



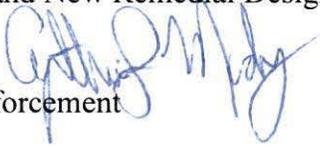
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Revised Model Administrative Settlement Agreement and Order on Consent for Remedial Design and New Remedial Design Statement of Work

FROM: Cynthia L. Mackey, Director 
Office of Site Remediation Enforcement

TO: Regional Counsels, Regions I-X
Superfund National Policy Managers, Regions I-X

I. INTRODUCTION

This memorandum transmits the revised Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) *Model Administrative Settlement Agreement and Order on Consent for Remedial Design* (RD ASAOC) and the new CERCLA *Model RD ASAOC Statement of Work* (SOW). These models are designed to be used together with the SOW as an attachment to the RD ASAOC. They were developed in collaboration with Headquarters, regional, and Department of Justice (DOJ) staff.

These documents are now available from the RD/RA category on the Cleanup Enforcement Model Language and Sample Documents Database ("Cleanup Models Database") located at <https://cfpub.epa.gov/compliance/models/>. These models are effective today and supersede the *Model Administrative Order on Consent for Remedial Design* (Jan. 6, 2005) ("2005 RD AOC") and the RD administrative settlement agreement and order on consent elements of the *Interim Revisions to CERCLA Removal, RI/FS and RD AOC Models to Clarify Contribution Rights and Protection Under Section 113(f)* (Aug. 3, 2005).

As explained further in Section II below, we are also using these models to introduce a change for the RD ASAOC context, as we removed the CERCLA Section 106(a) authority so that the RD ASAOC will mirror the authority relied on for the Remedial Investigation/Feasibility Study (RI/FS) ASAOC. We are also introducing a change to the property requirements provision, a clarification of EPA's objective assessment of contractors' qualifications, and a revision to the confidential business information language within all of our CERCLA response action settlement and unilateral administrative order models.

II. EXPLANATION OF REVISIONS

The revised RD ASAOC contains many updates and revisions, most significantly the development of a companion SOW so that the new RD model follows the format of the current Model RD/RA Consent Decree (CD) and SOW.¹ To conform with the RD/RA CD and SOW, we edited the 2005 RD AOC to move the technical provisions out of the AOC's body and into the SOW and modified the language for the RD-only context. Together, the ASAOC and SOW provide complete and up-to-date legal and technical national model language that will assist the Regions in drafting speedy, nationally-consistent CERCLA RD ASAOCs.

Other revisions are generally designed to bring the revised RD ASAOC and new SOW into conformance with more recently issued CERCLA guidance and models, including the RD/RA CD and SOW. The revisions include updated: property requirements (covering site access and applicable use restrictions), access to information, record retention, financial assurance, past and future response costs payment provisions, force majeure, and the consolidated waiver of claims covering de micromis, municipal solid waste, and *de minimis*/ability to pay parties. It also contains revised technical assistance plan language² and a new community involvement provision for use in accordance with applicable EPA guidance and the National Contingency Plan. In addition, the revised RD ASAOC and new SOW incorporates revised model settlement language announced in September 2014 as applicable to all CERCLA models (i.e., immediately effective covenants not to sue and contribution protection and rights language updates).³ It also incorporates the model geospatial data and electronic submission of deliverables language announced in September 2014.⁴ Finally, the revised RD ASAOC and new SOW include recent updates to financial assurance language and insurance language, introduced by the 2016 Remedial Investigation/Feasibility Study ASAOC and unilateral order.⁵

A. Removal of CERCLA § 106(a) Authority

In response to a regional comment regarding whether CERCLA § 106(a) authority was necessary in the RD context, we decided that the RD Model should follow the authorities that the RI/FS

¹ The latest version of the RD/RA CD and RD/RA SOW are available on the Cleanup Models Database at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=81 (RD/RA CD) and https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=543 (RD/RA SOW).

² See *Interim Guidance: Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements* (Sept. 3, 2009), available at <https://www.epa.gov/enforcement/interim-guidance-opportunities-independent-technical-assistance-superfund-settlements>, and *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), OSWER Directive No. 9200.2-125, available at <https://www.epa.gov/sites/production/files/documents/rev-saa-2012-mem.pdf>.

³ See *Revisions to 2009 ARC Memo and Issuance of Revised CERCLA Past Cost, Peripheral, De Minimis, De Micromis, and Municipal Solid Waste Settlement Models* (Sept. 26, 2014), available at <https://www.epa.gov/enforcement/guidance-revisions-2009-arc-memo-and-issuance-cercla-payment-models>.

⁴ See *Transmittal of Model Geospatial Data and Electronic Submission of Deliverables Language for Inclusion in CERCLA Statements of Work* (Sept. 29, 2014), available at <https://www.epa.gov/enforcement/guidance-model-geospatial-data-language-use-cercla-sows>.

⁵ See *Issuance of Revised Consent Order and New Unilateral Order for Remedial Investigation/Feasibility Study and Updated Financial Assurance and Insurance Language for All CERCLA Response Action Settlements and Unilateral Administrative Orders*, available at <https://www.epa.gov/enforcement/guidance-2016-rifs-asaoc-and-uaos>.

ASAOC relies on, namely CERCLA §§ 104, 107, and 122. We removed the reference to Section 106(a) in the caption, jurisdiction, and throughout as appropriate. Removing the citation to CERCLA § 106(a) led to removing other provisions including providing notice to state under Section 106(a), endangerment determination language, and penalties under Section 106(b). We made this change because RD ASAOCs fall squarely within Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), which authorizes agreements with PRPs with respect to action under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b).⁶

B. Revision to Property Requirements Provision of All CERCLA Models

In response to regional comments, we did not include within the property requirements section a provision – one that exists in other posted models – that requires the owner respondent to obtain an access and resource use restriction agreement from a potential buyer of the affected property prior to the transfer of that property. Under the common law merger doctrine, the property deed is presumed to supersede all preceding negotiations and agreements with respect to the property, and thus all rights, responsibilities, and remedies of the parties to the transfer of the property must be determined by the deed. Thus, generally, any agreements related to the property preceding the transfer are nullified by the deed. Moreover, this provision is made superfluous where proprietary controls (e.g., environmental covenants, restrictive covenants) are in place because such controls generally will run with the land and bind future owners of the affected property to whatever access and/or resource restrictions may be required. We are also deleting this provision from all other CERCLA models at this time.

C. Clarifying Language for Contractor Approval and Confidential Business Information Provisions in All CERCLA Models

In response to comments from the Office of General Counsel, we clarified language in the procedures for disapproval of respondent’s proposed contractors and project coordinators to state that EPA’s review of the qualifications of such personnel will be based on objective criteria, including that they do not have a conflict of interest with respect to the project. We also revised the confidential business information (CBI) language to more clearly reflect the protections afforded CBI in 40 C.F.R. Part 2, Subpart B as follows: “Records ~~submitted to EPA determined to be confidential by EPA~~ **that Respondents claim to be confidential business information** will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B.” These changes will be made in all other CERCLA models.

III. CONTACTS

Please direct any questions about the RD ASAOC to Tina Skaar of OSRE’s Regional Support Division (RSD) at 202-564-0895 (skaar.christina@epa.gov). If you have any questions about the RD/RA UAO SOW, please contact Tracy Hopkins, Office of Land and Emergency Management, Office of Superfund Remediation and Technology Innovation, Assessment and Remediation

⁶ Section 104(b)(1) provides, in pertinent part, “In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions.” This includes RD activity.

Division at 703-603-8788 (hopkins.tracy@epa.gov), or Mark Gallagher, DOJ Environmental Enforcement Section at 202-514-5405 (mark.gallagher@usdoj.gov).

IV. DISCLAIMER

This memorandum and the documents referenced herein are intended as guidance for EPA employees. They are not rules and do not create any legal obligation. The extent to which EPA applies them in a particular case will depend on the facts of the case.

Attachments

cc: John Michaud, Associate General Counsel, OGC/SWERLO
James Woolford, Director, OLEM/OSRTI
Tom Mariani, Chief, Environmental Enforcement Section, DOJ
Superfund Regional Counsel Branch Chiefs
RD/RA CD SOW Workgroup

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ____

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

**MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON
CONSENT FOR REMEDIAL DESIGN**

September 2016

This document contains automatic section and paragraph numbers, automatic section, and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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[NOTE: Appendices may also be listed in this Table of Contents.]

I. JURISDICTION AND GENERAL PROVISIONS

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 performance of a Remedial Design (RD) by Respondents and the payment of certain response costs incurred by the United States at or in connection with the “**[insert name]** Site” (the “Site”) generally located at **[insert address or descriptive location of Site]** in **[City or Town, County, State]**.

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, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). **[Insert if applicable:** These authorities were further redelegated by the Regional Administrator of EPA Region ___ to the _____ **[insert title of manager to whom delegation was made]** by **[insert numerical designations and dates of each Regional redelegation].]**

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified **[insert the relevant federal natural resource trustee(s)]** on _____, 20__ of negotiations with potentially responsible parties 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.

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 IV (Findings of Fact) and V (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

5. This Settlement is binding upon EPA and upon Respondents and their [heirs,] 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.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to

implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

7. 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.

8. 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 under this Settlement on 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. DEFINITIONS

[NOTE: The following list of definitions may be reduced or expanded as appropriate.]

9. 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:

[NOTE: In the definition below, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.]

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the RD, including, but not limited to, the following properties **[insert property descriptions]**.

“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 XXVIII.

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

[“_____” shall mean the [**insert name of state pollution control agency or state environmental protection agency**] and any successor departments or agencies of the State.]

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

[NOTE: If EPA determines that it is appropriate for the Settlement to provide orphan share compensation through forgiveness of RD oversight costs, insert the following “Future Oversight Costs” definition in addition to the standard “Future Response Costs” definition that follows and see ¶ 35 (Payments for Future Response Costs) to understand use of the terms in context.]

[“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Respondents’ performance of the Work to determine whether such performance is consistent with the requirements of this Settlement, including costs incurred in reviewing deliverables submitted pursuant to this Settlement, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by EPA pursuant to Section VIII (Property Requirements), [**if Financial Assurance included:** ¶ 87 (Access to Financial Assurance),] ¶ 15 (Emergencies and Releases), and ¶ 62 (Work Takeover), or the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection pursuant to Section XIII (Dispute Resolution) and all litigation costs.]

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States 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, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access [**if applicable:** or land, water, or other resource use restrictions], including, but not limited to, the amount of just compensation), ¶ 62 (Work Takeover), ¶ 15 (Emergencies and Releases), [**if Financial Assurance included:** ¶ 87 (Access to Financial Assurance),] ¶ 16 (Community Involvement Plan (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 United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs shall also include all Interim Response Costs, [and] all Interest on those Past Response Costs Respondents have agreed to pay under this Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from [**insert the date identified in the Past Response Costs definition**] to the Effective Date [**include the following text if ATSDR is**

currently conducting activities or anticipates doing so in the future: , and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site].

“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>.

[NOTE: Insert the following definition if Past Response Costs are being paid under the Settlement.]

[“Interim Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs: (a) paid by the United States in connection with the Site between [**insert date identified in Past Response Costs definition**] and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.]

[NOTE: If including ¶ 68.a(2) (MSW Waiver), insert the following definition.]

[“Municipal Solid Waste” or “MSW” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.]

“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.

[NOTE: Include next definition if any “Affected Property” is owned or controlled by persons other than Respondent.]

[“Non-Settling Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property, including [**insert names**]. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.]

[NOTE: Include next definition if any “Affected Property” is owned or controlled by any Respondent.]

[“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including [**insert names**]. 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.

[NOTE: Insert the following definition if Past Response Costs are being paid under the Settlement.]

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through **[insert date of most recent summary]**, plus Interest on all such costs through such date.

“Performance Standards” or “PS” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

“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 or Operable Unit at the Site], signed on _____, 20__ by the Regional Administrator, EPA Region __, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

[NOTE: Modify ROD definition to reference any ROD Amendments or any Explanations of Significant Differences issued prior to the Effective Date.]

“Remedial Action” or “RA” shall mean the remedial action selected in the ROD.

“Remedial Design” or “RD” shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the RA as stated in the SOW.

“Respondents” shall mean **[insert names of Respondents]** **[insert if applicable: those Parties identified in Appendix __.]**

“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 XXIV (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the _____ Superfund Site, encompassing approximately ____ acres, located at **[address or description of location]** in **[insert name of city, county, state]** and depicted generally on the map attached as Appendix C.

[“[Site Name] 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), and [identify prior settlement under which EPA established the special account].]

[NOTE: If including provisions for Respondents to prepay Future Response Costs in accordance with ¶ 35 (Payments for Future Response Costs), add the following definition.]

["[Site Name] Future Response Costs 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), and ¶ 35.a (Prepayment of Future Response Costs).]

"State" [or "Commonwealth"] shall mean the State [or Commonwealth] of _____.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to implement the RD, which is attached as Appendix B.

"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.

[NOTE: Substitute the following definition of "Tribe" for the definition of "State" if the Site is entirely on tribal land. Add a definition for "Tribe" in addition to the definition of "State" if both have a role at or interest in the Site. Additional changes will be needed throughout the Settlement to either add and/or substitute the Tribe for the State.]

["Tribe" shall mean the ____ Tribe.]

"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].

"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 material"] under [insert appropriate State statutory citation and "hazardous material" terminology].

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section X (Record Retention).

IV. FINDINGS OF FACT

[NOTE: Because findings of fact are site-specific, no model language is provided. However, suggested topics are provided below for some findings. Facts should be presented concisely,

accurately, and logically. Findings of fact should clearly support each conclusion of law. Regions should include a discussion of the following points: identification of Respondents; Site location and description; Site history and operations; Site ownership; enforcement history; general categories of Respondents' liability; past EPA and/or State activities and investigations; and conditions and data showing hazardous substances are present and releases or threats of releases exist.

10. Based on available information and investigation, EPA has found:

a. [Identification of the Site with the name, location, and description (including characteristics of the Site and a description of the surrounding areas, i.e., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas).]

b. [A brief history of the Site, including Site ownership and operations (process or other activity producing waste, nature of wastes produced).]

c. [Information that there are hazardous substances at the Site by listing specific chemicals found at the Site and their locations, concentrations, and quantities where known.]

d. [Description of actual and/or potential release (i.e., leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive.]

e. [Identification of the populations at risk, both human and non-human.]

f. [Health/environmental effects of some major contaminants.]

g. **[Whether the Site is on the [proposed] National Priorities List. Sample language follows:** "The _____ Site was [listed on] [proposed for inclusion on] the National Priorities List (NPL) by EPA pursuant to CERCLA § 105, 42 U.S.C. § 9605, on [insert month, day, year], [insert Federal Register citation]."

h. [Identification of Respondents, i.e., name/business; legal status (i.e., corporation, partnership, sole proprietor, trust, individual, federal, state, or local government, etc.), general categories of Respondents' liability under CERCLA § 107(a) and connection with the Site, e.g., owner or operator of hazardous waste site, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]

i. [Identification of prior response and enforcement actions taken at the Site, by EPA or the State, including performance of the Remedial Investigation/Feasibility Study (RI/FS) and issuance of the ROD.]

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The **[insert name]** Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). **[Regions should specify each category of liability under CERCLA § 107. For example:**

(1) Respondents **[insert names]** are the “owner(s)” and/or “operator(s)” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondents **[insert names]** were the “owner(s)” and/or “operator(s)” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

(3) Respondents **[insert names]** arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(4) Respondents **[insert names]** accept, or accepted, hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]

e. The conditions described in [¶¶ __ of] the 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).

f. The RD required by 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.

VI. SETTLEMENT AGREEMENT AND ORDER

12. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. PERFORMANCE OF THE WORK

13. Coordination and Supervision.

a. Project Coordinators.

(1) 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.

(2) EPA shall designate and notify Respondents of EPA's Project Coordinator[s] and Alternate Project Coordinator[s] [**replace with "Remedial Project Manager (RPM)" as appropriate, here and throughout Settlement**]. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) Respondents' Project Coordinators shall meet with EPA's Project Coordinator[s] at least [monthly].

b. **Supervising Contractor.** Respondents' proposed 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).

c. Procedures for Disapproval/Notice to Proceed.

(1) 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 respect to the project.

(2) 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 [30] 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.

(3) Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 13.c(1) and 13.c(2).

[NOTE: Include ¶ 13.c(4) if EPA has already accepted Respondents' Project Coordinator/Supervising Contractor.]

(4) Notwithstanding the procedures of ¶ 13.c(1) through 13.c(3), Respondents have proposed, and EPA has authorized Respondents to proceed, regarding the following Project Coordinator and Supervising Contractor: **[name and contact information]**.

14. **Performance of Work in Accordance with SOW.** Respondents shall develop the RD in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Settlement or SOW shall be subject to approval by EPA in accordance with ¶ [6.5] (Approval of Deliverables) of the SOW.

15. **Emergencies and Releases.** Respondents shall comply with the emergency and release response and reporting requirements under ¶ [3.9] (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by EPA), nothing in this Settlement, including ¶ [3.9] 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, 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 ¶ [3.9] of the SOW, EPA takes such action instead, Respondents shall reimburse EPA under Section XII (Payment of Response Costs) for all costs of the response action.

16. **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. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator **[insert, if provided for in the SOW: and implementation of a technical assistance plan]**. Costs incurred by EPA under this Section constitute Future Response Costs to be reimbursed under Section XII (Payments for Response Costs).

17. **Modification of SOW or Related Deliverables.**

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to carry out the RD, then EPA may notify Respondents of such modification. If Respondents object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIII (Dispute Resolution).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Respondents invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Settlement, and Respondents shall implement all work required by such modification. Respondents shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Settlement.

VIII. PROPERTY REQUIREMENTS

[NOTE: Here and in other places in this Section, optional text to be used if there is an Owner Respondent is set off in brackets.]

18. **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 [**if Owner Respondent:** , and Owner Respondent shall, with respect to Owner Settling Respondent's Affected Property]: [(i)] provide EPA [, the State,] 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 ¶ 18.a (Access Requirements) [**use if applicable:** ; and (ii) refrain from using such Affected Property in any manner [that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] that interferes with or adversely affects the implementation or integrity of the RD [**use if applicable:** , including the restrictions listed in ¶ 18.b (Land, Water, or Other Resource Use Restrictions)].]

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

[NOTE: Augment this list as appropriate.]

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States
[or the State];
- (3) Conducting investigations regarding contamination at or near the
Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring
response actions;

(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;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 62 (Work Takeover);

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

(9) Assessing Respondents' compliance with the Settlement;

(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; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

b. **[Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

(1) Prohibiting the following activities which could interfere with the RD: _____; and

(2) Ensuring that any new structures on the Affected Property will not be constructed in the following manner which could interfere with the RD: _____.]

19. **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 [and/or use restrictions]. All costs incurred by the United States 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 Future Response Costs to be reimbursed under Section XII (Payment of Response Costs).

20. 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 [and the State's] efforts to secure and ensure compliance with such institutional controls.

21. 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 [and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property].

[Insert if needed:

22. **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 an RD 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 RD, (identifying the name, docket number, and the effective date of this Settlement); and (b) Notify EPA [and the State] of the name and address of the proposed transferee and provide EPA [and the State] with a copy of the above notice that it provided to the proposed transferee.]

23. Notwithstanding any provision of the Settlement, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] 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.

IX. ACCESS TO INFORMATION

24. Respondents shall provide to EPA [and the State], 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 activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, 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 [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

25. Privileged and Protected Claims.

a. Respondents may assert all or part of a Record requested by EPA [or the State] is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 25.b, and except as provided in ¶ 25.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA [and the State] 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 [and the State] 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 [and the State] has [have] had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

26. **Business Confidential Claims.** Respondents may assert that all or part of a Record provided to EPA [and the State] under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with 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 [and the State], 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.

27. Notwithstanding any provision of this Settlement, EPA [and the State] retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. RECORD RETENTION

28. Until 10 years after EPA provides notice pursuant to ¶ [3.11] of the SOW (Notice of Work Completion), that all work has been fully performed in accordance with this Settlement, 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.

29. At the conclusion of the document retention period, Respondents shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records and, upon request by EPA [or the State], and except as provided for in ¶ 25 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA [or the State].

30. 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 or the State and that it has fully complied with any and all EPA and State 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.

XI. COMPLIANCE WITH OTHER LAWS

31. 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.

32. **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.

33. Respondents may seek relief under the provisions of Section XIV (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 ¶ 32 (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.

XII. PAYMENT OF RESPONSE COSTS

34. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA \$___ for Past Response Costs. Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

[NOTE: Regions may substitute the following for payment by Automated Clearinghouse (ACH) or for online payment:

For ACH payment:

Respondents shall make payment by Automated Clearinghouse (ACH) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For online payment:

Respondents shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

[NOTE: If Respondents have difficulty making EFT, ACH, or online payments, you may substitute the following: Respondents shall make payment by official bank check made payable to “EPA Hazardous Substance Superfund.” Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number _____, and the EPA docket number for this action, and shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000]

b. At the time of payment, Respondents shall send notice that payment has been made to [**insert name and address of RPM or other receiving official in Region**], and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number ____ and the EPA docket number for this action.

[NOTE ON SPECIAL ACCOUNTS: The Settlement should specify whether payments for Past Response Costs (if any) and Future Response Costs should be deposited in the EPA Hazardous Substance Superfund or in a site-specific special account within the EPA Hazardous Substance Superfund, or should be split between the Superfund and the Special Account (and should specify the split).]

c. **Deposit of Past Response Costs Payments.** **[Insert one of the following three sentences here.]** [The total amount to be paid by Respondents pursuant to ¶ 34.a shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by Respondents pursuant to ¶ 34.a shall be deposited by EPA in the **[Site name]** Special Account 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.] [Of the total amount to be paid by Respondents pursuant to ¶ 34.a, [“\$_____” or “____%”] shall be deposited by EPA in the EPA Hazardous Substance Superfund and [“\$_____” or “____%”] shall be deposited by EPA in the **[Site name]** Special Account 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.]

35. **Payments for Future Response Costs.** Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

[NOTE ON USE OF PREPAID FUTURE RESPONSE COSTS SPECIAL ACCOUNTS: Keep ¶¶ 35.c (Periodic Bills) and 35.d (Deposit of Future Response Costs Payments) in all Settlements. If Respondents will be prepaying any part of EPA’s Future Response Costs, also keep ¶¶ 35.a (Prepayment of Future Response Costs), 35.b (Shortfall Payments) and 35.e (Unused Amounts). (Note that ¶ 35.b (Shortfall Payments) is an optional provision for replenishment of the Future Response Costs Special Account in the event of a shortfall in the prepayment.) For an explanation of prepaid accounts, including when prepayment is appropriate, see “Additional Guidance on Prepayment of Oversight Costs and Special Accounts,” (Dec. 22, 2006) available at <https://www.epa.gov/enforcement/guidance-prepayment-oversight-costs-and-special-accounts>.]

a. **[Prepayment of Future Response Costs.** Within 30 days after the Effective Date, Respondents shall pay to EPA \$ _____ as a prepayment of **[if the ¶ 35.b (Shortfall Payments) optional provision for replenishment is used substitute:** as an initial payment toward] Future Response Costs. Respondents shall make payment in accordance with ¶¶ 34.a and 34.b. The total amount paid shall be deposited by EPA in the **[Site name]** Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site. **[NOTE: If Past Response Costs are not being paid, insert ¶¶ 34.a and 34.b payment instructions here.]**

b. **Shortfall Payments.** If at any time prior to the date EPA sends Respondents the first bill under ¶ 35.c (Periodic Bills), or one year after the Effective Date, whichever is earlier, the balance in the **[Site Name]** Future Response Costs Special Account falls

below \$ _____, EPA will so notify Respondents. Respondents shall, within 30 days after receipt of such notice, pay \$ _____ to EPA. Payment shall be made in accordance with ¶¶ 34.a and 34.b (instructions for Past Response Costs payments). The amounts paid shall be deposited by EPA in the [Site name] Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

c. **Periodic Bills.** On a periodic basis, EPA will send Respondents a bill requiring payment that includes a [insert name of standard Regionally-prepared cost summary], which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in ¶ 37 (Contesting Future Response Costs), and in accordance with ¶¶ 34.a and 34.b (instructions for Past Response Costs payments). [NOTE: If neither Past Response Costs nor Prepaid Future Response Costs are being paid, insert ¶¶ 34.a and 34.b payment instructions here.]

d. **Deposit of Future Response Costs Payments.** [Insert one of the following three sentences here.] [The total amount to be paid by Respondents pursuant to ¶ 35.c (Periodic Bills) shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by Respondents pursuant to ¶ 35.c (Periodic Bills) shall be deposited by EPA in the [Site name] Special Account 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, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the [Site name] Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.] [Of the total amount to be paid by Respondents pursuant to ¶ 35.c (Periodic Bills), [“\$_____” or “___%”] shall be deposited by EPA in the EPA Hazardous Substance Superfund and [“\$_____” or “___%”] shall be deposited by EPA in the [Site name] Special Account 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, provided, however, that EPA may deposit the entire amount of the Future Response Cost payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the [Site name] Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.] [If second or third sentence is used: Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.]

e. **Unused Amount.** After EPA issues the Notice of Work Completion pursuant to ¶ [3.11] of the SOW and a final accounting of the [Site name] Future Response Costs Special Account (including crediting Respondents for any amounts received under ¶¶ 35.a (Prepayment of Future Response Costs) [, 35.b (Shortfall Payments),] or 35.c (Periodic Bills),

EPA will **choose one or more of the following three clauses:** “offset the next¹ Future Response Costs bill by the unused amount paid by Respondents pursuant to ¶¶ 35.a (Prepayment of Future Response Costs) [, 35.b (Shortfall Payments),] or 35.c (Periodic Bills);” “apply any unused amount paid by Respondents pursuant to ¶¶ 35.a (Prepayment of Future Response Costs) [, 35.b (Shortfall Payments),] or 35.c (Periodic Bills) to any other unreimbursed response costs or response actions remaining at the Site;” or “remit and return to Respondents any unused amount of the funds paid by Respondents pursuant to ¶¶ 35.a (Prepayment of Future Response Costs) [, 35.b (Shortfall Payments),] or 35.c (Periodic Bills)”. **[If the second clause is chosen, insert:** Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.]

36. **Interest.** In the event that any payment for **[insert if applicable: Past Response Costs or] Future Response Costs** is not made by the date required, Respondents shall pay Interest on the unpaid balance. **[If applicable: The Interest on [Past Response Costs] [and] [prepaid Future Response Cost] shall begin to accrue on the Effective Date. The Interest on [if prepaid Future Response Costs: all subsequent] Future Response Costs shall begin to accrue on the date of the bill [if prepaid Future Response Costs: or on the date of the prepayment shortfall notice pursuant to ¶ 35.b (Shortfall Payments).] 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 United States by virtue of Respondents’ failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XV (Stipulated Penalties).**

37. **Contesting Future Response Costs.** Respondents may initiate the procedures of Section XIII (Dispute Resolution) regarding payment of any Future Response Costs billed under ¶ 35 (Payments for 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 Future Response Costs, 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 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in ¶ 35, 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 Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested 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 ¶ 35. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay

¹ If the RD is complete at the time of the final accounting, in the “offset” clause, use “final” instead of “next.”

that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in ¶ 35. 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 XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XIII. DISPUTE RESOLUTION

[NOTE: The Regions should develop a record for the dispute and its resolution.]

38. 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.

39. **Informal Dispute Resolution.** If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within __ days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have __ 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 at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

40. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within [20] days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within [20] days thereafter, submit a statement of position. Thereafter, an EPA management official at the [**insert Region-specific**] level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

41. 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 ¶ 37 (Contesting Future Response Costs), as agreed by EPA.

42. Except as provided in ¶ 52, 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 XV (Stipulated Penalties).

XIV. FORCE MAJEURE

43. “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.

44. 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 Waste Management Division, EPA Region __, within **[insert period of time]** of when Respondents first knew that the event might cause a delay. Within __ 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 ¶ 43 and whether Respondents have exercised their best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing Respondents’ failure to submit timely or complete notices under this Paragraph.

45. 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.

46. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIII (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 ¶¶ 43 and 44. 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.

47. 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.

XV. STIPULATED PENALTIES

48. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 49.a and 50 for failure to comply with the obligations specified in ¶¶ 49.a and 50, unless excused under Section XIV (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 or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ [6.5(a)(2)] of the SOW; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

49. Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 49.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$ _____	1st through 14th day
\$ _____	15th through 30th day
\$ _____	31st day and beyond

b. Obligations

(1) Payment of any amount due under Section XII (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 37 (Contesting Future Response Costs).

(4) [Continue list of major deliverables and other milestones.]

50. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in ¶ 49.a:

Penalty Per Violation Per Day	Period of Noncompliance
\$ _____	1st through 14th day
\$ _____	15th through 30th day
\$ _____	31st day and beyond

51. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. **[Include the following sentence if Section XXIII (Financial Assurance) is included in the Settlement:** Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 62 (Work Takeover) and 87 (Access to Financial Assurance).]

52. 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 ¶ [6.5] (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; and (b) with respect to a decision by the EPA Management Official at the [insert Region specific] level or higher, under Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

53. 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.

54. 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 XIII (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 ¶ 35 (Payments for Future Response Costs).

55. 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 ¶ 52 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 54 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.

56. 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.

57. 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 or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 62 (Work Takeover).

[NOTE: A provision for EPA to elect between seeking stipulated and statutory penalties for a particular settlement violation may be substituted in the paragraph above in appropriate cases by changing “for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation” to “for any violation for which a stipulated penalty is collected pursuant to this Settlement.”]

58. 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.

XVI. COVENANTS BY EPA

59. Except as provided in Section XVII (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 [**if addressed:** , Past Response Costs,] and Future Response Costs. 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.

XVII. RESERVATIONS OF RIGHTS BY EPA

60. 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, 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.

61. The covenants set forth in Section XVI (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:

- a. liability for failure by Respondents to meet a requirement of this Settlement;
- b. liability for costs not included within the definition[s] of [**if addressed:** Past Response Costs or] Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

62. Work Takeover

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will 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.

b. If, after expiration of the 10-day notice period specified in ¶ 62.a 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 or any portion(s) of the Work 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 ¶ 62.b. **[Include the following sentence if Section XXIII (Financial Assurance) is included in the Settlement: Funding of Work Takeover costs is addressed under ¶ 87 (Access to Financial Assurance).]**

c. Respondents may invoke the procedures set forth in ¶ 40 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 62.b. 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 ¶ 62.b 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 ¶ 40 (Formal Dispute Resolution).

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

XVIII. COVENANTS BY RESPONDENTS

63. 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, [Past Response Costs,] Future Response Costs, and this Settlement, including, but not limited to:

a. 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;

b. any claim under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work, **[if addressed: ,** Past Response Costs,] Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the [State] 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

[NOTE: If the Settlement contains a Future Response Cost prepayment provision under which Respondents may receive a return of unused amounts under option 3 of ¶ 35.e (Unused Amount), include ¶ 63.d.]

d. [any direct or indirect claim for return of unused amounts from the [Site name] Future Response Costs Special Account, except for unused amounts that EPA determines shall be returned to Respondents in accordance with ¶ 35.e (Unused Amount).]

64. Except as expressly provided in ¶ 68 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVII (Reservations of Rights by EPA), other than in ¶ 61.a (liability for failure to meet a requirement of the Settlement), 61.d (criminal liability), or 61.e (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 United States is seeking pursuant to the applicable reservation.

65. 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).

66. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, 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 United States, 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.

[NOTE: The following provision should be included if the Settlement includes removal activities other than the RD.]

67. [Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.]

68. Waiver of Claims by Respondents.

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by

such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

[NOTE: Use next paragraph if there is a MSW at the Site.]

(2) **[MSW Waiver.** For all matters relating to the Site against any person where the person’s liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site; and

[NOTE: Use the next paragraph if there are known or potential *de minimis* and/or ability to pay (ATP) parties at the Site. Include bracketed reference to *de minimis* party settlement, ATP party settlement, or both as appropriate given Site facts. Use the bracketed “[or in the future enters]” if there are known or potential *de minimis* and/or ATP PRPs with whom the United States has not yet settled. Note that inclusion of the future component of the waiver does not affect Respondents’ right to oppose entry of any such future settlement through the public comment process and does not have any effect unless and until the United States enters into any such future settlement. The scope of the waiver should generally track the scope of the “matters addressed” in the contribution provision of the concluded *de minimis* or ATP settlement. Normally, this means that the scope will be “response costs” as included below. However, if the settlement includes natural resource damages, also include “natural resource damages and assessment costs,” and if the settlement is not site-wide, limit the scope as appropriate. Also, if the “[or in the future enters]” bracket is used and the scope of the future settlement is likely to be different from the past settlement(s), redraft as necessary.]

(3) **[De Minimis/Ability to Pay Waiver.** For response costs relating to the Site against any person that has entered [or in the future enters] into [a final CERCLA § 122(g) *de minimis* settlement] [, or] [a final settlement based on limited ability to pay,] with EPA with respect to the Site.]

b. Exceptions to Waiver[s]

(1) The waiver[s] under this ¶ 68 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against such Respondent.

[NOTE: If a Respondent asserts that it has a claim against a PRP within the scope of the waiver[s] that is unrelated to the PRP’s CERCLA liability at the Site, e.g., a claim for contractual indemnification, add an exception for such claim, such as the following:

(2) The waiver[s] under this ¶ 68 shall not apply to Respondent [**insert name**]’s contractual indemnification claim against [**insert name**].]

(3) The waiver under ¶ 68.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver, if EPA

determines that: (i) that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise.

(4) [The waiver in ¶ 68.a(2) (MWS Waiver) shall not apply to any defense, claim, or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.]

XIX. OTHER CLAIMS

69. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or 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.

70. Except as expressly provided in ¶ 68 (Waiver of Claims by Respondents) and Section XVI (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 United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

71. 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).

XX. EFFECT OF SETTLEMENT/CONTRIBUTION

72. Except as provided in ¶ 68 (Waiver of Claims by Respondents), 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 XVIII (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).

73. 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 United States 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 the Work [if addressed: , Past Response Costs,] and Future Response Costs.

74. 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 United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

75. Each Respondent shall, with respect to any suit or claim brought by it for matters related to 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 matters related to 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 related to this Settlement.

76. 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 XVI (Covenants by EPA).

[NOTE: Include ¶ 77 if Past Response Costs are being paid under the Settlement.]

77. [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) required by ¶ 34 (Payment for Past Response Costs) and, if any, Section XV (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 ¶ 73 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 limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.]

XXI. INDEMNIFICATION

78. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents 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 United States, 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 United States 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 United States 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 United States.

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

80. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, 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 United States 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.

XXII. INSURANCE

81. No later than ___ days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Work Completion pursuant to ¶ [3.11] of the SOW, 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 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.

XXIII. FINANCIAL ASSURANCE

[NOTES ON ¶¶ 82 AND 83: Financial assurance should be included in settlements as a general matter. Case teams should negotiate and finalize the form, substance, and value of Respondents' financial assurance well before finalizing the Settlement so that the final financial assurance mechanism can take effect within 30 days after the Effective Date. Such review should ensure, among other things, that an instrument or account is established (or can be established) to receive financial assurance resources when needed. Case teams can find the most current sample financial assurance documents in the "Financial Assurance – Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Case teams should also ensure that entities providing a demonstration or guarantee pursuant to ¶ 82.e or ¶ 82.f have: (1) submitted all required documentation well in advance of finalizing the Settlement so that EPA can determine whether such financial assurance is adequate; and (2) fully and accurately reflected in their submission all of their financial assurance or "performance guarantee" obligations (under CERCLA, RCRA, the Underground Injection Control Program, the Toxic Substances Control Act, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether any such entity meets the financial test criteria. When reviewing which of the permissible financial assurance mechanisms set forth in ¶ 82 may be appropriate for inclusion in the Settlement, case teams should consider, as part of the facts and circumstances of each case, the estimated cost of the Work to be performed, the estimated time to complete the Work, the nature and extent of contamination at the Site, the financial health of Respondents, and the industry sector(s) in which Respondents operate. Regions have discretion, for example, to require that Respondents provide the financial assurance through a liquid mechanism rather than through a demonstration or guarantee pursuant to ¶ 82.e or 82.f. If any Respondent is a municipality, contact financial assurance team members within the Office of Site Remediation Enforcement for assistance. For more specific information and considerations, see "Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders" (April 6, 2015), available at <https://www.epa.gov/sites/production/files/2015-04/documents/fa-guide-2015.pdf>.]

82. 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. The financial assurance must be 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 if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. 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;

b. 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;

c. 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;

d. 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;

e. A demonstration by a Respondent that it meets the financial test criteria of ¶ 84 [, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover]; or

[NOTE: A sample of a standby funding commitment is available via the link in ¶ 82.]

f. 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 ¶ 84.

83. **[If the case team and Respondents have already negotiated the form of the Financial Assurance, use this text:** Respondents have selected, and EPA has found satisfactory, as an initial financial assurance a **[insert type]** in the form attached as Appendix ___. Within 30 days after the Effective Date, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the form of financial assurance attached as Appendix ___]

[Otherwise use this text: Respondents have selected, and EPA has found satisfactory, as an initial financial assurance a **[insert type]** prepared in accordance with ¶ 82. Within 30 days after the Effective Date, or 30 days after EPA’s approval of the form and substance of Respondents’

financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance]

[Keep following text with either option] and shall submit such mechanisms and documents to the [insert “**Regional Financial Management Officer**” or an alternative recipient such as “**Regional financial assurance specialist**”] at [insert address].

84. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 82.e or 82.f, must, within 30 days of the Effective Date:

- a. Demonstrate that:
 - (1) 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
 - (2) 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

b. 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/>.

85. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 82.e or 82.f must also:

a. Annually resubmit the documents described in ¶ 84.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. 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

c. 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 ¶ 84.b; 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.

86. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent 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, such Respondent 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 affected Respondent 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 affected Respondent, 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 ¶ 88 (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.

[NOTE REGARDING ¶ 87 (Access to Financial Assurance): Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to

provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

87. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 62.b, then, in accordance with any applicable financial assurance mechanism [**if a standby funding commitment requirement is included in ¶ 82.e, insert:** and/or related standby funding commitment], EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 87.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails 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 ¶ 87.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 62.b, 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 ¶ 82.e or 82.f, 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 ___ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 87 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 [**Site name**] 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.

e. All EPA Work Takeover costs not paid under this ¶ 87 must be reimbursed as Future Response Costs under Section XII (Payments for Response Costs).

88. 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 ¶ 83, 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 XIII (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 ¶ 83.

89. Release, Cancellation, or Discontinuation of Financial Assurance.

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Work Completion under ¶ [3.11] of the SOW; (b) in accordance with EPA’s approval of such release, cancellation, or discontinuation; or (c) 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 XIII (Dispute Resolution)].

XXIV. INTEGRATION/APPENDICES

90. 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: ____.

- a. Appendix A is the ROD.
- b. Appendix B is the SOW.
- c. Appendix C is the description and/or map of the Site.
- d. [“Appendix __” is the complete list of Respondents.].
- e. [“Appendix __” is the financial assurance.].

XXV. [PUBLIC COMMENT]

[NOTE: Include this Section if any response costs are compromised under Section XII (Payment of Response Costs) or this Settlement.]

91. [Final acceptance by EPA of ¶ __ (insert ¶ title) **[insert Paragraph number within Section XII that addresses the costs, if any, that are being compromised, or, if in the highly unusual event that either all Past Response Costs or all Future Response Costs are being compromised for, e.g., orphan share compensation, insert instead: “Final acceptance by EPA of the [Past Response Costs] [Future Response Costs] [Past Response Costs and Future Response Costs] compromise included in this Settlement”]** shall be subject to Section 122(i) of

CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all, or part, of Section XII (Payment of Response Costs) of this Settlement if comments received disclose facts or considerations that indicate that Section XII of this Settlement is inappropriate, improper, or inadequate. Otherwise, Section XII shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XII of this Settlement.]

XXVI. [ATTORNEY GENERAL APPROVAL]

[NOTE: This Section should be used if Attorney General approval is required for Section XII (Payment of Response Costs) or this Settlement because total past and projected response costs of the United States at the Site will exceed \$500,000, excluding interest, and the Settlement compromises a claim for past or future costs. If Attorney General approval is required, the Region should consult with the Department of Justice (DOJ) during the negotiations process and obtain written DOJ approval before publishing notice of the proposed cost compromise in the Federal Register. If the Settlement compromises a claim, but Attorney General approval is not required because the total past and projected response costs of the United States at, or in connection with, the Site are not expected to exceed \$500,000, excluding interest, insert a finding of fact stating in Section IV above stating that: The Regional Administrator of EPA Region ____, or [his/her] designee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.]

92. The Attorney General or [his/her] designee has approved the response cost settlement embodied in this Settlement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).]

XXVII. MODIFICATION

93. The EPA Project Coordinator may modify any plan, schedule, or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

94. If Respondents seek permission to deviate from any approved work plan, schedule, or SOW, 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 ¶ 93.

95. 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.

XXVIII. EFFECTIVE DATE

96. **[NOTE: Regions may insert specific practice and language.]** This Settlement shall be effective ___ days after the Settlement is signed by the Regional Administrator or his/her designee **[if the Settlement includes a cost compromise, include the following:** with the exception of ¶ ___ of Section XII (Payment of Response Costs), which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from ¶ ___ of Section XII of this Settlement.] **[NOTE: The notice sent after the comment period, if one was required, should inform Respondents that payment is now due in accordance with ¶ 34.a (Payment for Past Response Costs).]**

IT IS SO AGREED AND ORDERED;

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

[Name]
Regional Administrator (or designee/delegatee), Region ___

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.]

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document. Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
INSERTING A NEW PARAGRAPH	Click at the end of the ¶ immediately preceding the place where you wish to add the new paragraph , and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
UPDATING THE CROSS-REFERENCES	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
UPDATING THE TABLE OF CONTENTS	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
INSERTING A NEW SECTION HEADING	Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
CHANGING THE FONT	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK.

MODEL REMEDIAL DESIGN

STATEMENT OF WORK

[OPERABLE UNIT __]

_____ **SUPERFUND SITE**

_____ **City, _____ County, State of _____**

EPA Region ____

(For Use with Model RD Administrative Settlement Agreement and Order on Consent)

September 2016

This model, the guidance documents referenced herein, and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U. S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model, the guidance documents referenced herein, or its internal procedures.

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[NOTE: This document uses styles to make editing easier. Please do not try to format any paragraphs manually. Instead, use the tailor-made “quick style” buttons. They are accessible from the “Home” tab. There is a quick style for each of the six numbered levels, and they are “LVL 1” through “LVL 6.” All section headings, which have “LVL 1” formatting, will appear in the Table of Contents (TOC). Do not manually renumber any internal cross references, as they are all automatic. Use the “Update Field” command instead [Ctrl-A, right click, “Update Field,” OK]. Cross references to the body of the Settlement are bracketed and in bold in the text as they must be manually updated. There are additional editing instructions at the end.]

1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW.

- Section 2 (Community Involvement) sets forth EPA’s and Respondents’ responsibilities for community involvement.
- Section 3 (Remedial Design) sets forth the process for developing the RD, which includes the submission of specified primary deliverables.
- Section 4 (Contingency Remedy) sets forth Respondents’ obligations during the RD for testing and/or investigations needed for EPA to make a determination whether the contingency remedy selected in the ROD needs to be implemented.
- Section 5 (Reporting) sets forth Respondents’ reporting obligations.
- Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding Respondents’ submission of, and EPA’s review of, approval of, comment on, and/or modification of, the deliverables.
- Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RD.
- Section 8 (State Participation) addresses State participation.
- Section 9 (References) provides a list of references, including URLs.

1.3 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Administrative Settlement Agreement and Order on Consent (“Settlement”), have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously [during the RI/FS phase], EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP [, including, if applicable, [any Technical Assistance Grant (TAG), any use of the Technical Assistance Services for Communities (TASC) contract, and/or any Technical Assistance Plan (TAP)]]].
- (b) If requested by EPA, Respondents shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP Respondents' responsibilities for community involvement activities. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.
- (c) **Respondents' CI Coordinator.** If requested by EPA, Respondents shall, within [15] days, designate and notify EPA of Respondents' Community Involvement Coordinator (Respondents' CI Coordinator). Respondents may hire a contractor for this purpose. Respondents' notice must include the name, title, and qualifications of the Respondents' CI Coordinator. Respondents' CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

[NOTE: In the next section and throughout this SOW, the deadlines for performing a task or submitting a deliverable have been intentionally omitted. In lieu of including such deadlines (and even cross references to the Schedules), ¶ 7.1 provides that “all deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD Schedules.” To simplify editing of the SOW, and to simplify executing subsequent modifications to SOW deadlines, it is intended that all deadlines be in a central location, i.e., in Section 7 (Schedules). Therefore, the SOW should *not* be edited to include, in each paragraph that describes a deliverable or task, either the deadline for such deliverable or task, or even a cross reference to the Schedule that contains such deadline.]

3. REMEDIAL DESIGN

3.1 RD Work Plan. Respondents shall submit a Remedial Design (RD) Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) [Description of any proposed pre-design investigation;]
- (g) [Description of any proposed treatability study;]
- (h) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (i) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
- (j) The following supporting deliverables described in ¶ 6.6 (Supporting Deliverables): Health and Safety Plan; and Emergency Response Plan. **[NOTE: If the SOW includes ¶ 3.3 (Pre-Design Investigation), also include Field Sampling Plan and Quality Assurance Project Plan.]**

3.2 Respondents shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

[NOTE: The SOW describes many deliverables that are to be submitted to EPA. Some are to be submitted “for EPA approval,” some “for EPA comment,” and some are to be simply submitted without either EPA approval or comment. The model SOW includes careful selections of those deliverables that are to be submitted for “approval,” those that are to be submitted for “comment,” and those that are to be submitted without the need for “comment” or “approval.”]

[NOTE: The SOW includes numerous EPA obligations (such as approvals and notices) that must be completed in a timely manner for the remedial design process to proceed

efficiently and on schedule. Some of these are items that Respondents require to proceed with the next step of the remedial design process. Note that the Settlement contains a provision in the “Force Majeure” section [¶ 47], as follows: “The failure by EPA to timely complete any obligation under the Settlement or under the SOW is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines in the SOW, Respondents may seek relief under this Section [XIV] (Force Majeure).”]

[NOTE: The Pre-Design Investigation (PDI) may not be needed if sufficient data were gathered during the RI/FS. The PDI is only needed when additional field investigations are necessary to address data gaps.]

3.3 Pre-Design Investigation. The purpose of the Pre-Design Investigation (PDI) is to address data gaps identified in the RI/FS by conducting additional field investigations.

- (a) **PDI Work Plan.** [If EPA requests,] Respondents shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:
 - (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
 - (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the Quality Assurance Project Plan (QAPP) as described in ¶ 6.6(d).

- (b) Following the PDI, Respondents shall submit a PDI Evaluation Report. This report must include:
 - (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted; and
 - (8) Conclusions and recommendations for RD, including design parameters and criteria.

- (c) EPA may require Respondents to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

[NOTE: Depending on the type of remedy selected, a Treatability Study (TS) may be needed during RD. Remedies involving the use of proven technologies may not need a TS. Review the guidance referenced in ¶ 3.4(b) for information about whether a TS is appropriate in a given case.]

3.4 Treatability Study

- (a) Respondents shall perform a Treatability Study (TS) for the purpose of _____.
- (b) Respondents shall submit a TS Work Plan (TSWP) for EPA approval. Respondents shall prepare the TSWP in accordance with EPA's *Guide for Conducting Treatability Studies under CERCLA, Final* (Oct. 1992), as supplemented for RD by the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995).
- (c) Following completion of the TS, Respondents shall submit a TS Evaluation Report for EPA comment.
- (d) EPA may require Respondents to supplement the TS Evaluation Report and/or to perform additional treatability studies.

3.5 Preliminary (30%) RD. Respondents shall submit a Preliminary (30%) RD for EPA's comment. The Preliminary RD must include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (e) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA; and
- (g) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 6.6 (Supporting Deliverables): [~~delete if submitted with RDWP:~~ Field Sampling Plan; Quality Assurance Project Plan;] Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan;

O&M Plan; O&M Manual; and Institutional Controls Implementation and Assurance Plan.

[NOTE: The Intermediate (60%) RD may not be needed for a less complex project.]

- 3.6 Intermediate (60%) RD.** Respondents shall submit the Intermediate (60%) RD for EPA's comment. The Intermediate RD must: (a) be a continuation and expansion of the Preliminary RD; (b) address EPA's comments regarding the Preliminary RD; and (c) include the same elements as are required for the Preliminary (30%) RD.
- 3.7 Pre-Final (95%) RD.** Respondents shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Intermediate RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:
- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2012;
 - (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
 - (c) Pre-Final versions of the same elements and deliverables as are required for the [Preliminary/Intermediate] RD;
 - (d) A specification for photographic documentation of the RA; and
 - (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) RD.
- 3.8 Final (100%) RD.** Respondents shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.
- 3.9 Emergency Response and Reporting**
- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 3.9(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately notify the authorized EPA officer orally.
- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 3.9(a) and ¶ 3.9(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA [Emergency Response Unit], Region __ (if neither EPA Project Coordinator is available).
- (d) For any event covered by ¶ 3.9(a) and ¶ 3.9(b), Respondents shall: (1) within [14] days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 3.9 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

3.10 Off-Site Shipments

- (a) Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility’s state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the notice as soon as practicable after the award of the contract and before the Waste Material is shipped.
- (c) Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA,

42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

3.11 Notice of Work Completion

- (a) When EPA determines, after EPA's review of the Final 100% RD under ¶ 3.8 (Final (100%) RD), that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations as provided in ¶ 3.11(c), EPA will provide written notice to Respondents. 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 RD Work Plan if appropriate in order to correct such deficiencies.
- (b) Respondents shall implement the modified and approved RD Work Plan and shall submit a modified Final 100% Report for EPA approval in accordance with the EPA notice. If approved, EPA will issue the Notice of Work Completion.

[NOTE: In most cases, despite issuance of the Notice of Work Completion, Respondents will have continuing obligations under the Settlement regarding the Site. Modify the paragraph below as appropriate.]

- (c) Issuance of the Notice of Work Completion does not affect the following continuing obligations: (1) obligations under Sections [VIII] (Property Requirements), [IX] (Access to Information), and [X] (Record Retention of the Settlement); (3) [add other relevant obligations]; and (4) reimbursement of EPA's Future Response Costs under Section [XII] (Payment of Response Costs) of the Settlement.]

[NOTE: Include the next Section only if the ROD provides for a contingency remedy.]

4. CONTINGENCY REMEDY

- 4.1 Testing/Investigations.** If testing and/or investigations are needed for EPA to make a determination whether the contingency remedy selected in the ROD needs to be implemented, Respondents shall submit a plan for implementing such testing and/or investigations, shall implement such testing and/or investigations in accordance with EPA's approval and/or modification of such plan, and shall submit reports to EPA regarding the results of such testing and/or investigations.

5. REPORTING

- 5.1 Progress Reports.** Respondents shall submit progress reports to EPA on a [monthly/weekly] basis, or as otherwise requested by EPA, from the date of receipt of

EPA's approval of the RD Work Plan until issuance of Notice of Work Completion pursuant to ¶ 3.11, unless otherwise directed in writing by EPA's Project Coordinator. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Settlement;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Respondents;
- (c) A description of all deliverables that Respondents submitted to EPA;
- (d) A description of all activities scheduled for the next [six weeks];
- (e) information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that Respondents have proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next [six weeks].

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 5.1(d), changes, Respondents shall notify EPA of such change at least seven days before performance of the activity.

6. DELIVERABLES

6.1 Applicability. Respondents shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

6.2 In Writing. All deliverables under this SOW must be in writing unless otherwise specified.

[NOTE: If paper copies of specific deliverables (in addition to large exhibits) are needed, the paragraph below should be edited accordingly.]

6.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the RD Schedule, as applicable. Respondents shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and

spatial data are addressed in ¶ 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5” by 11”, Respondents shall also provide EPA with paper copies of such exhibits.

6.4 Technical Specifications

[NOTE: The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and may be revised at any time. The case team should check <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.]

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. [**Specify the EDD format that the Region uses.**] Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format [**or insert Regionally-preferred spatial file format**]; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

[NOTE: The provisions of ¶ 6.5 (Approval of Deliverables) have been carefully integrated. It is recommended that these provisions not be changed unless there is a site-specific reason for doing so. Even then the case team should ensure that the change is consistent with the other parts of ¶ 6.5.]

6.5 Approval of Deliverables

- (a) **Initial Submissions**

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
 - (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have 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.
- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.5(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.5(a), Respondents shall, within ___ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (5) any combination of the foregoing.
- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 6.5(a) (Initial Submissions) or ¶ 6.5(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.5(a) or ¶ 6.5(b) does not relieve Respondents of any liability for stipulated penalties under Section [XV] (Stipulated Penalties) of the Settlement.

6.6 Supporting Deliverables. Respondents shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Respondents shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 9 (References)). Respondents shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

[NOTE: The case team should keep or delete elements below as appropriate based on requirements of the particular remedy.]

- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Respondents shall develop the HASP in accordance with EPA's Emergency Responder Health and

Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP required by this RD SOW should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. (Updates may be needed for RA activities and after RA completion.) EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.

- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with ¶ 3.9(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with ¶ 3.9 (Emergency Response and Reporting) of the SOW in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) and addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Respondents shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Respondents' quality

assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Respondents shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:

- (1) To ensure that EPA [and the State] and its [their] authorized representative have reasonable access to laboratories used by Respondents in implementing the Settlement (Respondents' Labs);
 - (2) To ensure that Respondents' Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that Respondents' Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that Respondents' Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For Respondents to provide EPA [and the State] with notice at least [28] days prior to any sample collection activity;
 - (6) For Respondents to provide split samples and/or duplicate samples to EPA [and the State] upon request;
 - (7) For EPA [and the State] to take any additional samples that it deems [they deem] necessary;
 - (8) For EPA [and the State] to provide to Respondents, upon request, split samples and/or duplicate samples in connection with EPA's [and the State's] oversight sampling; and
 - (9) For Respondents to submit to EPA [and the State] all sampling and tests results and other data in connection with the implementation of the Settlement.
- (e) **Site Wide Monitoring Plan.** The purpose of the Site Wide Monitoring Plan (SWMP) is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term

monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the RA; to obtain information regarding contamination levels to determine whether Performance Standards (PS) are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:

- (1) Description of the environmental media to be monitored;
 - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
 - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
 - (4) Description of verification sampling procedures;
 - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies; and
 - (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement).
- (f) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:
- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the PS required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;

- (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
- (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
- (7) Describe procedures for documenting all CQA/QCP activities; and
- (8) Describe procedures for retention of documents and for final storage of documents.

[NOTE Regarding ¶ 6.6(g) (Transportation and Off-Site Disposal Plan): For most remedial actions, ¶ 3.10 (Off-Site Shipments) should be sufficient to ensure that Waste Material will be disposed of properly off-site and, therefore, the requirement to prepare a Transportation and Off-Site Disposal Plan (TODP) can be omitted. However, a TODP may be required, for example, when off-site disposal requirements are complicated by high vehicle traffic and densely populated areas.]

- (g) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 3.10 (Off-Site Shipments). The TODP must include:
 - (1) Proposed routes for off-site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (h) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. Respondents shall develop the draft O&M Plan in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001). The O&M Plan must include the following additional requirements:
 - (1) Description of PS required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or

may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and

- (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (i) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. Respondents shall develop the draft O&M Manual in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001).
- (j) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. Respondents shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
- (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
- (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) [**for Texas sites:** Texas Land Title Association (TLTA)] Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

- 7.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD Schedule set forth below. Respondents may submit proposed revised RD Schedules for EPA approval. Upon EPA's approval, the revised RD Schedules supersede the RD Schedules set forth below, and any previously-approved RD Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	[TAP]	10.1(c)	[X days after EPA request]
2	[Designate TAP Coordinator]	10.1(c)(7)	[X days after EPA request]
3	RDWP	3.1	X days after EPA's Authorization to Proceed regarding Supervising Contractor under Settlement ¶ [13.c]
4	[PDIWP]	[3.3(a)]	[X days after EPA's Authorization to Proceed regarding Supervising Contractor under Settlement ¶ [13.c]]
5	Preliminary (30%) RD	3.5, 3.3(a)	X days after EPA approval of Final RDWP
6	[Intermediate (60%) RD]	[3.6]	[X days after EPA comments on Preliminary RD]
7	Pre-final (90/95%) RD	3.7	X days after EPA comments on [Preliminary or Intermediate] RD
8	Final (100%) RD	3.8	X days after EPA comments on Pre-final RD

[NOTE: Substitute "Tribe" for "State" throughout Section 8 if the Site is entirely on tribal land. Add "and Tribe" after "State" throughout Section 8 if both have a role at or an interest in the Site.]

8. STATE PARTICIPATION

- 8.1 Copies.** Respondents shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, or disapproval to Respondents, send a copy of such document to the State.
- 8.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:
- (a) Any EPA approval or disapproval under ¶ 6.5 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
 - (b) any disapproval of, or Notice of Work Completion under, ¶ 3.11 (Notice of Work Completion).

9. REFERENCES

- 9.1** The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 9.2:

[NOTE: Case teams may modify the list to add references specific to the remedy selected in the ROD or to any applicable Regional guidance.]

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Operation and Maintenance in the Superfund Program, OSWER 9200.1-37FS, EPA/540/F-01/004 (May 2001).
- (o) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (p) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).

- (q) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (r) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (s) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (t) Superfund Community Involvement Handbook SEMS 100000070 (January 2016) available at <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (u) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (v) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (w) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (x) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (y) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (z) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), available at <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (aa) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (bb) Principles for Greener Cleanups (Aug. 2009), available at <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (cc) **[If Technical Assistance Plan provided for in SOW: Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).]**
- (dd) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).

- (ee) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (ff) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (gg) Recommended Evaluation of Institutional Controls: Supplement to the “Comprehensive Five-Year Review Guidance,” OSWER 9355.7-18 (Sep. 2011).
- (hh) Construction Specifications Institute’s MasterFormat 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (ii) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach, OSWER 9200.2-125 (Sep. 2012).
- (jj) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (kk) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (ll) EPA’s Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), http://www.epaosc.org/_HealthSafetyManual/manual-index.htm.
- (mm) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (nn) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).
- (oo) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

Test Methods Collections <https://www.epa.gov/measurements/collection-methods>

9.3 For any regulation or guidance referenced in the Settlement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the

Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

10. APPENDIX – TECHNICAL ASSISTANCE PLAN INSERTS

[NOTE: If the case team decides to provide for a Technical Assistance Plan (TAP), then use this paragraph and insert it at the end of ¶ 2.1 (Community Involvement Responsibilities). The rest of the paragraphs in the SOW (including in the RD Schedule) will renumber automatically. Technical Assistance Plans are a concept utilized primarily for sites using the Superfund Alternative Approach, although they are occasionally used at NPL sites as well. They are conceptually similar to Technical Assistance Grants, which typically provide an initial \$50,000 for independent technical assistance to communities. Paragraph 10.1 (which will become ¶ 2.2 when inserted after ¶ 2.1) should be included in the SOW only if EPA and the Respondents agree that the settlement should include a TAP provision. If a prior RI/FS settlement agreement relating to the ROD included a TAP provision, then this SOW will also probably include a TAP provision. Moreover, in that instance, EPA and the Respondents will likely agree to simply continue the existing TAP, and portions of ¶ 10.1 (Respondents' Responsibilities for Technical Assistance) should be modified accordingly (e.g., to omit the process for selecting a community group and to replace it with language that reflects that a group was already selected during the RI/FS).]

10.1 Respondents' Responsibilities for Technical Assistance

- (a) If EPA requests, Respondents shall arrange for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand Site cleanup issues (specifically, to interpret and comment on Site-related documents developed under this SOW); and (ii) share this information with others in the community. The technical advisor(s) will be independent from the Respondents. Respondents' TAP assistance will be limited to \$50,000, except as provided in ¶ 10.1(d)(3), and will end when EPA certifies completion of the Remedial Action. Respondents shall implement this requirement under a Technical Assistance Plan (TAP).

[NOTE: The above paragraph does not necessarily mean that Respondents will transfer funds to the community group. Respondents may elect, for example, to enter into an agreement providing that the community group direct its advisor to provide certain services, with the community group later receiving an invoice from the advisor, approving it, and sending the invoice to Respondents for payment.]

- (b) If EPA requests, Respondents shall cooperate with EPA in soliciting interest from community groups regarding a TAP at the Site. If more than one community group expresses an interest in a TAP, Respondents shall cooperate with EPA in encouraging the groups to submit a single, joint application for a TAP.

[NOTE: If a community group expresses interest in participating in a TAP and appears to be eligible, then EPA generally should request that Respondents prepare and submit a TAP. See *Interim Guidance: Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements* (Sep. 3, 2009).]

- (c) If EPA requests, Respondents shall, within [30] days, submit a proposed TAP for EPA approval. The TAP must describe the Respondents' plans for the qualified community group to receive independent technical assistance. The TAP must include the following elements:
- (1) For Respondents to arrange for publication of a notice in local media that they have received a Letter of Intent (LOI) to submit an application for a TAP. The notice should explain how other interested groups may also try to combine efforts with the LOI group or submit their own applications, by a reasonable specified deadline;
 - (2) For Respondents to review the application(s) received and determine the eligibility of the community group(s). The proposed TAP must include eligibility criteria as follows:
 - (i) A community group is eligible if it is: (a) comprised of people who are affected by the release or threatened release at the Site, and (b) able to demonstrate its ability to adequately and responsibly manage TAP-related responsibilities.
 - (ii) A community group is ineligible if it is: (a) a potentially responsible party (PRP) at the Site, represents such a PRP, or receives money or services from a PRP (other than through the TAP); (b) affiliated with a national organization; (c) an academic institution; (d) a political subdivision; (e) a tribal government; or (f) a group established or presently sustained by any of the above ineligible entities; or (g) a group in which any of the above ineligible entities is represented.
 - (3) For Respondents to notify EPA of their determination on eligibility of the applicant group(s) to ensure that the determination is consistent with the SOW before notifying the group(s);
 - (4) If more than one community group submits a timely application, for Respondents to review each application and evaluate each application based on the following elements:
 - (i) The extent to which the group is representative of those persons affected by the Site; and
 - (ii) The effectiveness of the group's proposed system for managing TAP-related responsibilities, including its plans for working with its technical advisor and for sharing Site-related information with other members of the community.
 - (5) For Respondents to document their evaluation of, and their selection of, a qualified community group, and to brief EPA regarding their evaluation process and choice. EPA may review Respondents' evaluation process to

determine whether the process satisfactorily follows the criteria in ¶ 10.1(c)(4). TAP assistance may be awarded to only one qualified group at a time;

- (6) For Respondents to notify all applicant(s) about Respondents' decision;
- (7) For Respondents to designate a person (TAP Coordinator) to be their primary contact with the selected community group;

[NOTE: Respondents' obligations to implement a TAP and their obligation to support EPA's Community Involvement Activities are distinct obligations. The EPA Project Coordinator might not request that Respondents prepare and implement a TAP (and designate a TAP Coordinator) since, historically, community groups have expressed interest in TAPs in only about 20% of settlements that contain TAP provisions. Similarly, the EPA Project Coordinator might not request that Respondents designate a CI Coordinator, since the EPA Project Coordinator might decide EPA does not need Respondents' support. Therefore, the deadlines for designating a TAP coordinator and for designating a CI Coordinator may be different. However, Respondents generally will designate the same individual for both responsibilities if both requirements are triggered.]

- (8) A description of Respondents' plans to implement the requirements of ¶ 10.1(d) (Agreement with Selected Community Group); and
- (9) For Respondents to submit quarterly progress reports regarding the implementation of the TAP.

(d) **Agreement with Selected Community Group**

- (1) Respondents shall negotiate an agreement with the selected community group that specifies the duties of Respondents and the community group. The agreement must specify the activities that may be reimbursed under the TAP and the activities that may not be reimbursed under the TAP. The list of allowable activities must be consistent with 40 C.F.R. § 35.4070 (e.g., obtaining the services of an advisor to help the group understand the nature of the environmental and public health hazards at the Site and the various stages of the response action, and communicating Site information to others in the community). The list of non-allowable activities must be consistent with 40 C.F.R. § 35.4075 (e.g., activities related to litigation or political lobbying).

[NOTE: EPA has developed a sample agreement to use as a starting point for negotiations between Respondents and the selected community group. The sample agreement is available from the Office of Site Remediation Enforcement upon request.]

- (2) The agreement must provide that Respondents' review of the Community Group's recommended choice for Technical Advisor will be limited, consistent with 40 C.F.R. §§ 35.4190 and 35.4195, to criteria such as whether the advisor has relevant knowledge, academic training, and

relevant experience as well as the ability to translate technical information into terms the community can understand.

- (3) The agreement must provide that the Community Group is eligible for additional TAP assistance, if it can demonstrate that it has effectively managed its TAP responsibilities to date, and that at least three of the following 10 factors are satisfied:
 - (i) EPA expects that more than eight years (beginning with the initiation of the RI/FS) will pass before construction completion will be achieved;
 - (ii) EPA requires treatability studies or evaluation of new and innovative technologies;
 - (iii) EPA reopens the ROD;
 - (iv) The public health assessment (or related activities) for the Site indicates the need for further health investigations and/or health-related activities;
 - (v) After Respondents' selection of the Community Group for the TAP, EPA designates additional operable units at the Site;
 - (vi) EPA issues an Explanation of Significant Differences for the ROD;
 - (vii) After Respondents' selection of the Community Group, a legislative or regulatory change results in significant new Site information;
 - (viii) Significant public concern about the Site exists, as evidenced, e.g., by relatively large turnout at meetings, the need for multiple meetings, the need for numerous copies of documents to inform community members, etc.;
 - (ix) Any other factor that, in EPA's judgment, indicates that the Site is unusually complex; or
 - (x) A RI/FS costing at least \$2 million was performed at the Site.
- (4) Respondents are entitled to retain any unobligated TAP funds when EPA certifies the completion of the Remedial Action.
- (5) Respondents shall submit a draft of the proposed agreement to EPA for its comments.

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document. Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
INSERTING A NEW PARAGRAPH	Click at the end of the paragraph immediately preceding the place where you wish to add the new paragraph , and press Enter. To change the new paragraph's outline level use (under the Home tab) the styles menu. For example, to change ¶ 2.1.c into ¶ 2.1.b(1), click in that paragraph and then (using the Home tab) click the "LVL 3" style. To change ¶ 3.1.a into ¶ 3.2, click in that paragraph and then (using the Home tab) click the “LVL 2” Style.
ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
UPDATING THE CROSS-REFERENCES	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
UPDATING THE TABLE OF CONTENTS	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
INSERTING A NEW SECTION HEADING	Click in the text of the new heading and assign the “LVL 1” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “LVL 1” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
CHANGING THE FONT	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK.