

CITY OF ANN ARBOR
SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into this ___ day of _____, 2020, between the City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron St., Ann Arbor, Michigan, 48104, and Gelman Sciences, Inc., a Michigan Corporation, with offices at 642 South Wagner Road, Ann Arbor, Michigan, 48103.

I. GENERAL PROVISIONS

- A. Compromise of Claims/Consideration. Except as otherwise expressly provided herein, the City and Gelman (collectively, the “Parties”) acknowledge that this Settlement Agreement is a compromise, among other things, of all Claims made by the City, including Claims for Intervention, in *Attorney General v. Gelman Sciences*, Case No. 88-34734-CE (Washtenaw Cty. Cir. Ct.) (the “State Enforcement Action”) and that these compromises, the Order of Dismissal and the Continuing Rights provided therein, and other valuable consideration, and the commitments reflected herein, provide the consideration for the Parties’ entry into this Settlement Agreement.
- B. Effect of Settlement. The Parties recognize that this Settlement Agreement is a compromise of disputed Claims and defenses. By entering into this Settlement Agreement, neither Party admits any fault or liability under any statutory or common law, and does not waive any rights, claims, or defenses with respect to any person except as otherwise provided herein. By entering into this Settlement Agreement, neither Party admits the validity or factual basis of any of the positions or defenses asserted by the other Party. The Settlement Agreement and the compromises reflected herein shall have no *res judicata* effect and shall not be

admissible as evidence in any other proceeding, except in a proceeding between the Parties seeking enforcement of this Agreement.

- C. Parties Bound. This Settlement Agreement applies to and is binding upon and inures to the benefit of the City, Gelman, and their successors and assigns. This Settlement Agreement shall inure to the benefit of and be binding upon the successors and assigns, if any, of Gelman to its obligations and rights under the Fourth Amended and Restated Consent Judgment entered into in the State Enforcement Action (as may be amended) (the “Consent Judgment”).

II. DEFINITIONS

The following terms, when capitalized in this Agreement, shall have the meanings specified in this Section II.

- A. 2006 City Settlement Agreement means the November 2006 Settlement Agreement between the City and Gelman.
- B. 2014 NPDES Permit means Gelman’s National Pollutant Discharge Elimination System Permit No. MI 0048453, dated October 1, 2014.
- C. City means the City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron St., Ann Arbor, Michigan, 48104, and includes its City Administrator, Administrative Units, and Council, all as defined in the City Charter, and all acting in their official capacity.
- D. Claims means any claim, allegation, demand, order, directive, action, suit, cause of action, counterclaim, cross-claim, third-party action, administrative proceeding, arbitration or mediation demand, or demand for Intervention, whether at law or in equity, and whether sounding in tort, equity, nuisance, trespass, negligence, contract, third-party beneficiary, strict liability, statutory, regulatory, administrative, judicial court rule, or common law, cause of action of any sort, asserted and unasserted, known and unknown, anticipated and

unanticipated, past, present, and future of any nature whatsoever, including, without limitation, any and all claims for statutory, injunctive, declaratory, or administrative relief, contribution, indemnification, reimbursement, Response Costs, Response Activity Costs, loss in the value of property, damages, expenses, penalties, costs, liens, or attorney/expert fees.

- E. Consent Judgment means the Fourth Amended and Restated Consent Judgment, as may be amended, entered in the State Enforcement Action.
- F. Gelman means Gelman Sciences, Inc., a Michigan Corporation with offices at 642 South Wagner Road, Ann Arbor, Michigan, 48103, its successors and assigns, including the successors and assigns, if any, to Gelman's obligations and rights under the Consent Judgment.
- G. Gelman Property has the same meaning as the definition of that term in Section III.I of the Consent Judgment.
- H. Gelman Remediation means the Remedial Action described in the Consent Judgment, associated court orders, and EGLE-approved work plans.
- I. Hazardous Substances has the same definition as that term in Section 20101(1)(x) of NREPA, MCL 324.20101(1)(x), but, without affecting the scope of the 2006 City Settlement Agreement, does not for purposes of this Settlement Agreement include Perfluorononanoic Acid (PFNA), Perfluorooctanoic Acid (PFOA), Perfluorooctanoic Sulfonic Acid (PFOS), Perfluorohexane Sulfonic Acid (PFHxS), Hexafluoropropylene Oxide Dimer Acid (HFPO-DA), Perfluorobutane Sulfonic Acid (PFBS), and Perfluorohexanoic Acid (PFHxA).
- J. Intervention means Claims seeking to intervene as a party or participant in an existing lawsuit, judicial or administrative proceeding, or arbitration, including without limitation, Claims under MCR 2.209(A) or (B), MCL 324.20137(8), Federal Rule of Civil Procedure 24, or 42 U.S.C. § 9613(i).

- K. Mobile Treatment Unit means Gelman’s 200 gpm mobile water treatment system that uses ozone/hydrogen peroxide treatment technology (including necessary chemical storage) that, subject to necessary approvals, will be used to treat groundwater extracted from the Parklake Extraction Well as described in Section V.A.3.f.ii of the Consent Judgment.
- L. Order of Dismissal means the Stipulated Order attached as Exhibit 1.
- M. Parklake Parcel means the City-owned parcel(s) at the corner of Jackson Road and Parklake Street, as generally depicted in the map attached as Exhibit 2.
- N. Prohibition Zone means the area within which groundwater use is restricted pursuant to Consent Judgment Section V.A.2, the boundaries of which are as depicted on the map attached as Exhibit 3, as may be amended pursuant to the Consent Judgment and subject to the Continuing Rights set forth in the Order of Dismissal.
- O. Release has the same meaning as the definition of that term in Section 20101(1)(pp) of NREPA, MCL 324.20101(1)(pp).
- P. Remedial Action has the same meaning as the definition of that term in Section 20101(1)(qq) of NREPA, MCL 324.20101(1)(qq).
- Q. Response Activity(ies) has the same meaning as the definition of that term in Section 20101(1)(vv) of NREPA, MCL 324.20101(1)(vv).
- R. Response Activity Costs has the same meaning as the definition of that term in Section 20101(1)(ww) of NREPA, MCL 324.20101(1)(ww).
- S. Response Costs has the same meaning as the definition of that term in 42 U.S.C. 9607(a).
- T. Summary of Restrictions means the list of restrictions on the use of groundwater within the Prohibition Zone set forth in Section V.B.2 (a)-(d) of the Consent Judgment.
- U. USEPA means the United States Environmental Protection Agency.

III. DISMISSAL OF INTERVENTION; ENTRY OF CONSENT JUDGMENT

- A. Dismissal of Intervention. Upon execution of this Agreement, the City and Gelman shall promptly execute the Order of Dismissal. Each Party shall, at its own expense, take appropriate actions on its behalf to seek entry of the Order of Dismissal.
- B. Entry of Consent Judgment. Upon execution of this Agreement, the City and Gelman shall each at its expense, and in coordination with EGLE, take appropriate actions on its behalf to seek entry of the Consent Judgment.

IV. RELEASE OF CLAIMS

- A. City Release. Except as provided in Paragraph IV.B, below, the City hereby irrevocably and unconditionally forever waives, releases, relinquishes, acquits, covenants not to sue, and discharges, Gelman, its predecessors, its parent corporation, Pall Corporation and its parent corporation, their subsidiaries and affiliates, and their respective current and former partners, venturers, stockholders, directors, managers, officers, legal representatives, agents, employees, successors, and assigns (collectively, the “Released Parties”) from any and all Claims that it may now or in the future have against the Released Parties in connection with the Covered Matters. Covered Matters are defined as:
 - 1. All Claims arising directly or indirectly from Hazardous Substances, including but not limited to 1,4-Dioxane, in soil, groundwater, air, and surface water present at or emanating or migrating from the Gelman Property at any concentration now or in the future that was originally Released, disposed or discharged to and/or from the Gelman Property prior to the Effective Date of this Agreement and any future Releases or discharges of any Hazardous Substances, including without limitation 1,4-Dioxane, pursuant to and in compliance with any NPDES permit issued to

Gelman (collectively “Contamination”), including, without limitation, all Claims that were or could have been raised or asserted in the State Enforcement Action.

2. Subject to the City’s “Continuing Rights” under the Order of Dismissal all Claims for Intervention in connection with Contamination.
3. Subject to the City’s “Continuing Rights” under the Order of Dismissal, all Claims past, present and future, for civil fines, penalties and costs arising directly or indirectly from Hazardous Substances Released before the Effective Date of this Agreement and any future discharges of any Hazardous Substances, including without limitation 1,4-Dioxane, pursuant to and in compliance with any NPDES permit issued to Gelman.

B. Exceptions and Reservation of Rights. Notwithstanding Paragraphs IV.A. 1 and 3, above, and to the extent not already released pursuant to the 2006 City Settlement Agreement, the City reserves, and this Agreement is without prejudice to, its rights:

1. To petition, sue, or otherwise proceed against Gelman, with respect to enforcement of this Agreement and the Order of Dismissal; and
2. To take actions and to assert any Claims and to exercise any rights reserved to the City under Paragraphs IV.B. 2 and 3 of the 2006 City Settlement Agreement, provided, however, that:
 - a. The reservation of Claims under this subparagraph shall not apply to any Claims that arose prior to the Effective Date of this Agreement;
 - b. The definition of “Prohibition Zone” in this Agreement shall be used in place of the corresponding definition in the 2006 City Settlement Agreement;
 - c. The data that will be used for purposes of determining what constitutes “New Contamination” and an “unforeseen change in the migration pathway of a

Known Plume” in Paragraphs IV.B.2 and 3 of the 2006 City Settlement Agreement shall include all data obtained through the Effective Date of this Agreement and any data obtained from the new monitoring wells listed in the Consent Judgment and any other monitoring wells installed as a direct result of the data obtained from the listed monitoring wells. In addition, with respect to New Contamination, this exception/reservation shall not include Claims that could have been brought as part of the City’s Claims in the State Enforcement Action in addition to Claims that could have been brought in the “State Lawsuit” or “Federal Lawsuit” as defined in the 2006 City Settlement Agreement; and

- d. This exception/reservation shall not include any Claims arising from the costs of investigating appropriate locations for, installing, and monitoring the sentinel wells described in the March 27, 2020 “Sentinel Monitoring Well Location Report” prepared by Tetra Tech for the City.
3. To take actions and to assert any Claims and to exercise any rights reserved to the City under Paragraphs IV.B.1, 4, 5, 6, or 7 of the 2006 City Settlement Agreement provided however the reservation of Claims under this subparagraph shall not apply to any Claims that arose prior to the Effective Date of this Agreement.
 4. Notwithstanding the above, the Claims reserved under this Paragraph IV.B do not include Claims for Intervention.

V. COOPERATION AND COORDINATION

- A. Access. Pursuant to license and access agreements that will be attached as Exhibit 4, when finalized after engineering design and good faith negotiations between the City and Gelman are completed, the City shall, at no cost to Gelman, provide Gelman with access to the

Parklake Parcel and City rights-of-way to locate, install, operate and maintain the Parklake Extraction Well (including one or more soil borings to determine proper location for the Parklake Extraction Well) described in Section V.A.3.e.ii and f.ii of the Consent Judgment and to locate, operate, and maintain the Mobile Treatment Unit, and related infrastructure, for purposes of treating the groundwater extracted by the Parklake Extraction Well before discharge to the First Sister Lake pursuant to an NPDES permit, including all reasonably necessary rights of ingress and egress. The City will not charge Gelman annual license fees, but will charge and Gelman agrees to pay the City's applicable license application and review fees, which cover necessary Engineering review, and will obtain and pay for all other permits required for installation and operation of the Parklake Extraction Well and Mobile Treatment Unit.

- B. Access to Information/Records. Upon written request from Gelman, the City shall promptly provide Gelman with information and records in its possession or control that are necessary to assist Gelman's preparation of specifically identified and described work plans, reports, and engineering plans in connection with EGLE-approved Response Activities related to the Consent Judgment, including without limitation, the Well Identification Plan, Municipal Water Connection Contingency Plans, and the Downgradient Investigation described in Consent Judgment Sections V.A.2.h, V.A.2.j, V.B.3.e, and V.A.5.f, respectively. Such records include, but may not be limited to, studies and other data related to the City water treatment facilities, the elevations and hydraulic capacity of water mains, drains, and storm and sanitary sewers, and digital drawings of utilities/infrastructure including water and sewer mains and connections. If they are available, the format of such digital drawings shall be AutoCad compatible. If AutoCad files are not available, the requested drawings shall be provided as PDF files. If no digital files are available, Gelman shall be provided physical

access to hardcopies of drawings and the ability to copy those drawings or documents. The City may require Gelman and/or its representatives to execute and comply with appropriate confidentiality agreements as a condition to providing records and information exempted from disclosure under Section 13(1)(y) of the Michigan Freedom of Information Act (MCL 15.243(1)(y)), and Gelman agrees to comply with, and agrees to require its agents and contractors to comply with, the terms of said confidentiality agreements.

C. Cooperation with Gelman Remediation. Consistent with, subject to, and without diminishing the City's Continuing Rights under the Order of Dismissal, the City shall cooperate with the Gelman Remediation and Gelman's implementation of the Consent Judgment, including the institutional control-based remedy for the Eastern Area and the non-expansion objective for the Western Area described in Consent Judgment Sections V.A.2 and V.B.1, respectively, and all related EGLE-approved plans. As part of this cooperation, on the City's public webpage that includes the City's zoning maps, or other appropriate webpage, the City shall maintain a hyperlink that directs the visitor to the portion of EGLE's Gelman Sciences website that identifies the extent of the Prohibition Zone and the Summary of Restrictions. Finally, the City's cooperation shall also include not soliciting USEPA and/or the Governor to ask USEPA to take a role with regard to the Gelman Sciences Site and/or to have the Site listed on the National Priorities List.

D. Future Wetlands and NPDES Permits. The City's entry into this Settlement Agreement shall constitute evidence of its approval of and support for EGLE's issuance of wetlands permit(s), NPDES permits, and the renewal of the 2014 NPDES Permit as reasonably necessary to implement the Gelman Remediation, provided that Gelman satisfies all legal requirements for such permits. Gelman may present this Settlement Agreement to EGLE as evidence of the City's support for the above-described permit(s).

- E. Solicitation of USEPA. If the City, contrary to Paragraph V.C, above, solicits USEPA and/or the Governor to ask USEPA to take a role with regard to the Gelman Sciences Site and/or to have the Site listed on the National Priorities List, the City's Continuing Rights shall terminate as provided in the Order of Dismissal, and, to the extent the Contingent Payment described in Section VI.B of the 2006 City Settlement Agreement is ever triggered, the Contingent Payment shall be reduced by One Million Dollars (\$1,000,000.00) and the reduced amount shall be used to determine the Escalator Payment/Amount under Paragraph VI.B.3.

VI. MISCELLANEOUS

- A. Severability. The provisions of this Agreement shall be severable. Should any provision be declared by a court of competent jurisdiction to be inconsistent with federal or state law, and therefore unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
- B. Warranties. The Parties each represent and warrant that:
1. The execution and delivery of this Agreement has been duly and validly authorized and approved by all requisite action required under applicable law and that no further action is necessary to make this Agreement valid and binding.
 2. Each is fully authorized to enter into this Agreement and is duly organized and validly existing in good standing under the laws of one of the states of the United States of America.
 3. Each has taken all necessary governmental, corporate, and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or other internal approval is necessary.

4. The making and performance of this Agreement will not, to the knowledge of either of the Parties, violate any provision of law or of their respective articles of incorporation, charter, or by-laws.
 5. Knowledgeable officials, officers, employees and/or agents of each Party have read this entire Agreement and know the contents hereof and that the terms of the Agreement are contractual and not merely recitals. Each Party has authorized this Agreement to be signed of its own free act, and, in making this Agreement, each has obtained the advice of legal counsel.
- C. Signatories. Each person executing this Agreement warrants that he or she has the authority and power to execute this Agreement from the Party on whose behalf he or she is executing.
- D. Change of Circumstances. Each Party to this Agreement acknowledges that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Agreement. The Parties each expressly accept and assume the risk of such possible difference in facts and agree that this Agreement shall be and remain effective notwithstanding such difference in facts.
- E. No Rights to Non-Parties. Except as expressly provided herein, this Agreement is intended to confer rights and benefits only upon the City and Gelman, and is not intended to confer any right or benefit upon any other person or entity. Except as expressly provided herein, no person or entity other than Gelman and the City shall have any legally enforceable right under this Agreement.
- F. Arms-Length Negotiations. This Agreement is the product of arms-length negotiations, and the language in all parts of this Agreement shall be construed as a whole according to its meaning, and not strictly for or against any Party. The Parties hereto agree that this Agreement shall not

be construed according to any special rules of construction applicable to contracts of adhesion and/or insurance contracts.

- G. Modification. This Agreement may not be modified in whole or in part except by written agreement signed by the City and Gelman.
- H. Headings. The headings used in this Agreement are for convenience only and shall not be used to construe the provisions of this Agreement.
- I. Cooperation. The City and Gelman shall execute promptly any and all voluntary dismissals, stipulations, supplemental agreements, releases, affidavits, waivers, and other documents of any nature or kind which the other Party may reasonably require in order to implement the provisions or objectives of this Agreement.
- J. No Representations. The Parties represent and agree that in executing this Agreement they do not rely and have not relied upon any representation or statement made by any other Party or by any other person or entity released herein with regard to the subject matter, basis, or effect of this Agreement, or otherwise, which is not specifically set forth herein.
- K. Entire Agreement. Except for the 2006 City Settlement Agreement and related license agreements for access to City property and rights of way, this Agreement represents the entire understanding of the City and Gelman, and this Agreement shall supersede and control any and all prior communications, correspondence, and memorialization of agreement or prior communication between the City and Gelman or their representatives relative to the matters contained herein.
- L. Counterpart Signatures. This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument and agreement.

- M. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed under the law of the State of Michigan and the law of the United States without regard to Michigan's conflict of laws principles.
- N. No Waiver. The failure of any of the Parties to exercise any power given such Party hereunder or to insist upon strict compliance by any Party with its obligations under this Agreement, and no custom or practice of the Parties at variance with the terms of this Agreement shall constitute a waiver of the Parties' right to demand exact compliance with the terms hereof.
- O. Effective Date. The Effective Date of this Agreement shall be on the date the later of the following two events occur: (i) the Order of Dismissal specified in Section III is entered; and (ii) the Consent Judgment is entered. This Agreement shall be effective only if both the Order of Dismissal specified in Section III and Consent Judgment are entered.
- P. Enforcement. The Parties agree that the Washtenaw County Circuit Court and the United States District Court for the Eastern District of Michigan each may retain jurisdiction to enforce the terms of this Agreement as appropriate.

****SIGNATURE PAGE FOLLOWS****

IN WITNESS WHEREOF, the Parties have executed this Agreement, consisting of fourteen (14) pages plus Exhibits 1 - 4, by their duly authorized representatives as set forth below.

City of Ann Arbor

Gelman Sciences, Inc.,

By: Christopher Taylor
Its: Mayor

By:
Its:

By: Jaqueline Beaudry
Its: City Clerk

By: Tom Crawford
Its: Interim City Administrator

Stephen K. Postema,
City Attorney
for the City of Ann Arbor

Michael L. Caldwell,
Zausmer, PC
Counsel for Gelman Sciences, Inc.

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Bodman PLC
Counsel for the City of Ann Arbor