**MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT**

**AND ORDER ON CONSENT FOR**

**REMEDIAL INVESTIGATION / FEASIBILITY STUDY**

**Use with Model RI/FS ASAOC Statement of Work**

December 2024

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UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION \_\_\_

|  |  |
| --- | --- |
| IN THE MATTER OF:  [Site Name and Location]  [Names of Respondents],[[1]](#footnote-2)  Respondents  and  Names of Settling Federal Agencies[[2]](#footnote-3)  Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act | CERCLA Docket No. \_\_\_\_  **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON** **CONSENT FOR REMEDIAL INVESTIGATION AND FEASIBILITY STUDY[[3]](#footnote-4)** |

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# 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”) and [**insert names or, if there are many, attach appendix listing the settling federal agencies**] (“Settling Federal Agencies” or “SFAs”)]. This Settlement provides for the performance of a Remedial Investigation and Feasibility Study (“RI/FS”) [for the operable unit comprising \_\_\_\_\_\_\_] by Respondents and the payment by Respondents of certain response costs incurred by the United States, and the payment, by Settling Federal Agencies, of certain response costs incurred by the United States and Respondents at or in connection with the “[**insert name**] Site” (the “Site”) generally located at [**address or description of location**] 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 (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14‑14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). [**Insert if applicable:** This authority was 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 delegation**)**.**]
3. In accordance with section 122(j)(1) of CERCLA, 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, the Respondents, and Settling Federal Agencies recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents, and payments made by the United States on behalf of Settling Federal Agencies, in accordance with this Settlement do not constitute an admission of any liability. Respondents and Settling Federal Agencies 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 and Settling Federal Agencies agree not to contest the basis or validity of this Settlement or its terms.

# PARTIES BOUND

1. This Settlement is binding upon EPA and Settling Federal Agencies, and upon Respondents and their successors [and heirs].[[4]](#footnote-5) Unless EPA otherwise consents, (a) any change in ownership or corporate or other legal status of any Respondent, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Respondents’ obligations under this Settlement. Respondents’ responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with ¶ 88.
2. Respondents shall be responsible for ensuring that their officers, directors, employees, agents, contractors, or any other person representing Respondents perform the Work in accordance with the terms of this Settlement. Respondents shall provide notice of this Settlement to each person representing Respondents with respect to the Site or the Work. Respondents shall provide notice of this Settlement to each contractor performing any Work and shall ensure that notice of the Settlement is provided to each subcontractor performing any Work.

# DEFINITIONS

1. Subject to the next sentence, terms used in this Settlement that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:[[5]](#footnote-6)

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Climate Change” means any substantial change in measures of climate (such as temperature or precipitation) lasting for an extended period, including major changes in temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer.

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working Day” means any day other than a Saturday, Sunday, or federal or State holiday.

“Effective Date” means the effective date of this Settlement as provided in Section XXVII.

“Engineering Controls” means constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, airborne particles and/or material, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs ” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between \_\_\_\_ [**same cutoff date as in PRC definition**] and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing,[[6]](#footnote-7) or enforcing this Settlement, including: (i) in developing, reviewing and approving deliverables generated under this Settlement; (ii) in overseeing Respondents’ performance of the Work; (iii) in assisting or taking action to obtain access [or use restrictions] under ¶ 26; (iv) in taking action under ¶ 35 (Access to Financial Assurance); (v) in taking response action described because of Respondents’ failure to take emergency action under Section 6.6 (Emergency Response and Reporting) in the SOW; (vi) in implementing a Work Takeover under ¶ 25; (vii) in implementing community involvement activities including the cost of any technical assistance grant provided under section 117(e) of CERCLA and (viii) in enforcing this Settlement, including all costs paid under Section XIV (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued after [**same cutoff date as in PRC definition**] on EPA’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

“Greener Cleanup” means strategies designed to help minimize the environmental footprint of cleaning up contaminated sites and ensure a protective remedy within the applicable CERCLA statutory and regulatory framework.

“Institutional Controls” means: (a) Proprietary Controls (i.e., easements or covenants running with the land that (i) limit land, water, or other resource use, provide access rights, or both, and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office); and (b) state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, or other resource use to implement, ensure noninterference with, or ensure protectiveness of the response action; (iii) provide information intended to modify or guide human behavior at or in connection with the Site; or (iv) any combination thereof.

“Including” or “including” means “including but not limited to.”

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will 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. As of the date EPA signs this Settlement, rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.[[7]](#footnote-8)

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.[[8]](#footnote-9)

“Owner Respondent” means any Respondent that owns or controls all or a portion of the Site.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means EPA, Respondents and Settling Federal Agencies.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that EPA paid in connection with the Site through [**insert a cutoff date; may be the date of the most recent cost update**], plus all interest on such costs accrued under section 107(a) of CERCLA through such date.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“RI/FS” means the Remedial Investigation and Feasibility Study required under this Settlement.

“Respondents” means [**insert names**].[[9]](#footnote-10) [[10]](#footnote-11)

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement and Order on Consent, all appendixes attached hereto (listed in Section XXI), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I through XXVII and a provision in any appendix or deliverable, the provision in Sections I through XXVII controls.

“Settling Federal Agency” means DoD including its past and present components. DoD means the Department of Defense as described in 10 U.S.C. § 111.[[11]](#footnote-12)

“Settling Federal Agency” means DoD acting by and through the [**insert names of DoD service branches (and DLA) addressed in DoD’s investigation, e.g. Air Force, Army, Marine Corps, Navy, as applicable**]. DoD means the Department of Defense as described in 10 U.S.C. § 111.

“Settling Federal Agency” means[[12]](#footnote-13)

“Site” means the \_\_\_\_\_\_ Superfund Site, comprising approximately \_\_ acres, located at [**address or description of location**] in [**city,**] \_\_\_\_\_\_\_\_County**, [state**] and depicted generally on the map attached as Appendix \_\_.

“Special Account” means the special account, within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.[[13]](#footnote-14)

“State” means the State [or Commonwealth] of \_\_\_\_\_\_.[[14]](#footnote-15)

“Statement of Work” or “SOW” means the document attached as Appendix \_\_ which describes the activities Respondents shall perform to conduct the RI/FS, and any modifications made thereto in accordance with this Settlement.

“Transfer” means 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.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA and Settling Federal Agencies.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any [“hazardous material”] under [**insert appropriate State or tribal statutory terminology and citation**].

“Work” means all obligations of Respondents under Sections VII (Performance of the Work) through X (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 25.

# FINDINGS OF FACT[[15]](#footnote-16)

1. [Identification of the Site by name, location, and description, including characteristics of the Site and a description of the surrounding areas, *e.g*., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas, environmental justice indicators, tribal community.]
2. [A summary of the history of the Site including Site ownership and operations such as process or other activity producing waste, nature of wastes produced.]
3. [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.]
4. [Information that there are hazardous substances and pollutants or contaminants at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where known.]
5. [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.]
6. [Identification of the populations at risk, both human and non-human.]
7. [Health/environmental effects of some of the major contaminants.]
8. The \_\_\_\_\_\_ Site was [listed on] [proposed for inclusion on] the National Priorities List (“NPL”) by EPA pursuant to CERCLA § 105 on [insert month, day, year], [insert Federal Register citation].[[16]](#footnote-17)
9. [Identification of Respondents and Settling Federal Agencies, i.e., name/business; legal status (*i.e*., corporation, partnership, sole proprietor, trust, individual, federal, state or local government, etc.), general categories of Respondents’ and Settling Federal Agencies’ liability under CERCLA § 107(a) and connection with the Site, *e.g*., owner or operator of hazardous waste site, including years of ownership or operation, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]
10. [Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.]
11. [The Regional Administrator of EPA Region \_\_\_, or their delegatee, 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.][[17]](#footnote-18)

# CONCLUSIONS OF LAW AND DETERMINATIONS

1. Based on the Findings of Fact in Section IV [and the administrative record], EPA has determined that:
   1. The Site is a “facility” as defined by section 101(9) of CERCLA.
   2. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by section 101(14) of CERCLA [and “pollutants or contaminants” as defined by section 101(33) of CERCLA].
   3. Each Respondent and Settling Federal Agency is a “person” as defined by section 101(21) of CERCLA.
   4. Each Respondent and Settling Federal Agency is a responsible party under section 107(a) of CERCLA.[[18]](#footnote-19) [[19]](#footnote-20)
      1. Respondents [**insert names**] and Settling Federal Agencies [**insert names**] are the “owner(s)” and/or “operator(s)” of the facility, as defined by section 101(20) of CERCLA and within the meaning of section 107(a)(1) of CERCLA.
      2. Respondents [**insert names**] and Settling Federal Agencies [**insert names**] were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, and within the meaning of section 107(a)(2) of CERCLA.
      3. Respondents [**insert names**] and Settling Federal Agencies [**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.
      4. Respondents [**insert names**] and Settling Federal Agencies [**insert names**] accept or accepted hazardous substances for transport to the facility, within the meaning of section 107(a)(4) of CERCLA.
   5. The conditions described in [¶¶ \_\_ of] the Findings of Fact constitute an actual and/or threatened release of a hazardous substance from the facility as defined by section 101(22) of CERCLA.
   6. The actions required by this Settlement are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation, in accordance with sections 104(a)(1) and 122(a) of CERCLA.
   7. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of section 104(a) of CERCLA and will carry out the Work properly and promptly, in accordance with sections 104(a) and 122(a) of CERCLA if Respondents comply with the terms of this Settlement.

# ORDER AND AGREEMENT

1. 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:

# PERFORMANCE OF THE WORK

1. **Performance of Work in Accordance with SOW**. Respondents shall develop and perform the RI/FS 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 Section 7.5 (Approval of Deliverables) of the SOW.
2. Respondents’ obligations to finance and perform the Work and to pay amounts due under this Settlement are joint and several. In the event of the insolvency of any Respondent or the failure by any Respondent to participate in the implementation of the Settlement, the remaining Respondents shall complete the Work and make the payments.
3. **Modifications to the Work**. EPA may modify the Work under this Settlement if it determines that additional data are needed or that, in addition to tasks defined in the initially approved Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents also may request modification of the approved Work Plan or other deliverables. EPA may notify Respondents of any modification needed under the foregoing two sentences. Respondents shall, within [30] days thereafter, submit a revised work plan and other deliverables as necessary to EPA for approval. Respondents shall implement the revised work plan and any other deliverables upon EPA’s approval in accordance with the procedures of Section 7.5 (Approval of Deliverables) of the SOW.
4. **Compliance with Applicable Law**. Nothing in this Settlement affects Respondents’ obligations to comply with all applicable federal and state laws and regulations. The activities conducted in accordance with this Settlement, if approved by EPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).
5. **Work Takeover**
   1. If EPA determines that Respondents: (1) have ceased to perform any portion of the Work; (2) are seriously or repeatedly deficient or late in performing the Work; or (3) are performing the Work in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a notice of Work Takeover to Respondents, including a description of the grounds for the notice and a period of time (“Remedy Period”) within which Respondents shall remedy the circumstances giving rise to the notice. The Remedy Period will be [20] days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be [10] days.
   2. If, by the end of the Remedy Period, Respondents do not remedy to EPA’s satisfaction the circumstances giving rise to the notice of Work Takeover, EPA may notify Respondents and, as it deems necessary, commence a Work Takeover.
   3. EPA may conduct the Work Takeover during the pendency of any dispute under Section XIV but shall terminate the Work Takeover if and when: (1) Respondents remedy, to EPA’s satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIV that EPA is required to terminate the Work Takeover.

# PROPERTY REQUIREMENTS[[20]](#footnote-21)

1. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement. [Owner Respondent shall refrain from using the Site in any manner that EPA determines will pose an unacceptable risk to public health or welfare or the environment because of exposure to Waste Material, or will interfere with or adversely affect the implementation or integrity of the Work.] Where any action under this Settlement is to be performed in areas owned or controlled by someone other than Respondents, Respondents shall use best efforts to obtain all necessary agreements for access, enforceable by Respondents and EPA, within \_\_ days after the Effective Date, or as otherwise specified in writing by EPA’s Project Coordinator.[[21]](#footnote-22) [[22]](#footnote-23) Respondents shall provide a copy of each agreement required under this ¶ 26 to EPA [and the State].
2. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondents would use 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 cannot accomplish what is required through “best efforts” in a timely manner, they shall notify EPA, and include a description of the steps taken to achieve the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions.
3. Any Respondent who owns or controls any property at the Site shall, prior to entering into a contract to Transfer any of its property that is part of the Site,[[23]](#footnote-24) or 60 days prior to a Transfer of such property, whichever is earlier, (a) give written notice to the proposed transferee that the property is subject to this Settlement; and (b) give written notice to EPA of the proposed Transfer, including the name and address of the transferee. Any Respondent who owns or controls property at the Site also agrees to require that their successors comply with this Section and Section XIX (Records).
4. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

# FINANCIAL ASSURANCE[[24]](#footnote-25)

1. To ensure completion of the Work required under Section VII, 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, and be satisfactory to EPA. As of the date of signing this Settlement, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:
   1. A surety bond guaranteeing payment, performance of the Work, or both, 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;
   2. An irrevocable letter of credit, payable to EPA 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;
   3. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
   4. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
   5. A demonstration by a Respondent that it meets the relevant financial test criteria of ¶ 31 [, accompanied by a standby funding commitment,[[25]](#footnote-26) that requires 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
   6. A guarantee to fund to 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) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 30.
2. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 30.e or 30.f shall, within [30] days of the Effective Date:
   1. Demonstrate that:
      1. the affected Respondent or guarantor has:
         1. 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
         2. 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
         3. tangible net worth of at least $10 million; and
         4. 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:
         1. 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
         2. 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
         3. tangible net worth of at least $10 million; and
         4. 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
   2. submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant’s report of the entity’s financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of signature of this Settlement, a sample letter and report are available 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/>.
3. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 30.e or 30.f shall also:
   1. annually resubmit the documents described in ¶ 31.b within 90 days after the close of the affected Respondent’s or guarantor’s fiscal year;
   2. notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
   3. provide to EPA, within 30 days of EPA’s request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 31.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.
4. Respondents have selected, and EPA has found satisfactory, a [**insert type**] as an initial form of financial assurance.[[26]](#footnote-27) Respondents shall, within [30] days after the Effective Date, seek EPA’s approval of the form of Respondents’ financial assurance.[[27]](#footnote-28) Within 30 days after [the Effective Date / EPA’s approval,] Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer in accordance with ¶ 86.
5. 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 ¶ 36 (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.
6. **Access to Financial Assurance[[28]](#footnote-29)**
   1. If EPA issues a notice of a Work Takeover under ¶ 25.b, then, in accordance with any applicable financial assurance mechanism [**if a standby funding commitment requirement is included in ¶ 30.e, insert:** and/or related standby funding commitment], EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 35.d.
   2. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the 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 ¶ 35.d.
   3. If, upon issuance of a notice of a Work Takeover under ¶ 25, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [including the 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 ¶ 30.e or 30.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.
   4. Any amounts required to be paid under this ¶ 35 will be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, 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 Federal Deposit Insurance Corporation (“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 Fund or into 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 Fund.
7. **Modification of Amount, Form****, or Terms of Financial Assurance**. Beginning after the first anniversary of the Effective Date or at any other time agreed to by the Parties, Respondents may request to change the form, terms, or amount of the financial assurance mechanism. Respondent shall submit any request to EPA in accordance with ¶ 33, and shall 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 regarding the request. Respondents may modify the form, terms, or the amount of the financial assurance mechanism only in accordance with: (a) EPA’s approval; or (b) any resolution of a dispute on the appropriate amount of financial assurance under Section XIV. 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. Respondents shall submit to EPA, within 30 days after receipt of EPA’s approval, or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.
8. **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 Completion of Work under Section 7.7 of the SOW (Notice of Completion of RI/FS Work); (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 XIV.

# INDEMNIFICATION AND INSURANCE

1. **Indemnification**
   1. EPA does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA’s authorized representative under section 104(e)(1) of CERCLA. Respondents shall indemnify and save and hold harmless EPA and its officials, agents, employees, contractors, subcontractors, and representatives for or from any 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, subcontractors, and any persons acting on Respondents’ behalf or under their control, in carrying out activities under this Settlement, including any claims arising from any designation of Respondents as EPA’s authorized representatives under section 104(e)(1) of CERCLA. Further, Respondents agree to pay EPA all costs it incurs including attorneys’ fees and other expenses of litigation and settlement arising from, or on account of, claims made against EPA 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 under this Settlement. EPA may not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities under this Settlement. The Respondents and any such contractor may not be considered an agent of EPA.
   2. EPA may give Respondents notice of any claim for which EPA plans to seek indemnification in accordance with this ¶ 38, and shall consult with Respondents prior to settling such claim.
2. Respondents covenant not to sue and shall not assert any claim against EPA for damages or reimbursement or for set-off of any payments made or to be made to EPA, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Respondents shall indemnify and save and hold EPA harmless with respect to any 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 at or relating to the Site, including claims on account of construction delays.
3. **Insurance**. Respondents shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of $1 million per occurrence; (b) automobile liability insurance with limits of liability of $1 million per accident; and (c) umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents under this Settlement. Respondents shall maintain this insurance until the first anniversary after EPA’s issuance of the Notice of Completion of RI/FS Work under Section 7.7 of the SOW. In addition, for the duration of this 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. Prior to commencement of the Work, Respondents shall provide to EPA 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. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, 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 of this case.

# PAYMENTS FOR RESPONSE COSTS

1. **Payment by Respondents for Past Response Costs**. Within 30 days after the Effective Date, Respondents shall pay EPA, in reimbursement of Past Response Costs in connection with the Site, $\_\_\_\_\_. Respondents shall make payment at https://www.pay.gov[[29]](#footnote-30) using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID number listed in ¶ 86 and the purpose of the payment. Respondents shall send notices of this payment to EPA in accordance with ¶ 86. If the payment required under this Paragraph is late, Respondents shall pay, in addition to any stipulated penalties owed under Section XV, an additional amount for Interest accrued from the Effective Date until the date of payment.
2. **Payments by Respondents for Future Response Costs[[30]](#footnote-31)**
   1. **Periodic Bills**. On a periodic basis, EPA will send Respondents a bill for Future Response Costs, including a [**“e-Recovery Report” or other standard cost summary**] listing direct costs paid by EPA, its contractors, and subcontractors and related indirect costs. Respondents may initiate a dispute under Section XIV regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether EPA has made an arithmetical error; (2) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (3) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. 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 ¶ 42.b, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the FDIC and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV shall be the exclusive mechanisms for resolving disputes regarding Respondents’ obligation to reimburse EPA for its Future Response Costs. Respondents shall specify in the Notice of Dispute the contested costs and the basis for the objection.
   2. **Payment of Bill**. Respondents shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Respondents shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (1) the uncontested bill or portion of bill, if late, and; (2) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Respondents shall make payment at https://www.pay.gov using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site/Spill ID number listed in ¶ 86 and the purpose of the payment. Respondents shall send notices of this payment to EPA.
3. **Payments by Settling Federal Agencies[[31]](#footnote-32)**
   1. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay:
      1. To EPA $\_\_\_\_\_\_, in payment of Past Response Costs and Future Response Costs;
      2. To the State $\_\_\_\_\_\_ [insert as appropriate: in payment of State Past Response Costs and State Future Response Costs] by Automated Clearing House (“ACH”) Electronic Funds Transfer in accordance with instructions provided by the State; and
      3. To Respondents $\_\_\_\_\_\_ [insert as appropriate: in payment of Respondents’ Past Response Costs and Respondents’ Future Response Costs] by Automated Clearing House (“ACH”) Electronic Funds Transfer in accordance with instructions provided by Respondents.
   2. **Interest.** If any payment required by ¶ 43.a is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.
   3. The Settling Federal Agencies’ payment[s] under this Settlement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement constitutes a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.
4. **Deposit of Payments**. EPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 41, 42, and 43.a(1) 43.a(1) in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

# [NATURAL RESOURCE DAMAGES][[32]](#footnote-33)

1. **[**For the purposes of Section 113(g)(1) of CERCLA, the parties agree that, upon issuance of this Order for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.]

# FORCE MAJEURE

1. “Force majeure,” for purposes of this Settlement, means 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. Given the need to protect public health and welfare and the environment, 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.
2. If any event occurs for which Respondents will or may claim a force majeure, Respondents shall notify EPA’s Project Coordinator by email. The deadline for the initial notice is \_\_ days after the date Respondents first knew or should have known that the event would likely delay performance. Respondents shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Respondents knew or should have known. Within \_\_ days thereafter, Respondents shall send a further notice to EPA that includes: (i) a description of the event and its effect on Respondents’ completion of the requirements of the Settlement; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Respondents to complete the requirements of the Settlement; (iv) 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; and (v) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 46 and whether Respondents have exercised their best efforts under ¶ 46, EPA may, in its unreviewable discretion, excuse in writing Respondents’ failure to submit timely or complete notices under this Paragraph.
3. EPA will notify Respondents of its determination whether Respondents are entitled to relief under ¶ 46, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. 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. Respondents may initiate dispute resolution under Section XIV regarding EPA’s determination within 15 days after receipt of the determination. In any such proceeding, Respondents have the burden of proving that they are entitled to relief under ¶ 46 and that their proposed extension was or will be warranted under the circumstances.
4. The failure by EPA to timely complete any activity under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from timely completing a requirement of the Settlement, Respondents may seek relief under this Section.

# DISPUTE RESOLUTION

1. Unless otherwise provided in this Settlement, Respondents shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.[[33]](#footnote-34)
2. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute (“Notice of Dispute”) to EPA. A notice is timely if sent within 30 days after receipt of the EPA notice or determination giving rise to the dispute or within 15 days in the case of a force majeure determination. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 20 days after the dispute arises, unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Respondents initiate formal dispute resolution under ¶ 52. [By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.]
3. **Formal Dispute Resolution**
   1. **Statement of Position**. Respondents may initiate formal dispute resolution by serving on EPA, within [20] days after the conclusion of informal dispute resolution under ¶ 51, an initial Statement of Position regarding the matter in dispute. EPA’s responsive Statement of Position is due within [20] days after receipt of the initial Statement of Position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within [10] days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to [45] days and may allow the submission of supplemental statements of position.
   2. **Formal Decision**. The Director of the [Superfund & Emergency Management Division], EPA Region \_\_, will issue a formal decision resolving the dispute (“Formal Decision”) based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Respondents.
4. **Escrow Account**.[[34]](#footnote-35) For disputes regarding a Future Response Cost billing, Respondents shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the FDIC; (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Respondents shall cause the escrow agent to pay the amounts due to EPA under ¶ 42, if any, by the deadline for such payment in ¶ 42. Respondents are responsible for any balance due under ¶ 42 after the payment by the escrow agent.
5. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 57.

# STIPULATED PENALTIES

1. Unless the noncompliance is excused under Section XIII (Force Majeure), Respondents are liable to EPA for the following stipulated penalties:
   1. for any failure: (i) to pay any amount due under Section XI; (ii) [to establish and maintain financial assurance in accordance with Section IX]; (iii) [to establish any escrow account required under ¶ 53]; (iv) to submit timely or adequate deliverables, including [**list major deliverables and compliance milestones**]:

|  |  |
| --- | --- |
| Period of Noncompliance | Penalty Per Noncompliance Per Day |
| 1st through 14th day | $ |
| 15th through 30th day | $ |
| 31st day and beyond | $ |

* 1. for any failure to submit timely or adequate deliverables required by this Settlement other than those specified in ¶ 55.a:

|  |  |
| --- | --- |
| Period of Noncompliance | Penalty Per Noncompliance Per Day |
| 1st through 14th day | $ |
| 15th through 30th day | $ |
| 31st day and beyond | $ |

1. **Work Takeover Penalty**. If EPA commences a Work Takeover under ¶ 25, Respondents are liable for a stipulated penalty in the amount of $\_\_\_\_\_\_\_\_. This stipulated penalty is in addition to the remedy available to EPA under ¶ 35 (Access to Financial Assurance).
2. **Accrual of Penalties**. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliances with this Settlement. Stipulated penalties accrue regardless of whether Respondents have been notified of their noncompliance, and regardless of whether Respondents have initiated dispute resolution under Section XIV, provided, however, that no penalties will accrue as follows:
   1. with respect to a submission that EPA subsequently determines is deficient under ¶ [7.5] 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; or
   2. with respect to a matter that is the subject of dispute resolution under Section XIV, during the period, if any, beginning on the 21st day after the later of the date that EPA’s Statement of Position is received or the date that Respondents’ reply thereto (if any) is received until the date of the Formal Decision under ¶ 52.b.
3. **Demand and Payment of Stipulated Penalties**. EPA may send Respondents a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Respondents may initiate dispute resolution under Section XIV within 30 days after receipt of the demand. Respondents shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Respondents shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Respondents shall make payment at https://www.pay.gov using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site/Spill ID number listed in ¶ 86, and the purpose of the payment. Respondents shall send a notice of this payment to EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Respondents under the Settlement.
4. Nothing in this Settlement limits the authority of EPA: (a) to seek any remedy otherwise provided by law for Respondents’ failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Respondents’ noncompliances with this Settlement or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, and punitive damages pursuant to section 107(c)(3) of CERCLA, provided, however, that EPA may not seek civil penalties under section 122(l) of CERCLA or punitive damages pursuant to section 107(c)(3) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Settlement, except in the case of a willful noncompliance with this Settlement.
5. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.
6. No action or decision by EPA pursuant to this Settlement gives rise to any right to judicial review, except as set forth in section 113(h) of CERCLA.

# COVENANTS BY EPA

1. **Covenants for Respondents**. Subject to ¶ 65, EPA covenants not to sue or to take administrative action against Respondents under sections 106 and 107(a) of CERCLA regarding the Work [**,** Past Response Costs,] and Future Response Costs.
2. **Covenants for Settling Federal Agencies by EPA.** Subject to ¶ 65, EPA covenants not to take administrative action against Settling Federal Agencies pursuant to sections 106 and 107(a) of CERCLA for the Work [, Past Response Costs,] and Future Response Costs.][[35]](#footnote-36) [[36]](#footnote-37)
3. The covenants under ¶ 62 and ¶ 63: (a) take effect upon the Effective Date; (b) are conditioned on the complete and satisfactory performance by Respondents and Settling Federal Agencies of the requirements of this Settlement; (c) extend to the successors of each Respondent but only to the extent that the alleged liability of the successor of the Respondent is based solely on its status as a successor of the Respondent; and (d) do not extend to any other person.
4. **General Reservations**. Notwithstanding any other provisions of this Settlement, EPA reserves, and this Settlement is without prejudice to, all rights against Respondents and Settling Federal Agencies regarding the following:
   1. liability for failure by Respondents or Settling Federal Agencies to meet a requirement of this Settlement;
   2. liability for performance of response action other than the Work;
   3. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
   4. [**if needed:** liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry regarding the Site;]
   5. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
   6. criminal liability.
5. Subject to ¶ 62 and ¶ 63, nothing in this Settlement limits any authority of EPA to take, direct, or order all appropriate action to protect public health and welfare 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 to request a Court to order such action.

# COVENANTS BY RESPONDENTS AND SETTLING FEDERAL AGENCIES

1. **Covenants by Respondents**
   1. Subject to ¶ 68, Respondents covenant not to sue and shall not assert any claim or cause of action against the United States under CERCLA, RCRA § 7002(a), the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Work, [Past Response Costs,] or Future Response Costs.[[37]](#footnote-38)
   2. Subject to ¶ 68, Respondents covenant not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work, [Past Response Costs,] Future Response Costs.[[38]](#footnote-39)
2. **Respondents’ Reservation**. The covenants in ¶ 67 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 65.a through 65.e.
3. ***De Minimis*/Ability to Pay Waiver.[[39]](#footnote-40)** Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have against any third party who enters or has entered into a *de minimis* or “ability-to-pay” settlement with EPA to the extent Respondents’ claims and causes of action are within the scope of the matters addressed in the third party’s settlement with EPA, provided, however, that this waiver does not apply if the third party asserts a claim or cause of action regarding the Site against the Respondents. Nothing in this Settlement limits Respondents’ rights under section 122(d)(2) of CERCLA to comment on any *de minimis* or ability-to-pay settlement proposed by EPA.
4. **De Micromis** **Waiver**.[[40]](#footnote-41) Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have 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. This waiver does not apply to any 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 under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA, 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 the waiver would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.
5. **MSW Waiver[[41]](#footnote-42)**
   1. “Municipal Solid Waste” or “MSW” means waste material: (1) generated by a household (including a single or multifamily residence); or (2) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (iii) 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.
   2. Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have 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% of the total volume of waste at the Site. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing MSW 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 under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA, 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. This waiver does not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.[[42]](#footnote-43)
6. 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.[[43]](#footnote-44)
7. **Covenant by Settling Federal Agencies.** Settling Federal Agencies shall not seek reimbursement from the Fund through CERCLA or any other law regarding the Work, [Past Response Costs,] Future Response Costs.[[44]](#footnote-45) This covenant does not preclude demand for reimbursement from the Fund of costs incurred by a Settling Federal Agency in the performance of its duties (other than in accordance with this Settlement) as lead or support agency under the NCP.

# EFFECT OF SETTLEMENT; CONTRIBUTION

1. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which each Respondent and each Settling Federal Agency has, as of the Effective Date, resolved its liability to the United States within the meaning of sections 113(f)(2), 113(f)(3)(B), and 122(h)(4) of CERCLA; and (b) each Respondent and each Settling Federal Agency 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 [, Past Response Costs,] and Future Response Costs,[[45]](#footnote-46) provided, however, that if the United States exercises rights against Respondents (or if EPA or the federal natural resource trustee [or the State] assert rights against Settling Federal Agencies)[[46]](#footnote-47) under the reservations in ¶¶ 65.a through 65.d, the “matters addressed” in this Settlement do not include those response costs or response actions that are within the scope of the exercised reservation.
2. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA no later than 60 days prior to the initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA within 10 days after service of the complaint on such Respondent. 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.
3. **Res Judicata and Other Defenses**. In any subsequent administrative or judicial proceeding initiated against any Respondent by EPA or by the United States on behalf of EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.
4. Nothing in this Settlement diminishes the right of the United States under sections 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Settlement 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).
5. 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 when EPA receives from such Respondent the payment(s) required by ¶ 41 (Payment for Past Response Costs) 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 ¶ 74 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 notifies Respondents that it will not make this Settlement effective, as authorized in ¶ 93, the tolling period ends 90 days after the date of such notice.

# RECORDS

1. **Respondents’ Certification**.[[47]](#footnote-48) Each Respondent certifies individually that: (a) it has implemented a litigation hold on documents and electronically stored information relating to the Site, including information relating to its potential liability under CERCLA regarding the Site, since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site; and (b) it has fully complied with any and all EPA requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA. [**If needed, add a sentence regarding known document or data losses**.]
2. **Settling Federal Agency Acknowledgment.[[48]](#footnote-49)** The United States acknowledges that each Settling Federal Agency: (a) is subject to all applicable federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site under sections 104(e) and 122(e)(3)(B) of CERCLA, [and] section 3007 of RCRA [, and State law].
3. **Retention of Records and Information**
   1. Respondents shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after the Notice of Completion of the Work under Section 7.7 of the SOW (the “Record Retention Period”):
      1. All records regarding Respondents’ liability under CERCLA regarding the Site;
      2. All reports, plans, permits, and documents submitted to EPA in accordance with this Settlement, including all underlying research and data; and
      3. All data developed by, or on behalf of, Respondents in the course of performing the Work.[[49]](#footnote-50)
   2. [**If needed**: [**name of each Respondent that is an owner or operator**] shall retain all Records regarding the liability of any person under CERCLA regarding the Site during the Record Retention Period.]
   3. At the end of the Record Retention Period, Respondents shall notify EPA that it has 90 days to request the Respondents’ Records subject to this Section. Respondents shall retain and preserve their Records subject to this Section until 90 days after EPA’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.
4. Respondents shall provide to EPA, upon request, copies of all Records and information required to be retained under this Section. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
5. **Privileged and Protected Claims**
   1. Respondents may assert that all or part of a record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that Respondents comply with ¶ 83.b, and except as provided in ¶ 83.c.
   2. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Respondents shall provide the record to Plaintiff in redacted form to mask the privileged or protected portion only. Respondents shall retain all records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents’ favor.
   3. Respondents shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including 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 in accordance with this Settlement.
6. **Confidential Business Information Claims**. Each Respondent is entitled to claim that all or part of a record[[50]](#footnote-51) submitted to EPA under this Section is Confidential Business Information (“CBI”) that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Respondent shall segregate all records or parts thereof submitted under this Settlement which it claims are CBI and label them as “claimed as confidential business information” or “claimed as CBI.” Records that a submitter properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA, or if EPA notifies the submitter that the records are not entitled to confidential treatment 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 the submitter.
7. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

# NOTICES AND SUBMISSIONS

1. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

|  |  |
| --- | --- |
| As to EPA: | *via email to*:  [**Superfund & Emergency Mgmt. Div. Director’s email address**]  and  [**EPA Project Coordinator’s email address**]  Re: Site/Spill ID # \_\_\_\_\_\_\_\_[[51]](#footnote-52) [[52]](#footnote-53) |
| As to the Regional Financial Management Officer: | *via email to*:  \_\_\_\_\_\_\_\_\_\_\_\_@epa.gov  Re: Site/Spill ID # \_\_\_\_\_\_\_\_ |
|  |  |
| As to Respondents: | *via email to*:  [**SD Project Coordinator’s email address**] |

# APPENDIXES

1. The following appendixes are attached to and incorporated into this Settlement:

“Appendix A” is the list of Respondents.

“Appendix B” is the map [description] of the Site.

“Appendix C” is the Statement of Work.

# MODIFICATIONS TO SETTLEMENT

1. Except as provided in ¶ 23 (Modifications to the Work), both nonmaterial and material modifications to the Settlement and ¶ 7.5 of the SOW (Approval of Deliverables) must be in writing and are effective when signed (including electronically signed) by the Parties.

# ATTORNEY GENERAL APPROVAL[[53]](#footnote-54)

1. 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.

# SIGNATORIES

1. The undersigned representative of EPA and each undersigned representative of a Respondent certifies that he or she is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such party to this Settlement.

# INTEGRATION

1. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement embodied herein.

# PUBLIC COMMENT[[54]](#footnote-55)

1. Final consent by EPA of its covenant regarding [Past Response Costs / Future Response Costs / Past and Future Response Costs] is subject to a 30 day public comment period under section 122(i) of CERCLA. EPA may withhold consent regarding, or seek to modify, all or part of Section XI (Payments for Response Costs) and the covenant regarding [Past Response Costs / Future Response Costs / Past and Future Response Costs] if comments received disclose facts or considerations that indicate that the covenant is inappropriate, improper, or inadequate.

# EFFECTIVE DATE

1. [Subject to the next sentence, ]This Settlement is effective when EPA issues notice to Respondents that the Regional Administrator or their delegatee has signed the Settlement. [EPA’s covenant as to [Past Response Costs / Future Response Costs / Past and Future Response Costs] is effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from such covenant].[[55]](#footnote-56)

Signature Page for [Administrative Settlement Agreement] regarding the [**site name**] Superfund Site

|  |  |
| --- | --- |
| **IT IS SO AGREED AND ORDERED**: |  |
|  | **BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY**: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_  Dated | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [**Name**]  Regional Administrator [or designee], Region \_\_ |

Signature Page for [Administrative Settlement Agreement] regarding the [**site name**] Superfund Site

|  |  |
| --- | --- |
|  | **FOR[[56]](#footnote-57)** |
| \_\_\_\_\_\_\_\_\_\_  Dated | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  [**Name**]  [**Title**]  [**Address**] |

Signature Page for [Administrative Settlement Agreement] regarding the [**site name**] Superfund Site

**FOR** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:[[57]](#footnote-58)

[Print name of SFA]

1. If there are many Respondents, attach an appendix and refer to it instead. [↑](#footnote-ref-2)
2. If many SFAs, reference appendix. [↑](#footnote-ref-3)
3. This caption is a table. To make it easier to navigate within it, turn on gridlines as follows: Click anywhere in the table. Under the “Table Tools” menu that appears in the upper ribbon, click the “Layout” button. In the layout ribbon that appears, on the far left, click the “View Gridlines” button. [↑](#footnote-ref-4)
4. Include “heirs” if any Settling Respondent is both an individual and an owner of the Site. [↑](#footnote-ref-5)
5. These definitions may be augmented or omitted as appropriate. [↑](#footnote-ref-6)
6. Note that CERCLA § 104(a)(1) requires that potentially responsible parties must agree to pay oversight costs. [↑](#footnote-ref-7)
7. If including ¶ 71 (MSW Waiver), insert the following definition.] [“Municipal solid waste” or “MSW” means 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.] [↑](#footnote-ref-8)
8. If the settlement will resolve natural resource damages, add a definition for that here. A number of additional provisions addressing NRD also will be needed throughout the Settlement. [↑](#footnote-ref-9)
9. If SFAs are making payments toward past and/or future response costs incurred by Respondents, please add definitions for “Respondents’ Past Response Costs” and “Respondents’ Future Response Costs.” DOJ’s Environmental Defense Section will generally take the lead in negotiating these definitions. [↑](#footnote-ref-10)
10. If there are many Respondents, list them in an appendix and insert this definition: “Respondents” means those Parties identified in Appendix \_\_.” [↑](#footnote-ref-11)
11. Use the first SFA definition above if the potential liability of DoD or one of its service branches is being resolved and DOD has duly responded to any outstanding section 104(e) information requests, and otherwise represented that it investigated the potential responsibility at the Site of all of its service branches (e.g., Air Force, Army, Marine Corps, Navy) and the Defense Logistics Agency (DLA). Use the second SFA definition if the potential liability of DoD or one of its service branches is being resolved and DoD has represented that only certain service branches were investigated for their potential liability at the Site. Use the third SFA definition for non-DoD SFAs, and generally use the name of the responsible agency component rather than the name of the agency (e.g., U.S. Forest Service rather than U.S. Department of Agriculture). If both DoD SFAs and non-DoD SFAs are involved at the Site, combine the DoD and non-DoD SFA definitions.

    If the SFAs are making payments to the Settling Respondents to reimburse past and/or future response costs paid by Settling Respondents, add definitions for “Settling Respondents’ Past Response Costs” and “Settling Respondents’ Future Response Costs.” DOJ’s Environmental Defense Section will generally take the lead in negotiating these definitions. [↑](#footnote-ref-12)
12. If the Region has any information suggesting federal agency liability, such information should be provided to DOJ as soon as possible. For information regarding CERCLA § 104(e) information requests to federal agencies, please review the “Guidance on Issuing CERCLA § 104(e)(2) Information Requests to Federal Agencies at Privately-owned Superfund Sites” (June 14, 2004), available at https://www.epa.gov/enforcement/guidance-issuing-superfund-104e2-information-requests-federal-agencies-privately-owned. [↑](#footnote-ref-13)
13. Keep this definition if ¶ 44 (Deposit of Payments) provides that payments for past or future costs may be deposited into the Site’s Special Account. Modify as appropriate if EPA has established more than one special account. [↑](#footnote-ref-14)
14. Add a definition for “Tribe” if there is one that has a role or interest at the Site: “Tribe” means the \_\_\_\_\_\_\_ Tribe.” If the Site is entirely on tribal land, substitute “Tribe” for “State” throughout the Decree. [↑](#footnote-ref-15)
15. The FOFs are site-specific. The case team should prepare FOFs consistent with the language here. The FOFs should support each conclusion of law. [↑](#footnote-ref-16)
16. Include if the Site is an NPL site. [↑](#footnote-ref-17)
17. If the Settlement includes a *compromise* of response costs but Site costs will be less than $500,000, in which case AG approval will not be needed, include this Finding of Fact. If the Settlement includes a compromise of response costs and total response costs are expected to exceed $500,000 (excluding interest) in total site costs, inclusive of past and anticipated future costs, then the Attorney General also must approve the settlement. [↑](#footnote-ref-18)
18. Regions may add ¶ 19.e describing an Imminent and Substantial Endangerment if there is one present at the site. [↑](#footnote-ref-19)
19. The case team should specify each category of liability under section 107, using these sub-paragraphs. [↑](#footnote-ref-20)
20. Here and in other places in this Section, optional text to be used if there is an Owner Respondent is set off in brackets. [↑](#footnote-ref-21)
21. As appropriate, the case team can specifically identify the purposes for which access is anticipated, using the following optional language to paragraph 26:

    As used in this Section, “Affected Property” means any real property, including the Site, where EPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the RI.

    b. The following is a non-exclusive list of activities for which access is required:

    **[NOTE: Augment this list as appropriate.]**

    Implementing the Work and overseeing compliance with the Settlement;

    Conducting investigations regarding contamination at or near the Site;

    Assessing the need for and planning response actions at or near the Site;

    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

    Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property. [↑](#footnote-ref-22)
22. Include the ¶ below if land, water, or other resource use restrictions are needed. Customize the list as appropriate.

    1. Land, Water, or Other Resource Use Restrictions. The following is a list of land, water, or other resource use restrictions applicable:
       1. Prohibiting the following activities which could interfere with the RI/FS: \_\_\_\_\_\_; and
       2. Ensuring that any new structures on the Affected Property will not be constructed in the following manner which could interfere with the RI/FS: \_\_\_\_\_

    [↑](#footnote-ref-23)
23. Case teams may expand this language to include new leases, licenses, or easements as appropriate given site-specific circumstances. [↑](#footnote-ref-24)
24. Case teams should try to 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 examine the form and substance of all financial assurance mechanisms submitted by Respondents, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee pursuant to ¶ 29.e or 29.f have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in their submission all of their financial assurance obligations (under CERCLA, RCRA, 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 such entity meets the financial test criteria). If a Respondent is a municipality or an individual, or if case teams have financial assurance questions, contact financial assurance team members within the Office of Site Remediation Enforcement. For more specific informhttps://www.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders.] [↑](#footnote-ref-25)
25. A sample of a standby funding commitment is available via the link in ¶ 31.b. [↑](#footnote-ref-26)
26. If the case team and Respondents have pre-negotiated the form of the financial assurance, use this text. [↑](#footnote-ref-27)
27. Otherwise, use this text. [↑](#footnote-ref-28)
28. 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. [↑](#footnote-ref-29)
29. The pay.gov system includes alternatives for making payment by credit card, debit card, automatic clearinghouse (ACH), and electronic fund transfer (EFT). If a Settling Party cannot make payment using the pay.gov system, the EPA attorney should contact their finance office about alternative methods of payment. [↑](#footnote-ref-30)
30. Keep ¶¶ 42.a (Periodic Bills) and 43 **(**Deposit Payments) in all Settlements. If Respondents will be prepaying any part of EPA’s Future Response Costs, add these additional subsections to ¶ 41, as appropriate. 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>.]

    c. **Prepayment of Future Response Costs**. Within 30 days after the Effective Date, Respondents shall pay to EPA $ \_\_\_\_\_ as a prepayment of [**if the ¶ 42.d (Shortfall Payments) optional provision for replenishment is used substitute**: as an initial payment toward] Future Response Costs. Payment must be made in accordance with ¶ 43.a. The total amount paid will be deposited by EPA in the [**Site name**] Future Response Costs Special Account . These funds will be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

    **The paragraph below (Shortfall Payments) is an optional provision for replenishment of the Future Response Costs Special Account in the event of a shortfall in the prepayment.**]

    d. **Shortfall Payments.** If at any time prior to the date EPA sends Respondents the first bill under ¶ [41.a] (Periodic Bills), or one year after the Effective Date, whichever is earlier, the balance in the 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 ¶ [41.a]. The amounts paid shall be deposited by EPA in the Future Response Costs Special Account. These funds will be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

    e. **Unused Amount**. After EPA issues the Notice of Completion of Work pursuant to Section [7.7] of the SOW and a final accounting of the Future Response Costs Special Account (including crediting Respondents for any amounts received under ¶¶ [42.c] (Prepayment of Future Response Costs) [, [42.d] (Shortfall Payments),] or 41.a (Periodic Bills), EPA will, in its sole discretion, [**choose one or more of the following three clauses**: “offset the next Future Response Costs bill by the unused amount paid by Respondents pursuant to ¶ [42.c] (Prepayment of Future Response Costs) [or [42.d] (Shortfall Payments)];” “apply any unused amount paid by Respondents pursuant to ¶ [42.c] (Prepayment of Future Response Costs) [or 42.d (Shortfall Payments)] 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 ¶ [42.c] (Prepayment of Future Response Costs) [or 42.d (Shortfall Payments)].”] [**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.] [↑](#footnote-ref-31)
31. If SFAs are making payments, insert the following paragraphs. [↑](#footnote-ref-32)
32. Include the following section in RI/FS AOCs for Superfund Alternative Approach settlements. [↑](#footnote-ref-33)
33. The Regions should develop a record for the dispute and its resolution. [↑](#footnote-ref-34)
34. Optional. [↑](#footnote-ref-35)
35. If SFAs are parties to the Settlement, insert the this covenant. [↑](#footnote-ref-36)
36. EPA’s covenant may also be extended to a federal PRP contractor where the federal PRP settlement includes the contractor. This generally occurs where the contractor is indemnified by the United States under the contract. [↑](#footnote-ref-37)
37. If SFAs are participating and are paying Respondents’ past and future response costs, add to this covenant: “Respondents’ Past Response Costs and Settling Respondents Future Response Costs.” [↑](#footnote-ref-38)
38. If the Settlement contains a Future Response Cost prepayment provision under which Respondents may receive a return of unused amounts under option 3 of ¶ 42.e (Unused Amount), include ¶ 66.c.

    c. [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 ¶ 42.e (Unused Amount).] [↑](#footnote-ref-39)
39. Keep this ¶ if there are known or potential *de minimis* and/or ability to pay (“ATP”) PRPs at the Site. Do not change the scope of the waiver to something less than “the matters addressed in the third party’s settlement with EPA.” Note that this waiver will not affect Respondents’ right to oppose entry of any such future *de minimis* or ATP settlement through the public comment process. [↑](#footnote-ref-40)
40. Keep this waiver only for non-NPL sites. [↑](#footnote-ref-41)
41. Keep only for non-NPL MSW Sites. [↑](#footnote-ref-42)
42. 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:

    c. The waiver[s] under this ¶ 70 do not apply to Respondent [insert name]’s contractual indemnification claim against [insert name]. [↑](#footnote-ref-43)
43. Keep only for non-NPL sites. [↑](#footnote-ref-44)
44. If SFAs are participating and are paying Respondents’ past and future response costs, add to this covenant: “Respondents’ Past Response Costs and Respondents Future Response Costs.” [↑](#footnote-ref-45)
45. If SFAs are participating and payingRespondents’ past and future response costs, insert: “, Respondents’ Past Response Costs and Respondents’ Future Response Costs] [↑](#footnote-ref-46)
46. Keep this text if SFAs are participating. [↑](#footnote-ref-47)
47. Alternatively, if a Respondent cannot make this certification, it can substitute “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.” [↑](#footnote-ref-48)
48. If SFAs, include this paragraph. EPA attorneys must assure that the Agency has received a written response to any information requests that it has sent to SFAs containing a certification substantially similar to that required from private PRPs. [↑](#footnote-ref-49)
49. The case team has flexibility to add to this paragraph other categories of information that the agency wants the Respondent to retain during the Record Retention Period. Be specific about what the agency wants, and consider proposals to exclude categories of ESI that may be inaccessible. Consult your e-discovery office coordinator for advice regarding inaccessible ESI. [↑](#footnote-ref-50)
50. Don’t substitute “Record” for “record” here, as this provision is not limited to “Records” referenced in ¶ 80.a. [↑](#footnote-ref-51)
51. This block of addresses is a table. To make it easier to navigate within it, turn on gridlines as follows: Click anywhere in the table. Under the “Table Tools” menu that appears in the upper ribbon, click the “Layout” button. In the layout ribbon that appears, on the far left, click the “View Gridlines” button. [↑](#footnote-ref-52)
52. If needed add mailing addresses for Director, Superfund & Emergency Management Division, EPA Project Coordinator, and Regional Financial Management Officer. Include Site/Spill ID. If needed add SDs’ Project Coordinator’s mailing address. [↑](#footnote-ref-53)
53. Attorney General approval is required if the Settlement includes a compromise of response costs *and* projected response costs for the Site are more than $500,000 (excluding interest). If AG approval is required, the case team should consult with 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 AG approval is not required (i.e., if total response costs are less than $500,000), insert this finding in the findings of fact section.

    The Regional Administrator of EPA Region \_\_, or their delegatee, 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. [↑](#footnote-ref-54)
54. Optional. Include this Section if the Settlement includes a compromise of any response costs. [↑](#footnote-ref-55)
55. Include this sentence if the Settlement includes a cost compromise. [↑](#footnote-ref-56)
56. A separate signature page is required for each settler. [↑](#footnote-ref-57)
57. If Settling Federal Agencies, insert signature blocks for each Settling Federal Agency. If Settling Federal Agencies are too numerous or signature by each and every SFA is otherwise impractical, DOJ may sign the Settlement on behalf of the Settling Federal Agencies. [↑](#footnote-ref-58)