PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION
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For Settlement Purposes Only

Pre-RD Group's 10/6/17 Redline Draft

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF: Portland Harbor Superfund Site [Names of Respondents (if many, reference attached list)], Respondents Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR PRE-REMEDIAL DESIGN INVESTIGATION AND BASELINE SAMPLING**

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I. JURISDICTION AND GENERAL PROVISIONS

1.1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and [**insert names or attach list of Respondents**] ("Respondents"). This Settlement provides for the Respondents' performance of a Pre-Remedial Design investigation and baseline sampling program and the payment of certain response costs incurred by the EPA and the Oregon Department of Environmental Quality (ODEQ) at or in connection with the Work conducted under this Settlement related to the in-river portion of the Portland Harbor Superfund Site (the "Site") as defined in Section IV below. It is anticipated that the Work will be completed by mid-2019.

1.2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the EPA Administrator on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, January 18, 2017) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, January 18, 2017). This authority has been re-delegated by the Region 10, Regional Administrator ("Regional Administrator") to the Region 10, Director, Environmental Cleanup Office, and Program Managers thereunder by EPA Delegation R10 14-14C.

1.3. EPA represents that, in accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), it notified the natural resource trustees for the Portland Harbor Site of negotiations with Respondents regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Settlement consistent with the process agreed to in the 2001 Memorandum of Understanding related to the Site.

1.4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections V (Findings of Fact) and VI (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

2.1. This Settlement is binding upon EPA and upon Respondents and their successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not

limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement.

2.2. EPA contends that Respondents are jointly and severally liable for response action at the Site. Respondents agree to carry out all activities agreed to in this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents agree they shall complete all such requirements.

2.3. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

2.4. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. STATEMENT OF PURPOSE

3.1. In entering into this Settlement, the objectives of the Parties are to: (a) implement investigation baseline sampling to update existing site-wide data; (b) inform certain analysis regarding scope and extent of remedial actions to the extent statistically significant data is available; and (c) collect data to facilitate completion of the third-party allocation amongst potentially responsible parties ("PRPs).

IV. DEFINITIONS

4.1. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where access is needed to perform the Work under this Settlement Agreement.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXVII.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"EPA Future Response Costs" shall mean all costs EPA incurs from the Effective Date of this Settlement through the date of the Certificate of Completion pursuant to Section XXVIII (Completion of Work) (which Certificate of Completion has been acknowledged in writing by EPA or determined to be valid through dispute resolution under Paragraph 14.3) related solely to this Settlement, the Statement of Work, and Work Plan, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, cooperative assistance grant costs related to oversight of the Work under this Settlement; the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, ¶ 8.3 (Emergencies and Releases), ¶ 24.6 (Access to Financial Assurance),] ¶ 8.4 (Community Involvement Plan related solely to this Settlement (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and the costs incurred by the EPA in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIV (Dispute Resolution) and all litigation costs in enforcing the terms of this Settlement.

"EPA Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, paid or incurred by EPA prior to the Effective Date in connection with negotiating this Settlement or in connection with developing the Statement of Work and Sampling and Analysis Plan dated June 2017 for the Site and charged to account 10PX beginning January 10, 2017.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Non-Settling Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property, including but not limited to, the Oregon Department of State Lands. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"ODEQ" shall mean the Oregon Department of Environmental Quality and any successor departments or agencies of the State.

"ODEQ Oversight Costs" shall mean only those direct and indirect costs that ODEQ incurs in coordinating and consulting with EPA in conjunction with EPA's planning and implementation of this Settlement, from July 6, 2017 through the date of completion of all Work agreed to by the Respondents under Section VIII of this Settlement. ODEQ Oversight Costs are only those costs incurred to fulfill the coordination and consultation role with EPA regarding implementation of this Settlement, including review of plans, reports and assessments prepared pursuant to this Settlement, but excluding any costs related to natural resource damages assessments, liability or restoration or uplands investigation, or source control. ODEQ Oversight Costs that are not inconsistent with the NCP, 40 C.F.R. Part 300, are recoverable response costs pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607. ODEQ Oversight Costs shall not include the costs of oversight or data collected by ODEQ concerning any other response action or Settlement Agreement associated with the Site.

"Owner Respondent" shall mean any Respondent that owns or controls any Affected Property. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.

"Paragraph" or "¶" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondents.

"Portland Harbor Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3) through prior settlements related to the Site.

"Portland Harbor Superfund Site" or "Site" for purposes of this Settlement shall mean the in-river portion of the site in Portland, Multnomah County, Oregon listed on the National Priorities List ("NPL") on December 1, 2000. 65 Fed. Reg. 75179-01 and for which a final remedy was selected in the January 2017 Record of Decision. As described in the Record of Decision, the Site extends in-river from approximately river mile ("RM") 1.9 to 11.8 and is depicted generally on the map attached as Appendix B.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, signed on January 3, 2017, by the Administrator of EPA, and all attachments thereto. A copy of the ROD can be found at https://www3.epa.gov/region10/pdf/ph/sitewide/record-of-decision-jan2017.pdf.

"Respondents" shall mean [**insert names of Respondents**] [**insert if applicable:** those Parties identified in Appendix C.]

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXV (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Sampling and Analysis Plan" or "SAP" shall mean the document describing the site-wide baseline investigation sampling, laboratory analysis, and other activities that EPA and Respondents have agreed will be performed under this Settlement, as described in the Work Plan and Statement of Work attached as Appendix A to this Settlement.

"State" shall mean the State of Oregon.

"Statement of Work" or "SOW" shall mean the document describing the activities that EPA and Respondents have agreed will be performed to implement the sampling and other Work, which is attached as Appendix A to this Settlement.

"Supervising Contractor" shall mean the principal contractor retained by Respondents to supervise and direct the implementation of the Work under this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Tribal Governments" shall mean the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Nez Perce Tribe. References to "Tribal Governments" in this Settlement Agreement may be a reference to an individual tribe, the tribes collectively, or some combination thereof.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and any federal natural resource trustee for the Site.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under ORS 465.200 et seq.

"Work" shall mean all activities and obligations that EPA and Respondents have agreed will be performed pursuant to the SOW and the Work Plan under this Settlement, except those required by Section XI (Record Retention).

"Work Plan" shall mean the document describing all of the specific tasks that constitute the Work that EPA and Respondents have agreed will be performed under this Settlement, which is an appendix to the SOW attached as Appendix A to this Settlement.

V. FINDINGS OF FACT

5.1. EPA finds the following facts, which Respondents neither admit nor deny:

5.1.1. Historical industrial, commercial, agricultural, and municipal, practices and releases of contaminants dating back to the early 1900s contributed to the observed chemical distribution of sediments within the Site. Historical sources responsible for the existing contamination include, but are not limited to: ship building, repair and dismantling; wood treatment and lumber milling; storage of bulk fuels and manufactured gas plant ("MGP") waste; chemical manufacturing and storage; metal recycling, production and fabrication; steel mills, smelters and foundries; electrical production and distribution; municipal combined sewer overflows; and stormwater from industrial, commercial, transportation, residential and agricultural land uses. Operations that continue to exist today include: bulk fuel storage; barge building; ship repair; automobile scrapping; recycling; steel manufacturing; cement manufacturing; operation and repair of electrical transformers; and many smaller industrial operations, as well as other commercial, agricultural, and municipal, practices.

5.1.2. On December 1, 2000, the Portland Harbor Superfund Site was listed on the National Priorities List due mainly to concerns about contamination in the sediments and the potential risks to human health and the environment from consuming fish. The most widespread contaminants found at the Site include, but are not limited to, polychlorinated biphenyls ("PCBs"), polycyclic aromatic hydrocarbons ("PAHs"), and dioxins/furans.

5.1.3. In 2001, EPA entered into a Memorandum of Understanding for the Portland Harbor Site (the "MOU") with the Oregon Department of Environmental Quality ("ODEQ"), National Oceanic and Atmospheric Administration within the Department of

Commerce, the United States Fish and Wildlife Service within the Department of the Interior, the Oregon Department of Fish and Wildlife and the Tribal Governments. The MOU, among other things, established the roles and responsibilities between EPA and ODEQ on managing the upland and in-river portions of the Site and set up a framework for technical and legal coordination among EPA and the Natural Resource Trustees; and relative to the Tribal Governments it sought to acknowledge the federal government's consultation requirements concerning the Portland Harbor Superfund Site, and to ensure the Tribal Governments' participation in the response actions at the Portland Harbor Superfund Site.

5.1.4. The Tribal Governments have treaty-reserved rights and resources and other rights, interests, or resources in the Site. The National Oceanic and Atmospheric Administration, the United States Department of the Interior, the Oregon Department of Fish & Wildlife, and the Tribal Governments are designated Natural Resource Trustees overseeing the assessment of natural resource damages at the Site. To the extent practicable, and if consistent with the objectives of the site-wide baseline sampling described herein, EPA intends that the work under this Settlement will be conducted so as to be coordinated with any natural resource damage assessment and restoration of the Portland Harbor Superfund Site. EPA intends to provide the Tribal Governments and the federal and state Natural Resource Trustees an opportunity to review and comment on plans, reports, and other deliverables submitted by Respondents to EPA under this Settlement.

5.1.5. A remedial investigation and feasibility study ("RI/FS") was initiated in 2001 and completed in 2017. As part of the RI/FS, baseline human health and ecological risk assessments were conducted to estimate the current and future effects of contaminants in sediments, surface water, groundwater seeps, and fish tissue on human health and the environment. The risk assessments provided the basis for taking action and identified the contaminants of potential concern ("COPCs") and exposure pathways that the remedial action should address.

5.1.6. The baseline human health risk assessment ("BHHRA") estimated cancer risks and noncancer health hazards from exposures to a set of chemicals in sediments (both beach and in-river), surface water, groundwater seeps, and fish tissue from samples collected at the Site.

5.1.7. The baseline ecological risk assessment ("BERA") estimated risks to aquatic and aquatic-dependent species exposed to hazardous substances associated with the in-river Willamette River portion of the Site.

5.1.8. The BHHRA and BERA concluded that contamination within the Site poses unacceptable risks to human health and the environment from numerous contaminants of potential concern in surface water, groundwater, sediment, and fish tissue. The selected remedy reduced the COPCs to 64 contaminants of concern ("COCs") that contribute the most significant amount of risk to the human and ecological receptors. See ROD, Appendix II, Tables 1–5.

5.1.9. A subset of the COCs, called focused COCs, was developed in order to simplify analysis and develop and evaluate remedial alternatives for the Site. The focused COCs include PCBs, PAHs, dioxins and furans, and DDx; and they contribute the most significant amount of site-wide risk to human and ecological receptors.

5.1.10. PCBs are classified as probable human carcinogens. Children exposed to PCBs may develop learning and behavioral problems later in life. PCBs are known to impact the human immune system and skin, especially in child receptors, and may cause cancer in people. Nursing infants can be exposed to PCBs in breast milk. PCBs can also bioaccumulate in fish, shellfish, and mammals. In birds and mammals, PCBs can cause adverse effects such as anemia and injuries to the liver, stomach, and thyroid gland. PCBs also can cause problems with the immune system, behavioral problems, and impaired reproduction.

5.1.11. PAHs are human health and ecological COCs. PAHs are suspected human carcinogens with potential to cause lung, skin, and bladder cancers with occupational exposure. Animal studies show that certain PAHs affect the hematopoietic, immune, reproductive and neurologic systems and cause developmental effects. They can cause inhibited reproduction, delayed emergence, sediment avoidance, and mortality. In fish, PAHs cause liver abnormalities and impairment of the immune system.

5.1.12. Dioxins and furans are human health and ecological COCs. Toxic effects in humans include reproductive problems, problems in fetal development or early childhood, immune system damage, and cancer. Nursing infants can be exposed to dioxins and furans in breast milk. Dioxins and furans can bioaccumulate in fish, shellfish, and mammals. Animal effects include developmental and reproductive problems, hemorrhaging, and immune system problems.

5.1.13. DDx, which represents collectively DDT and its primary breakdown products dichlorodiphenyldichloroethane (DDD) and dichlorodiphenyldichloroethene (DDE), are human health and ecological COCs. DDT is considered a possible human carcinogen. DDT and DDE are stored in the body's fatty tissues. In pregnant women, DDT and DDE can be passed to the fetus. Nursing infants can be exposed to DDx in breast milk. Laboratory animal studies showed effects on the liver and reproduction. These compounds can accumulate in fish, shellfish and mammals, and can cause adverse reproductive effects such as eggshell thinning in birds.

5.1.14. The Record of Decision requires active remediation (dredging, capping and enhanced natural recovery) at areas exceeding the remedial action levels ("RALs") for the focused COCs and contaminated riverbanks adjacent to some of those areas. The Record of Decision allows approximately 1,774 acres of sediment to recover naturally. The ROD estimated the remedy would take 13 years to construct.

5.1.15. One of the first steps in implementing the ROD is to implement site-wide investigation baseline sampling to update existing data, gather data as part of long-term trend

analysis, and further refine and delineate Sediment Management Areas in order to inform the remedial design process and the PRPs' allocation process.

5.1.16. The Work to be performed under this Settlement is required to protect public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment and pollutants or contaminants which may present an imminent and substantial endangerment to the public health or welfare.

5.1.17. Respondents currently own or operate or have owned or operated facilities that released hazardous substances at the Portland Harbor Superfund Site and, pursuant to the terms of this Agreement, have agreed to step forward to conduct the Work.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

6.1. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

6.1.1. The Portland Harbor Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6.1.2. The contamination found at the Site, as identified in the Findings of Fact above, includes"hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

6.1.3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6.1.4. Each Respondent is a potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and has agreed to enter into this Settlement and perform the Work agreed upon in this Settlement to advance the purposes enumerated in Section 3.1 above.

6.1.5. The conditions described in Section V, Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22)..

6.1.6. The Work agreed upon in this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. SETTLEMENT AGREEMENT AND ORDER

7.1. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record for the Site, it is hereby Ordered and Agreed that Respondents will comply with this Settlement, including, but not limited to, the SOW and all appendices to this Settlement hereby incorporated by reference herein.

VIII. PERFORMANCE OF THE WORK

8.1. Coordination and Supervision

8.1.1 Project Coordinators.

a. Respondents' Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondents' Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondents' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

b. EPA has designated Sean Sheldrake of the Office of Environmental Cleanup (ECL), Region 10, as its Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the EPA Project Coordinator, Sean Sheldrake, at 1200 Sixth Avenue, Suite 900, M/S ECL-115, Seattle, WA 98101 via electronic files to sheldrake.sean@epa.gov. Upon request by EPA, Respondents will also provide submissions on a compact disc. All requested electronic submissions must be formatted as directed by the EPA's Project Coordinator in order to be official file copies. Unless otherwise requested, EPA will not require hardcopy submissions of documents.

c. Respondents' Project Coordinator shall provide monthly progress reports to EPA and meet with EPA's Project Coordinator at least monthly to update EPA on the progress of the Work and resolve any technical questions not impacting the scope or structure of the Work in this Settlement.

8.1.2. Supervising Contractor. Respondents' Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

8.1.3. Procedures for Disapproval/Notice to Proceed.

a. Respondents shall designate, and notify EPA, within 10 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of Respondents' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have a conflict of interest with EPA with respect to the project.

b. EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondents shall, within 10 days, submit to EPA a list of

supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondents' selection.

c. Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 8.1.3(a) and 8.1.3(b).

8.2. Performance of Work in Accordance with the SOW and Work Plan. EPA and Respondents agree that Respondents shall perform the Work specified in the SOW and Work Plan. All deliverables required to be submitted for approval under the SOW or Work Plan shall be subject to approval by EPA in accordance with ¶ 5 (Approval of Deliverables) of the SOW.

8.3. Emergencies and Releases. Respondents shall comply with the emergency and release response and reporting requirements under ¶ 3.5 (Emergency Response and Reporting) of the SOW. Subject to Section XVII (Covenants by EPA), nothing in this Settlement, including ¶ 3.5 of the SOW, limits any authority of EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site associated with the Work, or (b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to Respondents' failure to take appropriate response action under ¶ 3.5 of the SOW, EPA takes such action instead, Respondents shall reimburse EPA under Section XIII (Payment of Response Costs) for all costs of the response action.

8.4. Community Involvement. If requested by EPA, Respondents shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Costs incurred by EPA under this Section constitute EPA Future Response Costs to be reimbursed under Section XIII (Payments for Response Costs).

8.5. Modification of SOW or Related Deliverables.

8.5.1. A basic tenet of Respondents' willingness to undertake the Work under this Settlement was EPA's willingness to agree in advance on the scope of all of the Work to be performed under this Settlement and the incorporation into the binding terms of this Settlement. The sampling and reportingto be performed under this Settlement is therefore limited to the specific tasks described in the Work Plan. EPA may not require the Respondents under the terms of this Settlement to perform any work not expressly identified in the SOW or Work Plan.

8.5.2. The SOW and Work Plan can only be modified by the mutual written consent of all Parties to this Settlement, each at its sole discretion. At which point the modification shall be incorporated into and enforceable under this Settlement. Respondents

agree to incorporate any agreed to modification into the deliverable required under the SOW, as appropriate.

8.5.3. Nothing in this Paragraph shall be construed to limit EPA's authority through a separate order or consent decree or otherwise pursuant to CERCLA or any other applicable law to require performance of response actions. In addition, nothing in this Settlement shall be construed to limit EPA's authority to perform or to authorize any other parties to perform additional work beyond the Work provided under this Settlement. However, nothing in this Settlement shall be construed as requiring Respondents under this Settlement to perform any work other than the Work provided under this Settlement or to reimburse any costs that do not constitute EPA Past Response Costs, EPA Future Response Costs or ODEQ Oversight Costs. Nothing in this Settlement limits EPA's authority through other means to collect any and all response costs that are excluded from or capped by this Settlement in the future.

IX. PROPERTY REQUIREMENTS

9.1. Agreements Regarding Access and Non-Interference. Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the EPA, providing that such Non-Settling Owner, and Owner Respondent shall, with respect to any Owner Settling Respondent's Affected Property: (i) provide EPA, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in ¶ 9.2 (Access Requirements); and (ii) refrain from using such Affected Property in any manner that interferes with or adversely affects the implementation or integrity of the Work.

9.2. Access Requirements. The following is a list of activities for which access is required regarding the Affected Property:

9.2.1. Monitoring the Work;

9.2.2. Verifying any data or information submitted to the EPA;

9.2.3. Conducting investigations regarding contamination at or near the Site;

9.2.4. Obtaining samples;

9.2.5. Assessing the need for, planning, implementing, or monitoring response actions;

9.2.6. Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;

9.2.7. Implementing the Work pursuant to the conditions set forth in ¶ 18.3 (Work Takeover);

9.2.8. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section X (Access to Information);

9.2.9. Assessing Respondents' compliance with the Settlement; and,

9.2.10. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement.

9.2.11. Taking all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material associated with the Work as provided in ¶8.3. (Emergencies and Releases).

9.4. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access. All costs incurred by the EPA in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute EPA Future Response Costs to be reimbursed under Section XIII (Payment of Response Costs).

9.5. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

9.6. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation[s] to secure access from the new owner of the Affected Property.

9.7. **Notice to Successors-in-Title**. Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier: (a) Notify the proposed transferee that EPA has determined that site-wide investigative baseline sampling must be performed at the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring

implementation of such baseline sampling, (identifying the name, docket number, and the effective date of this Settlement); and (b) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

9.8. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

10.1. Respondents shall provide to EPA, upon request, copies of all records, reports, documents and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to Work under this Settlement, including, but not limited to sampling results, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

10.2. **Privileged and Protected Claims.**

10.2.1. Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 10.2.2, and except as provided in ¶ 10.2.3.

10.2.2. If Respondents assert such a privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

10.2.3. Respondents may make no claim of privilege or protection regarding: (1) any data that is collected in performing the Work under this Settlement, including, but not limited to, all such sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data; (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement; or (3) any information for which a claim of confidentiality or privilege is expressly prohibited under applicable law including Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7).

10.3. **Business Confidential Claims**. Subject to subparagraph 10.2.3, above, Respondents may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with ¶ 10.2.3, Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

10.4. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

11.1. Until 10 years after completion of the Remedial Action, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

11.2. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided for in ¶ 10.2 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

11.3. Each Respondent certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

12.1. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Settlement, if approved by EPA, shall be considered consistent with the NCP.

12.2. **Permits**. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e. within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

12.3. Respondents may seek relief under the provisions of Section XV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 12.2 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. PAYMENT OF RESPONSE COSTS

13.1. **Payment for EPA Past Response Costs**

13.1.1. Within 180 days after the Effective Date EPA will send Respondents a bill for Past Response Costs that includes a SCORPIOS Report or similar EPA-prepared cost summary report. . Respondents shall pay within 60 days Respondent's receipt of a bill for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by EPA, Region 10, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region, the account number 10PX, and the EPA docket number for this action.

13.1.2. At the time of payment, Respondents shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

13.1.3. The total amount to be paid by Respondents pursuant to Paragraph 13.1.1 shall be deposited by EPA in the Portland Harbor Special Account within the EPA Hazardous

Substance Superfund to be retained in the Portland Harbor Special Account and used to conduct or finance response actions at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund.

13.2. **Payment for EPA Future Response Costs**

13.2.1. Respondents shall reimburse EPA for all EPA Future Response Costs incurred pursuant to this Settlement and not inconsistent with the NCP, provided that the aggregate amount of EPA Future Response Costs required to be reimbursed under this Paragraph 13.2 plus EPA Past Response Costs reimbursed under Paragraph 13.1 shall not exceed $2,000,000. Emergency response costs incurred by EPA pursuant to Paragraph 8.3 shall not be subject to the $2,000,000 limit. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS Report or similar EPA-prepared cost summary report. Respondents shall make all payments within 60 days of any Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 13.5 (Contesting Future Response Costs).

13.2.2. Payments made pursuant to this Paragraph 13.2 shall be made by EFT in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check or checks made payment to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, the Site name, the EPA Region, the account number 10PX, and the EPA docket number for this action. Respondents shall send the check to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Respondents shall use the following address for payments made by overnight mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101-1229

13.2.3. At the time of payment, Respondents shall send notice that payment has been made to EPA to the Region 10 Project Coordinator and to the Servicing Finance Office, EPA Finance Center, MS-NWD, Cincinnati, OH 45268.

13.3. The total amount paid by Respondents for EPA Future Response Costs will be deposited by EPA in the Portland Harbor Special Account to be retained in the Portland Harbor Special Account and used by EPA to conduct or finance response actions at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund.

13.4. **Interest**. In the event that any payment for EPA Past Response Costs or EPA Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on EPA Future Response costs shall begin to accrue 61 days after Respondents' receipt of the bill per ¶ 13.2.1. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the EPA by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

13.5. **Contesting EPA Future Response Costs**. Respondents may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any EPA Future Response Costs billed under ¶ 13.2 (Payments for EPA Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of EPA Future Response Costs or the not-to-exceed amount at ¶ 13.2.1, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the EPA Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 60-day payment period, also as a requirement for maintaining the dispute, (a) pay all uncontested EPA Future Response Costs to EPA in the manner described in ¶ 13.2, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested EPA Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 13.2. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in ¶ 13.2. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

13.6. **Payment of ODEQ Oversight Costs**

13.6.1. Respondents shall be responsible under this Settlement for reimbursing ODEQ for all ODEQ Oversight Costs incurred pursuant to this Settlement that are not inconsistent with the NCP. Following the issuance of this Settlement, ODEQ will submit a

detailed accounting to Respondents' Project Coordinator on a monthly basis of all ODEQ Oversight Costs sought to reimbursement under this Settlement.

13.6.2. Except for any ODEQ oversight costs that they dispute in a manner agreed to by ODEQ and Respondents, Respondents shall, within 60 days of receipt of each ODEQ invoice, remit payment to ODEQ in a manner agreed to by ODEQ and Respondents.

13.6.3. ODEQ invoices will include a summary of costs billed to date and all underlying documentation including but not limited to: ODEQ personnel time sheets; travel authorizations and vouchers; ODEQ contractor monthly invoices; and all applicable laboratory invoices.

13.6.4. Disputes regarding ODEQ oversight bills shall be resolved in accordance with a process agreed to between ODEQ and Respondents outside of this Settlement, and neither ruled by nor conducted under Section XIV of this Settlement.

13.6.5. Nothing in this Paragraph shall be construed to limit ODEQ's authority under any source other than this Settlement to seek reimbursement from Respondents or any other party of any costs that ODEQ may incur or may have incurred.

XIV. DISPUTE RESOLUTION

14.1. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

14.2. **Informal Dispute Resolution**. Except as provided in this Paragraph 14.2, if Respondents object to any EPA decision or action taken pursuant to this Settlement, including billings for EPA Future Response Costs, they shall send EPA's Project Coordinator a written Notice of Dispute describing the objection(s) within thirty (30) days after such action, unless the objection(s) has/have been resolved informally. The Respondents, when submitting a matter for resolution under this subparagraph, shall be limited collectively to one dispute per EPA decision or action. EPA and Respondents shall have thirty (30) days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended only upon the mutual agreement of all Parties to this Settlement. Any agreement reached by the Parties pursuant to this Paragraph 14.2 shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement. Notwithstanding the foregoing, any disputes regarding the following matters may proceed to formal dispute resolution under Paragraph 14.3 without need for informal dispute resolution: (i) EPA's approval of any Deliverable as described in the SOW; (ii) EPA's failure to issue a Notice of Work Completion under Section XXVIII; and (iii) any Work Takeover under Paragraph 18.3.

14.3. **Formal Dispute Resolution**. For any matters subject to informal dispute resolution under Paragraph 14.2, if the Parties are unable to reach an agreement on such matter in dispute within the Negotiation Period, within fourteen (14) days from the end of the Negotiation Period, the Respondents may submit the matter for formal dispute resolution in accordance with this Paragraph 14.3. If Respondents object to any EPA decision or action taken pursuant to this Settlement that relate to matters not subject to informal dispute resolution under Paragraph 14.2, they may, within thirty days after such action, submit the matter for formal dispute resolution in accordance with this Paragraph 14.3.

14.3.1. Any requests for formal dispute resolution shall be submitted for a written determination by the Regional Administrator or any EPA official that the Regional Administrator may designate to resolve disputes under this Settlement ("Regional Administrator's Designee"). The Respondents, when submitting a matter for resolution under this subparagraph, shall be limited collectively to one dispute per EPA decision or action. The Respondents shall provide to the Regional Administrator or the Regional Administrator's Designee, with a concurrent copy to all other Parties, a written request for resolution that includes, at a minimum, a statement of the matter in dispute, a summary of efforts to resolve the dispute informally, a succinct summary of the resolution sought and the basis for that determination, and any other materials that the Party deems necessary for resolution of the issue ("Request for Resolution"). The Request for Resolution may also include a report that Respondents may choose to commission from a panel of experts with expertise in fields relevant to the Work who may be selected and retained by Respondents for the purpose of providing an expert technical evaluation regarding the Work. Such report shall be included with and submitted at the same time as the Request for Resolution. At any time within fourteen (14) days after receipt of the Request for Resolution, the EPA may provide to the Regional Administrator or the Regional Administrator's Designee, with a concurrent copy to Respondents, a written response to the Request for Resolution ("Response to Request for Resolution"). The Respondents, in submitting a Request for Resolution, may request a review of any technical issue in dispute by the sitting Chairperson of the Contaminated Sediment Technical Advisory Group within the Office of Superfund Remediation and Technology Innovation ("CSTAG Chairperson"). Upon any such request, EPA shall promptly provide to the CSTAG Chairperson the Request for Resolution and Response to Request for Resolution. The CSTAG Chairperson shall evaluate the technical issues in dispute and, within thirty (30) days after the Response to Request for Resolution, issue a written evaluation assessing each such issue and the merits of the dispute. The Respondents, in submitting a Request for Resolution, may request the opportunity for a teleconference with the Regional Administrator or the Regional Administrator's Designeein advance of the determination. If such a teleconference is requested, it shall be scheduled by the Regional Administrator or the Regional Administrator's Designee for a mutually acceptable date and time within fourteen (14) days of any Response to Request for Resolution, or as soon as practicable thereafter, if no review by the CSTAG Chairperson is requested. If a review by the CSTAG Chairperson is requested, any such teleconference shall be scheduled by the Regional Administrator or the Regional Administrator's Designeefor a mutually acceptable date and time within fourteen (14) days of the issuance of the CSTAG Chairperson's evaluation, or as soon as practicable thereafter. The Regional Administrator or the Regional Administrator's Designeeshall issue a written determination on

the dispute ("Regional Determination") to all parties within ten (10) days after the last of the three potential events occur: (i) if a teleconference is requested, the date of the teleconference; (ii) if no teleconference is requested but an evaluation by the CSTAG Chairperson is requested, the date on which the CSTAG Chairperson issues an evaluation; or (iii) if no teleconference is requested and no evaluation by the CSTAG Chairperson is requested, the date on which the Response to Request for Resolution is submitted. In issuing the Regional Determination, the Regional Administrator or the Regional Administrator's Designeeshall consider, at a minimum, the Request for Resolution, the Response to Request for Resolution, and any evaluation from the CSTAG Chairperson. The Regional Determination shall constitute EPA's final decision on the matter, and EPA and Respondents shall thereafter comply with the Final Determination unless Respondents initiate an appeal of the Regional Determination under Paragraph 14.3.2..

14.3.2. Within ten days of issuance of the Regional Determination, Respondents may appeal the Regional Determination or any portion thereof to the EPA Administrator for a review by the EPA Administrator or any EPA official that the EPA Administrator may designate to resolve disputes under this Settlement ("Administrator's Designee"). The appeal shall include a written request for review of the Regional Determination along with a brief statement of the basis of the appeal and shall attach any underlying Requests for Resolution, Response to Request for Resolution and any evaluation from the CSTAG Chairperson. The Respondents shall submit a concurrent copy of the appeal and supporting documentation to the EPA Project Coordinator. At any time within fourteen (14) days after receipt of the appeal, the EPA may provide to the EPA Administrator, with a concurrent copy to Respondents, a written response to the appeal. Within fourteen days of a timely response to appeal, the EPA Administrator or the Administrator's Designee shall issue a final decision on the matter ("Final Determination"). EPA and Respondents shall thereafter comply with the Final Determination.

14.4. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement, except as provided by ¶ 13.5 (Contesting EPA Future Response Costs), as agreed by EPA.

14.5. Except as provided in ¶ 16.4, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

15.1. "Force Majeure" for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential

force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

15.2. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the EPA Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Environmental Cleanup Office, EPA Region 10, within 24 hours of when Respondents first knew that the event might cause a delay. Within 10 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 15.1 and whether Respondents have exercised their best efforts under ¶ 15.1, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

15.3. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

15.4. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of ¶¶ 15.1 and 15.2. If Respondents

carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

15.5. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XVI. STIPULATED PENALTIES

16.1. Respondents agree to be liable to EPA for stipulated penalties in the amounts set forth in ¶ 16.2 for any noncompliance with the requirements of this Settlement unless excused under Section XV (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. If (i) an initially submitted deliverable that has been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable; or (ii) a resubmitted deliverable contains a material defect; then such action constitutes a lack of compliance for purposes of this Paragraph.

16.2. The following stipulated penalties shall accrue per violation per day for any non-compliance with the requirements of this Settlement Agreement, including late payments of EPA Future Response Costs.

Penalty Per Violation Per Day	Period of Noncompliance
$ 250	1st through 7th day
$ 500	8th through 14th day
$ 1,500	15th through 30th day
$ 2,500	31st day and beyond

16.3. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 5.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; (b) with respect to a decision on a dispute under Section XIV (Dispute Resolution), during the period, if any, beginning on the date on which the Notice of Dispute is submitted or, for any dispute not subject to informal dispute resolution under

Paragraph 14.2, the date on which a Request for Resolution is submitted until the date that the relevant EPA dispute official issues a final decision regarding such dispute; and (c) for any matter subject to a Work Takeover under Paragraph 18.3, from the date of the Work Takeover Notice. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

16.4. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

16.5. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 13.2 (Payments for EPA Future Response Costs).

16.6. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 16.4 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 16.6 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

16.7. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

16.8. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement.

16.9. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVII. COVENANTS BY EPA

17.1. Except as provided in Section XVIII (Reservation of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, or for EPA Past Response Costs and EPA Future Response Costs up to the aggregate amount of $2 million under Paragraph 13.2.1. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XVIII. RESERVATIONS OF RIGHTS BY EPA

18.1. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law under a separate order or consent decree.

18.2. The covenants set forth in Section XVII (Covenants by EPA) above do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

18.2.1. liability for failure by Respondents to meet a requirement of this Settlement;

18.2.2. liability for costs not included within the definitions of EPA Past Response Costs or EPA Future Response Costs;

18,2.3.liability for costs included within the definitions of EPA Past Response Costs or EPA Future Response Costs that are not reimbursed under this Settlement;

18.2.3. liability for performance of response action other than the Work;

18.2.4. criminal liability;

18.2.5. liability for violations of federal or state law that occur during or after implementation of the Work;

18.2.6. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

18.2.7. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

18.2.8. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as EPA Future Response Costs under this Settlement.

18.3. Work Takeover

18.3.1. In the event EPA determines that Respondents: (1) have ceased implementation of the Work or any portion of the Work; or (2) are seriously or repeatedly deficient or late in their performance of the Work or any portion of the Work;, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will state whether it applies to all of the Work or a portion of the Work. If it applies to only a portion of the Work, the notice shall specifically identify the portion of the Work to be taken over. All Work Takeover Notices shall specify the grounds upon which such notice was issued, and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

18.3.2. If, after expiration of the 10-day notice period specified in ¶ 18.3.1. Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all of the Work or portion of the Work identified in the notice as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 18.3.2.

18.3.3. Respondents may invoke the procedures set forth in ¶ 14.3 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 18.3.2. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 18.3.2 until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 14.3 (Formal Dispute Resolution).

18.3.4. If EPA implements a Work Takeover of all Work remaining, Respondents shall have no further obligation under this Settlement to perform or fund any of the Work, nor shall Respondents have any obligation under this Settlement to fund or reimburse EPA for any costs it may incur in performing any Work under the Work Takeover. Respondents shall have a continuing obligation under Paragraph 13.2 to reimburse EPA for EPA Future Response Costs incurred pursuant to this Settlement for cost incurred up to the date of Work Takeover, but shall

have no obligation under this Settlement for reimbursing EPA for any EPA Future Response Costs that it may incur from the date of Work Takeover on. Respondents shall also have a continuing obligation under Paragraph 13.6 to reimburse ODEQ for ODEQ Oversight Costs incurred pursuant to this Settlement for cost incurred up to the date of Work Takeover, but shall have no obligation under this Settlement for reimbursing ODEQ for any ODEQ Oversight Costs that ODEQ may incur from the date of Work Takeover on.

18.3.5. If EPA implements a Work Takeover for only a portion of the Work ("Partial Work Takeover"), Respondents shall have no further obligation under this Settlement to perform or fund the portion of the Work subject to the Partial Work Takeover, nor shall Respondents have any obligation under this Settlement Agreement to fund or reimburse EPA for any costs it may incur in performing that portion of the Work. However, Respondents shall have a continuing obligation to perform those portions of the Work not subject to the Partial Work Takeover. Respondents shall have a continuing obligation under Paragraph 13.2 to reimburse EPA for EPA Future Response Costs incurred pursuant to this Settlement for cost incurred up to the date of Partial Work Takeover, and shall also have a continuing obligation for reimbursing EPA for any EPA Future Response Costs incurred after the date of the Partial Work Takeover related to the portion of the Work not subject to the Partial Work Takeover, but shall have no obligation under this Settlement to reimburse EPA for any EPA Future Response Costs incurred after the Partial Work Takeover that relate to Work subject to the Partial Work Takeover. Respondents shall also have a continuing obligation under Paragraph 13.6 to reimburse ODEQ for ODEQ Oversight Costs incurred pursuant to this Settlement for cost incurred up to the date of Partial Work Takeover, and shall also have a continuing obligation for reimbursing ODEQ for any ODEQ Oversight Costs incurred after the date of the Partial Work Takeover related to the portion of the Work not subject to the Partial Work Takeover, but shall have no obligation under this Settlement to reimburse ODEQ for any ODEQ Oversight Costs incurred after the Partial Work Takeover that relate to Work subject to the Partial Work Takeover.

18.3.6. Respondents' obligation to address emergency situations as described in the Paragraph 8.3 and in the SOW, and EPA's authority to abate an endangerment resulting from Respondents' activities are not included in this Work Takeover notice and process provided for in this Section.

18.3.7. Notwithstanding any other provision in this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XIX. COVENANTS BY RESPONDENTS

19.1. Except as provided in 19.2 below, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, EPA Past Response Costs, EPA Future Response Costs, and this Settlement, including, but not limited to:

19.1.1. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of

CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

19.1.2. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Oregon Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

19.1.3. any claim under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law.

19.2. This Settlement Agreement shall not have any effect on claims or causes of action that any Respondent has or may have pursuant to Sections 107(a) or 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) or 9613(f), against the United States on behalf of various federal agencies, based upon a claim that the United States is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Work and EPA Future Response Costs paid under Section XIII of this Settlement Agreement. However, the United States acknowledges the reservation of Section 107 claims without any concession that, even if such a claim exists, it is cognizable under Section 107.

19.3. These covenants not to sue shall not apply in the event the EPA brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservations of Rights by EPA), other than in ¶ 18.2.1 (liability for failure to meet a requirement of the Settlement), 18.2.2 (criminal liability), or 18.2.3 (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the EPA is seeking pursuant to the applicable reservation.

19.4. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S. C. § 9611, or 40 C.F.R. § 300.700(d).

19.5. Respondents reserve, and this Settlement is without prejudice to, claims against the EPA, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the EPA, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

XX. OTHER CLAIMS

20.1. By issuance of this Settlement, the EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

20.2. Except as expressly provided in Section XVII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the EPA for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

20.3. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

21.1. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XIX (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

21.2. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the EPA within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are solely the Work and EPA Past Response Costs and EPA Future Response Costs up to the maximum of $2 Million, but no more than actually billed and reimbursed by the Respondents.

21.3. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the EPA within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

21.4. Each Respondent shall, with respect to any suit or claim brought by it for the matters addressed in this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for the matters addressed in this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters addressed in this Settlement.

21.5. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVII (Covenants by EPA).

21.6. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s), if any, required by Paragraph 13.1 (Payment for EPA Past Response Costs) and, if any, Section XVI (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in ¶ 21.2 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement effective, the statute of l imitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXII. INDEMNIFICATION

22.1. The EPA does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents by the United States as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the EPA, its officials, agents, employees, contractors, subcontractors, employees, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the EPA all costs it incurs, including, but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors,

employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The EPA shall not be held out as a party to any contract entered into, by, or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the EPA.

22.2. The EPA shall give Respondents notice of any claim for which the EPA plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

22.3. Respondents covenant not to sue and agree not to assert any claims or causes of action against the EPA for damages or reimbursement or for set-off of any payments made, or to be made, to the EPA, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the EPA with respect to any and all claims for damages or reimbursement arising from or on account of, any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIII. INSURANCE

23.1. No later than 15 days before commencing any on-site Work, Respondents shall secure, and shall maintain until so notified by EPA, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Site name, City, State and the EPA docket number for this action.

XXIV. FINANCIAL ASSURANCE

24.1. In order to ensure the completion of the Work, Respondents shall secure financial assurance, initially in the amount of $ [_____] ("Estimated Cost of the Work"), for the benefit of EPA. Portions of this financial assurance may be provided by different Respondents using different mechanisms as long as the total amount of financial assurance provided by Respondents equals the Estimated Cost of Work. Notwithstanding the potential separate financial assurance mechanisms, Respondents are jointly and severally responsible for securing financial assurance equal to the total Estimated Cost of Work. All financial assurance under this Settlement must be provided through one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms, including but not limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

24.1.1. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

24.1.2. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

24.1.3. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

24.1.4. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

24.1.5. A demonstration by a Respondent that it meets the financial test criteria of ¶ 24.3,; or

24.1.6. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 24.3.

24.2. Respondents shall within _____ days of the Effective Date, obtain EPA's approval of the form of Respondents' financial assurance. Within 30 days of such approval, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, ORC 113, Seattle, WA 98101.

24.3. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 24.1.5 or 24.1.6, must, within 30 days of the Effective Date:

24.3.1. Demonstrate that:

a. The affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

b. The affected Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

24.3.2. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

24.4. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 24.1.5 or 24.1.6 must also:

24.4.1. Annually resubmit the documents described in ¶ 24.3.2 within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

24.4.2. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

24.4.3. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 24.3.2; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

24.5. Respondents shall diligently monitor the adequacy of the financial assurance. If Respondents becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondents shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Respondents of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the Respondents, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of ¶ 24.7

(Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

24.6. Access to Financial Assurance

24.6.1. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the Respondents fail to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 24.6.4.

24.6.2. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 18.3, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 24.1.5 or 24.1.6, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

24.6.3. Any amounts required to be paid under this ¶ 24.6 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Portland Harbor Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

24.7. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 24.2 and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there

is a dispute, the agreement or written decision resolving such dispute under Section XIV (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 24.2.

24.8. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (b) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV (Dispute Resolution), or (c) upon completion of the Work and termination of the work requirements of the Order.

XXV. INTEGRATION/APPENDICES

25.1. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

25.1.1. Appendix A is the Statement of Work.

25.1.2. Appendix B is a map of the Site.

25.1.3. Appendix C is a complete list of Respondents.

25.1.4. .

XXVI. MODIFICATION

26.1. The EPA Project Coordinator and Respondents' Project Coordinator may modify any schedule under the SOW or Work Plan by mutual agreement in writing. Any other requirements of this Settlement may only be modified in writing by mutual agreement of all Parties, each at its sole discretion.

26.2. If Respondents seek permission to deviate from the SOW, Work Plan, or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the

requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to ¶ 8.1.1.

26.3. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVII. EFFECTIVE DATE

27.1. This Settlement shall be effective upon signature by the Environmental Cleanup Office, EPA Region 10.

XXVIII. NOTICE OF WORK COMPLETION

28.1. When EPA determines, after EPA's review of the PDI Evaluation Report described in the SOW, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations as provided in Paragraph 28.3, EPA will provide written notice of that determination to Respondents ("Notice of Work Completion"). If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work if appropriate in order to correct such deficiencies. If EPA does not make such determination within forty-five (45) days of submittal of the PDI Evaluation Report, Respondents may dispute that inaction pursuant to Section XIV (Dispute Resolution).

28.2. Respondents shall modify the Work to correct the deficiencies in accordance with EPA's direction and shall submit the modified deliverable. If approved, EPA will issue the Notice of Work Completion. If EPA does not make a determination on the modified deliverable within forty-five (45) days of submittal, Respondents may dispute that inaction pursuant to Section XIV (Dispute Resolution).28.3 Issuance of the Notice of Work Completion does not affect the ongoing requirements of this Settlement: (1) obligations under Section X (Access to Information), Section XI (Record Retention), Section XIII (Payment of Response Costs), Section (XVI) Stipulated Penalties, Section XVII (Covenants by EPA), Section XVIII (Reservation of Rights by EPA), Section XIX (Covenants by Respondents), Section XX (Other Claims) and Section XXI (Effect of Settlement/Contribution), that shall remain in effect.

IT IS SO AGREED AND ORDERED;

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Dated

Sheryl Bilbrey
Director, Environmental Cleanup Office
EPA Region 10

PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION
Subject to FRE 408 and Related Privileges
For Settlement Purposes Only

Signature Page for Settlement regarding the _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____ _____
Dated [Name]
[Title]
[Company]
[Address]

[NOTE: A separate signature page is required for each settlor.]