UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF: East Waterway Operable Unit of the Harbor Island Superfund Site Port of Seattle, City of Seattle, and King County, Respondents Proceeding Under Sections 104, 107, and 122 of the Comprehensive, Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL DESIGN**

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the Port of Seattle, City of Seattle, and King County ("Respondents"). This Settlement provides for the performance of a Remedial Design (RD) by Respondents and the payment of certain response costs incurred by the United States at or in connection with the East Waterway Operable Unit ("EWOU") of the Harbor Island Superfund Site (the "Site") located immediately to the southwest of the downtown area of Seattle, Washington, and generally depicted on the diagram which is Appendix A to this Settlement.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. This authority was delegated to the EPA Administrator on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 10 to the Branch Manager, Remedial Cleanup Branch by EPA Region 10 Delegations R10 14-14-C (July 30, 2024) and R10 14-14-D (July 30, 2024).

3. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration, United States Fish and Wildlife Service, Suquamish Tribe, Muckleshoot Indian Tribe, and Yakama Nation 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 these trustees to participate in the negotiation of this Settlement.

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

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondents and their successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement.

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

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

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

III. DEFINITIONS

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

"Affected Property" shall mean all real property within the EWOU and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the RD.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

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

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

"Ecology" shall mean the Washington State Department of Ecology and any of its successor departments or agencies of the State of Washington.

"EPA" shall mean the United States Environmental Protection Agency.

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

"EWOU" shall mean the East Waterway Operable Unit of the Harbor Island Superfund Site, encompassing approximately 157 acres of sediments below Mean Higher High Water (MHHW), and extending for approximately 8,250 feet adjacent to the eastern side of Harbor Island in Seattle, Washington and depicted generally on the map attached as Appendix A. It does not include downstream or upstream areas (such as the Lower Duwamish Waterway Superfund Site), groundwater, or locations above MHHW.

"EWOU Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and a prior administrative settlement.

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Respondents' performance of the Work to determine whether such performance is consistent with the requirements of this Settlement, including costs incurred in reviewing deliverables submitted pursuant to this Settlement, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by EPA pursuant to Section VIII (Property Requirements), Paragraph 92 (Access to Financial Assurance), Paragraph 23 (Emergencies and Releases), and Paragraph 70 (Work Takeover), or the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Section XIII (Dispute Resolution) and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Paragraph 70 (Work Takeover), Paragraph 23 (Emergencies and Releases), Paragraph 92 (Access to Financial Assurance), Paragraph 24 (Community Involvement, (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and the costs incurred by the United States in enforcing the terms of this Settlement, including all costs incurred in connection with Dispute Resolution pursuant to Section XIII (Dispute Resolution) and all litigation costs (except costs incurred by the United States as a result of its status as a potentially responsible party under CERCLA, as described in Paragraph 73. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs that Respondents have agreed to pay under this Settlement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 4, 2025, to the Effective Date, and Agency for Toxic Substances and Disease Registry's (ATSDR's) CERCLA-recoverable costs regarding the EWOU.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable

rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"Interim Record of Decision" or "IROD" shall mean the EPA Record of Decision relating to the EWOU signed on May 28, 2024 by the Principal Deputy Assistant Administrator in the Office of Land and Emergency Management, and all attachments thereto. The IROD is maintained in the file system of EPA.

"Interim Remedial Action" or "IRA" shall mean the interim remedial action selected in the IROD.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs: (a) paid by the United States in connection with the EWOU between June 4, 2025, and the Effective Date, or (b) incurred prior to the Effective Date, but paid by the United States after that date.

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

"Non-Settling Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property, including the State of Washington Department of Natural Resources. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

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

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

"Parties" shall mean EPA and Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the EWOU from September 30, 2019 through June 4, 2025, plus Interest on all such costs through such date.

"Performance Standards" or "PS" shall mean the sediment Remedial Action Levels (RALs), for contaminants of concern (COCs) as set forth in the IROD.

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

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

"Respondents" shall mean the Port of Seattle, City of Seattle, and King County.

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

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

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

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

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

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

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

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

IV. FINDINGS OF FACT

10. Early industrial and commercial use of the EWOU was originally focused on the eastern shore and consisted of fish processing facilities, shipyards, and facilities with flour mills, grain elevators, lumber yards, and cold storage. Wharves constructed on creosoted piles were built in the early 1900s along both sides of the EWOU. The United States has also used the EWOU for military and industrial purposes, including but not limited to the Naval Industrial Reserve Shipyard. Commercial and industrial use occurred adjacent to or in the EWOU, including oil terminals (constructed in 1929), shipyards, rail transfer terminals, lead smelter, cold storage, lumber yards, and sand and gravel transfer stations. The combined sanitary and stormwater sewage system discharged to the EWW for many years. Beginning in or around 1958, the Municipality of Metropolitan Seattle (Metro) formed to address regional wastewater and by 1969, Metro was directing combined sewage from this area to the treatment plant at West Point.

11. By 1919, the EWOU was an authorized Federal navigation channel. Dredging in the EWOU has been conducted to maintain and deepen existing berths and to deepen part of the Federal navigation channel. As of 2018, the northern portion of EWOU has an authorized depth

of -57 feet mean lower low water (MLLW) and the southern portion is -34 feet MLLW. The main channel has been dredged at least 13 times since 1960 to maintain the authorized depth.

12. As a result of releases and threatened releases of hazardous substances, pollutants, or contaminants to soil and sediment, and potential routes of human and environmental exposure to that contamination, EPA placed the Harbor Island Superfund Site on the National Priorities List in September of 1983.

13. The Port of Seattle performed a removal action for the EWOU in 2004-2005 under EPA oversight and direction pursuant to an Administrative Order on Consent in CERCLA Docket No. 10-2003-0166. The removal action was undertaken in a 20-acre area of the middle to south portion of the EWOU and consisted of the dredging and offsite disposal of approximately 273.300 cubic yards of contaminated sediments followed by placement of sand or gravel as a cover for the dredged area.

14. EPA completed an initial remedial investigation for the Harbor Island Superfund Site in 1993. That remedial investigation focused primarily on the upland area of the Harbor Superfund Site. In 2006, additional work began to specifically characterize the EWOU. An Administrative Settlement Agreement and Order on Consent (ASAOC) for performance of a supplemental remedial investigation (SRI) and feasibility Study (FS) exclusively for the EWOU was entered into between EPA and the Port of Seattle on October 20, 2006, in CERCLA Docket No. 10-2007-0030. Under the oversight of EPA and with funding assistance provided by the City of Seattle and King County, the SRI was completed in 2014 and the FS in 2019, however, EPA then determined further work was necessary to complete the SRI/FS for the EWOU and some of that work is still ongoing. The nature and extent of contamination in the EWOU are detailed in the SRI and alternatives for addressing that contamination are set forth and compared in the FS.

15. The data and other information developed in the SRI and other investigations shows there to be contamination of sediments, surface water, fish, and invertebrates in the EWOU. This contamination includes, but is not limited to, polychlorinated biphenyls (PCBs), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), dioxins/furans, arsenic, tributyltin, metals, and other organic compounds. An assessment of exposure routes to this contamination was undertaken as part of the SRI and shows there to be potentially unacceptable risks to human health and the environment.

16. EPA prepared a proposed plan in 2023 which summarized data and other information about the nature and extent of contamination in the EWOU and compared the remedial action alternatives developed for addressing that contamination. After providing an opportunity for public, tribal, and state comment on the proposed plan, EPA issued an Interim Record of Decision (IROD) for the EWOU in May of 2024. In the IROD, EPA responded to the comments received on the proposed plan and set forth the selected remedial action for the EWOU.

17. The remedial action is to address approximately 123 acres of contaminated sediments and will include the dredging of 99 acres or approximately 940,000 cubic yards of contaminated sediments and the offsite disposal of those sediments. There is also to be capping

of seven acres of contaminated sediments, in-situ treatment of 12 acres of contaminated sediments located under docks and piers, and 3 acres of enhanced natural recovery of contaminated sediments. In addition, 36 acres of contaminated sediments will be subject to monitored natural attenuation and a residual management layer will be applied to dredged areas and adjacent locations. Further, institutional controls will be established to limit exposures to remaining contamination and protect the integrity of the remedial action, and short-term monitoring will be undertaken following implementation of the remedial action to assess the success of the work.

18. . Respondents each have responsibility or control over areas or conduits which may have contributed contamination to the EWOU.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The EWOU is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the EWOU, as identified in the Findings of Fact above, includes hazardous substances, pollutants, or contaminants as defined by Sections 101(14) and (33) of CERCLA, 42 U.S.C. §§ 9601(14) & (33).

c. Respondents are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondents are each a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

VII. PERFORMANCE OF THE WORK

21. **Coordination and Supervision**

a. **Project Coordinators**.

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

(2) EPA has designated Ravi Sanga as On-Scene Coordinator/Remedial Project Manager (OSC/RPM). EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's OSC/RPM will have the authority to oversee and direct the Work as well as other authorities described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when the OSC/RPM determines that conditions at the EWOU constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to the OSC/RPM, Ravi Sanga, at sanga.ravi@epa.gov.

(3) Respondents' Project Coordinators shall meet with the OSC/RPM at least monthly or as may otherwise be agreed to or approved by the OSC/RPM.

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

c. **Procedures for Disapproval/Notice to Proceed**

(1) Respondents shall designate, and notify EPA, within 14 days after the Effective Date, of the name[s], title[s], contact information, and qualifications of Respondents' proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have an unwaivable conflict of interest, as determined or approved by EPA, with respect to the project.

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondents shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondents may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondents' selection.

(3) Respondents may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of 21.c(1) and 21.c(2).

22. **Performance of Work in Accordance with SOW.** Respondents shall develop the RD in accordance with the SOW and all EPA-approved, conditionally approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Settlement or SOW shall be subject to approval by EPA in accordance with Paragraph 6.6 (Approval of Deliverables) of the SOW**.**

23. **Emergencies and Releases**. Respondents shall comply with the emergency and release response and reporting requirements under Paragraph **3.9** (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by EPA), nothing in this Settlement, including Paragraph 4.13 of the SOW, limits any authority of EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the EWOU, or (b) to direct or order such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the EWOU. If, due to Respondents' failure to take appropriate response action under Paragraph 4.13 of the SOW, EPA takes such action instead, Respondents shall reimburse EPA under Section XII (Payment of Response Costs) for all costs of the response action.

24. **Community Involvement**. If requested by EPA, Respondents shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section **2** (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by EPA under this Section constitute Future Response Costs to be reimbursed under Section XII (Payments for Response Costs).

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

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

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

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

VIII. PROPERTY REQUIREMENTS

26. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and EPA, providing that such Non-Settling Owner and Owner Respondent shall, with respect to Non-Settling Owner's Affected Property: (i) provide EPA, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 26.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or that interferes with or adversely affects the implementation or integrity of the RD. Respondents shall provide a copy of such access agreement(s) to EPA.

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

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations regarding contamination at or near the EWOU;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 70 (Work Takeover);

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

(9) Assessing Respondents' compliance with the Settlement.

(10) .

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

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

29. **Notice to Successors-in-Title**. Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier: (a) Notify the proposed transferee that EPA has determined that an RD must be performed at the EWOU, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such RD (identifying the name, docket number, and the effective date of this Settlement); and (b) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

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

IX. ACCESS TO INFORMATION

31. Respondents shall provide to EPA, upon request, copies of all records, reports, documents and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at or adjacent to the EWOU or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing,

correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

32. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with ¶ 33.b, and except as provided in ¶ 33.c.

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

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

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

34. 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.

X. RECORD RETENTION

35. Until 10 years after EPA provides notice pursuant to Paragraph 4.15 of the SOW (Notice of Work Completion), that all work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to their liability under CERCLA with respect to the EWOU, provided, however, that Respondents who are potentially liable as owners or operators of the EWOU must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the EWOU. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

36. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, and except as provided for in ¶ 33 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

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

XI. COMPLIANCE WITH OTHER LAWS

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

39. **Permits**. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(c)(3) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e. within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval,

Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

40. Respondents may seek relief under the provisions of Section XIV (Force Majeure) for any delay in performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 40 (Permits) and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XII. PAYMENT OF RESPONSE COSTS

41. **Payment for Past Response Costs**

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $1,427,692.69 for Past Response Costs. Respondent shall make the payment at https://www.pay.gov in accordance with the following payment instructions: enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number 10 T3. Respondents shall send to EPA, in accordance with Paragraph 21.a(2), a notice of this payment including these references.

b. **Deposit of Past Response Costs Payments**. The total amount to be paid by Respondents pursuant to ¶ 42.a shall be deposited by EPA in the Harbor Island Special Account to be retained and used to conduct or finance response actions at or in connection with the Harbor Island Superfund Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

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

a. **Periodic Bills**. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a standard regionally prepared cost summary, which includes direct and indirect costs incurred by EPA, its contractors and subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in ¶ 45 (Contesting Future Response Costs). Respondents shall make all payments and send notice of the payments in accordance with the procedures under ¶ 42.a (Payment for Past Response Costs).

b. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to ¶ 43.a (Periodic Bills) shall be deposited by EPA in the Harbor Island Special Account to be retained and used to conduct or finance response actions at or in connection with the Harbor Island Superfund Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Harbor Island Special Account balance is sufficient to

address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Harbor Island Superfund Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

43. **Interest**. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XV (Stipulated Penalties).

44. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XIII (Dispute Resolution) regarding payment of any Future Response Costs billed under ¶ 43 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the OSC/RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in ¶ 43.a and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the OSC/RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 43. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in ¶ 43. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XIII. DISPUTE RESOLUTION

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

46. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 21 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 20 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

47. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 21 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondents. This decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the EPA decision, whichever occurs.

48. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement, except as provided by ¶ 45 (Contesting Future Response Costs), as agreed by EPA.

49. Except as provided in ¶ 60, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XIV. FORCE MAJEURE

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

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

51. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify the OSC/RPM orally or, in his or her absence, EPA's Alternate OSC/RPM or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 10, within ten days of when Respondents first knew that the event might cause a delay. Within seven days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 51 and whether Respondents have exercised their best efforts under ¶ 51, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

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

53. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of ¶¶ 51 and 52. If Respondents

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

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

XV. STIPULATED PENALTIES

55. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 57.a and 58 for failure to comply with the obligations specified in ¶¶ 57.b and 58, unless excused under Section XIV (Force Majeure) or modified under Section XXV (Modification). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect, and the conditions are met for modifying the deliverable under Paragraph 6.6(a)(2) and 6.6(b) of the SOW; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

56. **Stipulated Penalty Amounts: Payments, Financial Assurance, Deliverables in RD Schedule.**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified below:

Penalty Per Violation Per Day	Period of Noncompliance
$ 750	1st through 14th day
$ 2,000	15th through 30th day
$ 4,000	31st day and beyond

b. **Obligations**

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

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

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 45 (Contesting Future Response Costs).

(4) Failure to submit timely or adequate deliverables required under this Settlement or the SOW.

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 70 (Work Takeover), Respondents shall be liable for a stipulated penalty in an amount selected by EPA that will not exceed 33% of the cost of EPA's performance of the takeover work. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 70 (Work Takeover) and 95 (Access to Financial Assurance).

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 6.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Division Director level or higher, under Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

60. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. Respondents shall make all payments at https://www.pay.gov using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the EWOU and Harbor Island Superfund Site, docket number for this action, and Site/Spill ID Number 10 DG. For the purpose of the payment. Respondents shall send to EPA, in accordance with the directions in ¶ 21.a(2), a notice of this payment including these references.

61. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 60 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 62 until the date of payment. If

Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

63. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 70 (Work Takeover).

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

XVI. COVENANTS BY EPA

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

XVII. RESERVATIONS OF RIGHTS BY EPA

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

67. The covenants set forth in Section XVI (Covenants by EPA) above do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is

without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

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

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

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

d. criminal liability;

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

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

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

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

i. liability for costs incurred by EPA in performing response actions for the EWOU prior to September 30, 2019.

68. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notices issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of time ("Remedy Period") that is ten days or longer, as prescribed by EPA, in its unreviewable discretion, within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the Remedy Period specified in ¶ 70.a Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that

implementation of a Work Takeover is warranted under this ¶ 70.b. Funding of Work Takeover costs is addressed under ¶ 92 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in ¶ 48 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 70.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 70.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with ¶ 48 (Formal Dispute Resolution).

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

XVIII. COVENANTS BY RESPONDENTS

69. Except as provided in Paragraph 73 below, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

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

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

70. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVII (Reservations of Rights by EPA), other than in ¶ 67.a (liability for failure to meet a requirement of the Settlement), 67.d (criminal liability), or 67.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

73. Notwithstanding any other provision of this Settlement, this Settlement Agreement shall not have any effect on claims or causes of action that any Respondent has or may have pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), against the United States or any department or agency thereof, based upon the United States' status as a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Work, Past Response Costs, Future Response Costs, and this Settlement.

XIX. OTHER CLAIMS

74. By issuance of this Settlement, the United States, except in its status as a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents for the Work. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

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

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

XX. EFFECT OF SETTLEMENT/CONTRIBUTION

77. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVIII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction,

or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

78. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Past Response Costs, and Future Response Costs.

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

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

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

82. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by ¶ 41 (Payment for Past Response Costs) and, if any, Section XV (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in ¶ 79 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice

to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXI. INDEMNIFICATION

83. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). To the extent permitted by law, Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, employees, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including, but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

85. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States except in its status as a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the EWOU, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States except in its status as a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to any and all claims for damages or reimbursement arising from or on account of, any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the EWOU, including, but not limited to, claims on account of construction delays.

XXII. INSURANCE

86. No later than 30 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Work Completion pursuant to Paragraph 4.15 of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of liability

of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the EWOU, Harbor Island Superfund Site, Seattle, Washington, and the EPA docket number for this action.

XXIII. FINANCIAL ASSURANCE

87. In order to ensure the completion of the Work, Respondents shall secure financial assurance, initially in the amount of $20,000,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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

e. A demonstration by a Respondent that it meets the financial test criteria of ¶ 889, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 88; or

g. a demonstration by one or more local government Respondent(s) that it meets the relevant test criteria of ¶ 90.

88. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 87.e or 87.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) The affected Respondent or guarantor has:

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

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

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

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

(2) The affected Respondent or guarantor has:

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

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

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

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

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

89. Respondents providing financial assurance by means of a demonstration or guarantee under ¶ 87.e or 87.f must also:

a. Annually resubmit the documents described in ¶ 88.88.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 888.88.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.

90. A local government Settling Work Defendant seeking to provide financial assurance by means of a demonstration under ¶ 87.g must, within 45 days after the Effective Date:

a. Demonstrate that:

(1) The local government Settling Work Defendant providing the demonstration is a local government unit (for example a United States city or county).

(2) if the local government Settling Work Defendant providing the demonstration has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such bonds; or

(3) each of the following financial ratios based on that local government Settling Work Defendant's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and a ratio of annual debt service to total expenditures less than or equal to 0.20.

b. The local government Settling Work Defendant providing the demonstration must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or the Washington State Auditor).

c. The local government Settling Work Defendant providing the demonstration must not (1) be currently in default on any outstanding general obligation bonds; (2) must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; (3) must not have operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; and (4) must not have received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or the Washington State Auditor) auditing its financial statement as required under ¶ 25.b (except for qualifications that are immaterial or deemed insufficient to warrant disallowance of use of the test by the EPA).

d. The following terms used in this section are defined as follows:(1) Deficit equals total annual revenues, minus total annual expenditures, measured on a government-wide basis; (2) Total annual revenues includes all revenues recognized in a fiscal year under applicable accounting principles, from all taxes, fees, charges, and other sources of income, including all utility gross revenues, plus any reserves or fund balance applied or used in that year, but does not include the proceeds from borrowing for capital purposes or revenues realized from asset sales; (3) Total annual expenditures includes all expenditures made during a fiscal year, excluding capital outlays and excluding funds applied to debt repayment and costs of debt issuance; (4) Cash plus marketable securities is all the cash plus marketable securities held by the local government Settling Work Defendant on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions or held by a trustee on behalf of the local government Settling Work Defendant; and (5) Debt service is the amount of

principal and interest due on a debt obligation in a given time period, typically the current year.

e. demonstration must place a reference to the estimated cost of the Work assured through the financial test into its next annual comprehensive financial report ("ACFR") after the Effective Date.

f. The amount that can be financially assured by this financial test mechanism by a local government Settling Work Defendant is determined as follows:

(1) If the local government Settling Work Defendant does not assure other environmental obligations through a financial test, the estimated cost of the Work may equal up to 43 percent of the local government Settling Work Defendant's total annual revenue.

(2) If the local government Settling Work Defendant assures any other environmental obligations through a financial test, it must add those costs to the estimated cost of the Work it seeks to assure under this Paragraph. The total that may be assured must not exceed 43 percent of the local government Settling Work Defendant's total annual revenue.

g. A local government Settling Work Defendant providing the demonstration under this section must provide the following documents within 45 days of the Effective Date. These documents must also be resubmitted annually, within 270 days following the close of the local government Settling Work Defendant's fiscal year, until the financial assurance requirements are released, or an alternative instrument is accepted by EPA.

(1) A letter signed by the local government Settling Work Defendant's Director of Finance or other official serving as chief financial or operating officer that: lists all the current cost estimates covered by a financial test, as described in ¶ 25.f of this section; provides evidence and certifies that the local government Settling Work Defendant meets the conditions of ¶ 25.a(1) and either ¶ 25.a(2) or ¶ 25.a(3) of this ¶ 25; and certifies that the local government Settling Work Defendant is in compliance with all conditions of this section;

(2) The local government Settling Work Defendant's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

(3) A report to the local government Settling Work Defendant from the local government Settling Work Defendant's independent certified public accountant ("CPA") or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by ¶ 25.a(3), if applicable, and the requirements of ¶ 25.f(1) or f(2). The CPA or State agency's report should state the procedures performed and the CPA or State agency's

findings. If the financial ratios under ¶ 25.a(3) are not applicable, then the foregoing requirement may be satisfied by a certificate provided by the local government Settling Work Defendant's Chief Financial or Operating Officer, in reliance upon audited financial statements, attesting that the requirements of ¶ 25.f(1) or 25.f(2), as applicable, have been satisfied; and

(4) A copy of the annual comprehensive financial report used to comply with ¶ 25.e of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

91. 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 seven 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 ¶ 93 (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.

92. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 70.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 92.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 92.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 70.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [and/or related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 87.e or 87.f or 87.g, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to

be performed. Respondents shall, within 30 days of such demand, pay the amount demanded as directed by EPA. EPA will accept payment by each of the Settling Work Defendants of a share of such costs, the total of which will be 100% of the demanded costs. Payments shall be made within 30 days of the demand except for amounts exceeding the current budget authority of the responsible departments for the Respondents. For amounts exceeding current budget authority, Respondents shall immediately initiate the steps necessary to obtain sufficient budget authority. Payment of the remaining amounts shall be made no later than 30 days after the necessary budget authority has been enacted and in any event within 120 days of the demand unless an alternative payment schedule is approved by EPA.

d. Any amounts required to be paid under this ¶ 92 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Harbor Island Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 92 must be reimbursed as Future Response Costs under Section XII (Payments for Response Costs).

93. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 91, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval.. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 91.

94. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Work Completion under Paragraph 4.15 of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if

there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIII (Dispute Resolution).

XXIV. INTEGRATION/APPENDICES

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

a. Appendix A is the description and/or map of the EWOU.

b. Appendix B is the SOW.

XXV. MODIFICATION

96. The OSC/RPM may modify any plan, schedule, or SOW in order to carry out the RD, in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly but shall have as its effective date the date of the OSC/RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

97. If Respondents seek permission to deviate from any approved work plan, schedule, or SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC/RPM pursuant to ¶ 96.

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

XXVI. EFFECTIVE DATE

99. This Settlement shall be effective on the day the Settlement is signed by the Remedial Branch Manager for Region 10 of EPA.

IT IS SO AGREED AND ORDERED;

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____
Dated

_____
Kira Lynch, Manager
Remedial Cleanup Branch
Superfund and Emergency Management Division
Region 10

Signature Page for Settlement regarding the East Waterway Operable Unit of the Harbor Island Superfund Site

FOR: PORT of SEATTLE

_____	_____
Dated	[Name] [Title]

Signature Page for Settlement regarding the East Waterway Operable Unit of the Harbor Island Superfund Site

FOR: CITY of SEATTLE

_____	_____
Dated	[Name] [Title]

Signature Page for Settlement regarding the East Waterway Operable Unit of the Harbor Island Superfund Site

FOR: KING COUNTY

_____ _____

Dated [Name]
[Title]