

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:)	
San Gabriel Valley)	
Superfund Sites (Areas 1-4))	Docket Number R9 EPA #2003-01
)	Agreement for Release of Lien
)	CERCLA § 107(r)
UNDER THE AUTHORITY OF)	
THE COMPREHENSIVE RESPONSE,)	Industry Urban-Development Agency
COMPENSATION, AND LIABILITY)	
ACT, 42 U.S.C. §§ 9601, <i>et seq.</i>)	

I. INTRODUCTION

This Agreement for Release of Lien ("Agreement") is made and entered into by and between the Environmental Protection Agency ("EPA") and Industry Urban-Development Agency ("IUDA") (collectively "the Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*

IUDA is a public body, corporate and politic, organized and existing as a redevelopment agency under California law, with offices located at 15651 East Stafford Street, City of Industry, California 91744. IUDA has entered into an agreement with Utility Trailer Manufacturing Co., Inc. ("Utility Trailer") which, subject to certain terms and conditions, provides for the purchase by IUDA of the property located at 17300 Chestnut Street in the City of Industry, California, Tax Assessor Numbers 8264-024-001, 8264-025-013, and 8264-025-006 (the "Property").

The Property consists of approximately 17 acres of land and is within the area encompassed by the Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1-4. The San Gabriel Valley Superfund Sites were listed on the National Priorities List in 1984 due to the presence of extensive groundwater contamination.

The Property was undeveloped open space until the mid-1950s, when it was developed for industrial purposes. The Property has been occupied since its development by Utility Trailer for manufacturing of truck trailers, and related maintenance, storage and office activities. IUDA intends to demolish the existing structures on the Property, and to redevelop the Property for a new manufacturing, warehouse/distribution, or other industrial or commercial use.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to release, subject to reservations and limitations contained in Sections V, VI, and VII, the potential lien against the Property under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which may arise when IUDA becomes owner of the Property. This Agreement is also intended to acknowledge the IUDA's status as a "Bona Fide Prospective Purchaser," as that term is defined in CERCLA Section 101(40), 42 U.S.C. § 9601(40), subject to the terms and conditions set forth in this Agreement.

The Parties agree that IUDA's entry into this Agreement, and the actions undertaken by IUDA in accordance with the Agreement, do not constitute an admission of any liability by IUDA. The release of this lien, in exchange for provision by IUDA to EPA of payment and other consideration satisfactory to the EPA Administrator, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "Bona Fide Prospective Purchaser" shall mean a person as described in CERCLA Section 101(40).

2. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

3. "Parties" shall mean EPA and the IUDA.

4. "Property" shall mean the parcel, encompassing approximately 17 acres, located at 17300 Chestnut Street in the City of Industry, in Los Angeles County, California, which is described in Exhibit 1, and shown on the map included as Exhibit 2, to this Agreement.

5. "Site" shall mean the San Gabriel Valley Superfund Sites (Area 1-4), including the Puente Valley Operable Unit.

6. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

7. The Property is located within an area which is primarily industrial and commercial in nature and is established and developed. The Property has recently been used for industrial purposes. The environmental condition of the soils and groundwater underlying the Property has been the subject of numerous investigations by Utility Trailer. Many, if not all, of these investigations were conducted for, and the information produced was shared with, EPA and/or the California Regional Water Quality Control Board - Los Angeles Region.

8. IUDA and the City of Industry are not, and have never been, named as potentially responsible parties ("PRPs") at the Site. Moreover, neither the IUDA nor the City of Industry is affiliated with Utility Trailer or with any other person or entity named as a potentially responsible party at the Site.

9. IUDA has informed EPA that:

a. IUDA has entered into an agreement with Utility Trailer to purchase the Property, and intend to redevelop the Property for a new industrial or commercial use, such as manufacturing or warehouse distribution.

b. The new use of the Property, after redevelopment, is expected to create more jobs, and generate more sales revenue and tax payments, than Utility Trailer's current use of Property.

10. IUDA has conducted a Phase I study of the Property, entitled "Phase I Environmental Site Assessment Report, 17300 East Chestnut Street and 942 Azusa Avenue, City of Industry, etc." (the "Phase I Report") and provided a copy of this report to EPA. This Phase I Report was conducted in conformance with applicable procedures of the American Society for Testing and Materials (E-1527-97) and CERCLA Section 101(35)(B), 42 U.S.C. § 9601(35)(B).

11. IUDA represents that, and for the purposes of this Agreement EPA relies on IUDA's representations that, IUDA's involvement with the Property prior to the effective date of this Agreement was limited to inspecting, auditing and performing environmental and other due diligence for the Property in connection with IUDA's purchase of the Property.

12. IUDA has provided EPA with a letter dated October 3, 2002 which describes the removal of soil contamination at the Property by Utility Trailer under the supervision of the California Regional Water Quality Control Board - Los Angeles Region. In this letter, the IUDA also provides assurances that: a) while conducting demolition activities, it will demolish structures and remove materials in accordance with all current laws and regulation; b) during demolition, grading and other redevelopment, it will inspect for areas of possible soil contamination, and, if signs of such contamination are found, will conduct soil testing and have

contaminated soil removed from the Property as appropriate; and c) the IUDA will relocate the groundwater monitoring wells that now exist on the Property to alternate places on or immediately adjacent to the Property. In entering into this Agreement, EPA has relied on, among other things, the information and assurances provided in IUDA's October 3, 2002 letter.

13. Based on information provided to EPA by Utility Trailer, and on IUDA's Phase I Report and appropriate inquiry for the Property, IUDA believes that all hazardous substances originating from the Property were disposed of before the date IUDA acquired ownership, and such disposal at the Property has ceased.

IV. PAYMENT

14. In consideration of and in exchange for EPA's release of any lien it has or may have under Section 107(r) of CERCLA, IUDA agrees, within thirty (30) days of the effective date of this Agreement, to pay to EPA the sum of \$100,000. IUDA shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region 9, EPA Docket # 2003-01, and Site/Spill ID # 09-8V, and name and address of payor. Payment should be sent to:

U.S. Environmental Protection Agency,
Attn: Superfund Accounting,
P.O. Box 360863M,
Pittsburgh, PA 15251

Notice of payment shall be sent to those persons listed in Section XI (Notices and Submissions) and to:

Donald Loi,
Financial Management Specialist (PMD-6),
U.S. EPA Region IX,
75 Hawthorne Street,
San Francisco, California 94105

The cash amount paid by IUDA pursuant to this Agreement shall be deposited into a Special Account and shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

15. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. RELEASE OF LIEN

16. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), EPA agrees to release the potential lien that it has on the Property under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by the United States responding to hazardous substances that were disposed of at the Site before IUDA acquired ownership of the Property.

VI. CERTIFICATION

17. By entering into this agreement, IUDA certifies that it intends to achieve and maintain status as a Bona Fide Prospective Purchaser for the Property which is the subject of this Agreement by complying with all requirements for Bona Fide Prospective Purchaser as set forth in CERCLA Section 101(40), 42 U.S.C. § 9601(40). Further, IUDA acknowledges the requirement of CERCLA that it exercise appropriate care by taking "reasonable steps" as set forth in Section 101(40), 42 U.S.C. § 9601(40), in order to maintain its status as a Bona Fide

Prospective Purchaser of the Property for so long as IUDA retains any ownership interest in the Property. IUDA also certifies that, to the best of its knowledge and belief, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants from the Site.

VII. RESERVATION OF RIGHTS

18. The release of lien set forth in Section V above does not pertain to any matters other than those expressly specified in Section V (Release of Lien). EPA reserves and the Agreement is without prejudice to all rights against IUDA with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by IUDA to meet a requirement of this Agreement, including but not limited to Section IV (Payment) and Section VI (Certification);

(b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment;

(c) liability for violations of local, State or federal law or regulations;

(d) liability under CERCLA, including Sections 106 and 107(a) and (1), 42 U.S.C. §§ 9606 and 9607(a) and (1), which arises due to IUDA's failure to comply with Section 101(40), 42 U.S.C. § 9601(40), including the obligation to make "all appropriate inquiry" pursuant to Section 101(40)(B), the obligation to provide all legally required notices pursuant to Section 101(40)(C), the obligation to exercise "appropriate care" pursuant to Section 101(40)(D), the obligation to provide "full cooperation, assistance, and access" pursuant to Section 101(40)(E), the obligation to comply with any "land use restrictions" and "institutional controls" pursuant to Section 101(40)(F), the obligation to comply with any request for information pursuant to Section

101(40)(G) and all requirements of 107(r) of CERCLA for so long as IUDA retains any ownership interest in the Property; and

(e) liability under CERCLA, including Sections 106 and 107(a) and (1), 42 U.S.C. §§ 9606 and 9607(a) and (1), resulting from the disposal or threat of disposal of hazardous substances, pollutants or contaminants at the Property after IUDA acquires the Property.

19. With respect to any claim or cause of action asserted by the United States, IUDA shall bear the burden of proving by a preponderance of the evidence that it exercised "appropriate care" by taking "reasonable steps" as those terms are defined in CERCLA Section 101(40), 42 U.S.C. § 9601(40).

20. Nothing in this Agreement is intended as a release for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than IUDA to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA. IUDA acknowledges that it is purchasing a Property where response actions may be required.

VIII. PARTIES BOUND

22. This Agreement shall apply to and be binding upon EPA and IUDA. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

IX. DISCLAIMER

23. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Property is fit for any particular purpose.

X. PAYMENT OF COSTS

24. If IUDA fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), it shall be liable for all litigation and other enforcement costs incurred by the United States and the state to enforce this Agreement or otherwise obtain compliance.

XI. NOTICES AND SUBMISSIONS

25. All notices to IUDA and/or the City should be sent to:

Kevin Radecki
Executive Director
Industry Urban - Development Agency
P.O. Box 7089
City of Industry, California 91744

with a copy to:

James A. Geocaris, Esq.
20321 Acacia Street, Suite 200
Newport Beach, California 92660

and

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Attn.: William Strausz, Esq.
Agency Counsel

All notices to the United States should be sent to:

William Keener
Assistant Regional Counsel (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

with a copy to:

Penelope R. McDaniel
Superfund Project Manager (SFD-7-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

XII. EFFECTIVE DATE

26. The effective date of this Agreement shall be the date upon which EPA issues written notice to IUDA that EPA has fully executed the Agreement.

XIII. ATTORNEY GENERAL APPROVAL

27. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By:



Laura Yoshii
Acting Regional Administrator

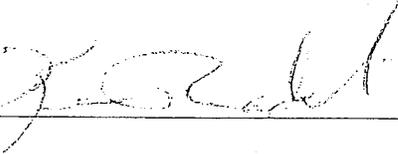
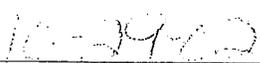


Date

IT IS SO AGREED:

INDUSTRY URBAN-DEVELOPMENT AGENCY

By:

 _____ 

Kevin Radecki
Executive Director

Date

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

PARCEL 3, IN THE CITY OF INDUSTRY, AS SHOWN ON PARCEL MAP NO. 113, FILED IN BOOK 91 PAGE 51 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, HYDROCARBONS OR OTHER MINERALS IN AND UNDER THAT PORTION OF SAID LAND LYING WITHIN SAID LOT 8 OF ROWLAND ADDITION NO. 2, WITHOUT THE RIGHT OF SURFACE ENTRY FOR DEVELOPMENT THEREOF, AS RESERVED BY THE COUNTY OF LOS ANGELES IN DEED RECORDED NOVEMBER 1, 1972 AS INSTRUMENT NO. 3180.

PARCEL 2:

THAT PORTION OF LOT 7 OF ROWLAND ADDITION NO. 2, IN THE CITY OF INDUSTRY, AS PER MAP RECORDED IN BOOK 4, PAGE 7 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHERLY OF THE NORTHEAST LINE OF RAILROAD STREET AS DESCRIBED IN THAT CERTAIN DEED RECORDED ON JANUARY 20, 1965 IN BOOK D-2770 PAGE 816 OF OFFICIAL RECORDS IN FAVOR OF THE CITY OF INDUSTRY, AS DOCUMENT NO. 256, OCTOBER 29, 1969 IN CHAIN.

EXCEPT THEREFROM THAT PORTION THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 9 OF SAID ROWLAND ADDITION NO. 2; THENCE ALONG THE WESTERLY LINE OF SAID LOT 9, NORTH 6° 36' 14" EAST 828.67 FEET; THENCE NORTH 83° 35' 00" WEST 433.93 FEET TO THE EASTERLY LINE OF THE WESTERLY 15.00 FEET, MEASURED AT RIGHT ANGLES, OF SAID LOT 7; THENCE ALONG SAID EASTERLY LINE SOUTH 6° 20' 47" WEST 526.25 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF RAILROAD STREET, A 60 FOOT PUBLIC ROAD AS DESCRIBED IN DEED TO THE CITY OF INDUSTRY, RECORDED JANUARY 20, 1965 AS INSTRUMENT NO. 1624 IN BOOK D-2770 PAGE 816 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID RAILROAD STREET AS FOLLOWS:

SOUTH 43° 16' 23" EAST 332.16 FEET AND SOUTHEASTERLY ALONG A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 470.00 FEET, AN ARC DISTANCE OF 202.31 FEET TO THE INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 9; THENCE ALONG SAID PROLONGATION NORTH 6° 36' 14" EAST 6.74 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT ONE-HALF OF ALL GAS AND HYDROCARBONS THEREUNDER AS RESERVED BY CLINTON F. SECCOMBE, ET AL., IN DEED RECORDED JANUARY 8, 1954 IN BOOK 43546 PAGE 159, OFFICIAL RECORDS.

PARCEL 3:

THAT PORTION OF LOT "A" OF TRACT 746, IN THE CITY OF INDUSTRY, AS PER MAP RECORDED IN BOOK 15 PAGE 175 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH THAT PORTION OF CHESTNUT STREET, 40.00 FEET WIDE, AS SHOWN ON SAID MAP AND ALSO SHOWN ON A MAP OF THE ROWLAND ADDITION NO. 2, RECORDED IN BOOK 4 PAGE 7 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A LINE PARALLEL WITH AND 20.00 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF LOT 8 OF SAID ROWLAND ADDITION NO. 2, WITH THE NORTHEASTERLY PROLONGATION OF THAT CERTAIN COURSE IN THE SOUTHEASTERLY BOUNDARY OF THE LAND GRANTED TO THE COUNTY OF LOS ANGELES IN THE DEED RECORDED JANUARY 25, 1966 AS INSTRUMENT NO. 3116, IN BOOK D-3186 PAGE 733 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS NORTH 58° 40' 02" EAST, 61.34 FEET; THENCE ALONG SAID PROLONGATION NORTH 58° 40' 02" EAST, 159.32 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE SOUTHERLY, AND HAVING A RADIUS OF 29.00 FEET, SAID CURVE ALSO BEING

TANGENT AT ITS EASTERLY TERMINUS WITH A CURVE, CONCAVE SOUTHWESTERLY, AND HAVING A RADIUS OF 910.52 FEET AND BEING CONCENTRIC WITH AND 54.00 FEET SOUTHWESTERLY MEASURED RADially, FROM THAT CERTAIN CURVE IN THE NORTHEASTERLY BOUNDARY OF THE LAND DESIGNATED AS "PARCEL 6-20 IN THE FINAL ORDER OF CONDEMNATION IN FAVOR OF THE COUNTY OF LOS ANGELES", RECORDED SEPTEMBER 27, 1967 AS INSTRUMENT NO. 3437 IN BOOK D-3781 PAGE 520 OF SAID OFFICIAL RECORDS, DESCRIBED AS HAVING A RADIUS OF 964.52 FEET, SAID POINT OF TANGENCY BEING THE TRUE POINT OF BEGINNING; THENCE EASTERLY ALONG SAID FIRST MENTIONED CURVE, THROUGH A CENTRAL ANGLE OF 64° 23' 47" AN ARC DISTANCE OF 32.59 FEET TO SAID EASTERLY TERMINUS; A RADIAL LINE TO SAID EASTERLY TERMINUS BEARS NORTH 33° 03' 49" EAST; THENCE SOUTHEASTERLY ALONG SAID 910.52 FOOT RADIUS CURVE, THROUGH A CENTRAL ANGLE 9° 29' 57", AN ARC DISTANCE OF 150.96 FEET; THENCE TANGENT TO SAID LAST MENTIONED CURVE, SOUTH 47° 26' 14" EAST, 16.39 FEET TO SAID PARALLEL LINE; THENCE CONTINUING, SOUTH 47° 26' 14" EAST, TO THE SOUTHERLY LINE OF SAID CHESTNUT STREET; THENCE WESTERLY ALONG SAID SOUTHERLY LINE, TO THE NORTHEAST CORNER OF LOT 4 OF ROWLAND ADDITION NO. 1, RECORDED IN BOOK 3, PAGE 92 OF MAPS, IN SAID RECORDER'S OFFICE; THENCE NORTHERLY ALONG THE NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 4, A DISTANCE OF 20.00 FEET TO A POINT OF SAID PARALLEL LINE; SAID POINT BEING THE SOUTHWESTERLY TERMINUS OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 29.00 FEET, SAID SOUTHWESTERLY TERMINUS BEING TANGENT TO SAID NORTHERLY PROLONGATION THENCE NORTHEASTERLY ALONG SAID LAST MENTIONED CURVE, THROUGH A CENTRAL ANGLE OF 32° 34' 37", AN ARC DISTANCE OF 16.49 FEET; THENCE TANGENT TO SAID CURVE, NORTH 38° 47' 02" EAST, 84.82 FEET TO THE POINT OF TANGENCY WITH THE FIRST ABOVE MENTIONED 29.00 FOOT RADIUS CURVE; THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 19° 53' 00", AN ARC DISTANCE OF 10.06 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT ALL PRECIOUS METALS AND RIGHT OF ENTRY TO EXTRACT AND REMOVE THE SAME, AS SERVED IN THE DEED OF PARTITION BETWEEN JOHN ROWLAND SR., ET AL., RECORDED IN BOOK 10 PAGE 39 OF DEEDS.

ASSESSOR'S PARCEL NOS:

8264-025-006

8264-025-013

8264-024-001

