

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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IN THE MATTER OF: )  
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)  
Portland Harbor Superfund Site )  
Portland, Multnomah County, Oregon )  
)  
State of Oregon, acting by and through the )  
Oregon Department of State Lands and )  
Oregon Department of Transportation, )  
)  
Respondent )  
)  
)  
)  
Proceeding Under Sections 104, 107, and )  
122 of the Comprehensive, Environmental )  
Response, Compensation, and Liability Act, )  
42 U.S.C. §§ 9604, 9607 and 9622 )  

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CERCLA Docket No. 10-2020-0103

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMEDIAL DESIGN  
OF AN INTERIM DATABASE**

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered voluntarily by the United States Environmental Protection Agency (EPA) and the State of Oregon, acting by and through the Oregon Department of State Lands and the Oregon Department of Transportation (Respondent). This Settlement provides for the performance of Remedial Design activities to develop an Interim Data Sharing Portal and Interim Database by Respondent and the payment by Respondent of certain response costs incurred by the EPA, the Oregon Department of Environmental Quality (ODEQ) and the Tribal Governments at or in connection with the Work conducted under this Settlement, related to the selected remedy for the in-river portion of the Portland Harbor Superfund Site (the Site).

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 (CERCLA). This authority was delegated to the EPA Administrator on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority has been re-delegated by the Region 10, Regional Administrator (Regional Administrator) to the Region 10, Director, Superfund and Emergency Management Division, and Branch Chiefs thereunder by EPA Delegations R10 14-14-C and 14-14-D (April 15, 2019).

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

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections V (Findings of Fact) and VI (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it 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 Respondent and their successors, and assigns. Any change in legal status of Respondent including, but not limited to, any transfer

of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

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

7. Respondent 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 Respondent with respect to 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. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

### **III. STATEMENT OF PURPOSE**

8. The purpose of this Settlement is to develop an Interim Data Sharing Portal and Interim Database, including development of requirements for consistent data formatting to EPA, for use by agencies, performing parties, Tribes and the public pending completion and launch of the final Information Management System being developed under EPA Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 10-2019-0151, and to manage and implement that Interim Data Sharing Portal and Interim Database until EPA issues the final Notice of Work Completion under this Settlement. This Settlement does not include or require implementation of the final Information Management System being developed under EPA Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 10-2019-0151.

### **IV. 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:

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

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

“Data Manager” shall mean a technical professional with experience in database development and Structured Query Language (SQL).

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

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

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

“EPA Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, ¶ 55 (Work Takeover), ¶ 77 (Access to Financial Assurance), ¶ 15 (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 Agency for Toxic Substances and Disease Registry (ATSDR) related to the Site, 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 reasonable litigation costs. EPA Future Response Costs shall also include direct and indirect costs paid or incurred by EPA prior to the Effective Date in connection with negotiating this Settlement and charged to account 10SR beginning April 16, 2020.

“Interim Data Sharing Portal” shall mean a portal and website for use by agencies, performing parties, Tribes and the public to access and download documents and data from the Harbor submitted to the EPA while the Portland Harbor Information Management System is being planned and implemented.

“Interim Database” shall mean the interim data repository system created to store data pending completion of the final Information Management System.

“Information Management System” shall mean the information management system being developed under EPA Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 10-2019-0151.

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

is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

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

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

“ODEQ Response Costs” shall mean all direct and indirect costs that ODEQ incurs in coordinating and consulting with EPA in conjunction with EPA’s planning and implementation of this Settlement Agreement. ODEQ Response Costs are only those costs incurred to fulfill the requirements of this Settlement, including review of plans, reports, and assessments prepared pursuant to this Settlement Agreement and Community Involvement activities; and scoping, planning, and negotiating this Settlement Agreement, but excluding any costs related to natural resource damages assessments, liability or restoration. ODEQ Response Costs are not inconsistent with the NCP, 40 C.F.R. Part 300, and are recoverable response costs pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607. ODEQ Response Costs shall not include the costs of oversight or data gathered by ODEQ concerning any other response action or Settlement Agreement associated with the Site.

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

“Parties” shall mean EPA and Respondent.

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

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

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site, signed on January 3, 2017, by the Administrator of EPA, and all attachments, amendments

or modifications thereto. A copy of the ROD can be found at <https://semspub.epa.gov/work/10/100036257.pdf>.

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

“Remedial Design” or “RD” shall mean those activities undertaken by Respondent to develop the requirements for consistent data formatting and to develop and implement an Interim Data Sharing Portal and Interim Database for the Site pending completion of the final Information Management System, as stated in the Statement of Work (SOW).

“Respondent” shall mean the State of Oregon, acting by and through the Oregon Department of State Lands and the Oregon Department of Transportation.

“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 XXIII (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 Respondent must perform to implement the Work, which is attached as Appendix A.

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

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

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

“Tribal Response Costs” shall mean all direct and indirect costs that the Tribal Governments and their employees, agents, contractors, consultants and other authorized representatives incur in coordinating and consulting with EPA in conjunction with EPA’s planning and implementation of this Settlement Agreement. Tribal Response Costs are only those costs incurred to fulfill the requirements of this Settlement Agreement, including review of plans, reports, and assessments prepared pursuant to this Settlement Agreement; development of common positions and coordination among the Tribes; briefings to tribal leaders and tribal communities; and scoping and planning, and negotiating this Settlement

Agreement and budgets, but excluding any costs related to natural resource damages assessments, liability or restoration. Tribal Response Costs are not inconsistent with the NCP, 40 C.F.R. Part 300, and are recoverable response costs pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607. Tribal Response Costs shall not include the costs of oversight or data gathered by Tribal Governments concerning any other response action or Settlement Agreement associated with the Site.

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

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

“Work” shall mean all deliverables and obligations Respondent is required to provide or perform under this Settlement, except those required by Section X (Record Retention).

## V. FINDINGS OF FACT

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

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

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

c. In 2001, EPA entered into a Memorandum of Understanding for the



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

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

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

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

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

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

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

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

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

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

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

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

o. The ROD also selected institutional controls (ICs) at the Site to: (1) protect human health and the environment by limiting exposure to contamination left in place

and (2) protect the long-term integrity of the engineered components of the Selected Remedy. The ICs detailed in the ROD are used to supplement engineering controls, as appropriate to prevent or limit exposures, and should not substitute for active response measures or be the sole remediation efforts defined in the ROD. EPA has entered into an Administrative Settlement Agreement and Order on Consent (ASAOC) for development of a Harbor-wide Information Management Plan (IMP) and Programmatic Institutional Controls Implementation and Assurance Plan (ICIAP) to support implementation of the ROD (*See*, CERCLA Docket No. 10-2019-0151). The IMP developed under that ASAOC will describe the requirements and specifications for a Portland Harbor Information Management System that will be the repository for both Harbor-wide and project area-specific environmental data and institutional controls. Data from the Site has been collected and will continue to be collected in the interim before the Information Management System is developed and implemented.

p. Respondent State of Oregon, acting by and through the Department of State Lands, currently owns or manages, or has owned or managed, certain submerged lands held in trust by the State of Oregon within the Portland Harbor Superfund Site.

q. Respondent State of Oregon, acting by and through the Department of Transportation, currently owns, operates, or has jurisdiction over, or has owned, operated, or had jurisdiction over facilities such as state highways, and certain roads, right of ways, and bridges within the Portland Harbor Superfund Site at the time of disposal of hazardous substances at the Site.

## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Respondent is alleged by EPA to be a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

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

f. The Work 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.

## **VII. SETTLEMENT AGREEMENT AND ORDER**

12. Based upon EPA's Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record for the Site, it is hereby Ordered and Agreed that Respondent 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.

## **VIII. PERFORMANCE OF THE WORK**

### **13. Coordination and Supervision**

#### **a. Project Coordinators.**

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

(2) EPA's designated Project Coordinator is Josie Clark, Remedial Project Manager in Region 10's Superfund and Emergency Management Division. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP.

(3) Respondent's Project Coordinator shall meet with EPA's Project Coordinator at least quarterly.

**b. Supervising Contractor.** Respondent's 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) Respondent shall designate, and notify EPA, within 10 days after the Effective Date, of the name(s), title(s), contact information, and qualifications of Respondent's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective

assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondent 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. Respondent may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondent's selection.

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

14. **Performance of Work in Accordance with SOW.** Respondent shall develop requirements for consistent data formatting and develop and implement an Interim Data Sharing Portal and Interim Database 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 ¶ 4.4 (Approval of Deliverables) of the SOW. Respondent will provide up to 60 hours [maximum] to support Data Managers employed by EPA and/or its Contractor on how to access the data in the Interim Database. Additionally, during the term of this Interim Database ASAOC, Respondent will provide up to 40 hours of access support to one Data Manager at ODEQ and one Data Manager for each Portland Harbor RD ASAOC or RD UAO to facilitate their direct access to information in the Interim Database, up to a maximum of 600 total hours of access support over the term of this Interim Database ASAOC.

15. **Community Involvement.** This short term or interim work is intended to support and interface with the final Information Management System being developed under EPA Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 10-2019-0151, which provides for Community Involvement.

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

a. If EPA determines that it is necessary to modify the work in deliverables developed under the SOW in order to carry out the Work consistent with the Statement of Purpose in Section III, then EPA may notify Respondent of such modification. If Respondent objects to the modification it 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 Respondent invokes dispute resolution, in

accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Settlement, and Respondent shall implement all work required by such modification. Respondent 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 consistent with the Statement of Purpose in Section III.

## **IX. ACCESS TO INFORMATION**

17. Respondent 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 its possession or control or that of its contractors or agents relating to the implementation of the Work under 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. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **18. Privileged and Protected Claims**

a. Respondent 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 Respondent complies with ¶ 18.b, and except as provided in ¶ 18.c.

b. If Respondent asserts such a privilege or protection, it 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, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims 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 Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, 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 Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

19. **Business Confidential Claims.** Respondent 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts 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 Respondent 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 Respondent.

20. **Access to Third-Party Information.** The Work under this Settlement includes development of an Interim Database that will aggregate Site-wide and site-specific data. Respondent shall use best efforts to obtain any information that is not in Respondent's possession or control and that EPA determines is necessary to perform the Work required under this Settlement. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, but does not including employing outside professional assistance or the payment of money to obtain information. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, EPA may assist Respondent in obtaining such information or take independent action to obtain the information.

21. 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**

22. Until 10 years after completion of the Remedial Action, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site; provided, however, that any Respondent who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. 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 its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that 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.

23. At the conclusion of the document retention period, Respondent 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 ¶ 18 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

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

## **XI. COMPLIANCE WITH OTHER LAWS**

25. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondent 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.

## **XII. PAYMENT OF RESPONSE COSTS**

26. **Payments by Respondent for EPA Future Response Costs.** Respondent shall pay to EPA all EPA Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIOS Report or similar EPA-prepared cost summary report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 60 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in ¶ 28 (Contesting EPA Future Response Costs).

b. **Payments.** Payments made pursuant to this Paragraph 26 shall be made by EFT in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, the Site name, the EPA Region, the account number 10SR, and the EPA docket number for this action. Respondent shall send the check to:

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



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

U.S. Environmental Protection Agency  
Government Lockbox 979076  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, MO 63101-1229

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

d. **Deposit of EPA Future Response Costs Payments.** The total amount to be paid by Respondent pursuant to ¶ 26.a (Periodic Bills) shall be deposited by EPA in the Portland Harbor Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit an EPA Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Portland Harbor Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit EPA Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

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

28. **Contesting EPA Future Response Costs.** Respondent may initiate the procedures of Section XIII (Dispute Resolution) regarding payment of any EPA Future Response Costs billed under ¶ 26 (Payments for EPA Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of EPA Future Response Costs, or if it believes 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, Respondent shall submit a Notice of Dispute in writing to the EPA Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested EPA Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested EPA Future Response Costs to EPA in the manner described in

¶ 26, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested EPA Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in ¶ 26. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in ¶ 26. Respondent 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 Respondent's obligation to reimburse EPA for its EPA Future Response Costs.

#### **29. Payment of ODEQ Response Costs**

a. Respondent shall be responsible under this Settlement for funding ODEQ Response Costs, if any, incurred pursuant to this Settlement that are not inconsistent with the NCP under the terms of a separate agreement to be executed by Respondent and ODEQ ("ODEQ Agreement").

b. Disputes regarding ODEQ Response Cost bills shall be resolved in accordance with a process agreed to between ODEQ and Respondent under the ODEQ Agreement, and neither ruled by nor conducted under the dispute resolution provisions of this Settlement.

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

#### **30. Payment of Tribal Response Costs**

a. Respondent shall be responsible under this Settlement for funding Tribal Response Costs, if any, incurred pursuant to this Settlement that are not inconsistent with the NCP under the terms of one or more separate agreement(s) to be executed by Respondent and the Tribal Governments.

b. Disputes regarding Tribal Response Cost bills shall be resolved in accordance with a process agreed to between the Tribal Governments and Respondent under the separate agreement(s) entered into between Respondent and the Tribal Governments, and neither ruled by nor conducted under the dispute resolution provisions of this Settlement.

c. Nothing in this Paragraph shall be construed to limit the Tribal Governments' authority under any source other than this Settlement to seek funding from Respondent or any other party of any costs that the Tribal Governments may incur or may have incurred.

### **XIII. DISPUTE RESOLUTION**

31. 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.

32. **Informal Dispute Resolution.** If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for EPA Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 20 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's 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.

33. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Regional Administrator, EPA Region 10 or his/her designee, will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

34. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement, except as provided by ¶ 28 (Contesting Future Response Costs), as agreed by EPA.

35. Except as provided in ¶ 45, 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 Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

#### **XIV. FORCE MAJEURE**

36. “Force Majeure” for purposes of this Settlement is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent’s contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent’s best efforts to fulfill the obligation. The requirement that Respondent 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.

37. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify the EPA Project Coordinator orally or, in his or her absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 10, within 48 hours of when Respondent first knew that the event might cause a delay. Within 10 days thereafter, Respondent 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; Respondent’s rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent’s contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent 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 ¶ 36 and whether Respondent has exercised its best efforts under ¶ 36, EPA may, in its unreviewable discretion, excuse in writing Respondent’s failure to submit timely or complete notices under this Paragraph.

38. 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force

majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

39. If Respondent elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 20 days after receipt of EPA’s notice. In any such proceeding, Respondent 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 Respondent complied with the requirements of ¶¶ 36 and 37. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

40. 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 Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

## **XV. STIPULATED PENALTIES**

41. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in ¶¶ 42.a and 43 for failure to comply with the obligations specified in ¶¶ 42.b and 43, unless excused under Section XIV (Force Majeure). “Comply” as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement or as otherwise agreed by EPA pursuant to the terms of this Settlement. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under ¶ 4.4(a)(2) of the SOW; or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

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

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in ¶ 42.b:

<b>Penalty Per Violation Per Day</b>	<b>Period of Noncompliance</b>
\$ 500	1st through 7th day
\$ 1,000	8th through 14th day
\$ 2,500	15th through 30th day

\$ 5,000 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 XXII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 28 (Contesting Future Response Costs).

(4) Submission of timely and quality deliverables for tasks listed under ¶ 4.5(a)-(i) of the SOW.

43. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in ¶ 42.b, and excluding task 4.5(j)(2) of the SOW:

<b>Penalty Per Violation Per Day</b>	<b>Period of Noncompliance</b>
\$ 250	1st through 7th day
\$ 500	8th through 14th day
\$ 1,000	15th through 30th day
\$ 2,500	31st day and beyond

44. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 55 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$75,000 or 25% of the cost of the Work EPA performs, whichever is less. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under ¶¶ 55 (Work Takeover) and 77 (Access to Financial Assurance).

45. 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 45 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 ¶ 4.4 (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 Respondent in writing of any deficiency; and (b) with respect to a decision by the Regional Administrator, EPA Region 10 or his/her designee under Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Regional Administrator or designee 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.

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

47. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 26 (Payments for Future Response Costs).

48. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has 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 ¶ 45 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 47 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

50. 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 Respondent's 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 ¶ 55 (Work Takeover).

51. 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**

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

## **XVII. RESERVATIONS OF RIGHTS BY EPA**

53. 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 Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

54. 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 Respondent with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;



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

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

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

#### 55. **Work Takeover**

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is 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 Respondent. 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 Respondent a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 55.a Respondent has 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 Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 55.b. Funding of Work Takeover costs is addressed under ¶ 77 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in ¶ 33 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under ¶ 55.b. However, notwithstanding Respondent's 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 ¶ 55.b until the earlier of (1) the date that Respondent 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 ¶ 33 (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 RESPONDENT**

56. **Covenants by Respondent.** Except as provided in paragraph 57 below, Respondent covenants not to sue and agrees not to assert any claims or causes of action against

the United States, or contractors or employees, with respect to the Work, EPA Future Response Costs, ODEQ Future Response Costs, Tribal 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, EPA Future Response Costs, and this Settlement; or

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

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

58. 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 ¶ 54.a (liability for failure to meet a requirement of the Settlement), 54.d (criminal liability), or 54.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

59. 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).

60. Respondent reserves, 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 Respondent's deliverables or activities.

## **XIX. OTHER CLAIMS**

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

62. Except as expressly provided in Section XVIII (Covenants by Respondent) and Section XVI (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent 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.

63. 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**

64. 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 Respondent), 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).

65. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved its 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.

66. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which 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).

67. 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. 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, 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. This paragraph shall not apply to a suit or claim between a Respondent and its insurers or alleged insurers.

68. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent 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).

## **XXI. INDEMNIFICATION**

69. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA’s authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent, to the extent permitted by Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), and its contractor(s) shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, employees, and representatives from any and all claims, causes of action or costs incurred by the United States including, but not limited to attorneys’ fees and other expenses of litigation and settlement arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, or its commissioners, officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent’s behalf or under its 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 Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

71. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States on behalf of EPA 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 Respondent and any person for performance of Work, including, but not limited to, claims on account of construction delays. In addition, Respondent to the extent permitted by Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) shall indemnify and hold harmless the United States on behalf of EPA with respect to any and all claims for damages or reimbursement arising from or on account of, any contract, agreement, or arrangement between Respondent and any person for performance of Work, including, but not limited to, claims on account of construction delays.

## **XXII. FINANCIAL ASSURANCE**

72. In order to ensure the completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$500,000 (“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. Respondent may use multiple mechanisms if those mechanisms 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 demonstration by a Respondent that it meets the financial test criteria of ¶ 74, 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

e. 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 ¶ 74.

73. Respondent shall, within 30 days of the Effective Date, obtain EPA’s approval of the form of Respondent’s financial assurance. Within 30 days of such approval, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA Project Coordinator.

74. A Respondent seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 72.d or 72.e, 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/>.

75. A Respondent providing financial assurance by means of a demonstration or guarantee under ¶ 72.d or 72.e must also:

a. Annually resubmit the documents described in ¶ 74.b within 90 days after the close of the affected Respondent’s or guarantor’s fiscal year or, 30 days of State of Oregon’s release of its audited Comprehensive Annual Financial Report (CAFR), whichever is later;

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 ¶ 74.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.

76. Respondent shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such

determination. Respondent 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. Respondent shall follow the procedures of ¶ 78 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

#### **77. Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 55.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 ¶ 77.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 ¶ 77.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 55.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 ¶ 72.d or 72.e then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 77 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Portland Harbor Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.



e. All EPA Work Takeover costs not paid under this ¶ 77 must be reimbursed as Future Response Costs under Section XII (Payments for Response Costs).

78. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondent 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 ¶ 73, 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 Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph within 45 days of receipt of Respondent's request. Respondent 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). Respondent 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 Respondent 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, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 73.

79. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (b) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIII (Dispute Resolution)].

### **XXIII. INTEGRATION/APPENDICES**

80. 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 SOW.

## **XXIV. MODIFICATION**

81. The EPA Project Coordinator may modify any plan, schedule, or deliverable in writing. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

82. If Respondent seeks permission to deviate from any approved work plan, schedule, or SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to ¶ 81.

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

## **XXV. RESPONDENT STATE OF OREGON**

84. Notwithstanding anything in this Settlement to the contrary, nothing in this Settlement is to be construed to permit or require the Respondent, the State of Oregon, to take any action that exceeds the scope of its authority, or to violate Article XI, § 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations.

## **XXVI. NOTICE OF WORK COMPLETION**

85. When EPA determines that the Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations as provided in ¶ 87, EPA will provide written notice to Respondent. Respondent may request that EPA make this determination. Upon finalization of the Interim Database, as determined by EPA, consistent with ¶¶ 4.4 and 4.5(g) of the SOW, EPA will issue an Initial Notice of Completion for the development of the Interim Data Sharing Portal and final Interim Database. EPA will issue the final Notice of Work Completion under this Settlement upon transfer of data from the Interim Database to the final Information Management System, developed pursuant to CERCLA Docket No. 10-2019-0151, or four years after the Initial Notice of Completion, whichever is earlier, unless the Parties agree in writing to extend Respondent's implementation of the Interim Database.

86. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work if appropriate to correct such deficiencies. Respondent shall implement the modified and approved Work and shall submit a modified deliverable for EPA approval in accordance with the EPA notice.

87. Issuance of the Notice of Work Completion does not affect the following continuing obligations: (1) obligations under Sections IX (Access to Information), and X (Record Retention); and (3) reimbursement of EPA's Future Response Costs under Section XII (Payment of Response Costs) of the Settlement.

**XXVI. EFFECTIVE DATE**

88. This Settlement shall be effective upon signature by the Superfund and Emergency Management Division, EPA Region 10.

IT IS SO AGREED AND ORDERED.

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Kira Lynch, Branch Chief  
Remedial Cleanup Branch  
Superfund and Emergency Management Division  
EPA Region 10

Signature Page for Settlement regarding the Portland Harbor Superfund Site

**STATE OF OREGON:**

\_\_\_\_\_  
Dated

Vicki L. Walker, Director

Digitally signed by Vicki L. Walker,  
Director  
Date: 2020.10.09 13:56:41 -07'00'

\_\_\_\_\_  
Vicki L. Walker  
Director  
Oregon Department of State Lands  
775 Summer St. NE  
Salem, OR 97301-1279

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Kris Strickler  
Director  
Oregon Department of Transportation  
355 Capitol St, NE MS 11  
Salem, OR 97301


Signature Page for Settlement regarding the Portland Harbor Superfund Site

**STATE OF OREGON:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Vicki L. Walker  
Director  
Oregon Department of State Lands  
775 Summer St. NE  
Salem, OR 97301-1279

10/19/2020  
Dated

 Karen Rowe for  
Kris Strickler  
Director  
Oregon Department of Transportation  
355 Capitol St, NE MS 11  
Salem, OR 97301

# **APPENDIX A**