notice of the EFT and copies of any correspondence from Defendant to the United States Attorney shall be sent to the United States and EPA as provided in Section VIII (Notices) of this Decree.

44. In the event that the payment required by Paragraph 43 is not made in compliance with the terms of Paragraph 43,

Defendant shall pay interest on the unpaid balance at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. The interest on the United States' costs shall begin to accrue on the date of the 11th day following Defendant's receipt of notice of the entry of the Consent Decree, and shall continue to accrue at the rate specified through the date of the Defendant's payment. Such interest shall be compounded each federal fiscal year. Defendant shall also pay a 6% per annum penalty on any principal amount not paid within ninety (90) days of the due date. Payments of interest and penalties made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendant's failure to make timely payments under this Section.

45. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

XIV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

46. Defendant shall implement certain Supplemental Environmental Projects ("SEPs"), with an aggregate value of approximately \$12,000,000, in accordance with the provisions of Attachment C, hereto, to facilitate pollution prevention and waste minimization at the Kodak Park Facility. Defendant hereby certifies that, to the best of its knowledge, it is not otherwise required, by virtue of any local, state or federal statute, regulation, order, consent decree, or other law, to perform the specific tasks enumerated in Attachment C to this Consent Decree. Defendant further certifies that it has not already received, and

is not currently negotiating to receive, credit in any other federal or state enforcement action for any of the SEPs specified in Attachment C.

XV. STIPULATED PENALTIES

47. Defendant shall be liable for stipulated penalties to the United States, as specified below, for failure to comply with the requirements of this Consent Decree, unless excused under Section XVII (Force Majeure). "Compliance" by Defendant shall include timely completion of the activities required by this Consent Decree, its Attachments, or any work plan, schedule, or other document approved by EPA pursuant to this Consent Decree.

a. For failure to submit the Penalty pursuant to the terms of Section XIII, Defendant shall pay stipulated penalties in the following amounts for each day during which the payment is not received:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th day	\$2,500
31st through 60th day	\$4,000
61st day and beyond	\$10,000

b. For failure to meet any implementation or construction deadline established in Attachment A to this Consent Decree, and for any violation of the interim operating conditions established in Section VI(B)(2) of Attachment A to this Consent Decree, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th day	\$1,000
31st through 60th day	\$2,000
61st day and beyond	\$5,000

c. For failure to meet any report submittal deadlines established in Attachments A or B, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th day	\$500
31st through 60th day	\$1000
61st day and beyond	\$2500

48. All stipulated penalties begin to accrue on the day that performance is due or a violation occurs, and continue to accrue through the final day of all correction of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

49. Defendant shall notify EPA in writing of any failure to meet Consent Decree requirements for which stipulated penalties may be due as soon as it has knowledge of such failure. Plaintiff shall notify Defendant as soon as practicable of any alleged failure by Defendant to meet Consent Decree requirements for which stipulated penalties may be due. Plaintiff reserves the right to demand payment of stipulated penalties upon a determination by Plaintiff that a violation of this Consent Decree has occurred. However, penalties shall accrue as provided in Paragraphs 47 and 48, regardless of whether Defendant or the EPA has notified the other of a violation.

50. The payment of penalties shall not alter in any way Defendant's obligation to complete the performance of the Work required under this Consent Decree.

51. All penalties owed to the United States under this Section shall be due and payable within 30 days of the Defendant's receipt from EPA of a demand for payment of the penalties, unless Defendant invokes the Dispute Resolution procedures under Section XVI (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to the "Treasurer of the United States" and shall be mailed with a cover letter stating the caption and docket number of this case to:

Chief, Civil Division
United States Attorney's Office
Western District of New York
68 Court Street, Room 502
Buffalo, New York 14202

A copy of the check and any correspondence from Kodak to the United States Attorney shall be sent to the United States and EPA as provided in Section VIII (Notices).

52. Penalties shall continue to accrue as provided in Paragraphs 47 and 48 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the United States within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owed to the United States within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States or to Defendant to the extent that it prevails.

53. If Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Defendant shall pay interest on the unpaid penalties at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, beginning on the date of demand made pursuant to Paragraph 51, and shall continue to accrue at the rate specified through the date of the Defendant's full payment. Such interest shall be compounded each federal fiscal year.

54. The stipulated penalties set forth above shall be in addition to the rights reserved to the Plaintiff in Section XXI of this Consent Decree. Nothing in this Section shall be

construed as prohibiting, altering or in any way limiting the ability of the Plaintiff to seek other remedies or sanctions available by virtue of Defendant's violation(s) of this Consent Decree or of the statutes and regulations referenced herein.

55. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

XVI. DISPUTE RESOLUTION

56. Unless otherwise expressly provided for in this Consent Decree, including the Attachments, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

57. Any dispute that arises under or with respect to this Consent Decree or any of its Attachments shall in the first instance be the subject of informal negotiations between the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute. The period for informal negotiations shall conclude upon written notice by either party, but shall not exceed 30 days from the date of the Notice of Dispute unless such time period is extended by written agreement of the parties to the dispute.

58. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the

written position advanced by EPA shall be considered binding unless Defendant invokes the formal dispute resolution procedures of this Section by filing with the Court a petition describing the nature of the dispute and proposing a resolution of the dispute. Any such petition shall be filed within ten (10) working days from the date of the conclusion of the informal negotiation period as set forth in Paragraph 57. In any such dispute, the Defendant shall bear the burden of proof. No inferences or presumptions adverse to either party will be drawn as a result of the termination of informal negotiations or the invocation of formal dispute resolution procedures. The Plaintiff shall have forty-five (45) days to respond to the petition. The filing of a petition asking the Court to resolve a dispute shall not, in itself, postpone the deadlines for the Defendant to meet its obligations under this Consent Decree with respect to the disputed issue.

59. If the Defendant does not file a petition with the Court within ten working days of the conclusion of informal negotiations as set forth in Paragraph 57, it will have waived its right to challenge Plaintiff's resolution of the matter.

60. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Defendant under this Consent Decree not directly in dispute, unless EPA agrees or the Court determines otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed

pending resolution of the dispute as provided in Paragraph 58. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XVII. FORCE MAJEURE

61. The Defendant's obligation to comply with one or more of the provisions of this Consent Decree shall be deferred to the extent and for the duration that the delay in compliance is caused by a "force majeure" event. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendant or of any entity controlled by Defendant, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that the Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" shall not apply to any delay due to increased costs or Defendant's financial inability to carry out the

provisions of this Consent Decree, to normal precipitation events, or to the Defendant's failure to make timely and bona fide applications and to exercise diligent effort to obtain permits. For purposes of this decree, "normal precipitation events" are those which are equal to or less than a twenty-four hour, twenty-five year storm event.

62. 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 event, Defendant shall notify EPA within 48 hours by telephone and shall submit written notification to EPA within twenty days after the date when it first obtained knowledge that the event might cause a delay. Such written notice shall include the nature, cause and anticipated length of the delay and all steps that the Defendant has taken and will take, with a schedule for implementation, to avoid or minimize the delay, and the Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim. The Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event. Defendant shall be deemed to have notice of any circumstance of which its contractors or subcontractors had or should have had notice.

63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, EPA will notify the

Defendant in writing of the length of the extension, if any, for performance of the obligations under this Consent Decree that are affected by the force majeure event. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Defendant in writing of its decision.

64. If the Defendant elects to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 61 and 62, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XVIII. INDEMNIFICATION

65. The United States does not assume any liability by entering into this agreement. Defendant shall indemnify, save and hold harmless the United States and its officials, agents,

employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Defendant, 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, the Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Defendant, 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. The United States shall not be held out as a party to any contract entered into by or on behalf of Defendant in carrying out activities pursuant to this Consent Decree. Neither the Defendant nor any such contractor shall be considered an agent of the United States.

66. Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages

or reimbursement arising from or on account of any contract, agreement, or arrangement between Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XIX. ACCESS TO INFORMATION

67. Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors, agents, or lessees of Kodak Park property, relating to the implementation of this Consent Decree, including, but not limited to, raw data, test results, memoranda, reports, correspondence, notes, any drafts of the foregoing, or other documents or information related to the Work. Defendant shall also make available to EPA for purposes of investigation and information gathering its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

68. All data, factual information, and documents obtained by the Plaintiff from or on behalf of the Defendant pursuant to this Consent Decree or its Attachments shall be subject to public inspection unless identified as confidential by the Defendant in conformance with 40 C.F.R. Part 2. Upon request by EPA, Kodak also shall provide responses to the questions listed at 40 C.F.R. § 2.204(e)(4). EPA reserves its right, pursuant to 40 C.F.R. §§ 2.204(a)(2) and (a)(3), to demand that Kodak submit these responses in connection with its initial designation of material as confidential. The data, factual information, and documents so

identified as confidential shall be disclosed only in accordance with appropriate EPA and DOJ regulations. Any information identified by Defendant as confidential may also be shared with representatives of NYSDEC, subject to compliance by NYSDEC with 6 NYCRR § 616.7 (Records Containing Trade Secrets). If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Defendant that the documents or information are not confidential under the standards of 40 C.F.R. § 2.204(e)(4), the public may be given access to such documents or information without further notice to Defendant.

69. The Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendant asserts such a privilege in lieu of providing documents, it shall notify the Plaintiff that such a claim is being made, and upon request shall provide the Plaintiff with the following information: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports or other information created or received pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are

privileged. No claim of 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 Site or that are developed pursuant to this Consent Decree or its Attachments.

XX. RECORD RETENTION

70. Defendant shall preserve and maintain, during the pendency of this Consent Decree, and for a minimum of one (1) year after termination of this Consent Decree, at least one legible copy of all reports required to be generated by Defendant under Attachment A of this Consent Decree, together with documentation, in either electronic or hardcopy form, of the research and data used to generate such reports or which otherwise demonstrate the performance of Defendant's obligations under this Consent Decree. In addition, all memoranda, communications, meeting minutes, and drafts prepared in connection with each report required to be generated by Defendant under this Consent Decree, and relevant to the issue of the adequacy of Defendant's performance of its obligations under this Consent Decree, shall be maintained until one (1) year following EPA's written approval of each final report, regardless of any corporate document retention policy to the contrary.

71. Notwithstanding the provisions of Paragraph 70, supra, the Defendant may request in writing permission from EPA to not preserve, to not maintain, or to destroy certain specified

categories of documents. Defendant's obligations under Paragraph 70, supra, will remain unchanged, however, unless and until EPA issues written approval of the request, which may or may not, in EPA's discretion, include a waiver of Defendant's obligations under Paragraph 72, infra.

72. Upon the expiration of any obligation under Paragraph, 70, supra, the Defendant shall provide no less than 90 days notice to the Plaintiff and to NYSDEC that no further preservation or maintenance of records is planned, or that destruction of records is planned, and shall make such records available to EPA and NYSDEC for inspection, copying or retention. This notification will identify the nature of the records and their storage location or locations.

73. The Defendant further agrees that within thirty (30) days of retaining or employing any agent, consultant or contractor for the purpose of carrying out the terms of this Consent Decree, the Defendant will enter into an agreement, with any such agents, consultants or contractors whereby such agents, consultants and/or contractors will be required to provide a copy to the Defendant for subsequent retention by Defendant in accordance with Paragraph 70, supra, of all documents produced pursuant to this Consent Decree. Such agreement shall require said agents, consultants and/or contractors upon completion of their work to furnish the Defendant a copy or originals of all documents, data, analyses, and all other materials created or

obtained during their performance of work specified in this Consent Decree.

XII. COVENANT OF PLAINTIFF

74. In consideration of the Work that will be performed and the penalties that will be paid by the Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 75, and 76 of this Section, the United States covenants not to sue or to take administrative action against Defendant pursuant to Sections 3008(a) and (g) of RCRA and Section 104(e) of CERCLA for claims specifically alleged in the Plaintiff's Complaint. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by Defendant of its obligations under this Consent Decree, including the Attachments hereto, and may be voided at any time prior to the issuance of the Acknowledgement of Completion, pursuant to Section XI, if Defendant fails to comply with any of the requirements of this Consent Decree. This covenant not to sue extends only to the Defendant and does not extend to any other person.

75. The United States retains all authority and reserves all rights to take any and all actions authorized by law to protect human health and the environment.

76. The rights reserved to the Plaintiff include the right to disapprove of work performed by the Defendant pursuant to this Consent Decree.

77. This Consent Decree shall not be construed as a ruling or determination of any issue related to any Federal, State, or local permit, if required in order to implement this Consent Decree or required in order to continue or alter operations of the Kodak Park Facility (including but not limited to construction, operation or closure permits required under RCRA), and the Defendant shall remain subject to all such permitting requirements. The Defendant shall be responsible for obtaining any Federal, State, or local permit(s) for any activity at the Kodak Park Facility, including those necessary for the performance of the work required by this Consent Decree.

78. Nothing in this Consent Decree is intended either to create any rights in or grant any cause of action to any person not a party to this Consent Decree, or to release or waive any claim, cause of action, demand, or defense in law or equity that any party to this Consent Decree may have against any person(s) or entity not a party to this Consent Decree.

79. Except as provided in Paragraph 74, the Plaintiff hereby reserves all statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, civil, criminal, or administrative, including those that may pertain to the Defendant's failure to comply with any of the requirements of this Consent Decree or RCRA, including, without limitation, additional enforcement action and the assessment of penalties under Section 3008 of RCRA, 42 U.S.C. § 6928, against the Defendant, its officers and directors.

XIII. COSTS

80. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Decree.

XIII. ATTACHMENTS

81. The following appendices are attached to and incorporated into this Consent Decree: "Attachment A" is the Compliance Schedule; "Attachment B" is the Management Systems Analysis; and "Attachment C" is the requirements for Supplemental Environmental Projects to be undertaken by Defendant .

XXIV. MODIFICATION

82. Except as specifically provided for herein, there shall be no modifications or amendments of this Consent Decree without written agreement of the parties to this Consent Decree and approval by this Court. Changes to the technical and schedule provisions set forth in Attachments A, B and C, hereto, may be made without approval by the Court under the terms set forth in the respective Attachments, or upon written agreement between the Defendant and EPA.

XXV. EFFECTIVE AND TERMINATION DATES

83. This Consent Decree shall be effective upon the date of its entry by the Court. The Consent Decree shall be terminated one year after EPA's issuance of the Acknowledgement of Completion of the Work, pursuant to Section XI of this Consent Decree, except for the requirements of Section XX (Record Retention), which shall terminate pursuant to the terms of that Section.

84. The parties may move jointly to terminate this Consent Decree based on their representation that all its requirements have been satisfied, and the Court may order such termination after conducting such inquiry as it deems appropriate.

XXVI. RETENTION OF JURISDICTION

85. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Defendant for the duration of the performance of the terms and provisions of this Consent Decree, including its Attachments, for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVI (Dispute Resolution) hereof.

86. The parties retain the right to seek to enforce the terms of this Consent Decree and take any action authorized by Federal or State law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

XXVII. PUBLIC NOTICE REQUIREMENTS

87. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or


considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

88. If, for any reason, the Court should decline to approve this Consent Decree in the form presented, then this agreement is voidable at the discretion of either party, and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.


SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

FOR PLAINTIFF - UNITED STATES OF AMERICA

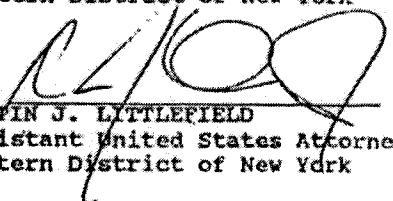

LOIS J. SCHIFFER
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
10th & Pennsylvania Avenue
Washington, DC 20530

DATE: 9/26/94


DEBORAH M. REYHER
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DATE: 9/26/94

PATRICK H. NEMOYER
United States Attorney
Western District of New York



By: MARTIN J. LITTLEFIELD
Assistant United States Attorney
Western District of New York

DATE: 10/6/94

FOR PLAINTIFF - UNITED STATES OF AMERICA -- page 2


STEVEN A. HERMAN
Assistant Administrator
for Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

DATE: 9/26/94


IRA FELDMAN, ESQ.
Office of Enforcement
U.S. Environmental Protection Agency
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Washington, D.C. 20460

DATE: 9/16/94

FOR PLAINTIFF - UNITED STATES OF AMERICA -- page 3

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Branch Chief
Air, Waste and Toxic Substances
Branch
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U.S. Environmental Protection
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DATE: 8/4/94

Christine McCulloch
CHRISTINE MCCULLOCH
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region II
26 Federal Plaza - Room 400
New York, New York 10278

DATE: 8/4/94

FOR DEFENDANT - EASTMAN KODAK COMPANY

Kenneth O. Hoffman
KENNETH O. HOFFMAN
Vice President, Eastman Kodak Company
General Manager, Kodak Park

DATE: August 9, 1994

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Elliott Stern
Title: Director, Environmental, Health & Safety Legal Staff
Address: Eastman Kodak Company, 343 State St., Rochester, NY 14650-0207

Appendix 1

Owner's Approval and RSS's Performance of Capital Expenditures and Major Repairs

Sections 12(b) and 12(c) of the Agreement provide that major repairs (as defined therein) and capital expenditures required to keep the Switching Equipment and the Tracks in good working order (hereinafter, any such repair and expenditure shall be referred to as a "Project", and together as "Projects") shall be performed by RSS at the sole cost and expense of OWNER (except for Projects required by RSS's negligence or wrongdoing); provided that no such Projects shall be made without the prior approval of OWNER. This Appendix sets forth the manner in which Projects shall be proposed by RSS and approved by OWNER (which shall generally involve the approval of an annual project plan and a specific project specification), and the obligations and duties of RSS in carrying out each approved Project.

I. Coordination and Approval of Projects. For any calendar year or portion thereof during the Term (each, a "Budget Year"), RSS shall not undertake any Project: (x) which is not included in the Annual Project Plan (as defined below) approved by OWNER for such Budget Year as contemplated in paragraph (a) below; and (y) except in accordance with a Project Specific Plan (as defined below) which has been approved by OWNER as required in paragraph (b) below.

(a) Annual Project Plan. The following process shall be followed for developing Annual Project Plans for all future Budget Years during the Term.

(i) Semi-Annual Joint Inspection of Tracks. OWNER's Traffic Representative and RSS's designated representative will undertake a thorough joint, walking inspection of all Tracks, switches, railroad rights-of-way and railroad related facilities two times each Contract Year to develop and update a mutually acceptable list of potential Projects.

(ii) Preparation by RSS of Proposed Annual Project Plan. On or before the first day of September of each Contract Year, RSS shall submit to OWNER a proposed Annual Project Plan for the next succeeding Budget Year (the "Proposed Annual Project Plan"), identifying each Project to be implemented (in whole or in part) during such succeeding Budget Year. The

Proposed Annual Project Plan shall include a brief description of each such Project, together with an estimate of the cost of each such Project expected to be expended for each such Project during the next succeeding Budget Year.

(iii) Review and Approval of Annual Project Plan. As soon as practicable after the submission of the Proposed Annual Project Plan, OWNER shall deliver to RSS its written approval or disapproval of each Project included in the Proposed Annual Project Plan. OWNER shall include with any such disapproval a brief explanation of OWNER's reasons for rejecting such Project. The Annual Project Plan for any Budget Year shall consist of the Proposed Annual Project Plan adjusted to remove the Projects disapproved by OWNER. A copy of the Annual Project Plan approved by OWNER shall be submitted by OWNER to RSS in writing no later than December 15 of any Contract Year for the next Budget Year's Annual Project Plan.

(iv) Interim Adjustments to Annual Project Plan. OWNER may, from time to time by written notice to RSS, remove from the Annual Project Plan for the current Budget Year all or a discrete part of one or more Projects included in such Annual Project Plan construction of which has not yet been commenced by RSS. Any costs incurred by RSS with respect to such removed Project, or discrete part thereof, prior to the date of receipt of such notice shall be paid by OWNER.

(b) Project Specific Plan.

(i) RSS's Submission of Project Specific Plan. Prior to beginning work on any Project, RSS shall submit a detailed project plan and specifications for such Capital Project in the form and containing generally the types of information and level of detail reasonably necessary to allow OWNER to evaluate the location, function and appearance of the Project (the "Project Specific Plan"). In addition, the Project Specific Plan shall set forth RSS's detailed estimate of the cost to complete the Project, together with the quoted not-to-exceed price (the "Not-to-Exceed Price") at which RSS shall be willing to agree to complete the proposed Project.

(ii) OWNER's Response to Project Specific Plan. Upon receipt of a Project Specific Plan, OWNER shall promptly review such plan. To assist in its review of the Project Specific Plan, OWNER may request, and RSS shall promptly provide to OWNER, copies of all design, engineering and other work produced by or on behalf of RSS with respect to the Project and RSS's

preparation of the Project Specific Plan. If OWNER determines in its reasonable discretion that the Project as proposed in the Project Specific Plan: (1) is not consistent with the Annual Project Plan; (2) would adversely affect the Eastman Business Park site; (3) would adversely affect operations or the cost to OWNER of operations at Eastman Business Park; or (4) would adversely affect safety or fire protection or environmental considerations at Eastman Business Park, then OWNER may reject the Project Specific Plan by notice to RSS, which notice shall contain a statement of the reasons for such rejection and shall be delivered within 60 days of OWNER's receipt of the Project Specific Plan. In the event of OWNER's rejection of a Project Specific Plan, then if requested by RSS, OWNER shall cause its Traffic Representative to meet with representatives of RSS to consider modifications to the Project Specific Plan for the purpose of assisting RSS to create a revised Project Specific Plan which will be acceptable to OWNER.

II. Implementation of Projects.

(a) Issuance of a Purchase Order by OWNER. Following OWNER's review and acceptance of a Project Specific Plan with respect to any Project, OWNER shall issue a Purchase Order to RSS to complete the Project either, at OWNER's option, (i) for a fixed price equal to the RSS's Not-to-Exceed Price set forth in the Project Specific Plan, or (ii) for a "cost plus" amount to be more specifically negotiated between OWNER and RSS. Such Purchase Order shall also provide the terms of payment and such other terms upon which the Parties shall agree in connection with the Project.

(b) Changes in Scope of Capital Projects. With respect to any Project for which a Purchase Order is issued to RSS pursuant to paragraph II(a) above, if RSS believes that a change in the scope of such Project is required, RSS shall submit a change order and a modified Purchase Order and specifications to OWNER (by written notice to OWNER's Traffic Representative, or his or her designee) for OWNER's consideration. Within 10 business days after receipt of the proposed change order, OWNER shall notify RSS either of its acceptance of such change in scope, in which case OWNER shall issue an amended Purchase Order covering such change in a manner to be agreed between OWNER and RSS, or that the proposed change in scope is not acceptable together with a brief statement of the reasons therefor.

(c) Risk of Loss. Except to the extent of any losses resulting from the negligence of OWNER, RSS shall bear the risk of loss with respect to each Project and all materials incorporated into the Project, or otherwise procured or provided by RSS as part of any Project, until the relevant Project or the components thereof shall have been delivered to and installed at Eastman Business Park.

(d) Project Completion Report. Upon final completion of each Project, RSS shall present to OWNER a final project report, which shall include final as-built drawings (except in cases where the Project does not involve significant construction or installation work to the Eastman Business Park), and which shall demonstrate that the Project as completed achieves the objectives and scope and specifications for the Project which were set forth in the Project Specific Plan and the Purchase Order.

Appendix 2: Scope of Maintenance Services

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6.	III. Equipment Maintenance / Repair Service

SECTION I: SERVICE LEVEL AGREEMENT

RSS will maintain and repair all aspects of Owner's Eastman Business Park rail car switching operations, except to the extent any aspect of such maintenance is specifically excluded from RSS's responsibilities in this Appendix 2. RSS's responsibilities shall include: (i) performing all required maintenance and repairs of Owner's track system, including snow removal from all tracks; and (ii) performing all required maintenance and repairs of Owner's locomotives and other equipment used by RSS in the operation of the switching services at Eastman Business Park (including equipment owned by RSS).

a. EBP Track Maintenance and Repair

- RSS will perform all routine, day-to-day maintenance and any repairs required to keep the tracks and switches in at least as good condition as exists on the commencement date of the Agreement. Notwithstanding the foregoing, RSS shall not repair or restore any pavement required in connection with any track repair or maintenance projects, but rather shall coordinate with Owner to allow Owner's provider of all asphalt paving services at EBP to perform such paving work. Such third party provider of paving work shall be paid directly by Owner.
- With respect to non-routine maintenance or repair projects and any capital replacement programs relating to portions of Owner's existing tracks, RSS will recommend needed maintenance and capital improvements on at least an annual basis, and will perform such projects, subject to and only after receiving Owner's prior written approval for each such repair or capital improvement.
- RSS shall be responsible to purchase all materials required for the maintenance and repair of tracks and switches as contemplated hereunder. However, Owner expects that all such repair components and materials purchased by RSS shall be competitively priced. Owner reserves the right to purchase repair or maintenance components directly if it is to Owner's financial advantage to do so.
- RSS will be responsible for all snow removal related to the entire rail system and switches.
- Without limiting the generality of the foregoing, RSS shall be responsible to perform each Key Activity listed in Section II, Track Maintenance and Repair Service; Snow Removal Service, at the Performance Level specified. RSS's performance of each such Key Activity shall be measured by the Key Performance Indicators as indicated. RSS and

Owner shall meet periodically (intended to be once per calendar quarter) during the term of the Agreement to review RSS's performance of each Key Activity.

b. Equipment Maintenance and Repairs

- RSS will perform all repairs and maintenance to the Loaned Equipment that is provided to RSS for daily use, and any other equipment required for operation of the switching services performed at the Eastman Business Park.
- RSS shall be responsible to purchase all materials required for the maintenance and repair of equipment as contemplated hereunder. However, Owner expects that all such repair components and materials purchased by RSS shall be competitively priced. Owner reserves the right to purchase repair or maintenance components directly if it is to Owner's financial advantage to do so.
- Without limiting the generality of the foregoing, RSS shall be responsible to perform each Key Activity listed in Section III, Equipment Maintenance and Repair Service, at the Performance Level specified. RSS's performance of each such Key Activity shall be measured by the Key Performance Indicators as indicated. RSS and Owner shall meet periodically (intended to be once per calendar quarter) during the term of the Agreement to review RSS's performance of each Key Activity.

Section II: Track Maintenance and Repair Service; Snow Removal Service

Key Activities	Performance Level	Key Performance Indicators
Perform all basic track maintenance, including lubrication and adjusting track switches.	Complete functions scheduled. All track maintenance work must be coordinated with switching operation so service is not interrupted to the site.	RSS to provide data showing all basic maintenance, including lubrication and adjusting track switches has been completed on a monthly basis.
Make all repairs to the system as required, including gauge rods, re-spiking, welding of points, and track splices.	Lack of or no derailments. All maintenance repairs will be reviewed with contract coordinator prior to start of work.	RSS must maintain all track, turnouts, ties, timbers and associated hardware in working condition at all times
Complete all track capital projects, including new rails, tracks, and track switches.	All track capital projects to be completed pursuant to the annually-approved EBP capital project plan. All track projects (i.e. installations, removals, repairs), must be conducted so as not to interfere with any affected customer schedules.	Provide a thorough, twice-a-year walking inspection of all tracks, switches, and right-of-ways with Owner's contract coordinator. Information from the walking inspections will be utilized to develop the three (3) year EBP capital project plan.
RSS shall maintain and manage the inventory of Owner-owned track repair parts as reasonably required to be prepared to promptly make needed track repairs.	Effectively manage inventory of on hand parts in order to meet any emergency track repair requests. Create / maintain inventory summary for easy review.	Quarterly reviews with RSS and Owner contract coordinator.
RSS to write specifications for capital track work.	Share with the Owner contract coordinator all specs prior to going out for bid.	Specifications shared and approved by Owner contract coordinator.
RSS to procure best value for outsourced work and track repair parts.	RSS to utilize purchasing volumes to obtain the best possible pricing.	RSS shall share bidding information with Owner contract coordinator and purchasing. Owner reserves the right to purchase repair or maintenance components directly if it is to Owner's

		financial advantage to do so.
Provide re-railing service for any derailments.	Owner contract coordinator (or, in coordinator's absence, EBP management) to be notified of derailments within 30 minutes of occurrence.	RSS shall share with Owner's contract coordinator its written emergency action plan for handling derailments.
RSS to provide all necessary snow removal from the EBP track system, including hand cleaning of switches, snowplowing tracks and leads, and clearing paths for switching crew.	Critical snow removal to be completed prior to 6:00 am to ensure that there is no delay in on time delivery expectations. No damage to switches or derailments due to ice and snow build up.	Daily report to Owner's contract coordinator on any day that all snow removal is not complete and as a result one or more deliveries will be delayed. No damage reports on switches or track due to snow and ice build-up.

Section III: Equipment Maintenance / Repair Service

Key Activities	Performance Level	Key Performance Indicators
Provide daily inspection of all switching equipment, inclusive of fueling, lubricating, and filling of sand hoppers.	Resolve immediately any maintenance or repair issues which would impact switching operations, and schedule any other required repairs or maintenance.	Utilization of daily check list to verify completion of tasks. Daily log should contain notes of observations at daily inspections.
RSS to perform all scheduled maintenance for all EBP switching equipment used by RSS for the switching operations. The applicable maintenance schedule for EBP switching equipment shall be subject to the reasonable approval of Owner.	RSS to maintain a database of scheduled maintenance performed. All equipment must remain leak free so that there is no release to the environment. All locomotives are washed a minimum of once per month or on an as needed basis.	Database to be reviewed at monthly meeting with contract coordinator. In addition, a visual check may be done by the Owner's contract coordinator upon request.
RSS to schedule and complete all repairs or coordinate outsourcing of repairs for all EBP equipment used by RSS for the switching operations.	RSS to maintain a database of all repairs performed to any EBP equipment	Database to be reviewed at monthly meeting with Owner's contract coordinator. Review by contact coordinator of all specifications for repairs to equipment as well as a review of the bids for work.
RSS to procure best value for outsourced equipment repair work and equipment repair parts.	RSS to utilize purchasing volumes to obtain the best possible pricing.	RSS shall share bidding information with Owner's contract coordinator and purchasing. Owner reserves the right to purchase repair or maintenance components directly if it is to Owner's financial advantage to do so.
RSS to maintain all records for EBP switching equipment that RSS utilizes.	Maintain all records to Owner's satisfaction, and as necessary to comply with all regulatory requirements.	Records available for inspection by Owner's contract coordinator upon request.

Appendix 3

Illustrative Examples of Minor vs Major Rail Equipment Repairs and Minor vs Major Railroad Track Repairs.

The following lists represent the agreement by the Parties in advance with respect to the classification of many common repair and maintenance items as Major Repairs for purposes of Sections 12(b) and 12(c) of the Agreement.

Examples of items to be treated as minor repairs/maintenance to the Loaned Equipment:

- **Locomotives**
 - Basic preventive maintenance ("PM") including all filters, gaskets, and lubricants as shown on PM Sheet see supplied copy
 - The repair or replacement of brake shoes
 - The cleaning of the exhaust system including the use of the load box when needed
 - The washing and cleaning of the locomotive inside and out
 - Sanding of the locomotives
 - Replacement of lights and light bulbs
 - The addition of water and water conditioner
 - The replacement of air hoses
 - The repair of minor oil and water leaks
 - The replacement of motor brushes
 - The troubleshooting of any electrical problems
 - The replacement of circuit breakers
 - The repair/rebuild of brake valves
 - The repair or recalibrating of the governor
- **Ballast Regulator/ Snow Blower**
 - Basic PM, including all filters, gaskets, and lubricants
 - The repair or replacement of brake shoes
 - Replacement of lights and light bulbs
 - The replacement of air hoses
 - The replacement of circuit breakers
 - The repair/rebuild of brake valves
 - The repair/replacement of rubber fingers and brushes
 - The repair/ replacement of hydraulic hoses
 - Installation and removal of the snow blower attachment
 - Troubleshooting of any electrical or hydraulic issues

- **Tamper**
 - Basic PM,s including all filters, gaskets, and lubricants
 - The repair or replacement of brake shoes
 - Replacement of lights and light bulbs
 - The replacement of air hoses
 - The replacement of circuit breakers and switches
 - The repair/rebuild of brake valves
 - The repair/replacement of picks
 - Troubleshooting of any electrical or hydraulic issues

Examples of items to be treated as Major Repairs to Loaned Equipment:

- **Locomotives**
 - The turning of wheels
 - The replacement of wheels
 - The replacement of traction motor
 - The replacement water pump
 - The replacement of governor
 - The replacement of the main bearing and power assemblies of the diesel engine
 - Any major body repairs including complete painting
 - The replacement of draft gear and couplers
 - The replacement of the auxiliary generator
 - The replacement of cooling fans and shutters
 - The replacement of the alternator / generator
- **Ballast Regulator/ Snow Blower**
 - The replacement of hydraulic pumps/ motors
 - The rebuild or replacement of the clutch
 - The replacement or rebuild of the transmission
 - The replacement or rebuild of the motor
 - The rebuilding of the auger and shoot assembly
 - Any major body repairs including complete painting
- **Tamper**
 - Any major body repairs including complete painting
 - The replacement of any hydraulic pumps and motors
 - The replacement or complete rebuild of the diesel engine
 - The replacement of any vibrating motors
 - The replacement of the generator
 - The replacement of any electric motors

Examples of items to be treated as minor repairs/maintenance to the Tracks:

- Replacement of any 1 length of rail in numerous spots on the rail system.
- Replacement of 200-300 ties or timbers on the rail system in the course of a single repair season.
- Adjusting and repairs of all switches including such things as switch stands, stock rail, clips, and adjusting rods.
- Repair welding to any switch components including points, point protectors, frogs and stock rails.
- Tamping, re-spiking and adding new ballast in specific areas of the rail system.
- Installation or replace of any compromise bars at any location within the rail system.

Examples of items to be treated as Major Repairs to the Tracks:

- Installation of any new switch or track either within the current EBP foot print or to any adjoining property.
- The replacement of all ties, ballast and/or rail on any section of the rail system exceeding 100 feet in length.
- Replacement of any grade crossing.
- The replacement of all ballast, ties, timbers and associated switch components for any 1 switch.
- All required repairs associated with any derailment.