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By telefax and first class U.S. mail

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Re: City of Albuquerque v. Sparton Technology, Inc., No. CV-97-0206 (D.N.M.)

Dear Jim:

We write to respond to the settlement offer made by Sparton Technology, Inc. ("Sparton") at our meeting in Albuquerque on October 15, 1997. We appreciate Sparton's settlement offer and feel that it represents substantive progress in our negotiations. In particular, we appreciate Sparton's willingness to perform work at the site and believe that Sparton's settlement proposal offers the potential to begin cleanup at the Coors Road facility in the near future. Nonetheless, we have some serious concerns with Sparton's proposed settlement. In an effort to reach an acceptable compromise, we make a specific counter-proposal below. Plaintiffs are making significant compromises in this counter-proposal in an effort reach an agreement whereby work will begin soon that will improve environmental conditions at the site. In particular, the proposal represents a significant compromise on the issues of leading edge containment system design and soil vapor extraction ("SVE") system design. Although we disagree Sparton's designs will work as the complete cleanup remedy for the site, we will allow Sparton to go forward and attempt to demonstrate the effectiveness of the systems. In addition, the City of Albuquerque is willing to accept treated water, subject to certain conditions, in the event of a failure of the water disposal system. Finally, we are willing to agree to a stay of the litigation, but feel that the duration of such a stay should be closely tied to the time reasonably needed to technically evaluate Sparton's leading-edge containment and SVE systems.

The following proposal incorporates many elements of Sparton's proposal of October 15. For discussion, we have divided the proposal into three main areas: (1) leading edge containment system; (2) SVE system demonstration; and (3) stay of the litigation.

1. Leading Edge Containment System

With regard to containment of the contaminant plume at its leading edge, Sparton would implement the "off-site" workplan which the parties have been negotiating. Under that workplan, Sparton will do additional work to characterize the geometry of the plume and will

conduct an aquifer pump test.

After completion of the "Containment Feasibility Test," Sparton would continue to operate the pump test well. Using the data from the pump test, Sparton would calculate the pumping rate necessary to prevent further migration of the contaminant plume and would operate the test well at that rate. Under an agreed plan, Sparton would monitor the system to determine whether it contains the plume and would submit a written containment analysis report to the Plaintiffs.

During the period after the Containment Feasibility Test, treated wastewater from the test well would be disposed of in a system of dry wells. Sparton would design the dry well system and submit the designs to Plaintiffs for review and approval. The design shall include a detailed description of the construction, siting, operation, and maintenance methods for the proposed dry wells. The design should include plans for the initial installation of multiple drywells to maximize the efficiency, reliability, and longevity of the system. Operation and maintenance plans should include provisions for alternating flows between existing drywells and for utilization of a backup drywell in the event that a drywell become unuseable.

If Plaintiffs approved the designs, Sparton would have the right to discharge the treated wastewater to the city's sanitary sewer system under certain conditions. First, Sparton would only discharge to the sanitary sewer if dry wells were constructed and operated pursuant to the approved design. This requirement includes obtaining and complying with all required permits, including an NMED Discharge Permit, and bringing the dry well system on-line after completion of the Containment Feasibility Test. Second, Sparton would only discharge to the sanitary sewer if a dry well and backup well(s) failed. In the event that the dry well system failed, Sparton would notify the City of Albuquerque Industrial Waste Engineer and request permission to discharge to the sanitary sewer. The Industrial Waste Engineer would act on the application within seventy-two (72) hours. The Industrial Waste Engineer would grant the application if, in his/her judgement, at the time of the application the sanitary sewer system and related infrastructure were in adequate condition to handle the additional flow and that the discharge meets the City's pretreatment requirements.. If granted, Sparton would then be permitted to discharge treated wastewater to the sanitary sewer for a period of up to thirty days. Sparton would, of course, be required to comply with pre-treatment standards throughout the discharge period.. Sparton could request an extension which would be granted at the discretion of the Industrial Waste Engineer. A fee would be charged by the city for all discharges to the sanitary sewer system. During the period when the litigation stay for the containment system is in effect (as discussed below), Sparton would have the right to discharge to the sanitary sewer under the above conditions .

2. Soil Vapor Extraction System Demonstration

The SVE system design proposed by Sparton would be incorporated into a work plan.

In addition, the work plan would specify steps to fully characterize the vapor plume. The plan would also include a soil vapor monitoring network which would include pipe probes and permanent monitoring wells; this network would be designed to both characterize the size of the vapor plume and to monitor the effectiveness of the vadose zone cleanup. Sparton would implement the workplan and operate the SVE system for approximately three months. During this period, data from the monitoring network would be gathered according to an agreed schedule. At the end of three months, the system would be shut down for thirty days to evaluate how fast vapor concentrations rebound. This data will be useful in evaluating the area affected by the SVE system.

We are unable to agree to Sparton's proposal that if its SVE system is shown to have a radius of influence of less than two hundred feet, certain pre-defined steps would be taken. First, the SVE system must influence all areas within the 10 ppmv line, regardless of whether that is at precisely two hundred feet. Since it is not presently clear where the 10 ppmv line is, we cannot agree to limit the radius of influence of the SVE system to two hundred feet. Second, after extended discussion with our technical staff, we have concluded that it would not be prudent to specify details of a final SVE system design until after evaluation of the data from the initial period of operation of Sparton's proposed system. Sparton has generally proposed to add additional extraction points and to consider a second Acu-Vac system. The operational data from the initial system will be extremely useful in evaluating the adequacy of these proposed steps. While we do not rule Sparton's proposal out, neither can we specifically endorse it at this time. In general, it would be much more prudent to evaluate the data from the initial period of operation before deciding upon the next step. For that reason, we propose that, if the radius of influence of the SVE system installed by Sparton fails to extend to the 10 ppmv line, the parties will then attempt to negotiate the next step.

3. Litigation Stay

In exchange for Sparton performing the work described above, Plaintiffs are willing to agree to a limited stay of the litigation for specified periods of time. Although we are not able to agree to the lengthy stays that Sparton has proposed, we would be willing to expressly provide in the order that the stays may be extended by agreement of the parties. As a precaution, Plaintiffs would reserve the right to move the Court to lift the stay if Sparton substantially violates the order or upon discovery of previously unknown facts. The agreed stay would be in lieu of the August 6, 1997 stay entered by Judge Hanson.

Plaintiffs can agree to an eight month stay of litigation on issues related to the leading edge containment system. This period would begin when the Court enters an order governing the settlement. During the first six months, Sparton would implement the off-site work plan. During the seventh month, Sparton would continue to operate its system. Given that Sparton will begin operating its system after completion of the Containment Feasibility Test and that the off-site work plan includes four weeks after completion of that test for preparation of a

report, this proposal allows Sparton approximately two months to demonstrate its system contains the contaminant plume. This should be more than enough time to gather and evaluate data on the operation of the system. If, at the end of the seventh month, Plaintiffs conclude that additional measures are required to contain the plume at its leading edge, we would commit to a thirty day period during which we would attempt to reach agreement with Sparton on the matter. Sparton would agree to continue to run its system during the period of negotiations and until final resolution of the issue so that any plume containment benefits from that well would be maintained. If at the end of the thirty day negotiation period, the issue remains unresolved, the stay would be lifted. A stipulated extension of the stay by all parties would not be precluded by the agreement.

Plaintiffs can agree to a limited stay on issues related to the SVE system. This period would begin when the Court enters an order governing the settlement and continue four months after Sparton's SVE system goes on line. During the first three months after the SVE system goes on line, Sparton would operate the system and gather data. This should be ample time to gather and evaluate data on the operation of the SVE system. If, after Sparton has operated its SVE system for three months, Plaintiffs conclude that additional actions are needed to reduce soil vapors, we would commit to a thirty day period during which we would attempt to reach agreement with Sparton on the matter. Sparton would agree to continue to run its SVE system until the matter was resolved. If at the end of the thirty day negotiation period, the issue remains unresolved, the stay would be lifted. A stipulated extension of the stay by all parties would not be precluded by the agreement.

Plaintiffs can agree to an eight month stay on issues related to restoration of the aquifer. This time is equal to the length of the stay on off-site containment issues and would effectively cover the entire period during which Sparton is conducting work on the leading edge containment system and the SVE system. The eight month period would begin upon entry of the settlement agreement. Upon expiration of that period, the parties could either agree to an extension or the stay would be lifted.

Plaintiffs propose that there be no stay applicable to the on-site containment issue. While the parties have not completed discussions on on-site containment issues, there is no reason to delay continued settlement efforts in this area. We are, of course, prepared to discuss settlement of the on-site containment issue with Sparton as soon as practicable and within a reasonable period of time.

With respect to the RCRA section 3008(h) order, EPA presently intends to issue the final order in the near future pursuant to the Regional Administrator's final decision. EPA proposes that the parties agree to modify in writing, pursuant to Section XX of the final order, the effective date provision of the order so that the provision is consistent with the above proposal for a stay in litigation. The same conditions governing the stay in litigation would apply to the order as well. For example, the extension in the effective date of the final order

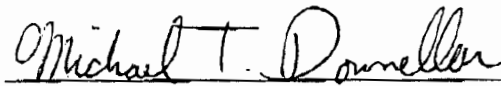
would be conditioned on Sparton's compliance with the terms of the judicial order. Thus, if Sparton fails to meet a term of the judicial order, the extension in the effective date of the final order will be rescinded and the effective date of the final order will become the date that the stay in the litigation is lifted. EPA will memorialize its intention to modify the effective date provision in a letter to Sparton.

Sparton has previously expressed concerns that the requirements in the judicial order may be duplicative or inconsistent with the terms of the final order. As stated previously, the United States is committed to ensuring that the terms of the final order do not conflict with the terms of any settlement document that the parties may craft as a result of these negotiations. EPA will work with Sparton to modify the final order pursuant to the order's modification provision to ensure that the order is neither inconsistent with, nor duplicative of the requirements of the judicial order or any other settlement document.

While many details remain to be discussed, Plaintiffs propose that the parties begin the process of drafting an agreed order which would embody the agreement described above. It must be noted that counsel representing Plaintiffs have authority only to recommend settlement, not final settlement authority. In addition, the United States final approval may require notice and opportunity to comment. While the proposed settlement would not resolve all the issues in this case, it would represent substantial progress. If you or any other Sparton representative have questions concerning this proposal, Plaintiffs would be happy to arrange a conference call to discuss the matter.

Submitted by the undersigned,

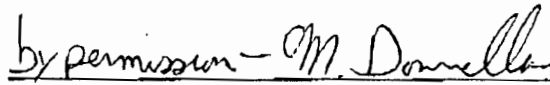
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cc: **Honorable Robert J. DeGiacomo**
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