

**ENVIRONMENTAL RESPONSE TRUST AGREEMENT**

**BY AND AMONG**

**THE UNITED STATES OF AMERICA,  
as Settlor, and as Beneficiary on behalf of the  
United States Environmental Protection Agency,**

**SADIE HOSKIE,  
not individually but solely in her representative capacity  
as Trustee,**

**AND**

**THE NAVAJO NATION,  
as Beneficiary.**

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## **ENVIRONMENTAL RESPONSE TRUST AGREEMENT**

This Environmental Response Trust Agreement (the “Trust Agreement”) is made by and among the United States of America (“United States”), as Settlor, and as Beneficiary on behalf of the United States Environmental Protection Agency (“USEPA”); Sadie Hoskie, not individually but solely in her representative capacity as Trustee (defined herein) of the Environmental Response Trust established hereby (the “Trust”); and the Navajo Nation, a federally recognized Indian Tribe, as Beneficiary (collectively, “the Parties”).

### **RECITALS:**

WHEREAS, the Navajo Nation contends that it has claims against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-75, in connection with approximately 523 abandoned uranium mines (“AUMs”) located on Navajo Lands, as set forth in a letter from the Navajo Nation Attorney General to the United States Department of Justice, dated November 21, 2013;

WHEREAS, Region IX of USEPA, in collaboration with the Navajo Nation Environmental Protection Agency (“NNEPA”), has compiled a list of forty-three (43) “priority mines” for cleanup and has included that list as part of the next Federal Government Five-Year Plan for addressing uranium contamination on Navajo Lands;

WHEREAS, the list of priority mines is based on two primary criteria, specifically, demonstrated levels of Radium-226: (a) at or in excess of 10 times the background levels and the existence of a potentially inhabited structure located within 0.25 miles of AUM features; or (b) at or in excess of two times background levels and the existence of a potentially-inhabited structure located within 200 feet;

WHEREAS, the Navajo Nation and the United States agree that initial efforts to resolve the Navajo Nation’s CERCLA claims shall focus on a subset of the priority mines, namely those priority mines for which a viable private potentially responsible party has not yet been identified;

WHEREAS, the Navajo Nation and the United States have entered into a Settlement Agreement on April 8, 2015, resolving the Navajo Nation’s claims against the United States relating to Covered Matters, as defined and more fully set forth in Section 1.1.7 of this Trust Agreement and Sections 1.6 and 5.1 of the Settlement Agreement;

WHEREAS, the Navajo Nation and the United States agree that close consultation and collaboration between NNEPA and Region IX of USEPA is essential to the successful implementation of the Settlement Agreement;

WHEREAS, the Settlement Agreement provides for the creation of the Trust and for the transfer of Funding (defined herein) to the Trust, to be administered by the Trustee pursuant to this Trust Agreement and the Settlement Agreement;

WHEREAS, in accordance with Section 2.3 of the Settlement Agreement, the Trust is established for the purposes of managing, administering, funding and performing the Work and reimbursing Future Oversight Costs and Administrative Costs, as more fully defined or described below and in the Settlement Agreement, in compliance with all applicable laws, regulations, and guidance, including but not limited to the National Contingency Plan; and

WHEREAS, the Trust is to be funded in the amount set forth in the Settlement Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the Settlement Agreement, the Parties hereby agree as follows:

## **ARTICLE I** **DEFINITIONS**

### 1.1 Definitions.

The following terms as used in this Trust Agreement shall have the definitions given below:

1.1.1 “Administrative Costs” shall mean costs incurred in administering the Trust.

1.1.2 “Agencies” shall mean, collectively, the Lead Agency and the Supporting Agency.

1.1.3 “AUMs” shall mean abandoned uranium mines located on Navajo Lands.

1.1.4 “AUM Future Oversight Costs Special Account” shall mean the special account, within the Hazardous Substance Superfund,

established by USEPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Section 4.5 of this Trust Agreement.

1.1.5 “Beneficiaries” shall mean the Navajo Nation and the United States, on behalf of USEPA.

1.1.6 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-75.

1.1.7 “Covered Matters” shall mean any and all claims that were, that could have been, that could now be, or that could hereafter be asserted by the Navajo Nation and the United States, as of the Effective Date of the Settlement Agreement, that arise out of or in connection with: (1) the Work; (2) Future Oversight Costs incurred by NNEPA and USEPA with respect to the Work; and (3) Administrative Costs. Covered Matters shall further include any work performed following termination of this Trust Agreement, as part of additional Response Actions at any of the Sites, using residual funds from the Trust Assets pursuant to Section 2.7 of this Trust Agreement.

1.1.8 “Effective Date” shall refer to the date on which the last of the Parties signs this Trust Agreement.

1.1.9 “Environmental Costs” shall mean costs of managing and performing the Work and Future Oversight Costs.

1.1.10 “Excluded Matters” shall mean any claims and liabilities associated with: (a) Response Actions (including Response Action decisions) at any Site that occur subsequent to the approval of an RSE Final Report for such Site pursuant to Section 5.4 of this Trust Agreement, except as expressly provided in Section 1.1.7 of this Trust Agreement and Section 1.6 of the Settlement Agreement; (b) areas subject to the authority conferred by the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 7901 *et seq.*; and (c) any other matters not expressly defined as Covered Matters.

1.1.11 “Funding” shall mean the payment to be made by the United States to the Trust Account pursuant to Section 2.1.5 of this Trust Agreement and Section 2.4 of the Settlement Agreement.

1.1.12 “Future Oversight Costs” shall mean all costs of response that are not inconsistent with the National Contingency Plan and arise out of or in connection with Covered Matters, and that are incurred by

USEPA or NNEPA, including, but not limited to, direct and indirect costs that USEPA or NNEPA incurs in reviewing or developing plans, reports and other items pursuant to the Settlement Agreement, verifying the Work, or otherwise implementing or overseeing the Settlement Agreement, including but not limited to payroll costs, contractor costs, travel costs, and laboratory costs.

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

1.1.14 “Lead Agency” shall mean NNEPA.

1.1.15 “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.

1.1.16 “Navajo Lands” shall mean all lands of the Navajo Nation as described in 7 N.N.C. § 254(A).

1.1.17 “Navajo Nation EPA” or “NNEPA” shall mean the Navajo Nation Environmental Protection Agency and any successor departments or agencies of the Navajo Nation.

1.1.18 “NNCERCLA” shall mean the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, 4 N.N.C. § 2101 *et seq.*

1.1.19 “Parties” shall mean the Settlor, the Trustee and the Beneficiaries.

1.1.20 “Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

1.1.21 “Removal Site Evaluation” or “RSE” shall mean a removal preliminary site assessment and, if warranted, a removal site inspection and shall, for purposes of this Agreement, include the following activities: conducting background studies and gamma scans of surface soils, sampling surface and subsurface soils and sediments related to historic mining operations, assessing radiation exposure inside mine operations buildings, homes, or other nearby structures (if present at the Sites), sampling existing



and accessible wells (if present at the Sites), mitigating physical hazards and other interim response actions, and preparing a final written report documenting the work performed and information obtained for each of the Sites, such as indicated in the exemplar Scopes of Work identified in Section 3.1 of the Settlement Agreement.

1.1.22 “Response Action” shall have the same definition as given for the term “response” under Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

1.1.23 “Settlement Agreement” shall have the meaning given in the recitals above.

1.1.24 “Settlor” shall mean the United States.

1.1.25 “Site” shall mean each of the sixteen AUMs listed on Appendix A to the Settlement Agreement, including the proximate areas where Waste Material associated with each such AUM has been deposited, stored, disposed of, placed, or otherwise come to be located. “Sites” shall mean, collectively, all sixteen AUMs.

1.1.26 “Supporting Agency” shall mean USEPA.

1.1.27 “Trust” shall mean the trust established pursuant to this Trust Agreement.

1.1.28 “Trust Account” shall mean the account established pursuant to Section 2.1.3 of this Trust Agreement, including any trust subaccounts thereof.

1.1.29 “Trust Assets” shall mean the Funding and such other assets as may be acquired, earned, or held by the Trust prior to its termination.

1.1.30 “Trustee” shall mean the trustee appointed pursuant to Section 2.1 of the Settlement Agreement.

1.1.31 “United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

1.1.32 “USEPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

1.1.33 “Waste Material” shall mean: (1) any “hazardous substance” as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant as defined under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” as defined under Section 1004(27) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, 42 U.S.C. § 6903(27).

1.1.34 “Work” shall mean Removal Site Evaluations at the Sites and associated public participation.

## **ARTICLE II** **THE TRUST**

### 2.1 Creation of and Transfer of Funding to the Trust

2.1.1 Pursuant to the Settlement Agreement, the Settlor hereby establishes the Trust on behalf of the Beneficiaries named herein. The Trustee hereby accepts and agrees to hold the Trust Assets for the benefit of the Beneficiaries for the purposes described in Section 2.2 below, subject to the terms of this Trust Agreement and the Settlement Agreement.

2.1.2 On the Effective Date, Sadie Hoskie (the “Trustee”), not individually but solely in the representative capacity of trustee, shall be appointed as the Trustee to administer the Trust in accordance with this Trust Agreement and the Settlement Agreement.

#### 2.1.3 Creation of the Trust Account

Within five (5) business days following the Effective Date, the Trustee shall establish a Trust Account, which shall receive the Funding described in Section 2.1.5 below and any other Trust Assets. The purpose of the Trust Account shall be to fund all Environmental Costs and Administrative Costs in accordance with the Settlement Agreement and this Trust Agreement. The income and gains from any investment of Trust Assets shall be allocated, paid, and credited to such Trust Account.

2.1.4 The Trust Account may be divided into such number of trust subaccounts dedicated for specific Sites or uses as may be deemed necessary in the sole discretion of the Trustee to comply with the terms of, and implement, the Settlement Agreement and this Trust Agreement.

### 2.1.5 The Funding

As provided in Section 2.4 of the Settlement Agreement, and as soon as reasonably practicable after the Effective Date, the United States shall cause to be transferred the sum of thirteen million, two hundred and twenty-five thousand dollars (\$13,225,000) for deposit into the Trust Account. This sum shall constitute the "Funding."

2.1.6 The grantee for the Funding shall be the Trust; however, if the law of the state in which the Funding is situated prohibits a trust entity from holding title to the Funding, the grantee for the Funding shall be the Trustee.

### 2.2 Objectives and Purposes

The exclusive purposes and functions of the Trust are to manage, administer, fund and perform the Work and to reimburse or provide advance payment for Future Oversight Costs and Administrative Costs, as more fully defined or described in this Trust Agreement and in the Settlement Agreement, in compliance with all applicable laws, regulations, and guidance, including but not limited to the National Contingency Plan, and to receive, hold and use the Trust Assets for the above purposes.

### 2.3 Beneficiaries

Beneficial interests in the Trust shall be held by each of the Beneficiaries, which are the Navajo Nation, and the United States on behalf of USEPA.

### 2.4 Investment and Safekeeping of Trust Assets

2.4.1 The Trust Assets shall be held in trust and segregated. All interest earned in the Trust Account shall be retained in the Trust Account and used only for the same purposes as the principal. Investments of any monies held by the Trust shall be made in a manner consistent with the standards and requirements applicable to a trustee in connection with a Chapter 7 liquidation; provided, however, that the right and power of the Trust to invest the Trust Assets, or any income earned by the Trust, shall be limited to demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, or other liquid investments, such as Treasury bills.

2.4.2 The Trustee is expressly prohibited from holding any or all of the Trust Assets in a common, commingled or collective trust fund with the assets of any other entity.

2.4.3 Nothing in this Section 2.4 shall be construed as authorizing the Trustee to cause the Trust to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company or a company “controlled” by an “investment company,” required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this Section 2.4 is to authorize the investment of the funds in the Trust Accounts or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Trust.

2.4.4 The Trustee shall not incur any liability for following any written direction or order to act (or to refrain to act) from any Beneficiary so long as such written direction is not inconsistent with this Trust Agreement and the Settlement Agreement.

2.4.5 The Trustee shall investigate the possible purchase of one or more insurance policies to cover the Work and general liability related to this Trust Agreement, and shall make recommendations to the Lead Agency and the Supporting Agency regarding such insurance. If and when authorized in writing to do so by the Lead Agency and the Supporting Agency, the Trustee shall promptly purchase such insurance using Trust Assets.

## 2.5 Accounting

The Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Trust, and the assets and liabilities of the Trust, in such detail and for such period of time as may be necessary to enable the Trustee to make full and proper accounting in respect thereof in accordance with Article VI below and to comply with applicable provisions of law and good accounting practices. Beneficiaries shall have the right upon fourteen (14) calendar days’ prior written notice delivered to the Trustee to inspect any such books, records or accounts.

## 2.6 Termination

The Trustee shall not unduly prolong the duration of the Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims against Trust Assets and to effect the distribution of Trust Assets and other receipts relating thereto to the Persons who receive distributions hereunder in accordance with the terms hereof, and to terminate the Trust as soon as practicable consistent with this Trust Agreement and the Settlement Agreement. The provisions of Sections 2.7, 2.8,

4.4.6, 4.5.6, 6.1 and 6.2 of this Trust Agreement shall survive and remain in effect following such termination.

### 2.7 Final Disposition of Trust Assets

Upon the completion of all RSEs for all Sites and the reimbursement of all Future Oversight Costs, and after the Lead Agency and the Supporting Agency have confirmed to the Trustee that all Work required pursuant to the Settlement Agreement is complete, any funds remaining in the Trust Account shall be transferred in the following order: (a) the Trustee, in consultation with the Lead Agency and the Supporting Agency, shall agree to a reservation of funds sufficient to cover any remaining Administrative Costs including taxes; (b) upon concurrence of the United States that dissolution of the Trust is appropriate and complete, to NNEPA for use in connection with Response Actions at any of the Sites.

### 2.8 Document Retention and Disposition

The Trustee shall preserve and retain all non-identical copies of records or documents (including records or documents in electronic form) now in its possession or control or which hereafter come into its possession or control that relate in any manner to implementation of the Trust Agreement, performance of the Work or the liability of any Person under NNCERCLA or CERCLA with respect to any Site. The Trustee shall make such records and documents available for inspection by the Lead Agency and the Supporting Agency upon their request, at reasonable times and in a reasonable manner. The Trustee may assert any privilege as is available in law. In the event of termination of the Trust, the Trustee shall provide to the Lead Agency and the Supporting Agency at least one hundred eighty (180) days written notice prior to the destruction of any records or documents of whatever kind, nature or description in any way relating to the Trust, the Work or any Site, in order to enable such entities to prepare and implement a protocol for their preservation. Upon the request of the Lead Agency and the Supporting Agency, the Trustee shall deliver such records or documents to NNEPA, USEPA and/or such other Persons as the Lead Agency and the Supporting Agency may designate. The Trustee may assert any privilege as is available in law.

## **ARTICLE III** **THE TRUSTEE**

### 3.1 Appointment

3.1.1 Sadie Hoskie, not individually but solely in

her representative capacity as trustee, is appointed to serve as the Trustee to administer the Trust and the Trust Account in accordance with the Settlement Agreement and this Trust Agreement, and the Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective on the Effective Date. Subject to the provisions of this Article III, the term of the Trustee shall be for three years. After the expiration of the initial three-year term, the Trustee may be re-appointed or terminated. Any successor Trustee shall be appointed in accordance with Section 3.8 of this Trust Agreement.

3.1.2 Subject to the approval of the Lead Agency and the Supporting Agency, the Trustee shall obtain the services of an environmental consultant to manage the performance of the Work (the "Consultant"). The Consultant shall obtain environmental, general and professional liability insurance in an appropriate sum as agreed to by the Trustee after consultation with the Lead Agency and the Supporting Agency. The beneficiary of the insurance policies shall be the Trust, and such policies shall cover negligence committed by the Consultant related to implementation of this Trust Agreement and the Settlement Agreement. The legal relationship of the Consultant to the Trustee is that of an independent contractor professional, not that of an entity employed by the Trustee. The Consultant shall not be deemed a Trust Party.

3.1.3 The Trustee shall take into account the following qualifications when evaluating candidates for the position of the Consultant: (a) at least 10 years of senior management roles demonstrating extensive knowledge of and experience with the implementation of environmental investigation and removal action strategies; (b) a proven track record regarding consultant / contractor management for single projects totaling in excess of \$5,000,000; (c) the ability to create and present detailed presentations for large audiences; (d) experience with the CERCLA cleanup and remedy selection process.

## 3.2 Generally

The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the objectives and purposes of the Trust, the Settlement Agreement and this Trust Agreement. The Trustee shall have the authority to bind the Trust, and any successor Trustee or successor or assign of the Trust, but shall for all purposes hereunder be acting in her representative capacity as Trustee and not

individually. The Trustee shall not be required to take any action or omit to take any action if, after the advice of counsel, the Trustee believes in good faith that such action or omission is inconsistent with the Trustee's fiduciary duties.

### 3.3 Powers

In connection with the administration of the Trust, except as otherwise set forth in the Trust Agreement or the Settlement Agreement, the Trustee is authorized to perform any and all acts necessary to accomplish the objectives and purposes of the Trust. The powers of the Trustee shall include, without limitation, each of the following: (a) to receive, manage, invest, supervise and protect the Trust Assets and to pay obligations owed by the Trust or the Trust Account from funds held by the Trustee and/or the Trust in accordance with the Trust Agreement and the Settlement Agreement; (b) to engage the Consultant and, as the Trustee deems necessary or appropriate, other Persons to assist the Trustee with respect to the responsibilities described herein; (c) to make distributions of the Trust Assets from the Trust Account for the purposes contemplated in and in accordance with the terms of this Trust Agreement and the Settlement Agreement; and (d) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Trust Agreement and the Settlement Agreement. The Trustee is authorized to execute and deliver all documents on behalf of the Trust to accomplish the purposes of this Trust Agreement and the Settlement Agreement.

### 3.4 Other Professionals

In addition to the Consultant to be retained pursuant to Section 3.1.2 above, the Trustee is authorized, following consultation with the Lead Agency and the Supporting Agency, to retain on behalf of the Trust and to pay such additional third parties as the Trustee may deem necessary or appropriate to assist the Trustee in carrying out its powers and duties under the Trust Agreement and the Settlement Agreement, including, without limitation: (a) counsel to the Trustee; (b) a public accounting firm to perform such reviews and/or audits of the financial books and records of the Trust as may be appropriate in the Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Trust or the Trust Account as may be required, and/or (c) environmental consultants, custodians, security personnel, engineers, surveyors, brokers, contractors, administrative assistants and clerks. The Trustee shall pay all such Persons, including the Consultant, from the Trust Account for services rendered and expenses incurred, in accordance with a budget or fee schedule approved as provided in Article IV of this Trust Agreement.



### 3.5 Limitation of the Trustee's Authority

The Trustee is not, and shall not be, authorized to engage in any trade or business with respect to the Trust Assets or any proceeds therefrom. The performance by the Trustee of her duties under this Trust Agreement and the Settlement Agreement shall not be considered to constitute engagement in a trade or business.

### 3.6 Compensation of the Trustee

The Trustee shall be reimbursed from the Trust Account for its reasonable and necessary costs and expenses in connection with the Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent, postage, photocopying, telephone and facsimile charges, upon submission of periodic billings, all in accordance with a budget or fee schedule approved as provided in Article IV of this Trust Agreement. The Trustee shall also be entitled to receive reasonable compensation for actual services rendered on behalf of the Trust. All compensation and other amounts payable to the Trustee shall be paid from the Trust Account in accordance with a budget or fee schedule approved as provided in Article IV of this Trust Agreement.

### 3.7 Termination, Replacement, and Removal of the Trustee.

#### 3.7.1 Termination

The duties, responsibilities and powers of the Trustee shall terminate on the date the Trust is terminated in accordance with the Settlement Agreement and this Trust Agreement. The Trustee may resign before the Trust is terminated by giving not less than one hundred twenty (120) days prior written notice thereof to the Navajo Nation and the United States; provided, however, that in the event a suitable replacement is not found and approved by the Navajo Nation and the United States within one hundred twenty (120) days after receipt of such written notice, the Trustee's resignation shall not become effective and the Trustee shall continue to function in her capacity as Trustee until a suitable replacement is appointed in accordance with Section 3.8 of this Trust Agreement.

#### 3.7.2 Replacement

The Trustee may be replaced, in accordance with Section 3.8 below, upon completion of any three (3) year term.



### 3.7.3 Removal

The Trustee may be removed by written agreement of the Navajo Nation and the United States. Such removal shall be effective on the date both the Navajo Nation and the United States have signed such written agreement. Following such removal, the Trustee shall be replaced in accordance with Section 3.8 below.

### 3.8 Appointment of Successor Trustees

Any successor Trustee shall be selected by the Navajo Nation with the approval and concurrence of the United States. Such successor shall execute an instrument accepting such appointment and shall file such acceptance with the Trust records. Thereupon, such successor Trustee shall, without any further act, become vested with all the rights, powers, trusts and duties of its predecessor in the Trust with like effect as if originally named herein. At their mutual discretion, the Navajo Nation and the United States may agree in writing to authorize a Trustee to continue in his or her capacity as Trustee following the date of completion of a three (3)-year term, or following the date of removal under Section 3.7.3, until a suitable replacement is found and approved by the Navajo Nation and the United States.

### 3.9 No Bond

The Trustee shall be exempt from giving any bond or other security in any jurisdiction.

## **ARTICLE IV**

### **BUDGET APPROVALS AND DISTRIBUTIONS FROM THE TRUST**

#### 4.1 Trust Account

The Trustee shall establish, maintain and hold the Trust Account, in accordance with the Settlement Agreement and this Trust Agreement, to administer the Trust Assets and distributions therefrom.

#### 4.2 Budget Approval Process and Payments by the Trust

The Trustee shall submit for approval by the Lead Agency and the Supporting Agency proposed budgets for all Environmental Costs and all Administrative Costs to be incurred, in the following sequence: (a) the first such proposed budget shall be submitted simultaneously with the proposed schedule required to be submitted under Section 5.1 of this Trust Agreement, and shall include all Environmental Costs and Administrative Costs to be incurred from the Effective Date of this Trust

Agreement through June 30, 2016, as well as any pre-Effective Date start-up fees and expenses of the Trustee in accordance with Section 4.3 of this Trust Agreement; (b) by March 31, 2016, and by March 31 of each subsequent year, the Trustee shall submit a proposed budget for all Environmental Costs and Administrative Costs to be incurred during the subsequent six (6)-month period from July through December; and (b) by September 30, 2016, and by September 30 of each subsequent year, the Trustee shall submit a proposed budget for all Environmental Costs and all Administrative Costs to be incurred during the subsequent six (6)-month period from January through June. Each such budget submission shall include any fee schedule that may be required as provided in Article III of this Trust Agreement, and shall separately identify with reasonable specificity all Environmental Costs and all Administrative Costs to be incurred during the applicable period. If either the Lead Agency or the Supporting Agency disapproves the budget submission, the Lead Agency and the Supporting Agency shall consult and submit a joint request for revisions to the Trustee. The Trustee shall then submit a revised budget to both Agencies within the response period specified in the joint request for revisions, unless a longer response period is subsequently authorized by the Lead Agency and the Supporting Agency. The Trustee shall not pay any fee or expense that has not been provided for in the applicable budget and approved by the Lead Agency and the Supporting Agency. Each approved budget shall be funded by the transfer or withdrawal of approved amount(s) from the Trust Account.

#### 4.3 Remuneration for the Trustee's Start-Up Fees and Expenses

The Trustee shall be entitled to reimbursement from the Trust Account of up to one hundred and ninety thousand dollars (\$190,000) ("Pre-Budget Approval Cap") for her reasonable fees and expenses incurred in connection with the formation of the Trust and preparation of the first proposed budget prior to the Effective Date and prior to the first budget approval pursuant to Section 4.2 of this Trust Agreement. In conjunction with the first budget submission pursuant to Section 4.2 hereof, the Trustee shall submit detailed invoices identifying all such fees and expenses. The Trustee is authorized to expend funds from the Trust Accounts, subject to the Pre-Budget Approval Cap set forth in this section, to cover the reasonable fees and expenses identified in this section on the following two occasions prior to approval of the first proposed budget: 1) regarding all reasonable fees and expenses incurred prior to the Effective Date, as soon as reasonably practicable after receipt of the Funding; and 2) regarding all reasonable fees and expenses incurred in preparation of the first proposed budget pursuant to Section 4.2 of this Trust Agreement, as soon as reasonably practicable following the submission of that budget to the Lead Agency and Supporting Agency. Prior to submission of that first budget, the Trustee may petition the Lead Agency and Supporting Agency

in writing for an increase in the Pre-Budget Approval Cap. If the Trustee demonstrates good cause for an increase, the Lead Agency and Supporting Agency may jointly approve the requested increase in full or in part.

4.4 Reimbursement of or Advance Payment for Future Oversight Costs to the Lead Agency

4.4.1 The Trustee shall pay to the Lead Agency all Future Oversight Costs not inconsistent with the NCP, in accordance with the approved budget pursuant to Section 4.2 of this Trust Agreement.

4.4.2 Within thirty (30) days after receiving the Funding, and notwithstanding the absence of an approved budget, the Trustee shall pay to the Lead Agency four hundred thousand dollars (\$400,000) as an initial payment toward Future Oversight Costs. Payment shall be made in accordance with Section 4.4.5 below. The Lead Agency shall deposit all funds it receives from the Trustee under this Trust Agreement in the appropriate subaccount of the Hazardous Substances Fund established under the NNCERCLA, 4 N.N.C. § 2701. The Lead Agency shall retain and use all such funds to conduct or finance future oversight activities in connection with Covered Matters. At the conclusion of each twelve (12)-month period following the Lead Agency's receipt of the initial payment for Future Oversight Costs required under this Section 4.4.2, the Lead Agency shall send the Trustee and the Supporting Agency a cost summary that identifies the direct and indirect costs incurred by NNEPA, its contractors, and its subcontractors during the preceding twelve (12) months.

4.4.3 In the event the Lead Agency determines that the balance of the account described in Section 4.4.2 above has fallen below the amount necessary to continue funding Future Oversight Costs on an ongoing basis, the Lead Agency shall notify the Trustee and request in writing such additional funds as the Lead Agency estimates will be necessary to fund Future Oversight Costs during the ensuing six (6) months. Such written request for additional funds shall be in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such written request, pay the requested amount to the Lead Agency in accordance with Section 4.4.5 below.

4.4.4 In the event that the Lead Agency incurs Future Oversight Costs without disbursing funds from the account described in Section 4.4.2 above, the Lead Agency will send the Trustee a written request for reimbursement, which shall include a cost summary identifying all direct

and indirect costs incurred by NNEPA, its contractors and its subcontractors for which reimbursement is requested. Such request for reimbursement shall be in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such request for reimbursement, pay the requested amount to the Lead Agency in accordance with Section 4.4.5 below.

4.4.5 All payments to the Lead Agency required by this Trust Agreement shall be made in accordance with instructions to be provided by the Lead Agency.

4.4.6 After the Lead Agency and the Supporting Agency have confirmed in writing to the Trustee, pursuant to Section 2.7 of this Trust Agreement, that all Work required pursuant to the Settlement Agreement is complete, the Lead Agency shall remit and return to the Trust Account any unused portion of the funds paid by the Trustee to the Lead Agency pursuant to this Trust Agreement.

4.5 Reimbursement of or Advance Payment for Future Oversight Costs to the Supporting Agency

4.5.1 The Trustee shall pay to the Supporting Agency all Future Oversight Costs not inconsistent with the NCP, in accordance with the approved budget pursuant to Section 4.2 of this Trust Agreement.

4.5.2 Within thirty (30) days after receiving a written demand from the Supporting Agency, and notwithstanding the absence of an approved budget, the Trustee shall pay to the Supporting Agency four hundred thousand dollars (\$400,000) as an initial payment toward Future Oversight Costs. Payment shall be made in accordance with Section 4.5.5 below. The Supporting Agency shall deposit all funds it receives from the Trustee under this Trust Agreement in the AUM Future Oversight Costs Special Account. The Supporting Agency shall retain and use all such funds to conduct or finance future oversight activities in connection with Covered Matters. At the conclusion of each twelve (12)-month period following the Supporting Agency's receipt of the initial payment for Future Oversight Costs required under this Section 4.5.2, the Supporting Agency shall send the Trustee and the Lead Agency a cost summary that identifies the direct and indirect costs incurred by the Supporting Agency, its contractors, and its subcontractors during the preceding twelve (12) months.

4.5.3 In the event the Supporting Agency determines that the balance of the AUM Future Oversight Costs Special Account has fallen below the amount necessary to continue funding Future Oversight Costs on an ongoing basis, the Supporting Agency shall notify the Trustee and request in writing such additional funds as the Supporting Agency estimates will be necessary to fund Future Oversight Costs during the ensuing six (6) months. Such written request for additional funds shall be in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such written request, pay the requested amount to the Supporting Agency in accordance with Section 4.5.5 below.

4.5.4 In the event that the Supporting Agency incurs Future Oversight Costs without disbursing funds from the AUM Future Oversight Costs Special Account, the Supporting Agency will send the Trustee a written request for reimbursement, which shall include a cost summary identifying all direct and indirect costs incurred by the Supporting Agency, its contractors and/or its subcontractors for which reimbursement is requested. Such request for reimbursement shall be in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such request for reimbursement, pay the requested amount to the Supporting Agency in accordance with Section 4.5.5 below.

4.5.5 All payments to the Supporting Agency required by this Trust Agreement shall be made by Fedwire 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”

At the time of payment, the Trustee shall send notice that payment has been made: (a) to USEPA in accordance with Section 8.1 of this Trust Agreement; and b) to the EPA Cincinnati Finance Center by email to [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by regular mail to EPA Cincinnati Finance Center, 26 W. Martin Luther King Drive, Cincinnati, OH 45268. Each such payment and notice shall reference the Site/Spill ID Number A977.

4.5.6 After the Lead Agency and the Supporting Agency have confirmed in writing to the Trustee, pursuant to Section 2.7 of this Trust Agreement, that all Work required pursuant to the Settlement Agreement is complete, the Supporting Agency shall remit and return to the Trust Account any unused portion of the funds paid by the Trustee to the Supporting Agency pursuant to this Trust Agreement.

#### 4.6 Liens by Government

Notwithstanding anything to the contrary in this Trust Agreement, the Trust (or if the law of the state in which the Trust Assets are situated prohibits a trust entity from holding title to such assets, the Trustee) hereby grants to the Trustee, the Navajo Nation and the United States a first-priority lien on or security interest in the Trust Assets, to secure the payment of all amounts owed to or accrued or reserved on account of the Trust or to be retained by the Trustee hereunder or otherwise due hereunder and to secure the performance of the Work. However, only the Trustee shall have a first-priority lien on or security interest in funds budgeted for the payment of Administrative Costs, and only the Navajo Nation and the United States shall have a first-priority lien on or security interest in funds budgeted for the payment of Future Oversight Costs and costs of performing the Work. The Trustee agrees to take appropriate actions and execute appropriate documents so that the Trustee's, the Navajo Nation's, and the United States' liens or security hereunder are perfected within ten (10) business days of the Effective Date.

#### 4.7 Manner of Payment

Unless otherwise specified by this Trust Agreement, cash payments made by the Trust shall be in United States dollars by checks drawn on a domestic bank selected by the Trustee whose deposits are federally insured, or by wire transfer from such a domestic bank.

### **ARTICLE V** **WORK PLANNING, IMPLEMENTATION AND REPORTING**

#### 5.1 Schedule for Submitting Draft Scopes of Work

Within sixty (60) days after the Trustee has: (a) made the initial payment to the Lead Agency for Future Oversight Costs pursuant to Section 4.4.2 of this Trust Agreement; and (b) obtained the Lead Agency's and the Supporting Agency's approval of the Consultant pursuant to Section 3.1.2 of this Trust Agreement, and following consultation with the Lead Agency and the Supporting Agency, the Trustee shall submit for approval by the Lead Agency and the Supporting Agency a



schedule for submittal of draft Scopes of Work for each of the Sites. Such schedule, upon approval by the Lead Agency and the Supporting Agency, shall be appended to and deemed incorporated by reference into this Trust Agreement and the Settlement Agreement. If either the Lead Agency or the Supporting Agency disapproves the schedule submission, the Lead Agency and the Supporting Agency shall consult and submit a joint request for revisions to the Trustee. The Trustee shall submit a revised schedule to both Agencies within the response period specified in the joint request for revisions, unless a longer response period is subsequently authorized by the Lead Agency and the Supporting Agency.

## 5.2 Scopes of Work and Work Plans

Following consultation with the Lead Agency and the Supporting Agency, and in accordance with the schedule approved pursuant to Section 5.1 above, the Trustee shall submit for approval by the Lead Agency and the Supporting Agency a draft Scope of Work applicable to each Site, as described in Section 3.1 of the Settlement Agreement. Following approval of a Scope of Work for a Site or group of Sites, the Trustee shall submit for approval by the Lead Agency and the Supporting Agency, as and when instructed by the Agencies, a work plan and schedule, and such other planning documents as the Agencies may require with respect to that Site or group of Sites. If either the Lead Agency or the Supporting Agency disapproves any such submission, the Lead Agency and the Supporting Agency shall consult and submit a joint request for revisions to the Trustee. The Trustee shall submit the revised document to both Agencies within the response period specified in the joint request for revisions, unless a longer response period is subsequently authorized by the Lead Agency and the Supporting Agency. The Trustee shall implement each Scope of Work and each work plan as approved in writing by the Lead Agency and the Supporting Agency.

## 5.3 Work Progress Reports

The Trustee shall prepare a written progress report to the Lead Agency and the Supporting Agency concerning actions undertaken to perform the Work by the end of each calendar quarter following the Effective Date, or as otherwise directed in writing by the Lead Agency and the Supporting Agency. These reports shall describe all significant developments during the reporting period, including the actions performed and any problems encountered, any analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems. On March 31 and September 30 of 2016 and of each subsequent year thereafter, the Trustee may

in its discretion submit a single document to the Lead Agency and the Supporting Agency that complies with both the semi-annual budget submission requirements of Section 4.2 of this Trust Agreement and the quarterly progress reporting requirements of this Section 5.3.

#### 5.4 RSE Final Reports

For each Site, within thirty (30) days after completion of all Work required by the Settlement Agreement and this Trust Agreement for that Site and receipt by the Trustee of all validated laboratory data, the Trustee shall submit for approval by the Lead Agency and the Supporting Agency a final report (the "RSE Final Report") summarizing all actions taken to comply with the Settlement Agreement and this Trust Agreement with respect to that Site. If either the Lead Agency or the Supporting Agency disapproves such submission, the Lead Agency and the Supporting Agency shall consult and submit a joint request for revisions to the Trustee. The Trustee shall submit a revised RSE Final Report to both Agencies within the response period specified in the joint request for revisions, unless a longer response period is subsequently authorized by the Lead Agency and the Supporting Agency.

5.4.1 Each RSE Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement and this Trust Agreement with respect to the pertinent Site(s). Each RSE Final Report shall also include the following certification signed by a Person who supervised or directed the preparation of the report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### 5.5. Emergency Response and Notification of Release or Threatened Release

In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material at or from any Site that may constitute an emergency situation or may present an immediate threat to public health or welfare or the environment, the Trustee shall immediately notify the representatives of the Lead Agency and the Supporting Agency listed in this Section 5.5, and shall expeditiously consult with the Lead Agency and the Supporting Agency regarding any further action that may be required. The Trustee shall submit a written report to



the Lead Agency and the Supporting Agency within five (5) business days after each such release or threatened release, setting forth the events that occurred and the measures taken or to be taken to mitigate any endangerment caused or threatened by the incident and to prevent similar incidents from reoccurring. This reporting requirement is in addition to, and not in lieu of, any other report that may be required under applicable law.

Nothing in this Trust Agreement limits any authority of the Lead Agency or the Supporting Agency 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 Sites.

**Representatives of NNEPA to Contact in the Event of Emergency**

Diane Malone  
Environmental Department Manager  
Waste Regulatory & Compliance Department  
Navajo Nation EPA  
Morgan Boulevard, Building 6656  
Window Rock, AZ 86515  
[dmalone@navajo-nsn.gov](mailto:dmalone@navajo-nsn.gov)  
928-871-7993

Freida White  
Environmental Program Manager  
Superfund Program  
Navajo Nation EPA  
43 Crest Road  
St. Michaels, AZ 86511  
[freidawhite@navajo-nsn.gov](mailto:freidawhite@navajo-nsn.gov)  
928-871-6859

**Representatives of USEPA to Contact in the Event of Emergency**

Will C. Duncan III  
Chief, Arizona & Nevada Site Section, SFD-6-2  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3412

**ARTICLE VI**  
**FINANCIAL REPORTING AND TAXES**

6.1 Financial Reports

As soon as practicable after the end of each calendar quarter beginning with the quarter ended after the Funding is received by the Trust, and ending as soon as practicable upon termination of the Trust, the Trustee shall submit to the Beneficiaries a written report, including: (a) financial statements of the Trust at the end of such calendar quarter or period and the receipts and disbursements of the Trust for such calendar quarter or period; and (b) a description of any action taken by the Trustee in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Trust and of which notice has not previously been given to the Beneficiaries. Further, by February 28 of 2016 and each subsequent calendar year, and within six (6) months after termination of the Trust, the Trustee shall submit to the Beneficiaries an annual report that provides the above-described information with respect to the preceding calendar year or, if the report is a final report after termination, with respect to the period from the most recent annual report until the termination of the Trust.

6.2 Taxes and Other Disclosures

The Trustee shall also file or cause to be filed any other statements, returns or disclosures relating to the Trust that are required by any applicable governmental unit, including but not limited to tax returns. All taxes applicable to the Trust shall be paid from the Trust Assets.

**ARTICLE VII**  
**MISCELLANEOUS PROVISIONS**

7.1 Amendments and Waivers

Any provision of this Trust Agreement may be clarified, amended or waived by mutual written consent of the Trustee, the Navajo Nation and the United States.

7.2 Governing Law

The Parties agree that this Trust Agreement shall be governed by, and construed and enforced in accordance with, the laws of the United States.

### 7.3 Headings

The section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or any term or provision hereof.

### 7.4 Actions Taken on Other Than Business Day

If any payment or act under the Trust Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day. For the purposes of this Trust Agreement, a business day shall be any of the days Monday through Friday excluding federal and Navajo holidays.

### 7.5 Consistency of Agreements and Construction

As of the Effective Date, this Trust Agreement shall be deemed incorporated into the Settlement Agreement. To the extent reasonably possible, the provisions of this Trust Agreement shall be interpreted in a manner consistent with the Settlement Agreement. In the event of an irreconcilable conflict between this Trust Agreement and the Settlement Agreement, the Settlement Agreement shall prevail.

### 7.6 Compliance with Laws

Any and all distributions of Trust Assets shall be in compliance with all applicable laws.

### 7.7 No Recourse to Beneficiaries

In no event shall the Beneficiaries have any responsibility to pay any expenses, fees, or other obligations of the Trust, and in no event shall the Trustee, the Consultant, or any other Person employed or contracted to perform services on behalf of the Trust have recourse to the Beneficiaries therefor.

### 7.8 Status of Beneficiaries

No Beneficiary shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Trust, or to be an owner or operator of any Site, solely on account of this Trust Agreement or the Settlement Agreement, or actions contemplated thereby, or its status as a Settlor, Beneficiary or Party to this Trust Agreement or the Settlement Agreement.

7.9 Uniform Custodial Trust Act Not Applicable

This Trust Agreement shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

7.10 Counterparts

This Trust Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

**ARTICLE VIII**  
**NOTIFICATIONS**

8.1 The Trustee shall send copies of all reports, budgets, work plans, statements, and any other documents or written communications that the Trustee is required to submit or from time to time may submit under this Trust Agreement and the Settlement Agreement to the following representatives of the Lead Agency and the Supporting Agency:

For the Lead Agency:

Authorized representative to receive all notices:

Environmental Department Manager  
Waste Regulatory & Compliance Department  
Navajo Nation EPA  
P.O. Box 339  
Window Rock, AZ 86515  
Re: Abandoned Uranium Mines

For the Supporting Agency:

Authorized representative to receive all notices:

Will C. Duncan III  
Chief, Arizona & Nevada Site Section, SFD-6-2  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

With a copy of all notices to be sent to the following:

Director, Site Operations  
Office of Legacy Management, LM-1  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, D.C. 20585

Regional Director  
Navajo Regional Office  
Bureau of Indian Affairs  
P.O. Box 1060  
Gallup, NM 87305

8.2 Where this Trust Agreement expressly requires notice to, consultation with or approval by “the Navajo Nation” and “the United States,” rather than the “Lead Agency” and the “Supporting Agency,” the Trustee shall provide written notice to the following representatives of the Navajo Nation and the United States, in addition to those listed in Section 8.1 above:

For the Navajo Nation:

Authorized representative to receive notices under this Section 8.2:

Assistant Attorney General  
Natural Resources Unit  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, AZ 86515  
Re: Abandoned Uranium Mines

For the United States:

Notices under this Section 8.2 shall refer to “DJ# 90-11-6-19983,” and shall be sent to the following authorized representative:


Chief, Environmental Defense Section  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044

8.3 The Trustee shall submit copies of notices under Sections 8.1 or 8.2 above electronically, in addition to or in lieu of other forms of delivery, as and when instructed by an authorized representative of the Navajo Nation, the United States, the Lead Agency or the Supporting Agency.

THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT.

**FOR THE UNITED STATES OF AMERICA:**

Date: 4/8/15

  
JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

**FOR THE NAVAJO NATION:**

Date: \_\_\_\_\_

\_\_\_\_\_  
HARRISON TSOSIE  
Navajo Nation Attorney General

**FOR THE TRUSTEE:**

Date: \_\_\_\_\_

\_\_\_\_\_  
SADIE HOSKIE, not individually but in a  
representative capacity.

THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT.


**FOR THE UNITED STATES OF AMERICA:**

Date: \_\_\_\_\_

\_\_\_\_\_  
JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

**FOR THE NAVAJO NATION:**

Date: April 7, 2015

  
\_\_\_\_\_  
HARRISON TSOSIE  
Navajo Nation Attorney General

**FOR THE TRUSTEE:**

Date: \_\_\_\_\_

\_\_\_\_\_  
SADIE HOSKIE, not individually but in a  
representative capacity.



THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT.

**FOR THE UNITED STATES OF AMERICA:**

Date: \_\_\_\_\_

\_\_\_\_\_  
JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice


**FOR THE NAVAJO NATION:**

Date: \_\_\_\_\_

\_\_\_\_\_  
HARRISON TSOSIE  
Navajo Nation Attorney General

**FOR THE TRUSTEE:**

Date: 4/30/15

  
\_\_\_\_\_  
SADIE HOSKIE, not individually but in a  
representative capacity.