

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID M. ELSEA, et al.,)	
)	
Plaintiffs,)	Case No. 1016-CV15976
)	
v.)	Division 60
)	
US ENGINEERING COMPANY)	
and JACKSON COUNTY, MISSOURI,)	
)	
Defendants.)	

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (“Agreement”) is entered into between the class representatives David M. Elsea and Jeanne M. Morgan and the class, by and through their counsel, as defined in Section 1.6 below, and Defendant U.S. Engineering (collectively the “Settling Parties”), by and through its counsel, as defined in Section 1.13 below

Recitals

A. This action was filed on May 25, 2010 and is currently pending in the Circuit Court for Jackson County, Missouri.

B. As previously disclosed to the Court, the Settling Parties have reached a compromise of all disputes at issue in this matter. In sum, the parties wish to promptly and fully resolve and settle the differences among them with respect to the Lawsuit, on the terms and conditions set forth in this Settlement Agreement, which Class Counsel believe are fair, reasonable, adequate, and beneficial to and in the best interests of the Class Members.

C. U.S. Engineering’s insurance company(s) is funding the settlement on behalf of both defendants and, therefore, Jackson County, while not a party to this Agreement, will be dismissed with prejudice.

D. The Court has already preliminarily approved the material terms of this Agreement and a fairness hearing is scheduled to take place on December 27, 2016.

NOW THEREFORE, in consideration of the mutual promises contained in this Settlement Agreement, the parties hereto hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms and phrases not otherwise defined in this Settlement Agreement shall have the meanings set forth below.

1.1 "Administrator" shall mean Hoffman Clark, P.C. which has been agreed to by the Parties and designated by the Court, who/which will be responsible for managing and overseeing the Medical Monitoring Program detailed herein.

1.2 "Administrator Contract" shall have the meaning provided for in Section 8.2 hereof.

1.3 "Agreement" shall have the meaning provided in the preamble of this Agreement.

1.4 "Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banking institutions or trust companies in Kansas City, Missouri, or New York, New York are authorized or obligated by law, regulation, or executive order to remain closed.

1.5 "Certified Class" shall have the meaning provided in Section 2.1.1 hereof.

1.6 "Class Counsel" shall mean those law firms listed on the signature pages of this Agreement as "Counsel for Plaintiffs."

1.7 "Class Definition" shall mean the definition included in Plaintiffs' Fourth Amended Complaint.

1.8 "Class Members" shall mean those individuals who are members of the Certified Class who have not exercised the right to "Opt-Out" and who have not elected to waive any rights they may have to any relief awarded in the Lawsuit and to representation by Class Counsel, as evidenced by a Notice of Clarification Regarding Class Member Status on file with the Court.

1.9 "Class Settlement Notice" shall have the meaning provided in Section 2.1.3 hereof.

1.10 "Class Period" shall mean January 1, 1983 to December 31, 2007 as defined in the Class Definition.

1.11 "Court" shall have the meaning provided in Recital A.

1.12 "Defendant Jackson County" shall mean Jackson County, Missouri.

1.13 "Defendant U.S. Engineering" or "Defendant USE" shall mean U.S. Engineering.

1.14 "Effective Date of Settlement" shall mean the date on which all conditions to settlement set forth in Section 2 of this Agreement have been fully satisfied or waived.

1.15 "Eligible Class Member" means all members of the Medical Monitoring Class who meet the entry criteria for participation in the Medical Monitoring Program. Once an Eligible class member registers for the Program, he/she will receive notice by first-class mail of the commencement of each Screening Period. Participation in the Program is completely

voluntary. Participants will remain eligible to participate in the Medical Monitoring Program so long as they actually participate in each prior Screening Period(s) and do not skip Screening Periods.

1.16 "Entry Criteria" means requirements as specified in the Medical Monitoring Program to qualify for participation in the Medical Monitoring Program. Those requirements include producing reasonable proof of being an Eligible Class Member as detailed in **Exhibit D**.

1.17 "Fairness Hearing" shall have the meaning provided in Section 2.1.5.

1.18 "Fee Percentage" shall have the meaning provided in Section 8 hereof.

1.19 "Final" shall mean: with respect to any judicial ruling or order, that the period for any petitions for appeals, appeals, petitions, writs, motions for rehearing or certiorari or any other motions required to seek review by any court with appellate or original jurisdiction has expired without the initiation of a review proceeding, or, if a review proceeding has been timely initiated, that there has occurred a full and final disposition of any such review proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.

1.20 "Hospital" shall mean University of Kansas Medical Center, 3599 Rainbow Blvd, Kansas City, KS 66103.

1.21 "Hospital Contract" shall have the meaning provided in **Exhibit E**.

1.22 "Human Disease" shall mean a serious latent disease that results in an interruption, cessation, or disorder of body functions, systems, or organs. The term "Human Disease" as used herein includes birth defects.

1.23 "Initial Funding Level" shall have the meaning provided in Section 12.4.1 hereof.

1.24 "Initial Screening Period" means the first Screening Period following the Effective Date, and will consist of registration, testing, and the reporting of test results as set forth in the Medical Monitoring Program and/or Protocol.

1.25 "Lawsuit" shall have the meaning provided in Recital A of this Agreement.

1.26 "Medical Monitoring" shall mean diagnostic medical examinations, tests or procedures as detailed expressly herein to detect serious latent (i.e., asymptomatic) diseases before those diseases become manifest or symptomatic. Medical monitoring, monitoring, and screening are used interchangeably in this Agreement. Medical Monitoring does not mean ordering secondary tests to diagnose a disease process or condition that is causing those signs and symptoms, and/or rendering care or treatment.

1.27 "Medical Monitoring Class" means the class of persons who meet the criterion of the Class Definition for the Class Period.

1.28 "Medical Monitoring Fund" means the Fund to be established by Defendants to pay the costs of Medical Monitoring Program and its administration.

1.29 "Medical Monitoring Institution" shall mean the Hospital.

1.30 "Medical Monitoring Program" shall mean the medical monitoring and screening tests and other examinations to be provided to certain members of the Medical Monitoring Class as detailed in this Agreement.

1.31 "Medical Monitoring Protocol" shall have the meaning provided in **Exhibit B**.

1.32 "Minimum Participation Level" shall have the meaning provided in **Exhibit B**.

1.33 "Named Plaintiffs" shall have the meaning provided in the Preamble to this Agreement.

1.34 "Notice" shall have the meaning provided in Section 2.1.2 hereof.

1.35 "Opt Outs" shall mean those individuals included in the Certified Class who have exercised the right to Opt-Out and thus are not Class Members.

1.36 "Preliminary Approval Order" shall have the meaning provided in Section 2.1.2 hereof.

1.37 "Qualified Settlement Fund" shall have the meaning provided in Section 7.1 hereof.

1.38 "Registration Period" shall have the meaning provided in Section 7.1 hereof.

1.39 "Released Claims" shall have the meaning provided in Section 3.2 hereof.

1.40 "Released Parties" shall have the meaning provided in Section 3.1 hereof.

1.41 "Screening Period" means the periods of time, to occur either every year or every five years for a term of 30 years commencing after the Registration Period closes, during which testing and the reporting of test results will occur as set forth in **Exhibit B** of this Agreement.

1.42 "Settlement" shall mean the settlement to be consummated under this Agreement pursuant to the Final Settlement Order as described in Section 2.1.6 hereof.

1.43 "Settlement Amount" shall have the meaning provided in Section 9.1 hereof.

1.44 "Settling Parties" shall mean the Named Plaintiffs on behalf of themselves and the Class Members, and their heirs, personal representatives, successors and assigns. It shall also include the Defendant U.S. Engineering and its agents, current and former employees, counsel, representatives, successors and assigns as more fully detailed in Section 1.40 hereof.

1.45 "Unconditional" shall have the meaning provided in Section 2 hereof.

2. CONDITIONS TO EFFECTIVENESS OF SETTLEMENT UNDER THIS

AGREEMENT. The Settlement provided for in this Agreement shall not become final and unconditional ("Unconditional") unless and until each and every one of the following conditions in Sections 2.1 through 2.3 has been satisfied or waived, in writing:

2.1 Notice and Court Approval. The Settlement contemplated under this Agreement must be finally approved by the Court, as provided for herein. The Settling Parties agree jointly to recommend to the Court that it approve the terms of this Agreement and the Settlement contemplated hereunder which has been accomplished resulting in an Order of preliminary approval dated October 26, 2016. All Settling Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Agreement, and any other steps or efforts which may become necessary by order of the Court or otherwise, to carry out this Agreement, including the following:

2.1.1 *Class Certification.* By Order of the Court dated July 13, 2015, the Lawsuit was certified as a class action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure.

2.1.1(a) The July 13, 2015 Order certified and defined the class, which has been amended, and now includes:

“Subclass 1 consists of Missouri citizens who: were employed by the state of Missouri or employed by the County of Jackson, and worked inside the Jackson County Courthouse for a period of time exceeding two consecutive weeks from 1983 to 2008, or because of their duties, were required to work inside the Jackson County Courthouse for period more than 80 hours in a year from 1983 to 2008. Subclass 2 consists of Missouri citizens who: as a result of their employment, were required to spend more than two consecutive weeks (10 days) in the Jackson County Courthouse, or over the course of any given year between 1983 and 2008, were required to spend a total of 80 hours in the Jackson County Courthouse.” *See Fourth Amended Complaint.*

2.1.1(b) The Settling Parties hereby agree and stipulate that the Certified Class shall be certified pursuant to Missouri Rule of Civil Procedure 52.08 to include as Class Members only those individuals who did not exercise their right to Opt-Out of the Certified Class by the Court-ordered date. The Settlement contemplated under this Agreement is expressly conditioned on the definition of the Certified Class provided in this Section 2.1.1(a) having become Final.

2.1.2 *Preliminary Approval of Settlement and of Notice.*

2.1.2(a) The Court entered an Order of preliminary approval of the Settlement detailed in this Agreement on October 26, 2016.

- 2.1.2(b) The Settling Parties submitted a Joint Motion to the Court on October 28, 2016 seeking the Court's approval of this proposed notice to the class of the terms of Settlement and the fairness hearing in the form of **Exhibits A-1 and A-2** (the "Notice").
- 2.1.3 *Issuance of Class Notice.* Following the Court's ruling on the Settling Parties October 28, 2016 Joint Motion regarding Class Notice, the Notice in the form of **Exhibits A-1 and A-2** ("Class Settlement Notice") shall be delivered to the Certified Class at the time specified by the Court.
- 2.1.4 *The "Fairness Hearing."* On December 27, 2016, the Settling Parties shall participate in the hearing at which the Court will determine: whether the proposed Settlement of the Lawsuit on the terms and conditions provided for in this Agreement is fair, reasonable and adequate and should be approved by the Court; whether a judgment should be entered herein; whether the distribution of the Settlement Amount as provided in this Agreement should be approved; and to determine the amount of fees and expenses that should be awarded to Class Counsel (the "Fairness Hearing"). The Settling Parties will reasonably cooperate with one another in obtaining acceptable Orders at the Fairness Hearing and will not do anything inconsistent with obtaining them.
- 2.1.5 *Motion for Order of Final Approval of Class Action Settlement.* The Settling Parties shall file a joint motion for issuance of an Order of Final Approval of Class Action Settlement in this Lawsuit ("Final Settlement Order") in time for such motion to be considered by the Court at the Fairness Hearing. The joint motion shall seek an order approving the Settlement embodied in this Agreement and entering a judgment dismissing the Released Claims described in Section 3 with prejudice.
- 2.2 At the Fairness Hearing, Class Counsel will urge the Court to enter the Final Order. At that time, Class Counsel will also request that the Court enter orders approving the Medical Monitoring Program and Fund and awarding attorneys' fees and expenses to Class Counsel as detailed herein. The Parties agree to support entry of the Court's Final Order as contemplated herein. The Defendants will urge the Court to enter the Final Order and will not oppose Class Counsel's request for attorneys' fees if the request does not exceed the amount described in Section 10. In the event the Court awards fees and/or costs in excess of the amounts agreed to by the parties in Section 10, Defendants shall have the right to terminate and nullify this Agreement and the provisions of Section 6 shall apply.
- 2.3 *Finality of Order of Final Approval of Settlement.* The Final Settlement Order shall have become Final.
- 2.4 *Defendants' Reservation of Rights.* If the Court does not enter the Final Order, or the settlement does not become final for any reason, the Defendant U.S.

Engineering and Defendant Jackson County specifically reserve their right to move to decertify or otherwise oppose class certification of the Medical Monitoring Class in this Action and the Action will, for all purposes, revert to its status as of October 26, 2016.

3. **RELEASES AND COVENANTS NOT TO SUE.**

- 3.1 Released Parties. The Released Parties are Defendant U.S. Engineering and Defendant Jackson County and their current and former directors, officers, shareholders, agents, attorneys, representatives, employees, affiliates, subsidiaries, insurers and counsel, and their predecessors, successors or assigns ("Released Parties").
- 3.2 Release and Covenant Not to Sue. Effective upon the disbursement of the Settlement Amount pursuant to Section 9.1, the Named Plaintiffs, on their own behalf, and all Class Members, release and forever discharge the Released Parties from any and all claims, losses, damages, attorneys' fees, costs, and expenses, whether asserted or not, accrued or not, known or unknown including, but not limited to, claims for medical monitoring, injunctive relief and special, general and punitive damages associated with such claims that: (a) relate to exposure to asbestos of any and all Class Members from any and all pathways including, but not limited to, air, water and soil; and (b) are based on the same factual predicate as raised in the Lawsuit (collectively, the "Released Claims"). This release is intended to include the release of unknown and unsuspected claims, as well as any claim or right obtained by assignment. This release is not intended to include the release of any rights or duties created by or that could be created by this Agreement, including, but not limited to, the express warranties and covenants set forth herein. The Named Plaintiffs, on their own behalf, and the Class Members, further covenant and agree not to file any action or proceedings against the Released Parties or their counsel based on the Released Claims. Nothing in this Agreement releases any person other than the Released Parties.
- 3.3 Notwithstanding Sections 3.1 and 3.2 above, Defendant U.S. Engineering's insurers are expressly released from all claims related to this lawsuit, other than the insurance carrier(s)' obligation to fund pursuant to their settlement agreement(s) with U.S. Engineering or the applicable, in force, policies.
- 3.4 Notwithstanding Section 3.2 above, neither the Named Plaintiffs nor the Class Members provide any release to the Defendants relating to any personal injury action that may later accrue involving a manifested disease or physical impairment. Any claim for emotional distress or similar claim relating to a non-manifest injury shall expressly be included in the release as described in Section 3.2 above.

4. **NO ADMISSION OF LIABILITY.**

- 4.1 The Settling Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of wrongdoing by either Defendant, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding. Moreover, both Defendants specifically deny any such liability or wrongdoing. Defendant U.S. Engineering specifically state that it is entering into this Settlement to avoid the time, expense and distraction of embroilment in the current Lawsuit and potential future litigation and disputes present or past exposure claimed to be attributable to the existence and/or removal of asbestos at the Jackson County Courthouse.
- 4.2 Any agreement, stipulation and/or the Court's Preliminary Approval Order related to the definition of the Certified Class in accordance with Section 2.1.1 shall not constitute and shall not be construed as an admission on the part of any Released Party that this action (in the event that this Agreement is terminated under the conditions described in Section 7), or any other proposed or certified class action is appropriate for class treatment pursuant to Missouri Rule of Civil Procedure 52.08 or any other class action statute or rule, and does not constitute a waiver of any substantive or procedural defenses. This Agreement is without prejudice to the rights of the Plaintiffs or the Released Parties (a) in the event that this Agreement is terminated under the conditions described in Section 6, to seek decertification or modification of the class as certified in the Court's Order of July 15, 2015, as amended by Plaintiffs' subsequent class definition, or (b) to oppose certification in any other proposed or certified class action.
- 4.3 Neither the terms, nor the existence of this Agreement shall be admissible in any other action. However, the terms and existence shall be admissible in a proceeding brought by, on behalf of, or pertaining to Class Members for alleged breach of this Agreement by any person or entity, or if either Defendant seeks to allege a breach of this Agreement by any person or entity, or in the event either of the Defendants seek to prove and assert the release provisions herein. Such claims shall be presented by motion, as opposed to a separate action/petition, to this Court unless required to be asserted defensively in a separate action.

5. **REPRESENTATIONS AND WARRANTIES.**

- 5.1 Settling Parties' Representations and Warranties. The Settling Parties, and each of them, represent and warrant:
- 5.1.1 That they are voluntarily entering into this Agreement as a result of arm's-length negotiations among their counsel, that in executing this Agreement they are relying solely upon their own judgment, belief and knowledge, and that advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which related in any way to the

subject matter hereof, and that this Agreement contains the entire agreement among the Settling Parties. The Settling Parties acknowledge that they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omissions pertaining to any of the foregoing except as specifically set forth in this Agreement. Each Settling Party assumes the risk of mistake as to facts or law; and

5 .1.2 That they have carefully read the contents of this Agreement, and this Agreement is signed freely by each individual executing this Agreement on behalf of the Settling Parties. The Settling Parties, and each of them, further represent and warrant to each other that he, she or it has made such investigation of the facts pertaining to the Settlement, this Agreement and all of the matters pertaining thereto, as he, she or it deems necessary.

5.2 Signatories' Representations and Warranties. Each individual executing this Agreement on behalf of any other Person does hereby personally represent and warrant to the other Settling Parties that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

6. **TERMINATION OF AGREEMENT.**

6.1 Termination. This Agreement may automatically terminate or be terminated by the Settling Parties, and thereupon become null and void, in the following circumstances:

6.1.1 If the Court declines to finally approve the Settlement, then the Settling Parties hereto agree to jointly pursue review of such decision of the Court. In the event and on the date that such order declining final approval of the Settlement becomes Final, this Agreement shall automatically terminate, and thereupon become null and void.

6.1.2 If an extraordinary writ or appeal is pending of an order approving or declining to approve the Agreement, this Agreement shall not be terminated until final resolution or dismissal of any such extraordinary writ or appeal, except by written agreement of the Settling Parties.

6.2 Consequences of Termination of the Settlement Agreement. If this Agreement is terminated and rendered null and void for any reason specified in Section 2.2 or 6.1 above, the following shall occur:

6.2.1 The Lawsuit shall for all purposes with respect to the Settling

Parties revert to its status as of October 26, 2016, reserving to the Settling Parties all claims and defenses, and Class Counsel and Counsel for the Defendants agree to jointly seek postponement of trial for a period of at least 2 months from the date of termination of this Agreement.

6.2.2 All releases and dismissals delivered pursuant to the Agreement shall be null and void; none of the terms of the Agreement shall be effective or enforceable; and neither the fact nor the terms of this Agreement shall be offered or received in evidence in the Lawsuit or in any other action or proceeding for any purpose.

6.2.3 Neither Class Counsel nor Defendants, nor their counsel shall be entitled to repayment of any costs or expenses paid for the Administrator or the Class Settlement Notice.

7. SETTLEMENT PAYMENT AND COSTS.

7.1 Settlement Amount. In consideration of all the promises and covenants set forth in this Agreement, and of the release and dismissal of claims as contemplated in this Agreement and specifically described in Section 3, Defendant U.S. Engineering will, within thirty (30) Business Days of the date on which the Settling Parties agree that all conditions to the effectiveness of this Settlement set forth in Section 2 hereof have been waived or satisfied, pay and deliver the initial sum of \$2 Million Dollars (\$2,000,000.00) to an account established for the benefit of the Class Members, which account is intended to constitute a qualified settlement fund as defined in 26 C.F.R., Section 1.468B-1 of the Treasury regulations as promulgated under Section 468B of the Internal Revenue Code ("Qualified Settlement Fund"). The Administrator of said Qualified Settlement Fund is identified in Section 8.1 hereto. The Settling Parties acknowledge and agree that no party to this action or any of their counsel shall have liability in connection with the management, investment, maintenance, or administration of the Settlement Amount or the Qualified Settlement Fund.

7.2 No Separate Service Awards to Medical Monitoring Class Representatives payable by Defendants. Any service awards for the David Elsea or Jeanne Morgan will be paid by Class Counsel from attorneys' fees and expenses awarded to Class Counsel by the Court. Class Counsel will ask the Court to approve payments to the class representatives not to exceed \$25,000 each which will be deducted from the fees and/or costs awarded by the Court to Class Counsel.

7.3 Costs Related to Administration of the Settlement Amount. Defendants shall have no direct responsibility for payment of costs and expenses related to the administration and management of the Settlement Amount on behalf of Class Members, including the costs of compliance with any applicable requirements

imposed by law. Those costs will be paid in accordance with Section 8.2.3 of this Agreement.

- 7.4 All costs of Class Settlement Notice regarding this Agreement shall be borne exclusively by Class Counsel from expenses awarded by the Court. However, as detailed herein, the cost of future notices associated with the initial and ongoing implementation of the Medical Monitoring Program will be borne exclusively by and deducted from the Fund by the Administrator as detailed herein.
- 7.5 Each member of the Medical Monitoring Class hereby accepts sole, full, and complete responsibility for satisfying and discharging any medical, disability, indemnity, or other lien or expense of any kind asserted by any private or public entity, including but not limited to Medicare, Medicaid, Social Security, and/or any similar state agency, which resulted from the claims referred to in this Agreement or any consideration paid hereunder.
- 7.6 Each member of the Medical Monitoring Class agrees to indemnify and hold harmless Defendants against any and all past, present, future, or potential claims and actions by or any private or public entity, including but not limited to Medicare, Medicaid, Social Security, and/or any similar state agency individual or organization, claiming any right of contribution, indemnification, subrogation, or payment of any nature whatsoever asserted against Defendants and their current and former officers and directors, or any assignee, successor, predecessor, direct or indirect subsidiary, direct or indirect parent company, divisions, affiliates, attorneys, employees, and agents, which resulted from the claims referred to in this Agreement or any consideration paid hereunder.

8. ROLE OF ADMINISTRATOR.

- 8.1 Appointment of Administrator. The Settling Parties agree that Hoffman Clark, P.C. shall serve as the Administrator of this Agreement, subject to approval by the Court.
- 8.2 Powers and Duties of Administrator. Defendants shall make a reasonable, Good-faith effort to execute, within ten (10) Business Days of the Effective Date of Settlement as defined in Section 1.19, a contract with the Administrator ("Administrator Contract") that authorizes the Administrator to exercise the authorities and to perform the duties described in this Agreement and its Exhibits. Defendants shall not include any terms or conditions in the Administrator Contract (or any modification or amendment thereto) that conflict or are inconsistent with the terms of this Agreement or the Settlement. Defendants shall provide a full and complete copy of the Administrator Contract (and any modification or amendment thereto) to Class Counsel within three (3) Business Days of the execution of the Administrator Contract (or any modification or amendment thereto).

- 8.2.1 *Initial Powers and Duties.* The Administrator Contract shall require the Administrator to:
- (a) Coordinate or perform any mailings associated with the Settlement Notice or additional elements of the notice plan.
- 8.2.2 *Powers and Duties Relating to Settlement.* The Administrator Contract shall require the Administrator, on the condition that the Settling Parties agree that all conditions to the effectiveness of this Agreement set forth in Section 2 hereof have been waived or satisfied, to:
- (1) Facilitate communication between the Settling Parties and the Medical Monitoring Institution.
 - (2) Medical Monitoring Fund.
In the event a Medical Monitoring Fund is established in accordance with Section 9:
 - i) The Administrator shall take steps necessary to monitor the fund during the period of the Medical Monitoring program to make certain the Medical Monitoring Fund is kept in accordance with Section 9.
 - ii) The Administrator shall promptly notify the Settling Parties if the Medical Monitoring Fund must be replenished in accordance with Section 9.
 - iii) The Administrator shall process claims by individual Class Members for expenses for any Medical Monitoring as described in **Exhibits B and C.**
 - iv) Collect and maintain any requests for Medical Monitoring and records related to any reimbursement for Medical Monitoring submitted the Medical Monitoring Institution.
- 8.2.3 *Costs of Administrator.* The Administrator shall be compensated and reimbursed, where applicable, by the Medical Monitoring Fund in manner and amounts as provided for in the Administrator Contract.
- 8.2.4 *Recordkeeping Duties of Administrator.* The Administrator shall maintain appropriate books, records and documents such as contracts, invoices and receipts as reasonably required by the Defendant U.S. Engineering, including for the purpose of obtaining reimbursement of costs and expenses related to the performance of the Administrator's duties under this Agreement. Defendant U.S. Engineering shall have the right to

obtain, and the Administrator shall be required to provide, an accounting related to costs and expenses as well as access to books and records which Defendant U.S. Engineering may reasonably require.

9. MEDICAL MONITORING FUND. On the condition that the Settling Parties agree that all conditions to the effectiveness of this Agreement set forth in Section 2 hereof have been waived or satisfied:

9.1 *Establishment of Medical Monitoring Fund.* A Medical Monitoring Fund shall be established within 30 business days of the Effective Date. The Fund shall operate as follows:

(a) The Fund will be established in an interest-bearing account in a bank or other financial institution selected by Defendant U.S. Engineering.

(b) The Fund will be administered by the Medical Monitoring Fund Administrator for a fee negotiated by Defendant U.S. Engineering to be paid out of the Fund as further detailed in the Administrator Contract.

(c) Defendant U.S. Engineering will be responsible for maintaining appropriate balances in the Fund as further outlined below.

(d) Payment for all examinations and testing will be disbursed from the Fund on a "pay as you go" basis. Any part of the Fund not used for medical monitoring during any Screening Period as set forth below will be returned to Defendant U.S. Engineering.

9.2 The Medical Monitoring Program: The Medical Monitoring Program ("Program") will operate as follows:

(a) The Program will follow the principles and protocols set forth in **Exhibit C**.

(b) Eligibility for medical monitoring: only those class members who satisfy the Entry Criteria as set forth in **Exhibit D** will be eligible to participate in the Program.

(c) The Registration Procedures for the Program are set forth in **Exhibit D**.

(d) The initial Screening Period ("Year 1") will commence within 60 days of the Effective Date and follow this timeline: (1) A nine month Registration Period shall commence on the Effective Date ; (2) Following the nine month period, Participants (as defined in **Exhibit C**) will have three months to have testing performed as set forth in the Program; (3) Thereafter, within 60 days of the completion of testing, the Hospital will

issue reports summarizing the test results and send them to the Participants' primary care physician as detailed in the Hospital Contract described in **Exhibit E**. Each participant shall have the opportunity to instead designate, in writing, that the reporting of his/her results are only provided to him/herself.

(e) Each subsequent Screening Period will follow this timeline: (1) On or about May 1 of that year, or as soon as practical thereafter in light of the status the Final Approval of this Agreement, mailing by first-class mail and email to Participants in the Initial Screening Period of notice of the commencement of another Screening Period with instructions on how to schedule testing; (2) Thereafter, Participants will have three months to have testing performed; (3) Thereafter, within 60 days of the completion of testing, the Hospital will issue reports summarizing the test results and send them to the Participants and/or the Participant's primary care physician, at the Participants' written election, as detailed in **Exhibit E**

(f) As detailed in Section 7.1, Defendant U.S. Engineering will directly or indirectly deposit \$2 million to fund the Initial Screening Period.

(g) Following each Screening Period and the payment of the costs associated with the same, the Administrator shall calculate the balance of the Fund. In the event the balance of the Fund is below One Million Dollars No/100 (\$1,000,000.00), the Administrator shall provide notice of the calculation and the amount needed to maintain the \$1 million account balance. Defendant U.S. Engineering shall issue the necessary payment to the fund within thirty business days of receipt of such notice so as to maintain the balance of the fund at \$2,000,000.

(h) Following each Screening Period and the payment of the costs associated with the same, the Administrator shall calculate the balance of the Fund. In the event the balance of the Fund exceeds Two Million Dollars No/100 (\$2,000,000.00), the Administrator shall issue a payment to Defendant U.S. Engineering in an amount to maintain the balance of the fund at \$2,000,000.

(i) The Fund will be responsible for, among other things detailed herein, the following expenses: fees and costs of the Administrator, the Hospital (including examinations, testing and the issuance and mailing of reports), the Biomarker Analyst, and all notices of commencement of Screening Periods.

(j) Notice of the commencement of the Initial Screening Period will accomplished by first-class mail and email sent to all those who provided notification of their intention to participate following Class Notice of the Settlement. Notice of the commencement of all subsequent Screening

Periods will be accomplished by the Administrator by first-class mail to all Program Participants that participated in all prior Screening Periods.

- 9.3 Informed Consent/Release: All participating Medical Monitoring Class members shall execute an Informed Consent form drafted jointly by the Hospital, Class Counsel and Defendant U.S. Engineering's Counsel, which will include a Release of Class Counsel, the Defendants and their counsel for, among other things, all medical malpractice claims that might arise from any class member's participation in the Program.
- 9.4 It is agreed that under no circumstances will incentive payments be made to the Medical Monitoring Class to encourage participation in the Program or for any other purpose.
- 9.5 *Termination of Medical Monitoring Fund.* Upon completion of the Monitoring to be provided in year 30 and following the reporting of the results therefrom, the Medical Monitoring Fund shall terminate. The Administrator shall have a period of six (6) months to conclude the Fund's affairs and he/she/it shall submit a final accounting to the Settling Parties. Within thirty (30) days of submission of the final accounting, the Administrator shall remit any remaining money in the Fund to Defendant U.S. Engineering and/or its written designee.
- 9.7 *Termination of Medical Monitoring Fund – Minimal Participation.* In the event that any Screening Period results in the active participation (Participants that undergo at least one test during the relevant Screening Period) of less than 100 Class Members, the Medical Monitoring Fund shall terminate and each such Class Member in the less than 100 group shall receive a payment by check from the Fund, to be provided by the Administrator, in the amount of One Thousand Dollars and No/100 (\$1,000.00) or One Hundred Dollars (\$100.00) as detailed in **Exhibit C**. The Settling Parties agree that this provision is a reasonable compromise and in the best interests of the Class in the event that monies are utilized to maintain a Fund that, in such a situation, would only serve to unnecessarily benefit and also burden the Administrator and/or the Hospital.
- 9.8 Absence of Agency. The Settling Parties acknowledge and agree that the Administrator, the Medical Monitoring Institutions, and any qualified entities retained by the Administrator in connection with this Agreement are intended to be independent and are not agents of any of the Settling Parties or any Released Party. As a result, any data or information obtained, generated, collected or otherwise possessed by the Administrator, the Medical Monitoring Institutions, and any qualified entities retained by the Administrator in connection with this Agreement should not, prior to dissemination to the specific Settling Party, be attributed to or deemed to be known by any Settling Party or Released Party for the any purpose whatsoever including, but not limited to, any reporting or other compliance obligation imposed by law.

10. ATTORNEYS' FEES.

- 10.1 Class Counsel shall apply to the Court and Defendant U.S. Engineering agrees to not object to such an application, for attorneys' fees not to exceed the amount of Twenty-Four Million Dollars and No/100 (\$24,000,000.00). The Settling Parties agree that such an award is 30% of the total value of the settlement. Class Counsel agrees to accept any award of fees from the Court that may be lower than the figure requested.
- 10.2 Class Counsel will also apply to the Court for an award of costs. Defendant U.S. Engineering agrees to not object to Class Counsel's application for costs up to One Million Dollars and No/100 (\$1,000,000.00).
- 10.3 Defendant U.S. Engineering agrees to, within thirty (30) Business Days after the date on which the Settling Parties agree, in writing, that all conditions to the effectiveness of this Agreement set forth in Section 2 hereof have been waived or satisfied, pay and deliver all such attorneys' fees, costs and expenses in the amounts referenced herein as are approved by the Court by initiating a wire-transfer to the account designated by Class Counsel. Said payment(s) shall be provided by Defendant U.S. Engineering for the sake of simplicity but shall be deemed to have been deducted from the Fund. This provision is expressly subject to Section 2.2 hereof.

11. MISCELLANEOUS PROVISIONS.

- 11.1 Service of Notice. The service of papers and notices under this Agreement shall be made upon the Settling Parties as follows:

Class Counsel:

The Accurso Law Firm
Attn: Louis C. Accurso
4646 Roanoke Parkway
Kansas City, MO 64112

Counsel for U.S. Engineering:

Husch Blackwell, LLP
Attn: Matthew R. Grant
190 Carondelet Plaza, Suite 600
St. Louis MO 63105

Counsel for Jackson County Missouri:

Polsinelli PC
Attn: Dennis J. Dobbels
900 W. 48th Place, Suite 900
Kansas City, MO 64112

- 11.2 The Settling Parties acknowledge and agree that the Medical Monitoring Program is anticipated to exist for a period of approximately thirty (30) years. As such, the Settling Parties agree that certain provisions should and shall exist for the written designation of successor individuals and/or entities as follows:
- a) Class Counsel shall have the option to designate successor individuals and/or law firms to serve in the role of Class Counsel.
 - b) Each Defendant shall have the option to designate successor individuals and/or law firms to serve in the role of their counsel for each respective Defendant.
 - c) Defendant U.S. Engineering shall have the option to retain, with the written approval of Class Counsel, a successor Administrator to serve in the role of Administrator as detailed in the Settlement Agreement in the event it is reasonably necessary, including, but not limited to the dissolution, death, incapacity or disinterest of the Administrator appointed in the Settlement Agreement. In the event the parties are unable to agree, the Court shall consider the parties' respective and proposed successor Administrators and the Court shall make a final and binding selection.
 - d) Any individual or entity exercising its right to designate a successor under this Section shall provide written notice to, at a minimum, Class Counsel, Counsel for Jackson County, Counsel for U.S. Engineering, and the Administrator.
- 11.3 Good Faith Efforts. The Settling Parties agree that they will in good faith draft and execute all documents necessary to carry out the intent of this Agreement.
- 11.4 Jurisdiction. The Circuit Court of Jackson County, Missouri shall retain jurisdiction over the Settling Parties to resolve any dispute which may arise regarding this Agreement including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or whether the Agreement should be deemed terminated because the Settling Parties are unable to satisfy one or more unwaived conditions.
- 11.5 Governing Law. This Agreement shall be governed by the laws of the State of Missouri without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

- 11.6 Severability. The provisions of this Agreement are not severable.
- 11.7 Amendment. This Agreement may be amended only by a writing executed by all signatories hereto, provided that after Court approval, this Agreement may be modified or amended only by written agreement signed on behalf of all the parties and approved by the Circuit Court of Jackson County, Missouri. Prior to the Court's approval of any material modification of this Agreement, the parties shall provide sufficient advance notice, as determined by the Court, to affected Class Members.
- 11.8 Waiver. The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party and expressly detailing the waiver. There shall be no implied waivers. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
- 11.9 Construction. None of the Settling Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.
- 11.10 Principles of Interpretation. The following principles of interpretation apply to this Agreement:
- 11.10.1 *Headings.* The headings of this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- 11.10.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.
- 11.10.3 *Gender.* Definitions apply to the masculine, feminine, and neutral genders of each term defined.
- 11.10.4 *References to a Person.* References to a person are also to the person's permitted successors, heirs, personal representatives and assigns.
- 11.11 Counterparts. This Agreement may be executed in counterparts by the individual signatories, but shall be deemed a single document.

Agreed to by the Settling parties by and through their counsel.

Dated: December 7, 2016.

THE ACCURSO LAW FIRM

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Attorneys for Defendant U.S. Engineering

EXHIBIT B

MEDICAL MONITORING PROTOCOL

1. Purpose: The Medical Monitoring Program is diagnostic in nature. It is not designed to fund further confirmatory testing nor treatment of any asbestos-related disease.
2. Age: The Medical Monitoring Program will be available for Eligible Class Members aged 18 years and older as further detailed herein.
3. Class Members Shall Be Assigned to a Screening Sub-Class:
 - a) The “Early Screening Sub-Class”: This subclass shall consist of Class Members that were present in the Courthouse for at least 80 hours during any of the years 1983, 1984, or 1985.
 - b) The “Late Screening Sub-Class”: This subclass shall consist of Class Members that were present in Courthouse for at least 80 hours in any year in the class period but **not** have been present during either 1983, 1984, or 1985 (e.g., not a member of ’83-’85 subclass)
4. Early Screening Sub-Class: Qualified Participants of the “Early” Sub-Class as detailed above shall be provided the opportunity to participate in the following tests on annual basis for thirty (30) years:
 - a) History and Baseline Assessment (one-time examination)
 - b) Chest X-Ray
 - c) Pulmonary Function Test
 - d) Fecal Occult Blood
 - e) Low Dose CT - for Class Smokers Only
 - f) Smoking Cessation – for Class Smokers Only
 - g) MesoMark®
 - h) BAP 1 (one-time test)
 - i) ONCOblot®
5. Late Screening Sub-Class: Qualified Participants of the “Late” Sub-Class as detailed above shall be provided the opportunity to participate in the following tests every five (5) years for a period of thirty (30) years:
 - a) History and Baseline Assessment (one-time examination)
 - b) Pulmonary Function Test
 - c) MesoMark® or ONCOblot® or another diagnostic test developed for the discovery of asbestos related disease, provided that the cost of the test does not exceed the cost of the MesoMark®.

6. Hospital to Exercise Professional Ethics/Discretion: Despite the tests made available under the Medical Monitoring Program, the Hospital may and should, in its discretion, not perform any of the above-listed tests that it reasonably believes are medically contraindicated or contrary to sound principles of medical screening for any Participant.

7. Analysis of Screening Test Results:

6.1 All blood samples will be placed in vials and shipping containers provided by the Hospital or its designated laboratory (the "Laboratory").

6.2 Analysis of the blood samples, if any, will be performed by the Laboratory.

6.3 The Laboratory will provide and follow protocols that are consistent with industry standards, including QA/QC standards.

8. Results of Screening Tests:

8.1 The Laboratory will provide a full data package with respect to each of its analyses to the Hospital which will advise each participant of his/her results via his/her primary care physician and/or directly, as designated by each participant, in writing, as detailed in **Exhibit E**

8.2 The Laboratory will provide said data packages within two (2) weeks of receipt of the blood samples.

8.3 The Laboratory will provide notice to the Administrator of each participant's participation but will not provide any results that are linked in any way to participant identifying information. Any test results required to be provided to the Administrator shall be provided with a confidential code assigned to each participant to be kept by the Hospital only and which shall not be revealed to the Settling Parties unless expressly required as detailed in **Exhibit E**.

EXHIBIT C

MEDICAL MONITORING PROGRAM: PRINCIPLES AND PROTOCOLS

1. Guiding Principles: The Program will follow the established principles of medical monitoring or screening that are set forth in the Guide to Clinical Preventive Services of the U.S. Preventive Services Task Force, and the ATSDR's Final Criteria for Determining the Appropriateness of a Medical Monitoring Program Under CERCLA (60 FR 38839). Those principles include the following:

- 1.1 Medical screening targets latent, asymptomatic diseases or conditions.
- 1.2 A screening test is not intended to be fully diagnostic. See Section 1.26 of Agreement. Persons with positive findings must be referred to their physicians for diagnosis and necessary treatment. This further diagnosis and/or treatment is excluded from the Medical Monitoring Program and any costs of further diagnosis and treatment will not be covered by the Medical Monitoring Program and/or the settlement.
- 1.3 All screening tests must normally meet the requirements of validity, reliability, estimates of yield, sensitivity: specificity, and positive and negative predictive value. The predictive value of any screening test depends largely on the prevalence of the disease in the population being tested. Notwithstanding the foregoing, the parties agree that Defendants contend that certain tests included herein would not normally be provided to the Class outside of the context of the underlying litigation.
- 1.4 All screening tests risk false positive results (i.e., a positive test result where there is in fact no disease). False positive testing can lead to over-diagnosis, an interventional cascade of increasingly invasive testing and surgery, and false labeling of a well Participant as a sick one (which can have financial, social, and psychological effects).
- 1.5 All screening tests risk false negative results (i.e., a negative test result where there is in fact disease). False negative testing can lead to under-diagnosis, create within a Participant a sense of false reassurance (that might lead the Participant to ignore real signs of a treatable disease), and have a negative impact on behavior modification efforts.

2. Participants: The "Participants" (individually, a "Participant") shall be those Class Members who have registered and been deemed eligible by the Administrator as described in section 3 below. Participation in the Program is purely voluntary. A Participant must register for the Initial Screening Period and then may participate in any subsequent Screening Period he/she chooses. Once registered, a Participant will receive notice by first-class mail of the commencement of each Screening Period. Any Participant may decline any of the tests that are part of the protocol for any reason.

3. Determination of Eligibility: The Administrator (not the Hospital, Plaintiffs, Class Counsel, or Defendants or Defendants' counsel) will determine whether a class member meets the Entry Criteria. This determination will be made after court-approved notice of the commencement of the Initial Screening Period (to be accomplished by first-class mail and email sent to all those who provided notification of their intention to participate following Class Settlement Notice) and a nine month registration period. The Administrator will work with the Hospital to assign Participants to available appointment slots provided by the Hospital.

4. Informed Consent: Each Participant will be required to sign an informed consent/release form to be drafted jointly by the Hospital, Class Counsel, and Counsel for the Defendant U.S. Engineering.

5. Purpose of the Program: The Program is designed to screen Participants for certain asymptomatic conditions by administering certain tests (listed in **Exhibit B**), and to communicate the results of the testing to the Participant and/or his/her primary care physician (at the Participant's written election). It is not designed: (1) to test for, or render treatment for or advise about symptomatic or previously diagnosed conditions; (2) as a research vehicle; or (3) to make determinations of whether Participants' conditions or Laboratory results are caused by or in any way related to alleged asbestos exposure.

6. Wind-down of Program: In the event that any Screening Period results in the active participation (Participants that undergo at least one test during the relevant Screening Period) of less than 100 Class Members, the Medical Monitoring Fund shall wind-down and terminate. The Administrator shall provide a single and final payment to the class members that constituted the less than 100 group and payment shall be made as follows: a) Early Screening Sub-Class Members shall receive a payment by check from the Fund, to be provided by the Administrator, in the amount of One Thousand Dollars and No/100 (\$1,000.00); and b) Late Screening Sub-Class Members shall receive a payment by check from the Fund, to be provided by the Administrator, in the amount of or One Hundred Dollars (\$100.00).

EXHIBIT D

REGISTRATION PROCEDURES

1. Purpose: The Registration Procedure is designed to accomplish the following purposes (collectively, "Purposes"): (a) provide notice to eligible class members of the commencement of the Initial Screening Period by first-class mail and email sent to those who sent notification of their intention to participate; (b) schedule a Registration Period of 60 days following notice of the Initial Screening Period; (c) provide notice of the commencement of subsequent Screening Periods to Participants by first-class mail and email sent to Participants; (d) arrange for a convenient access to Registration; (e) administer Questionnaires that will be used to assist the Registration Administrator (as defined below) in determining eligibility of class members for the Program; and (f) assist eligible class members in scheduling an appointment at the Hospital.

2. Administrator: The Administrator detailed in Section 1.1 of the Settlement Agreement will be initially appointed for the length of the screening period for a fee negotiated by Defendant U.S. Engineering and paid from the Fund. His/her responsibilities will include accomplishing all of the Purposes as set forth in Section 1 above, in a manner that is both cost efficient and furthers the underlying principles of the Program.

3. Registration Costs to be paid from the Fund: the Fund will be responsible for paying the costs of first-class mail notice and email as specified in the Medical Monitoring Program including a post-registration Questionnaire Form, and reasonable costs associated with the Registration Process (e.g., photocopying, telephone, postage, etc.).

4. Determinations of Eligibility: The Administrator will apply the Entry Criteria detailed in Section 5 below to each registrant and make an independent determination as to whether or not each registrant is eligible to participate in the Medical Monitoring Program. Following the application of such criteria, the Administrator shall provide its determinations to Counsel for U.S. Engineering after which time U.S. Engineering shall have thirty (30) days to challenge any determination. U.S. Engineering shall have the right to further appeal any such determination to a special master to be appointed by the Court, at U.S. Engineering's own cost. The special master's ruling shall be final and binding.

5. Entry Criteria: All class members must present reasonable proof of meeting the Entry Criteria. Any class member who has been found by the Administrator to not meet the Entry Criteria may request that the Administrator review any such finding. The Entry Criteria shall have three (3) components. First, each registrant must affirm, under oath, that he or she meets the Class Definition. Second, each registrant must submit documentation that he/she resided in the State of Missouri on May 25, 2010. Satisfactory documentation shall include and be limited to: a) state or federal tax filing forms for the year 2010 reflecting a Missouri address; or b) a real estate or personal property tax receipt for the year 2010 reflecting a Missouri address or c) other government documentation acceptable to the Administrator. Third, each registrant must substantially complete the Questionnaire detailed in Section 7 below.

6. Notice: Notice of the commencement of the Initial Screening Period will be given to the Class as reflected in the forms attached hereto as **Exhibits A-1 and A-2**. Following initial registration, future notices shall be provided by first-class mail and email sent to those who provided notification of their intention to participate as set forth in the Medical Monitoring Program. Subsequent Notices of Screening Periods ("Subsequent Notices") shall be sent by first-class mail and email to all those who registered for the Initial Screening Period and were determined to be eligible. Subsequent Notices shall advise Participants of the commencement of the Screening Period and provide scheduling information.

7. Questionnaires: The Questionnaire will be in the form to be agreed upon by the Administrator, the Hospital, Class Counsel and Defendants' Counsel. Any disputes will be resolved by the Administrator and the Hospital after input from Class Counsel and Defendant U.S. Engineering's Counsel. A situation in which the Administrator and the Hospital are unable to reach an agreement will be resolved by the Court.

EXHIBIT E

HOSPITAL CONTRACT

1. Defendant U.S. Engineering shall make a reasonable, good-faith effort to execute, within thirty (30) Business Days of the Effective Date of Settlement as defined in Section 1.19 of the Agreement, a contract with the Hospital ("Hospital Contract") that authorizes and compensates the Hospital to perform the duties described in the Agreement and its Exhibits.

2. Class Counsel and Counsel for U.S. Engineering shall use reasonable and mutual efforts to decrease fixed and indirect costs included in Medical Monitoring Plan submitted by Dr. Harold Barkman in the underlying litigation.

3. Defendants shall not include any terms or conditions in the Hospital Contract (or any modification or amendment thereto) that conflict or are inconsistent with the terms of the Agreement or the Settlement. Defendant U.S. Engineering shall provide a full and complete copy of the Hospital Contract (and any modification or amendment thereto) to Class Counsel within three (3) Business Days of the execution of the Hospital Contract (or any modification or amendment thereto).

2. The Hospital contract shall, at a minimum, include the following provisions:

- a) The Hospital must acknowledge, receipt, review and agreement to the terms of the Agreement as they may impact the Hospital's role and responsibilities;
- b) The Hospital must release Class Counsel, the Named Plaintiffs, Defendants, and Defendants' Counsel for any claim or cause of action relating in any way to the Hospital's role in the Medical Monitoring Program;
- c) The Hospital must agree to indemnify and hold harmless Class Counsel, the Named Plaintiffs, Defendants, and Defendants' Counsel for any claim or cause of action relating in any way to the Hospital's involvement in the Medical Monitoring Program;
- d) The Hospital shall agree to perform the testing available under the Medical Monitoring Program and associated tasks including making appointments and providing reporting, etc. at the fixed and established costs detailed in report from Dr. Harold Barkman (*but see* Section 2 above) for the entire span of the Medical Monitoring Program.
- e) The Hospital shall preserve the test results and provide them in an anonymous manner to the Administrator after each Screening Period; and

- f) The Hospital shall participate in the development of an Informed Consent form and Questionnaire as detailed in the Agreement and agree to provide the same to each Participant.
- g) The Hospital shall request bids from three qualified vendors for all “costs” and the lowest bid from a qualified vendor shall be deemed to be selected. All costs associated with the Hospital’s involvement in the Medical Monitoring Program shall be passed on to the Administrator for its direct payment.