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16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA)
19)
20 Plaintiff,) Case No. 2:01-cv-1520 MCE GGH
21 v.)
22) PARTIAL CONSENT DECREE
23 EL DORADO COUNTY,) BETWEEN THE UNITED STATES
24 CALIFORNIA and CITY OF) OF AMERICA AND EL DORADO
25 SOUTH LAKE TAHOE,) COUNTY, CALIFORNIA
26 CALIFORNIA, et al.)
27)
28 Defendants.)
_____)
_____)
AND ALL RELATED ACTIONS.)
_____)

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I. BACKGROUND

A. On August 3, 2001, Plaintiff United States of America (“Plaintiff” or “United States”), on behalf of the United States Department of Agriculture, Forest Service (“Forest Service”), filed a complaint pursuant to Sections 107 and 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607 and 9613(f), against defendants the County of El Dorado (the “County” or “Settling Defendant”) and the City of South Lake Tahoe (the “City”). The complaint filed by the United States seeks, *inter alia*: (1) reimbursement of costs incurred by the United States for response actions at the Meyers Landfill Site (“Site”), a former waste disposal facility located on National Forest System lands administered by the Lake Tahoe Basin Management Unit of the Forest Service, and a “facility” as defined under 42 U.S.C. § 9601(9), with accrued interest, and a declaration of the County's and the City's liability for future response costs incurred by the United States related to the Site; and (2) performance of response actions by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

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B. Settling Defendant does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public

1 health or welfare or the environment. The Forest Service does not admit any
2 liability arising out of the transactions or occurrences alleged in any counterclaim
3 asserted by Settling Defendant.
4

5 C. In response to a release or a substantial threat of a release of
6 hazardous substances at or from the Site, in 2005 the Forest Service commenced a
7 Supplemental Remedial Investigation and Supplemental Feasibility Study
8 (“SRI/SFS”) for the Site pursuant to 40 C.F.R. § 300.430.
9

10 D. In early 2006, consistent with EPA guidance, the Forest Service
11 made a determination to separate the landfill and the contaminated groundwater
12 beneath the Site into two separate operable units (“OUs”) for remediation
13 purposes. OU-1 is the landfill waste mass itself and OU-2 is the contaminated
14 groundwater plume. This Partial Consent Decree addresses only OU-1.
15
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17

18 E. The Forest Service completed the SRI/SFS Report in May, 2007.
19

20 F. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the Forest
21 Service published notice of the completion of the SRI/SFS Report and of the
22 proposed plan for remedial action on May 21, 2007, in a major local newspaper
23 of general circulation. The Forest Service provided an opportunity for written
24 and oral comments from the public on the proposed plan for remedial action. A
25 copy of the transcript of the public meeting is available to the public as part of the
26
27
28

1 administrative record upon which the Forest Service based the selection of the
2 remedial action for OU-1.
3

4 G. The decision by the Forest Service selecting the Remedial Action to
5 be implemented at OU-1 at the Site is embodied in a final Record of Decision
6 (“OU-1 ROD”), executed on November 15, 2007, which the State had a
7 reasonable opportunity to review and comment. The OU-1 ROD is attached as
8 Appendix A to this Partial Consent Decree and is incorporated herein by
9 reference. The OU-1 ROD is supported by an administrative record that contains
10 the documents and information upon which the Forest Service based its selection
11 of the remedial action.
12
13
14

15 H. After signature of this Partial Consent Decree by the Settling
16 Defendant, the Forest Service shall issue a Unilateral Administrative Order
17 (“UAO”) to the Settling Defendant for the Work. Under the UAO the County can
18 begin the Work in an expeditious fashion while the proposed Partial Consent
19 Decree is under consideration by the United States and the Court. Upon approval
20 of the Partial Consent Decree and entry by the Court and upon the withdrawal of
21 the UAO by the Forest Service, the Partial Consent Decree shall supersede the
22 UAO and the Terms of the Partial Consent Decree shall control the conduct of
23 activities at the Site from the Effective Date forward.
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1 Based on the information currently available to the Forest Service, the
2 Forest Service believes that the Work, as defined herein, will be properly and
3 promptly conducted by Settling Defendant if conducted in accordance with the
4 requirements of this Partial Consent Decree and its appendices.
5

6
7 I. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. §
8 9613(j), the Remedial Action set forth in the OU-1 ROD and the Work to be
9 performed by Settling Defendant shall constitute a response action taken or
10 ordered by the President for which judicial review shall be limited to the
11 administrative record.
12

13
14 J. The Parties recognize, and the Court by entering this Partial Consent
15 Decree finds, that this Partial Consent Decree has been negotiated by the Parties
16 in good faith and implementation of this Partial Consent Decree will expedite the
17 cleanup of the Site and will avoid additional prolonged and complicated litigation
18 between the Parties, and that this Partial Consent Decree is fair, reasonable, and
19 in the public interest.
20
21

22
23 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:
24

25 **II. JURISDICTION**
26

27 1. This Court has jurisdiction over the subject matter of this action
28 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and

1 9613(b). This Court also has personal jurisdiction over Settling Defendant.
2 Solely for the purposes of this Partial Consent Decree and the underlying
3 complaint, Settling Defendant waives all objections and defenses that it may have
4 to jurisdiction of the Court or to venue in this District. Settling Defendant shall
5 not challenge the terms of this Partial Consent Decree or this Court's jurisdiction
6 to enter and enforce this Partial Consent Decree.
7
8

9 10 **III. PARTIES BOUND**

11 2. This Partial Consent Decree applies to and is binding upon the
12 United States and upon Settling Defendant and its successors and assigns. Any
13 change in status of Settling Defendant including, but not limited to, any transfer
14 of assets or real or personal property, shall in no way alter Settling Defendant's
15 responsibilities under this Partial Consent Decree.
16
17

18 3. Settling Defendant shall provide a copy of this Partial Consent
19 Decree to each contractor hired to perform the Work required by this Partial
20 Consent Decree and to each person representing Settling Defendant with respect
21 to the Site or the Work, and shall condition all contracts entered into hereunder
22 upon performance of the Work in conformity with the terms of this Partial
23 Consent Decree. Settling Defendant or its contractors shall provide written notice
24 of the Partial Consent Decree to all subcontractors hired to perform any portion of
25
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1 the Work required by this Partial Consent Decree. Settling Defendant shall
2 nonetheless be responsible for ensuring that its contractors and subcontractors
3 perform the Work in accordance with the terms of this Partial Consent Decree.
4 With regard to the activities undertaken pursuant to this Partial Consent Decree,
5 each contractor and subcontractor shall be deemed to be in a contractual
6 relationship with Settling Defendant within the meaning of Section 107(b)(3) of
7 CERCLA, 42 U.S.C. § 9607(b)(3).
8
9
10

11 **IV. DEFINITIONS**

12
13 4. Unless otherwise expressly provided in this Partial Consent Decree,
14 terms used in this Partial Consent Decree that are defined in CERCLA or in
15 regulations promulgated under CERCLA shall have the meaning assigned to them
16 in CERCLA or in such regulations. Whenever terms listed below are used in this
17 Partial Consent Decree or in the appendices attached hereto and incorporated
18 hereunder, the following definitions shall apply solely for purposes of this Partial
19 Consent Decree:
20
21

22
23 “CERCLA” shall mean the Comprehensive Environmental Response,
24 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
25

26 “Court Registry Account” shall mean the Court Registry Account No.1
27 established by this Court by Order entered December 7, 2009 (Docket No. 361)
28

1 and containing \$1,250,000 paid by the Settling Third Party Defendants, plus any
2 interest accrued thereon.

3
4 The term “day” shall mean a calendar day unless expressly stated to be a
5 working day. The term “working day” shall mean a day other than a Saturday,
6 Sunday, or federal holiday. In computing any period of time under this Partial
7 Consent Decree, where the last day would fall on a Saturday, Sunday, or federal
8 holiday, the period shall run until the close of business of the next working day.
9

10
11 “District” shall mean the South Tahoe Public Utility District.

12
13 “Effective Date” shall be the date upon which this Partial Consent Decree
14 is entered by the Court as recorded on the Court docket, or, if the Court instead
15 issues an order approving the Partial Consent Decree, the date such order is
16 recorded on the Court docket.
17

18
19 “EPA” shall mean the United States Environmental Protection Agency and
20 any successor departments or agencies of the United States.
21

22 “Forest Service” shall mean the United States Department of Agriculture,
23 Forest Service and any successor departments or agencies of the United States.
24

25 “Future Oversight Costs” shall mean that portion of Future Response Costs
26 related to OU-1 that the Forest Service incurs in monitoring and supervising
27 Settling Defendant’s performance of the Work to determine whether such
28

1 performance is consistent with the requirements of this Partial Consent Decree,
2 including costs incurred in reviewing plans, reports and other documents
3 submitted pursuant to this Partial Consent Decree, as well as costs incurred in
4 overseeing implementation of the Work; however, Future Oversight Costs do not
5 include, *inter alia*: the costs incurred by the United States pursuant to Sections
6 VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency
7 Response), and Paragraph 47 (Funding for Work Takeover), or the costs incurred
8 by the United States in enforcing the terms of this Partial Consent Decree,
9 including all costs incurred in connection with Dispute Resolution pursuant to
10 Section XX (Dispute Resolution) and all litigation costs.

15 "Future Response Costs" shall mean all costs, including, but not limited to,
16 direct and indirect costs that the United States incurs pursuant to CERCLA
17 related to the Site from the Effective Date of this Partial Consent Decree forward
18 and which are not included in the definition of Future Oversight Costs, and any
19 Interest accrued thereon.

23 "Groundwater ROD" shall mean, for the purpose of this Partial Consent
24 Decree, the Forest Service's second Record of Decision for the Meyers Landfill
25 Site, whenever it is signed by the delegate of the Regional Forester, Forest
26 Service Region 5, and all attachments thereto, relating to groundwater (Operable
27 Unit 2 or "OU-2"), and any other remedial actions at the Site outside of the scope
28

1 of the remedial action set forth in the OU-1 ROD.

2
3 “Institutional Controls” shall mean Proprietary Controls and state or local
4 laws, regulations, ordinances, zoning restrictions, or other governmental controls
5 or notices that: (a) limit land, water, and/or resource use to minimize the potential
6 for human exposure to Waste Materials at the Site; (b) limit land, water, and/or
7 resource use to implement, ensure non-interference with, or ensure the
8 protectiveness of the OU-1 Remedial Action; and/or (c) provide information
9 intended to modify or guide human behavior at the Site.
10
11

12
13 “Interim Response Costs” shall mean all costs, including direct and indirect
14 costs, (a) paid by the United States in connection with the Site between January 1,
15 2008 and the Effective Date, or (b) incurred prior to the Effective Date but paid
16 after that date, and any Interest accrued thereon.
17
18

19 “Interest” shall mean interest at the rate specified for interest on
20 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
21 § 9507, compounded annually on October 1 of each year, in accordance with 42
22 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
23 time the interest accrues. The rate of interest is subject to change on October 1 of
24 each year.
25
26

27
28 “Meyers Landfill Site Special Account” shall mean the special account

1 established for the Site by the Forest Service pursuant to 16 U.S.C. § 579c.

2
3 “Meyers Landfill Site Disbursement Special Account” shall mean the
4 special account established for the Site by the Forest Service pursuant to 16
5 U.S.C. § 579c, and Paragraph 58 and used to partially reimburse Settling
6 Defendant for certain work at the Site.
7

8
9 “Municipal Solid Waste” shall mean waste material: (a) generated by a
10 household (including a single or multifamily residence); or (b) generated by a
11 commercial, industrial or institutional entity, to the extent that the waste material
12 (i) is essentially the same as waste normally generated by a household; (ii) is
13 collected and disposed of with other municipal solid waste as part of normal
14 municipal solid waste collection services; and (iii) contains a relative quantity of
15 hazardous substances no greater than the relative quantity of hazardous
16 substances contained in waste material generated by a typical single-family
17 household.
18
19
20

21
22 “National Contingency Plan” or “NCP” shall mean the National Oil and
23 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
24 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and
25 any amendments thereto.
26

27
28 “Operation and Maintenance” or “O&M” shall mean all activities required

1 to maintain the effectiveness of the OU-1 Remedial Action as required under the
2 OU-1 ROD and the Operation and Maintenance Plan approved or developed by
3 the Forest Service pursuant to Section VI (Performance of the Work by Settling
4 Defendant) and the SOW.
5

6
7 “OU-1” shall mean Operable Unit One at the Site. OU-1 of the Site is the
8 landfill waste mass.
9

10 “OU-1 Record of Decision” or “OU-1 ROD” shall mean the Forest Service
11 Record of Decision and all attachments thereto relating to the remedy for
12 Operable Unit 1 at the Site, which was signed by the delegate of the Regional
13 Forester, Forest Service Region 5 on November 15, 2007. The OU-1 ROD is
14 attached as Appendix A.
15

16
17 “OU-1 Remedial Action Work Plan” shall mean the document developed
18 pursuant to Paragraph 10 and approved by the Forest Service and any
19 modifications thereto.
20

21
22 “Paragraph” shall mean a portion of this Partial Consent Decree identified
23 by an Arabic numeral or an upper or lower case letter.
24

25 “Partial Consent Decree” shall mean this Partial Consent Decree and all
26 appendices attached hereto (listed in Section XXIX). In the event of conflict
27 between this Partial Consent Decree and any appendix, this Partial Consent
28

1 Decree shall control.

2
3 “Parties” shall mean the United States and Settling Defendant.

4 “Past Response Costs” shall mean all costs, including, but not limited to,
5
6 direct and indirect costs, that the United States paid at or in connection with the
7 Site through December 31, 2007, plus Interest on all such costs which has accrued
8 pursuant to 42 U.S.C. § 9607(a) through such date.
9

10 “Performance Standards” shall mean the remedial action objectives,
11
12 remedial goals, and standards of the Remedial Action, set forth in the OU-1 ROD,
13 the Remedial Design and Section III of the SOW and any modified standards
14 established pursuant to “technical impracticability” provision of Paragraph 12 or
15 any other provision of this Consent Decree.
16

17
18 “Plaintiff” shall mean the United States.

19 “Pre-Achievement O&M” shall mean all operation and maintenance
20
21 activities required for the Remedial Action for the post construction time period
22 prior to the Forest Service’s written Certification of Completion that the Remedial
23 Action is complete and the initiation of Post-Achievement O&M, as provided
24 under the Operation and Maintenance Plan approved or developed by the Forest
25 Service pursuant to Section VI (Performance of the Work by Settling Defendants)
26 and the SOW.
27
28

1 "Post-Achievement O&M" shall mean all activities, after the Remedial
2 Action has achieved the remedial action objectives and remediation goals in the
3 OU-1 ROD and has been determined to be operational and functional pursuant to
4 40 CFR § 300.435(f), which are required to maintain the effectiveness of the
5 Remedial Action, as required under the Operation and Maintenance Plan
6 approved or developed by the Forest Service pursuant to Section VI (Performance
7 of the Work by Settling Defendants) and the SOW.
8
9

10
11 "Project Coordinator" shall mean the Forest Service's Project Coordinator
12 for Work at the Site.
13

14 "Project Manager" shall mean the person(s) designated by Settling
15 Defendant pursuant to Section XII hereof.
16

17 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
18 §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).
19

20 "Remedial Action" or "RA" shall mean all activities Settling Defendant is
21 required to perform under the Partial Consent Decree to implement the OU-1
22 ROD as further described in the Remedial Design, in accordance with the SOW,
23 the Remedial Action Work Plan, and other plans approved by the Forest Service,
24 including Pre-Achievement O&M and implementation of Institutional Controls,
25 until the Performance Standards are met, excluding Post-Achievement O&M, and
26
27
28

1 the activities required under Section XXV (Retention of Records).

2
3 "Remedial Design" or "RD" shall mean the Remedial Design prepared by
4 the Forest Service in January, 2009, including the performance of the Remedial
5 Action.

6
7 "Section" shall mean a portion of this Partial Consent Decree identified by
8 a Roman numeral.

9
10 "Settling Defendant" shall mean El Dorado County, California.

11
12 "Settling Defendant Excess Future OU-1 Construction Costs" shall mean
13 those costs of response Settling Defendant incurs after the Effective Date, in
14 construction of the Remedial Action, which exceed the OU-1 cost estimate set
15 forth in the Remedial Design of \$5,500,000.00 and which would be compensable
16 as "necessary costs of response . . . consistent with the national contingency plan"
17 within the meaning of CERCLA section 107(a)(4), 42 U.S.C. Section 9607(a)(4).

18
19 "Settling Defendant Excess Future OU-1 Construction Costs" do not include
20 those costs reimbursed by the Waste Board Grant, or costs incurred by Settling
21 Defendant after completion of construction of the Remedial Action, and does not
22 include costs associated with O&M of the Remedial Action.

23
24 "Settling Defendant Future OU-1 Response Costs" shall mean those costs
25 of response Settling Defendant incurs after the Effective Date in construction of
26
27
28

1 the Remedial Action, which would be compensable as "necessary costs of
2 response . . . consistent with the national contingency plan" within the meaning of
3 CERCLA section 107(a)(4), 42 U.S.C. Section 9607(a)(4), including those costs
4 incurred by the Settling Defendant after completion of the Work, and costs
5 associated with O&M of the Remedial Action.
6
7

8 "Settling Defendant Past Response Costs" shall mean all costs, including,
9 but not limited to, direct and indirect costs, that Settling Defendant, or one or
10 more insurance companies on Settling Defendant's behalf, paid at or in
11 connection with the Site through the Effective Date.
12
13

14 "Site" shall mean the Meyers Landfill Site, located in Meyers, El Dorado
15 County, California, encompassing the areal extent of contamination including,
16 without limitation, approximately 11 acres of buried waste and the groundwater
17 plume originating therefrom (which presently has an areal extent of more than 31
18 acres), and generally shown on the map attached hereto as Appendix B.
19
20

21 "Site Portion of Trout Creek Trunk Pipeline" shall mean that portion of the
22 District's Trout Creek Trunk Pipeline located within the Site, generally depicted
23 on the map attached hereto as Appendix F, and including manholes numbered 45-
24 50.
25
26

27 "Statement of Work" or "SOW" shall mean the statement of work for
28

1 implementation of the Remedial Action at the Site as set forth in Appendix C to
2 this Partial Consent Decree and any modifications made in accordance with this
3 Partial Consent Decree. The SOW is incorporated by reference into this Partial
4 Consent Decree and is enforceable as part of this Partial Consent Decree.
5

6
7 “Supervising Contractor” shall mean the principal contractor retained by
8 Settling Defendant to supervise and direct the implementation of the Work under
9 this Partial Consent Decree.
10

11 “United States” shall mean the United States of America and each
12 department, agency and instrumentality of the United States.
13

14 “U.S. Payment” shall mean the payment required by Paragraph 56.a. and
15 any Interest required by Paragraph 56.b.
16

17 “Waste Board Grant” shall mean the full monetary extent of any grant
18 received by the Settling Defendant from the California Department of Resources,
19 Recycling and Recovery, formerly known as the Integrated Waste Management
20 Board (the Department is referred to herein as the “Waste Board”), whereby the
21 Waste Board reimburses the Settling Defendant for certain costs of Work.
22
23

24 “Waste Material” shall mean (1) any “hazardous substance” under Section
25 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
26 under Section 101(33), 42 U.S.C. § 9601(33) of CERCLA; (3) any “solid waste”
27
28

1 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous
2 material” under the California Hazardous Waste Control Act Section 25100 *et*
3
4 *seq.*

5 “Work” shall mean all activities and obligations Settling Defendant is
6 required to perform under this Partial Consent Decree to implement the OU-1
7 ROD, including the Remedial Action, O&M and any activities required to be
8 undertaken pursuant to this Partial Consent Decree, except the activities required
9 under Section XXVI (Retention of Records).
10
11

12 13 **V. GENERAL PROVISIONS**

14
15 5. Objectives of the Parties. The objectives of the Parties in entering
16 into this Partial Consent Decree are to protect public health or welfare or the
17 environment at the Site through the implementation of the Remedial Action by
18 Settling Defendant; to resolve Plaintiff’s claim for recovery of Past Response
19 Costs and Future Oversight Costs; and to resolve Settling Defendant’s claim for
20 recovery of Settling Defendant Past Response Costs, Settling Defendant Future
21 OU-1 Response Costs, and Settling Defendant Excess Future OU-1 Construction
22 Costs. The Parties stipulate, and the Court orders, that upon entry of this Partial
23 Consent Decree the Parties’ claims or partial claims against each other regarding
24 matters in this action not resolved in this Partial Consent Decree are dismissed
25
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1 without prejudice. This Partial Consent Decree is also without prejudice as to any
2 claim expressly preserved herein.
3

4 6. Commitments by Settling Defendant and the Forest Service. Settling
5 Defendant shall perform the Work in accordance with this Partial Consent
6 Decree, the OU-1 ROD, the SOW, and all work plans and other plans, standards,
7 specifications, and schedules set forth in this Partial Consent Decree or developed
8 by Settling Defendant and approved by the Forest Service pursuant to this Partial
9 Consent Decree. Settling Defendant shall also pay the United States for Past
10 Response Costs and Future Oversight Costs as provided in this Partial Consent
11 Decree. The Forest Service shall pay Settling Defendant for Settling Defendant
12 Past Response Costs, Settling Defendant Future OU-1 Response Costs, and
13 Settling Defendant Excess Future OU-1 Construction Costs as provided in this
14 Partial Consent Decree.
15
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19

20 7. Compliance With Applicable Law. All activities undertaken by
21 Settling Defendant pursuant to this Partial Consent Decree shall be performed in
22 accordance with the requirements of all applicable federal, state, and local laws
23 and regulations. Settling Defendant must also comply with all applicable or
24 relevant and appropriate requirements of all Federal, state, and local
25 environmental laws as set forth in the OU-1 ROD and the SOW. The activities
26 conducted pursuant to this Partial Consent Decree, if approved by the Forest
27
28

1 Service, shall be deemed to be consistent with the NCP.

2
3 8. Permits.

4 a. As provided in Section 121(e) of CERCLA, 42 U.S.C. §
5
6 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any
7 portion of the Work conducted entirely on-site (i.e., within the areal extent of
8 contamination or in very close proximity to the contamination and necessary for
9 implementation of the Work). Where any portion of the Work that is not on-site
10 requires a federal or state permit or approval, Settling Defendant shall submit
11
12 timely and complete applications and take all other actions necessary to obtain all
13 such permits or approvals.
14
15

16 b. Settling Defendant may seek relief under the provisions of
17 Section XIX (Force Majeure) for any delay in the performance of the Work
18 resulting from a failure to obtain, or a delay in obtaining, any permit or approval
19 referenced in Paragraph 8.a and required for the Work, provided that they have
20 submitted timely and complete applications and taken all other actions necessary
21 to obtain such permits or approvals.
22
23

24 c. This Partial Consent Decree is not, and shall not be construed
25 to be, a permit issued pursuant to any federal or state statute or regulation.
26
27
28

1 **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**

2
3 9. Selection of Supervising Contractor.

4 a. All aspects of the Work to be performed by Settling Defendant
5
6 pursuant to Sections VI (Performance of the Work by Performing Settling
7 Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data
8 Analysis), and XV (Emergency Response) of this Partial Consent Decree shall be
9 under the direction and supervision of the Supervising Contractor the selection of
10 which shall be subject to disapproval by the Forest Service. Within ten days after
11 it signs this Partial Consent Decree, Settling Defendant shall notify the Forest
12 Service in writing of the name, title, and qualifications of any contractor proposed
13 to be the Supervising Contractor. With respect to any contractor proposed to be
14 Supervising Contractor, Settling Defendant shall demonstrate that the proposed
15 contractor has a quality assurance system that complies with ANSI/ASQC E4-
16 1994, "Specifications and Guidelines for Quality Systems for Environmental Data
17 Collection and Environmental Technology Programs" (American National
18 Standard, January 5, 1995 or most recent version), by submitting a copy of the
19 proposed contractor's Quality Management Plan (QMP). The QMP should be
20 prepared in accordance with "EPA Requirements for Quality Management Plans
21 (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent
22 documentation as determined by the Forest Service. The Forest Service will issue
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1 a notice of disapproval or an authorization to proceed regarding hiring of the
2 proposed contractor. If at any time thereafter, Settling Defendant proposes to
3 change a Supervising Contractor, Settling Defendant shall give such notice to the
4 Forest Service and must obtain an authorization to proceed from the Forest
5 Service before the new Supervising Contractor performs, directs, or supervises
6 any Work under this Partial Consent Decree.
7
8

9
10 b. If the Forest Service disapproves a proposed Supervising
11 Contractor, the Forest Service will notify Settling Defendant in writing. Settling
12 Defendant shall submit to the Forest Service a list of contractors, including the
13 qualifications of each contractor that would be acceptable to it within 10 days
14 after receipt of the Forest Service's disapproval of the contractor previously
15 proposed. The Forest Service will provide written notice of the names of any
16 contractor(s) that it disapproves and an authorization to proceed with respect to
17 any of the other contractors. Settling Defendant may select any contractor from
18 that list that is not disapproved and shall notify the Forest Service of the name of
19 the contractor selected within 7 days of the Forest Service's authorization to
20 proceed.
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25
26 c. If the Forest Service fails to provide written notice of its
27 authorization to proceed or disapproval as provided in this Paragraph and this
28 failure prevents Settling Defendant from meeting one or more deadlines in a plan

1 approved by the Forest Service pursuant to this Partial Consent Decree,
2 Performing Settling Defendant may seek relief under Section XIX (Force
3 Majeure).
4

5
6 10. Remedial Action.

7 a. Within 20 days after it signs this Partial Consent Decree,
8
9 Settling Defendant shall submit to the Forest Service a Work Plan for the
10 performance of the OU-1 Remedial Action at the Site (“OU-1 RA Work Plan”)
11 for review and approval by the Forest Service. The OU-1 RA Work Plan shall be
12 developed in accordance with the OU-1 ROD and the attached SOW to
13 implement and be consistent with the Final Remedial Design and to perform the
14 Remedial Action. As specified in the attached SOW, the OU-1 RA Work Plan
15 shall include methodologies, plans and schedules for implementation of the
16 Remedial Design and performance of the Remedial Action and shall include, but
17 is not limited to, the following: (1) selection of the Remedial Action contractor;
18 (2) a Construction Quality Assurance Plan (CQAP); (3) a Construction Health
19 and Safety Plan; (4) a Sampling and Analysis Plan and Quality Assurance Project
20 Plan (QAPP); (5) an Operation, Monitoring and Maintenance Manual; (6) a
21 Construction Stormwater Pollution Prevention and Erosion Control Plan; (7) a
22 Field Sampling Plan (directed at measuring progress towards meeting
23 performance standards and implemented in accordance with the RD QAPP); and
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1 (8) development and submission of the Performance Standards Assessment Plan.

2 The OU-1 RA Work Plan shall also include a schedule for implementing all
3 Remedial Action tasks identified in the SOW and shall identify the initial
4 formulation of Respondent's Remedial Action Project Team (including the
5 Supervising Contractor).
6
7

8 b. As an attachment to the OU-1 RA Work Plan, Respondent
9 shall submit to the Forest Service for review, a Health and Safety Plan for field
10 activities required by the OU-1 RA Work Plan. The Health and Safety Plan for
11 field activities shall conform to applicable Occupational Safety and Health
12 Administration and EPA requirements, including but not limited to the
13 regulations at 29 C.F.R. Part 1910.
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16

17 c. Upon approval by the Forest Service, the OU-1 RA Work Plan
18 is incorporated into this Partial Consent Decree and shall be an enforceable part
19 of this Partial Consent Decree.
20
21

22 d. Upon approval of the OU-1 RA Work Plan by the Forest
23 Service, Settling Defendant shall implement the OU-1 RA Work Plan according
24 to the schedules in the OU-1 RA Work Plan. Unless otherwise directed by the
25 Forest Service, Settling Defendant shall not commence the Remedial Action at
26 the Site prior to approval of the OU-1 RA Work Plan.
27
28

1 e. Within 20 days after the Forest Service approves the OU-1 RA
2 Work Plan Settling Defendant shall notify the Forest Service in writing of the
3 name, title, and qualifications of any construction contractor(s) proposed to be
4 used in carrying out work under this Partial Consent Decree. With respect to any
5 proposed construction contractor, Settling Defendant shall demonstrate that the
6 proposed construction contractor has a quality system that complies with
7 ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for
8 Environmental Data Collection and Environmental Technology Programs,"
9 (American National Standard, January 5, 1995), by submitting a copy of the
10 proposed Project Manager's QMP. The QMP should be prepared in accordance
11 with the specifications set forth in "EPA Requirements for Quality Management
12 Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation
13 as determined by the Forest Service. If the Forest Service disapproves of the
14 selection of the construction contractor(s), Settling Defendant shall submit to the
15 Forest Service within 10 days after receipt of the Forest Service's disapproval of
16 the construction contractor(s) previously selected, a list of construction
17 contractors that would be acceptable to Settling Defendant. The Forest Service
18 will thereafter provide written notice to Settling Defendant of the names of the
19 construction contractors that are acceptable to the Forest Service. Settling
20 Defendant may then select any approved construction contractor from that list and

1 shall notify the Forest Service of the name of the construction contractor(s)
2 selected within 7 days of the Forest Service's designation of approved
3 construction contractors. The Forest Service retains the right to disapprove of
4 Settling Defendant's designated construction contractors(s) at any time during the
5 Settling Defendant's performance of Work. If the Forest Service disapproves of
6 the designated construction contractor(s), Settling Defendant shall retain a
7 different construction contractor(s) and shall notify the Forest Service of that
8 person's name, address, telephone number and qualifications within five (5) days
9 following the Forest Service's disapproval. If at any time Settling Defendant
10 proposes to change the construction contractor(s), Settling Defendant shall notify
11 the Forest Service and shall obtain approval from the Forest Service as provided
12 in this Paragraph, before the new construction contractor(s) performs any work
13 under this Partial Consent Decree.
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20 f. Upon approval of the OU-1 RA Work Plan by the Forest
21 Service, Settling Defendant shall implement the activities required under the OU-
22 1 RA Work Plan. Settling Defendant shall submit to the Forest Service all reports
23 and other deliverables required under the approved OU-1 RA Work Plan in
24 accordance with the approved schedule for review and approval pursuant to
25 Section XI (Forest Service Approval of Plans and Other Submissions). Unless
26 otherwise directed by the Forest Service, Settling Defendant shall not commence
27
28

1 physical Remedial Action activities at the Site prior to approval of the OU-1 RA
2 Work Plan.

3
4 11. Settling Defendant shall continue to implement the OU-1 Remedial
5 Action until the Performance Standards are achieved. Settling Defendant shall
6 implement Post Achievement O&M for so long thereafter as is required by the
7 OU-1 ROD, Remedial Design, and this Partial Consent Decree.
8

9
10 12. Modification of SOW or Related Work Plans.

11
12 a. If the Forest Service determines that it is necessary to modify
13 the work specified in the SOW and/or in work plans developed pursuant to the
14 SOW to achieve and maintain the Performance Standards or to carry out and
15 maintain the effectiveness of the remedy set forth in the OU-1 ROD, and such
16 modification is consistent with the scope of the remedy set forth in the OU-1
17 ROD and the Remedial Design, then the Forest Service may issue such
18 modification in writing and shall notify Settling Defendant of such modification.
19 For the purposes of this Paragraph and Paragraph 49 (Completion of Remedial
20 Action for OU-1) only, the “scope of the remedy set forth in the OU-1 ROD”
21 includes but is not limited to:
22
23
24
25

26 1. Installation of a multilayer cap and cover system to
27 isolate landfill refuse from contact with potential receptors, reduce or eliminate
28

1 erosion and surface water infiltration through the waste mass, and reduce or
2 eliminate potential surface contaminant migration. The cover system includes
3 surface controls for drainage and storm water management.
4

5 2. The relocation of waste from above and east of the
6 District's Site Portion of Trout Creek Trunk Pipeline and consolidating the waste
7 into the main landfill mass. This will result in the sewer line being located
8 outside the boundary of the waste disposal area and the footprint of the cover
9 system.
10

11 3. Implementation of Institutional Controls to safeguard
12 the integrity of the multi-layer cap and cover system and associated monitoring
13 systems. Institutional Controls would prohibit construction of any habitable
14 structures, or other land-disturbing activity into or onto the surface of the landfill;
15 planting of vegetation that could threaten the integrity of the landfill cap; removal
16 of or tampering with posted signs; irrigation of the surface of the landfill; and
17 extraction of groundwater from beneath the landfill for public or private use.
18
19

20 4. Implementation of a passive landfill gas (LFG) venting
21 system, as a component of the multilayer cap and cover system, to control LFG
22 migration.
23

24 5. Expansion of the French drain along the western
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1 boundary of the Site to prevent uncontaminated perched groundwater present at
2 the southwest and west sides of the landfill from contributing to the contaminated
3 groundwater plume beneath the landfill, and potentially affecting groundwater
4 levels within the waste.
5

6
7 6. Pre and Post Achievement O&M including, but not
8 limited to, surface water monitoring and perimeter LFG migration monitoring.
9

10 If Settling Defendant objects to the modification they may, within 30 days after
11 the Forest Service's notification, seek dispute resolution under Paragraph 75
12 (Record Review).
13

14
15 b. The SOW and/or related work plans shall be modified: (i) in
16 accordance with the modification issued by the Forest Service; or (ii) if Settling
17 Defendant invokes dispute resolution, in accordance with the final resolution of
18 the dispute. The modification shall be incorporated into and enforceable under
19 this Partial Consent Decree, and Settling Defendant shall implement all work
20 required by such modification. Settling Defendant shall incorporate the
21 modification into the OU-1 RA Work Plan under Paragraph 10.
22
23

24
25 c. Nothing in this Paragraph shall be construed to limit the Forest
26 Service's authority to require performance of further response actions as
27 otherwise provided in this Partial Consent Decree.
28

1 13. Nothing in this Partial Consent Decree, the SOW, or the OU-1
2 Remedial Design or OU-1 RA Work Plan constitutes a warranty or representation
3 of any kind by Plaintiff that compliance with the work requirements set forth in
4 the SOW and the Work Plans will achieve the Performance Standards set forth in
5 the OU-1 ROD and the SOW. Settling Defendant's compliance with such
6 approved documents does not foreclose the Forest Service from seeking
7 additional work to achieve applicable performance standards.
8
9
10

11 14. Off-Site Shipment of Waste Material.
12

13 a. Settling Defendant may ship Waste Material from the Site to
14 an off-Site facility only if they verify, prior to any shipment, that the off-Site
15 facility is operating in compliance with the requirements of Section 121(d)(3) of
16 CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a
17 determination from EPA that the proposed receiving facility is operating in
18 compliance with 42 U.S.C. §9621(d)(3) and 40 C.F.R. § 300.440.
19
20

21 b. Settling Defendant may ship Waste Material from the Site to
22 an out-of-state waste management facility only if, prior to any shipment, they
23 provide written notice to the appropriate state environmental official in the
24 receiving facility's state and to the Forest Service Project Coordinator. This
25 notice requirement shall not apply to any off-Site shipments when the total
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1 quantity of all such shipments will not exceed ten cubic yards. The written notice
2 shall include the following information, if available: (i) the name and location of
3 the receiving facility; (ii) the type and quantity of Waste Material to be shipped;
4 (iii) the schedule for the shipment; and (iv) the method of transportation. Settling
5 Defendant also shall notify the state environmental official referenced above and
6 the Forest Service Project Coordinator of any major changes in the shipment plan,
7 such as a decision to ship the Waste Material to a different out-of state facility.

8 Settling Defendant shall provide the written notice after the award of the contract
9 for Remedial Action construction and before the Waste Material is shipped.

10 Before shipping any hazardous substances, pollutants, or contaminants from the
11 Site to an off-Site location, Settling Defendant shall provide the Forest Service
12 with certification that the proposed receiving facility is operating in compliance
13 with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. 9621(d)(3), and
14 40 C.F.R. § 300.440. Settling Defendant shall only send hazardous substances,
15 pollutants, or contaminants from the Site to an off-Site facility that complies with
16 the requirements of the statutory provision and regulation cited in the preceding
17 sentence.

18 **VII. REMEDY REVIEW**

19 15. Periodic Review. Settling Defendant shall conduct any studies and
20 investigations that the Forest Service requests, in order to permit the Forest
21

1 Service to conduct reviews of whether the OU-1 Remedial Action is protective of
2 human health and the environment at least every five years as required by Section
3 121(c) of CERCLA, 42 U.S.C. § 9621(c) and any applicable regulations.

4
5 16. Forest Service Selection of Further Response Actions. If the Forest
6 Service determines, at any time, that the Remedial Action is not protective of
7 human health and the environment, the Forest Service may select further response
8 actions for the Site in accordance with the requirements of CERCLA and the
9 NCP. Settling Defendant is aware and acknowledges that further response actions
10 will be necessary with respect to the Groundwater ROD or final response action
11 at the SiteOU-2. The Groundwater ROD or future actions at the Site are not
12 covered by this Partial Consent Decree.
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17 17. Opportunity to Comment. Settling Defendant and, if required by
18 Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the
19 public, will be provided with an opportunity to comment on any further response
20 actions proposed by the Forest Service as a result of the review conducted
21 pursuant to Section 121(c) of CERCLA and to submit written comments for the
22 record during the comment period.
23
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25

26 18. Settling Defendant's Obligation To Perform Further Response
27 Actions. If the Forest Service selects further response actions for OU-1 at the
28

1 Site, the Forest Service may require Settling Defendant to perform such further
2 response actions, but only to the extent that the reopener conditions in Paragraph
3
4 91 or Paragraph 92 (United States' Pre- and Post-Certification Reservations) are
5 satisfied. Settling Defendant may invoke the procedures set forth in Section XX
6
7 (Dispute Resolution) to dispute (a) the Forest Service's determination that the
8 reopener conditions of Paragraph 91 or Paragraph 92 of Section XXII (Covenants
9
10 by Plaintiff) are satisfied, (b) the Forest Service's determination that the OU-1
11 Remedial Action is not protective of human health and the environment, or (c) the
12 Forest Service's selection of further OU-1 response actions. Disputes pertaining
13
14 to whether the OU-1 Remedial Action is protective or to the Forest Service's
15 selection of further OU-1 response actions shall be resolved pursuant to
16
17 Paragraph 75 (Record Review).

18 19. Submission of Plans. If Settling Defendant is required to perform
19
20 further OU-1 response actions pursuant to Paragraph 18, they shall submit a plan
21
22 for such response action to the Forest Service for approval in accordance with the
23
24 procedures of Section VI (Performance of the Work by Settling Defendant).
25
26 Settling Defendant shall implement the approved plan in accordance with this
27
28 Partial Consent Decree.

1 **VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

2
3 20. Quality Assurance

4 a. Settling Defendant shall use quality assurance, quality control,
5
6 and chain of custody procedures for all samples in accordance with “EPA
7 Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-
8 01/003, March 2001, reissued May 2006) “Guidance for Quality Assurance
9 Project Plans (QA/G-5)” (EPA/240/R-02/009, December 2002), and subsequent
10 amendments to such guidelines upon notification by the Forest Service to Settling
11 Defendant of such amendment, while conducting all sample collection and
12 analysis activities, required herein under any plan. Amended guidelines shall
13 apply only to procedures conducted after such notification.
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16

17 b. Prior to the commencement of any monitoring project under
18 this Consent Decree, Settling Defendant shall submit to the Forest Service for
19 approval a Quality Assurance Project Plan (“QAPP”) that is consistent with the
20 SOW, the NCP, and applicable guidance documents. If relevant to the
21 proceeding, the Parties agree that validated sampling data generated in
22 accordance with the QAPP(s) and reviewed and approved by the Forest Service
23 shall be admissible as evidence, without objection, in any proceeding under this
24 Partial Consent Decree. Settling Defendant shall ensure that the Forest Service
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1 personnel and its authorized representatives are allowed access at reasonable
2 times to all laboratories utilized by Settling Defendant in implementing this
3 Partial Consent Decree. In addition, Settling Defendant shall ensure that such
4 laboratories shall analyze all samples submitted by the Forest Service pursuant to
5 the QAPP for quality assurance monitoring. Settling Defendant shall ensure that
6 the laboratories they utilize for the analysis of samples taken pursuant to this
7 Partial Consent Decree perform all analyses according to accepted EPA methods.
8 Accepted EPA methods consist of those methods that are documented in the
9 “USEPA Contract Laboratory Program Statement of Work for Inorganic
10 Analysis. ILM05.4,” and the “USEPA Contract Laboratory Program Statement of
11 Work for Organic Analysis, SOM01.2,” and any amendments made thereto
12 during the course of the implementation of this Partial Consent Decree. Settling
13 Defendant shall ensure that all laboratories they use for analysis of samples taken
14 pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC
15 program. Settling Defendant shall only use laboratories that have a documented
16 Quality System which complies with ANSI/ASQC E4-1994, “Specifications and
17 Guidelines for Quality Systems for Environmental Data Collection and
18 Environmental Technology Programs” (American National Standard, January 5,
19 1995), and “EPA Requirements for Quality Management Plans (QA/R-2),”
20 (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent
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1 documentation as determined by EPA. The Forest Service may consider
2 laboratories accredited under the National Environmental Laboratory
3 Accreditation Program ("NELAP") as meeting the Quality System requirements.
4 Settling Defendant shall ensure that all field methodologies utilized in collecting
5 samples for subsequent analysis pursuant to this Partial Consent Decree are
6 conducted in accordance with the procedures set forth in the QAPP approved by
7 the Forest Service.
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10

11 21. Upon request, Settling Defendant shall allow split or duplicate
12 samples to be taken by the Forest Service or its authorized representatives,
13 Settling Defendant shall notify the Forest Service not less than 14 days in advance
14 of any sample collection activity unless shorter notice is agreed to by the Forest
15 Service. In addition, the Forest Service shall have the right to take any additional
16 samples that the Forest Service deems necessary. Upon request, the Forest
17 Service shall allow the Settling Defendant to take split or duplicate samples of
18 any samples it takes as part of the Plaintiff's oversight of Settling Defendant's
19 implementation of the Work.
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24 22. Settling Defendant shall submit to the Forest Service a copy of the
25 results of all sampling and/or tests or other data obtained or generated by or on
26 behalf of Settling Defendant with respect to the Site and/or the implementation of
27 this Partial Consent Decree unless the Forest Service agrees otherwise.
28

1 23. Notwithstanding any provision of this Partial Consent Decree, the
2 United States retains all of its information gathering and inspection authorities
3
4 and rights, including enforcement actions related thereto, under CERCLA, RCRA
5
6 and any other applicable statutes or regulations.

7 **IX. ACCESS**

8
9 24. If the Site, or any other real property where access or land/water use
10 restrictions are needed, is owned or controlled by persons other than Settling
11 Defendant or the United States, Settling Defendant shall use best efforts to secure
12
13 access agreements from the present owner(s) within thirty (30) days after the
14 Effective Date of this Partial Consent Decree, or as otherwise specified in writing
15
16 by the Project Coordinator. Such agreements shall provide access for the Forest
17 Service, its contractors, subcontractors, and oversight officials, and Settling
18 Defendant or its authorized representatives, contractors, and subcontractors, and
19
20 such agreements shall specify that Settling Defendant is not the Forest Service's
21 representative with respect to liability associated with Site activities.
22

23 25. For purposes of Paragraph 24, "best efforts" includes the payment of
24 reasonable sums of money to obtain access. Settling Defendant shall promptly
25
26 notify the United States in writing, and shall include in that notification a
27
28 summary of the steps that Settling Defendant has taken to attempt to comply with

1 Paragraph 24 of this Consent Decree. The United States may, as it deems
2 appropriate, assist Settling Defendant in obtaining access or agreements to restrict
3 land/water use, either in the form of contractual agreements or in the form of
4 easements running with the land, or in obtaining the release or subordination of a
5 prior lien or encumbrance. Settling Defendant shall reimburse the United States
6 under Section XVI (Payments for Response Costs), for all costs incurred, direct
7 or indirect, by the United States in obtaining such access, agreements to restrict
8 land/water use restrictions, including, but not limited to, the cost of attorney time
9 and the amount of monetary consideration paid or just compensation.
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14 26. If the Forest Service determines that Institutional Controls in the
15 form of state or local laws, regulations, ordinances, zoning restrictions, or other
16 governmental controls are needed Settling Defendant shall cooperate with the
17 Forest Service's efforts to secure and ensure compliance with such governmental
18 controls.
19
20

21 27. To the extent Settling Defendant reasonably anticipates excavating
22 material or otherwise implementing a portion of the Work above or immediately
23 around the District's Site Portion of the Trout Creek Trunk Pipeline, Settling
24 Defendant shall use its best efforts to provide reasonable advance notice of no
25 less than 48 hours to the District of such activities. Settling Defendant shall also
26 use best efforts to ensure that any access into the Site Portion of the Trout Creek
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1 Trunk Pipeline meets all of the District's reasonable written requirements or
2 reasonable verbal directions during on-site activity and that access to the Site
3
4 Portion of the Trout Creek Trunk Pipeline will not interfere with the integrity of
5 the pipeline.

6
7 28. Notwithstanding any provision of this Partial Consent Decree, the
8 United States retains all of its access authorities and rights, as well as all of its
9 rights to require Institutional Controls, including enforcement authorities related
10 thereto, under CERCLA, RCRA, and any other applicable statute or regulations.
11

12 **X. REPORTING REQUIREMENTS**

13
14
15 29. In addition to any other requirement of this Partial Consent Decree
16 and the attached SOW, Settling Defendant shall submit to the Forest Service
17 Project Coordinator and Alternate Forest Service Project Coordinator a copy of
18 written monthly progress reports that: (a) describe the actions which have been
19 taken toward achieving compliance with this Partial Consent Decree during the
20 previous month; (b) include a summary of all results of sampling and tests and all
21 other data received or generated by Settling Defendant or its contractors or agents
22 in the previous month; (c) identify all plans, reports and other deliverables
23 required by this Partial Consent Decree completed and submitted during the
24 previous month; (d) describe all actions, including, but not limited to, data
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1 collection and implementation of work plans, and provide other information
2 relating to the progress of construction, including, but not limited to, critical path
3 diagrams, Gantt charts and Pert charts; (e) include information regarding
4 percentage of completion, unresolved delays encountered or anticipated that may
5 affect the future schedule for implementation of the Work, and a description of
6 efforts made to mitigate those delays or anticipated delays; (f) include any
7 modifications to the work plans or other schedules that Settling Defendant has
8 proposed to the Forest Service or that have been approved by the Forest Service;
9 and (g) describe all activities undertaken in support of the Community Relations
10 Plan during the previous month and those to be undertaken in the next six weeks.
11 Settling Defendant shall submit these progress reports to the Forest Service
12 Project Coordinator and Alternate Project Coordinator by the tenth day of every
13 month following the lodging of this Partial Consent Decree until the Forest
14 Service notifies Settling Defendant pursuant to Paragraph 49.b. of Section XIV
15 (Certification of Completion). If requested by the Forest Service, Settling
16 Defendant shall also provide briefings for the Forest Service to discuss the
17 progress of the Work.

25 30. Settling Defendant shall notify the Forest Service of any change in
26 the schedule described in the monthly progress report for the performance of any
27 activity, including, but not limited to, data collection and implementation of work
28

1 plans, no later than seven days prior to the performance of the activity.

2
3 31. Upon the occurrence of any event during performance of the Work
4 that Performing Settling Defendant is required to report pursuant to Section 103
5 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and
6 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and
7 Community Right-to-know Act (“EPCRA”), 42 U.S.C. § 11004, Settling
8 Defendant shall within 24 hours of the onset of such event orally notify the Forest
9 Service Project Coordinator or the Alternate Forest Service Project Coordinator
10 (in the event of the unavailability of the Forest Service Project Coordinator), or,
11 in the event that neither the Forest Service Project Coordinator or Alternate Forest
12 Service Project Coordinator is available, the Forest Service Regional Office
13 CERCLA Coordinator at (707) 562-8729. These reporting requirements are in
14 addition to the reporting required by CERCLA Section 103 or EPCRA Section
15 304.
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20 32. Within 20 days of the onset of such an event, Settling Defendant
21 shall furnish to the Forest Service a written report, signed by Settling Defendant’s
22 Project Manager, setting forth the events that occurred and the measures taken,
23 and to be taken, in response thereto. Within 30 days of the conclusion of such an
24 event, Settling Defendant shall submit a report setting forth all actions taken in
25 response thereto.
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1 33. Settling Defendant shall submit 3 copies of all plans, reports, data,
2
3 and other deliverables required by the SOW, the OU-1 RA Work Plan, or any
4 other approved plans to the Forest Service in accordance with the schedules set
5 forth in such plans. Upon request by the Forest Service, Settling Defendant shall
6 submit in electronic form all or any portion of any deliverables Settling
7 Defendant is required to submit pursuant to the provisions of this Partial Consent
8 Decree.
9

10
11 34. All deliverables submitted by Settling Defendant to the Forest
12 Service which purport to document Settling Defendant's compliance with the
13 terms of this Partial Consent Decree shall be signed by an authorized
14 representative of Settling Defendant.
15
16

17 **XI. FOREST SERVICE APPROVAL OF PLANS,**
18 **REPORTS, AND OTHER DELIVERABLES**
19

20 35. Initial Submissions.
21

22 a. After review of any plan, report, or other deliverable that is
23 required to be submitted for approval pursuant to this Partial Consent Decree, the
24 Forest Service, shall: (i) approve, in whole or in part, the submission; (ii) approve
25 the submission upon specified conditions; (iii) disapprove, in whole or in part, the
26 submission; or (iv) any combination of the foregoing.
27
28

1 b. The Forest Service also may modify the initial submission to
2 cure deficiencies in the submission if: (i) the Forest Service determines that
3
4 disapproving the submission and awaiting a resubmission would cause substantial
5 disruption to the Work; or (ii) previous submission(s) have been disapproved due
6
7 to material defects and the deficiencies in the initial submission under
8 consideration indicate a bad faith lack of effort to submit an acceptable plan,
9
10 report, or deliverable.

11 36. Resubmissions. Upon receipt of a notice of disapproval under
12 Paragraph 35.a.(iii) or (iv), or if required by a notice of approval upon specified
13 conditions under paragraph 35.a.(ii), Settling Defendant shall within 10 days or
14 such longer time as specified by the Forest Service in such notice, correct the
15 deficiencies and resubmit the plan, report, or other deliverable for approval. After
16
17 review of the resubmitted plan, report, or other deliverable, the Forest Service
18
19 may: (a) Approve, in whole or in part, the resubmission; (b) approve the
20
21 resubmission upon specified conditions; (c) modify the resubmission; (d)
22
23 disapprove, in whole or in part, the resubmission, requiring Settling Defendant to
24 correct the deficiencies; or (e) any, combination of the foregoing.

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26 37. Material Defects. If an initially submitted or resubmitted plan,
27 report, or other deliverable contains a material defect, and the plan, report, or
28 other deliverable is disapproved or modified by the Forest Service under

1 Paragraph 35.b(ii) or 36 due to such material defect, then the material defect shall
2 constitute a lack of compliance for purposes of Paragraph 78. The provisions of
3 Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall
4 govern the accrual and payment of any stipulated penalties regarding Settling
5 Defendant's submissions under this Section.
6
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8 38. Implementation. Upon approval, approval upon conditions, or
9 modification by the Forest Service under Paragraph 35 or 36, of any plan, report,
10 or other deliverable, or any portion thereof: (a) such plan, report, or other
11 deliverable, or portion thereof, shall be incorporated into and enforceable under
12 this Partial Consent Decree; and (b) Settling Defendant shall take any action
13 required by such plan, report, or other deliverable or portion thereof, subject only
14 to their right to invoke the Dispute Resolution procedures set forth in Section XX
15 (Dispute Resolution) with respect to the modifications or conditions made by the
16 Forest Service. The implementation of any non-deficient portion of a plan, report,
17 or other deliverable submitted or resubmitted under Paragraph 35 or 36 shall not
18 relieve Settling Defendant of any liability for stipulated penalties under Section
19 XXI (Stipulated Penalties).
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26 **XII. COUNTY PROJECT MANAGER/FOREST SERVICE PROJECT COORDINATOR**

27 39. Within 10 days of signing this Partial Consent Decree, Settling
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1 Defendant will notify the Forest Service, in writing, of the name, address, and
2 telephone number of their respective designated Project Manager and Alternate
3 Project Manager, each of whom shall be a County employee. If a Project
4 Manager or Alternate Project Manager initially designated is changed, the identity
5 of the successor will be given to the Forest Service at least five working days
6 before the change occurs, unless impracticable, but in no event later than the
7 actual day the change is made. Settling Defendant's Project Manager shall be
8 subject to disapproval by the Forest Service and shall have the technical expertise
9 sufficient to adequately oversee all aspects of the Work. Neither Settling
10 Defendant's Project Manager nor Alternate Project Manager shall be an attorney
11 for Settling Defendant in this matter. He or she may assign other representatives,
12 including other contractors, to serve as a Site representative for oversight of
13 performance of daily operations during remedial activities.

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20 40. All communications, whether written or oral, from Settling
21 Defendant to the Forest Service shall be directed to the Forest Service's Project
22 Coordinator. Settling Defendant shall submit to the Forest Service three copies of
23 all documents, including plans, reports, and other correspondence, which are
24 developed pursuant to this Partial Consent Decree, and shall send these
25 documents by certified mail, return receipt requested or overnight mail.
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1 The Forest Service's Project Coordinator is:

2
3 Gail Bakker
4 Forest Service, Tahoe National Forest
5 631 Coyote Street
6 Nevada City, CA 95959
7 phone: 530-478-6192
8 fax: 530-478-6109
9 e-mail: gbakker@fs.fed.us

10 Two copies of all documents shall be sent to the Project Coordinator, and
11 one copy shall be sent to the Alternate Project Coordinator:

12
13 Dennis Geiser
14 Forest Service
15 Pacific Southwest Region
16 1323 Club Drive
17 Vallejo, CA 94592
18 phone: 707-562-8729
19 fax: 707-562-9055
20 e-mail: dennisgeiser@fs.fed.us

21 The Forest Service has the unreviewable right to change its Project Coordinator.

22 If the Forest Service changes its Project Coordinator, the Forest Service will
23 inform Settling Defendant in writing of the name, address, and telephone number
24 of the new Project Coordinator.

25
26 41. The Forest Service may designate other representatives, including,
27 but not limited to, Forest Service employees, and federal contractors and
28 consultants, to observe and monitor the progress of any activity undertaken

1 pursuant to this Partial Consent Decree. The Forest Service's Project Coordinator
2 and Alternate Project Coordinator shall have the authority lawfully vested in a
3 Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the
4 NCP, 40 C.F.R. Part 300. In addition, the Forest Service's Project Coordinator
5 and/or Alternate Project Coordinator shall have authority, consistent with the
6 NCP, to halt any Work required by this Partial Consent Decree and to take any
7 necessary response action when he or she determines that conditions at the Site
8 constitute an emergency situation or may present an immediate threat to public
9 health or welfare or the environment due to release or threatened release of Waste
10 Material.
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15 42. The Forest Service's Project Coordinator and Settling Defendant's
16 Project Manager will meet, at a minimum, on a monthly basis while on-site
17 construction of the OU-1 remedy is ongoing.
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20 **XIII. PERFORMANCE GUARANTEE**

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22 43. In order to ensure the full and final completion of the Work, Settling
23 Defendant shall provide a performance guarantee for the benefit of the Forest
24 Service in the amount of \$ 7.2 million (hereinafter "Estimated Unfunded Cost of
25 the Work"). The performance guarantee, which must be satisfactory in form and
26 substance to the Forest Service, shall be in the form of one or more of the
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1 following mechanisms (provided that, if Settling Defendant intends to use
2 multiple mechanisms, such multiple mechanisms shall be limited to surety bonds
3 guaranteeing payment, letters of credit, trust funds, and insurance policies):
4

5 a. A surety bond unconditionally guaranteeing payment and/or
6 performance of the Work that is issued by a surety company among those listed
7 as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S.
8 Department of the Treasury;
9

10 b. One or more irrevocable letters of credit, payable to or at the
11 direction of the Forest Service, that is issued by one or more financial
12 institution(s) (i) that has the authority to issue letters of credit and (ii) whose
13 letter-of-credit operations are regulated and examined by a federal or state
14 agency;
15

16 c. A trust fund established for the benefit of the Forest Service that
17 is administered by a trustee (i) that has the authority to act as a trustee and (ii)
18 whose trust operations are regulated and examined by a federal or state agency;
19

20 d. A policy of insurance that (i) provides the Forest Service with
21 acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier
22 (a) that has the authority to issue insurance policies in the applicable
23 jurisdiction(s) and (b) whose insurance operations are regulated and examined by
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1 a federal or state agency; or

2
3 e. A demonstration by Settling Defendant that it is a local
4 government or other political subdivision of the State, and that such Settling
5 Defendant satisfies the requirements in Appendix E;
6

7 f. A demonstration by Settling Defendant that it meets the financial
8 test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the
9 Work (plus the amount(s) of any other federal or any state environmental
10 obligations financially assured through the use of a financial test or guarantee),
11 provided that all other requirements of 40 C.F.R. § 264.143(f) are met to the
12 Forest Service's satisfaction.
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16 44. Settling Defendant has selected, and the Forest Service has
17 approved, as an initial performance guarantee a demonstration by the Settling
18 Defendant pursuant to the requirements of Paragraph 43(e) and Appendix E to
19 address their obligation hereunder. Within ten days after the Effective Date of
20 this Partial Consent Decree, Settling Defendant shall execute or cause to be
21 executed or otherwise finalize all instruments or other documents required in
22 order to make the selected performance guarantee(s) and the assignment thereof
23 legally binding in a form substantially identical to the documents attached hereto
24 as Appendix E, and such performance guarantee(s) shall thereupon be fully
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1 effective. Within 30 days of the Effective Date of this Partial Consent Decree,
2 Settling Defendant shall submit copies of all executed and/or otherwise finalized
3 instruments or other documents required in order to make the selected
4 performance guarantee(s) legally binding to the Forest Service Regional Financial
5 Management Officer in accordance with Section XXVII ("Notices and
6 Submissions") of this Partial Consent Decree and to the United States and the
7 Forest Service as specified in Section XXVII (Notices and Submissions).
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11 45. If, at any time after the Effective Date and before issuance of the
12 Certification of Completion of the Remedial Action pursuant to Paragraph 49,
13 Settling Defendant provides a performance guarantee for completion of the Work
14 by means of a demonstration or guarantee pursuant to Paragraph 43(e) above,
15 Settling Defendant shall also comply with the other relevant requirements of 40
16 C.F.R. § 264.143(f), relating to these mechanisms unless otherwise provided in
17 this Partial Consent Decree, including but not limited to (a) the initial submission
18 of required financial reports and statements from the relevant entity's chief
19 financial officer ("CFO") and independent certified public accountant ("CPA"),
20 in the form prescribed by EPA in its financial test sample CFO letter and CPA
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1 reports available at:

2
3 <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf> ;

4 (b) the annual re-submission of such reports and statements within ninety days
5 after the close of each such entity's fiscal year; and (c) the prompt notification of
6 the Forest Service after each such entity determines that it no longer satisfies the
7 financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event
8 within ninety days after the close of any fiscal year in which such entity no longer
9 satisfies such financial test requirements. For purposes of the performance
10 guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part
11 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment"
12 shall be deemed to include the Work; the terms "current closure cost estimate"
13 "current post-closure cost estimate," and "current plugging and abandonment cost
14 estimate" shall be deemed to include the Estimated Cost of the Work; the term
15 "operator" shall be deemed to refer to Settling Defendant making a demonstration
16 under Paragraph 43.e; and the terms "facility" and "hazardous waste facility"
17 shall be deemed to include the Site.
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25 46. In the event that the Forest Service determines at any time that a
26 performance guarantee provided by Settling Defendant pursuant to this Section is
27 inadequate or otherwise no longer satisfies the requirements set forth in this
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1 Section, whether due to an increase in the estimated cost of completing the Work
2 or for any other reason, or in the event that Settling Defendant becomes aware of
3 information indicating that a performance guarantee provided pursuant to this
4 Section is inadequate or otherwise no longer satisfies the requirements set forth in
5 this Section, whether due to an increase in the estimated cost of completing the
6 Work or for any other reason, Settling Defendant, within thirty days of receipt of
7 notice of the Forest Service's determination or, as the case may be, within thirty
8 days of Settling Defendant becoming aware of such information, shall obtain and
9 present to the Forest Service for approval a proposal for a revised or alternative
10 form of performance guarantee listed in Paragraph 43 of this Partial Consent
11 Decree that satisfies all requirements set forth in this Section XIII; provided,
12 however, that if Settling Defendant cannot obtain such revised or alternative form
13 of performance guarantee within such 30-day period, and provided further that
14 Settling Defendant shall commence to obtain such revised or alternative form of
15 performance guarantee within such 30-day period, and thereafter diligently
16 proceeds to obtain the same, the Forest Service shall extend such period for such
17 time as is reasonably necessary for Settling Defendant in the exercise of due
18 diligence to obtain such revised or alternative form of performance guarantee,
19 such additional period not to exceed 60 days. On day 30, Settling Defendant shall
20 provide to the Forest Service a status report on its efforts to obtain the revised or
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1 alternative form of guarantee. In seeking approval for a revised or alternative
2 form of performance guarantee, Settling Defendant shall follow the procedures
3 set forth in Paragraph 48.b.(2) of this Partial Consent Decree. Settling
4 Defendant's inability to post a performance guarantee for completion of the Work
5 shall in no way excuse performance of any other requirements of this Partial
6 Consent Decree, including, without limitation, the obligation of Settling
7 Defendant to complete the Work in strict accordance with the terms of this Partial
8 Consent Decree.

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13 47. Funding for Work Takeover. The commencement of any Work
14 Takeover pursuant to Paragraph 95 of this Partial Consent Decree shall trigger the
15 Forest Service's right to receive the benefit of any performance guarantee(s)
16 provided pursuant to Paragraph 43(a), 43(b), 43(c), or 43(d) and at such time the
17 Forest Service shall have immediate access to resources guaranteed under any
18 such performance guarantee(s), whether in cash or in kind, as needed to continue
19 and complete the Work assumed by the Forest Service under the Work Takeover.
20 Upon the commencement of any Work Takeover, if (a) for any reason the Forest
21 Service is unable to promptly secure the resources guaranteed under any such
22 performance guarantee(s), whether in cash or in kind, necessary to continue and
23 complete the Work assumed by the Forest Service under the Work Takeover, or
24 (b) in the event that the performance guarantee involves a demonstration of
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1 satisfaction of the financial test criteria pursuant to Paragraph 44(e), Settling
2 Defendant shall immediately upon written demand from the Forest Service
3 deposit into a Forest Service special account or such other account as the Forest
4 Service may specify, in immediately available funds and without setoff,
5 counterclaim, or condition of any kind, a cash amount up to but not exceeding the
6 estimated cost of completing the Work as of such date, as determined by the
7 Forest Service. In addition, if at any time the Forest Service is notified by the
8 issuer of a performance guarantee that such issuer intends to cancel the
9 performance guarantee mechanism it has issued, then, unless Settling Defendant
10 provides a substitute performance guarantee mechanism in accordance with this
11 Section XIII no later than 30 days prior to the impending cancellation date, the
12 Forest Service shall be entitled (as of and after the date that is 30 days prior to the
13 impending cancellation) to draw fully on the funds guaranteed under the then-
14 existing performance guarantee. All Forest Service Work Takeover costs not
15 reimbursed under this paragraph shall be reimbursed under section XVI
16 (Payments for Response Costs).

24 48. Modification of Amount and/or Form of Performance Guarantee.

25 a. Reduction of Amount of Performance Guarantee. If Settling
26 Defendant believes that the estimated cost of completing the Work has
27 diminished below the amount set forth in Paragraph 43, Settling Defendant may,
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1 on any anniversary date of entry of this Partial Consent Decree, or at any other
2 time agreed to by the Parties, petition the Forest Service in writing to request a
3 reduction in the amount of the performance guarantee provided pursuant to this
4 Section so that the amount of the performance guarantee is equal to the estimated
5 cost of completing the Work. Settling Defendant shall submit a written proposal
6 for such reduction to the Forest Service that shall specify, at a minimum, the
7 estimated cost of completing the Work and the basis upon which such cost was
8 calculated. In seeking approval for a reduction in the amount of the performance
9 guarantee, Settling Defendant shall follow the procedures set forth in Paragraph
10 48.b.(2) for requesting a revised or alternative form of performance guarantee,
11 except as specifically provided in this Paragraph 48.a. If the Forest Service
12 decides to accept Settling Defendant's proposal for a reduction in the amount of
13 the performance guarantee, either to the amount set forth in Settling Defendant's
14 written proposal or to some other amount as selected by the Forest Service, the
15 Forest Service will notify Settling Defendant of such decision in writing. Upon
16 the Forest Service's acceptance of a reduction in the amount of the performance
17 guarantee, the Estimated Cost of the Work shall be deemed to be the estimated
18 cost of completing the Work set forth in the Forest Service's written decision.
19 After receiving the Forest Service's written decision, Settling Defendant may
20 reduce the amount of the performance guarantee in accordance with and to the
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1 extent permitted by such written acceptance and shall submit copies of all
2 executed and/or otherwise finalized instruments or other documents required in
3 order to make the selected performance guarantee(s) legally binding in
4 accordance with Paragraph 48.b.(2). In the event of a dispute, Settling Defendant
5 may reduce the amount of the performance guarantee required hereunder only in
6 accordance with a final administrative or judicial decision resolving such dispute
7 pursuant to Section XIX (Dispute Resolution). No change to the form or terms of
8 any performance guarantee provided under this Section, other than a reduction in
9 amount, is authorized except as provided in Paragraphs 46 or 48.b.
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14 b. Change of Form of Performance Guarantee.

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16 (1) If, after the Effective Date, Settling Defendant desires to
17 change the form or terms of any performance guarantee(s) provided pursuant to
18 this Section, Settling Defendant may, on any anniversary date of entry of this
19 Partial Consent Decree, or at any other time agreed to by the Parties, petition the
20 Forest Service in writing to request a change in the form or terms of the
21 performance guarantee provided hereunder. The submission of such proposed
22 revised or alternative performance guarantee shall be as provided in Paragraph
23 48.b.(2). Any decision made by the Forest Service on a petition submitted under
24 this Paragraph shall be made in the Forest Service's sole and unreviewable
25 discretion, and such decision shall not be subject to challenge by Settling
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1 Defendant pursuant to the dispute resolution provisions of this Partial Consent
2 Decree or in any other forum.

3
4 (2) Settling Defendant shall submit a written proposal for a
5 revised or alternative performance guarantee to the Forest Service which shall
6 specify, at a minimum, the estimated cost of completing the Work, the basis upon
7 which such cost was calculated, and the proposed revised performance guarantee,
8 including all proposed instruments or other documents required in order to make
9 the proposed performance guarantee legally binding. The proposed revised or
10 alternative performance guarantee must satisfy all requirements set forth or
11 incorporated by reference in this Section. Settling Defendant shall submit such
12 proposed revised or alternative form of performance guarantee to the Forest
13 Service Regional Financial Management Officer in accordance with Section
14 XXVII (Notices and Submissions) of this Partial Consent Decree. The Forest
15 Service will notify Settling Defendant in writing of its decision to accept or reject
16 a revised or alternative performance guarantee submitted pursuant to this
17 Paragraph. Within ten days after receiving a written decision approving the
18 proposed revised or alternative performance guarantee, Settling Defendant shall
19 execute and/or otherwise finalize all instruments or other documents required in
20 order to make the selected performance guarantee legally binding in a form
21 substantially identical to the documents submitted to the Forest Service as part of
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1 the proposal, and such performance guarantee shall thereupon be fully effective.
2 Settling Defendant shall submit copies of all executed and/or otherwise finalized
3 instruments or other documents required in order to make the selected
4 performance guarantee(s) legally binding to the Forest Service Regional Financial
5 Management Officer within thirty days of receiving a written decision approving
6 the proposed revised or alternative performance guarantee in accordance with
7 Section XXVII (Notices and Submissions) of this Partial Consent Decree and to
8 the United States and the Forest Service as specified in Section XXVII.

12
13 c. Release of Performance Guarantee. Settling Defendant shall not
14 release, cancel, or discontinue any performance guarantee provided pursuant to
15 this Section except as provided in this Paragraph. If Settling Defendant receives
16 written notice from the Forest Service in accordance with Paragraph 49 hereof
17 that the Remedial Action has been fully and finally completed in accordance with
18 the terms of this Partial Consent Decree, or if the Forest Service otherwise so
19 notifies Settling Defendant in writing, Settling Defendant may thereafter release,
20 cancel, or discontinue the performance guarantee(s) provided pursuant to this
21 Section. In the event of a dispute, Settling Defendant may release, cancel, or
22 discontinue the performance guarantee(s) required hereunder only in accordance
23 with a final administrative or judicial decision resolving such dispute pursuant to
24 Section XX (Dispute Resolution).

1 The Pre-Final Inspection Report shall include as-built drawings signed and
2 stamped by a professional engineer. The report shall contain the following
3 statement, signed by a responsible corporate official of Settling Defendant or
4 Settling Defendant's Project Manager:
5

6
7 I certify under penalty of law that this document and all attachments
8 were prepared under my direction or supervision in accordance with
9 a system designed to assure that qualified personnel properly gather
10 and evaluate the information submitted. Based on my inquiry of the
11 person or persons who manage the system, or those persons directly
12 responsible for gathering the information, the information submitted
13 is, to the best of my knowledge and belief, true, accurate, and
14 complete. I am aware that there are significant penalties for
submitting false information, including the possibility of fine and
imprisonment for knowing violations.

15 If no deficiencies are found during the pre-certification inspection, the pre-
16 certification inspection shall be considered to be the final certification
17 inspection and the Settling Defendant shall prepare and submit Remedial
18 Action Completion Certification Report in accordance with the provisions
19 in the SOW and Section XI (Forest Service Approval of Plans and Other
20 Submissions) within 14 days of the inspection.
21

22
23
24 b. Final Certification Inspection: Within fourteen (14) days of
25 the submittal of the Pre-Final Inspection Report, the Settling Defendant shall
26 schedule a final certification inspection with the Forest Service. The Pre-Final
27 Inspection Report shall be used as a checklist with the final inspection focusing
28

1 on the outstanding items identified in the pre-final inspection. The Forest Service
2 shall confirm that all outstanding items have been resolved. If, after completion
3 of the final certification inspection and receipt and review of the Pre-Final
4 Inspection Report, the Forest Service determines that the Remedial Action or any
5 portion thereof has not been completed in accordance with this Partial Consent
6 Decree or that the Performance Standards have not been achieved, the Forest
7 Service will notify Settling Defendant in writing of the activities that must be
8 undertaken by Settling Defendant pursuant to this Partial Consent Decree to
9 complete the Remedial Action and achieve the Performance Standards, provided,
10 however, that the Forest Service may only require Settling Defendant to perform
11 such activities pursuant to this Paragraph to the extent that such activities are
12 consistent with the "scope of the remedy set forth in the OU-1 ROD," as that term
13 is defined in Paragraph 12.a. The Forest Service will set forth in the notice a
14 schedule for performance of such activities consistent with the Partial Consent
15 Decree and the SOW or require Settling Defendant to submit a schedule to the
16 Forest Service for approval pursuant to Section XI (Forest Service Approval of
17 Plans and Other Submissions). Settling Defendant shall perform all activities
18 described in the notice in accordance with the specifications and schedules
19 established pursuant to this Paragraph, subject to their right to invoke the dispute
20 resolution procedures set forth in Section XX (Dispute Resolution).

1 If no deficiencies are found during the final certification inspection, the
2 Settling Defendant shall prepare and submit Remedial Action Completion
3 Certification Report in accordance with the provisions in the SOW and Section
4 XI (Forest Service Approval of Plans and Other Submissions).
5

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7 c. Remedial Action Completion Certification Report: Within
8 thirty (30) days after the final certification inspection, (or the pre-certification
9 inspection if no deficiencies were found), the Settling Defendant shall submit a
10 Remedial Action Completion Report to the Forest Service for review and
11 approval in accordance with the provisions in the SOW. If the Forest Service
12 concludes, based on the initial or any subsequent report requesting Certification
13 of Completion of the Remedial Action that the Remedial Action undertaken by
14 the Settling Defendant has: i) been fully performed, ii) achieved the remedial
15 action goals and objectives set forth in the OU-1 ROD, iii) is operational and
16 functional, and iv) is functioning properly and is performing as designed, the
17 Forest Service will so certify in writing to Settling Defendant. This certification
18 shall constitute the Certification of Completion of the Remedial Action for
19 purposes of this Partial Consent Decree, including, but not limited to, Section
20 XXII (Covenants by Plaintiff). Certification of Completion of the Remedial
21 Action shall not affect Settling Defendant's remaining obligations for the Work
22 under this Partial Consent Decree, including but not limited to, Post-Achievement
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1 O&M.

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3 **XV. EMERGENCY RESPONSE**

4 50. If any action or occurrence during the performance of the Work
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6 which causes or threatens a release of Waste Material from the Site that
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8 constitutes an emergency situation or may present an immediate threat to public
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10 health or welfare or the environment, Settling Defendant shall, subject to
11
12 Paragraph 51, immediately take all appropriate action to prevent, abate, or
13
14 minimize such release or threat of release, and shall immediately notify the Forest
15
16 Service's Project Coordinator, or, if the Project Coordinator is unavailable, the
17
18 Forest Service's Alternate Project Coordinator. If neither of these persons is
19
20 available, Settling Defendant shall notify the Forest Service Regional Office
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22 CERCLA Coordinator at (707) 562-8729. Settling Defendant shall take such
23
24 actions in consultation with the Forest Service's Project Coordinator or other
25
26 available authorized Forest Service officer and in accordance with all applicable
27
28 provisions of the Health and Safety Plans, the Contingency Plans, and any other
applicable plans or documents developed pursuant to the SOW. In the event that
Settling Defendant fails to take appropriate response action as required by this
Section, and the Forest Service takes such action instead, Settling Defendant shall
reimburse the Forest Service all costs of the response action under Section XVI
(Payments for Response Costs).

1 51. Subject to Section XXII (Covenants by Plaintiff), nothing in the
2 preceding Paragraph or in this Partial Consent Decree shall be deemed to limit
3 any authority of the United States a) to take all appropriate action to protect
4 human health and the environment or to prevent, abate, respond to, or minimize
5 an actual or threatened release of Waste Material on, at, or from the Site, or b) to
6 direct or order such action, or seek an order from the Court, to protect human
7 health and the environment or to prevent, abate, respond to, or minimize an actual
8 or threatened release of Waste Material on, at, or from the Site.
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13 **XVI. PAYMENTS FOR RESPONSE COSTS**

14 52. Payment by Settling Defendant for Past Response Costs.

15
16 a. Within 120 days of the Effective Date, Settling Defendant
17 shall pay to the Forest Service \$1,651,000, plus Interest in payment for Past
18 Response Costs. Payment shall be made by FedWire Electronic Funds Transfer
19 ("EFT") to the U.S. Department of Justice account in accordance with current
20 EFT procedures, referencing USAO File Number 2001V00433 and DOJ Case
21 Number 90-11-3-06554 and Agency Locator Code AGFS. Payment shall be
22 made in accordance with instructions provided to Settling Defendant by the
23 Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of
24 California following lodging of the Partial Consent Decree. Any payment
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1 received by the Department of Justice after 4:00 p.m. Eastern Time shall be
2 credited on the next business day. At the time of payment, Settling Defendant
3 shall send notice that payment has been made to the Forest Service and DOJ in
4 accordance with Section XXVII (Notices and Submissions).
5

6
7 Upon receipt of the Settling Defendant's payment of Past Response
8 Costs pursuant to this paragraph, the Forest Service shall deposit the amount
9 transferred by DOJ into the Meyers Landfill Special Account to be retained and
10 used by the Forest Service to conduct or finance response actions at or in
11 connection with the Site.
12

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14 53. Payments by Settling Defendant for Future Oversight Costs.
15

16 a. Settling Defendant shall pay to the Forest Service all Future
17 Oversight Costs not inconsistent with the National Contingency Plan. On a
18 periodic basis the Forest Service will send Settling Defendant a bill requiring
19 payment that includes an accounting of all Oversight Costs incurred over a certain
20 period with respect to this Partial Consent Decree. The bill will include a
21 certified Agency Financial Management System summary (FFIS Reports), or
22 such other summary data as certified by the Forest Service (which includes direct
23 and indirect costs incurred by the Forest Service and its contractors). Settling
24 Defendant shall make all payments within 30 days of Settling Defendant's receipt
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1 of each bill requiring payment, except as otherwise provided in Paragraph 54.

2
3 b. Payment of Future Oversight Costs shall be made by Certified
4 or Bank Check made payable to the "USDA Forest Service" and reference the
5 Settling Defendant's name, address, tax-identification number, the Meyers
6 Landfill Partial Consent Decree, and the Collection Number referenced on the
7 bill. A copy of the bill shall accompany the payment and the payment shall be
8 directed to the address provided on the bill. Alternatively, Settling Defendant
9 may make this payment by EFT, in accordance with instructions provided by the
10 Forest Service.

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14 54. Settling Defendant may contest any Future Oversight Costs billed
15 under Paragraph 53 if it determines that the Forest Service has made a
16 mathematical error or included a cost item that is not within the definition of
17 Future Oversight Costs, or if it believes the Forest Service incurred excess costs
18 as a direct result of a Forest Service action that was inconsistent with a specific
19 provision or provisions of the NCP. Such objection shall be made in writing
20 within 30 days of receipt of the bill and must be sent to the United States pursuant
21 to Section XXVII (Notices and Submissions). Any such objection shall
22 specifically identify the contested Future Oversight Costs and the basis for
23 objection. In the event of an objection, Settling Defendant shall pay all
24 uncontested Future Oversight Costs to the United States within 30 days of
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1 Settling Defendant's receipt of the of the bill requiring payment. Simultaneously,
2 Settling Defendant shall establish an interest-bearing escrow account in a
3
4 federally-insured bank duly chartered in the State of California and remit to that
5 escrow account funds equivalent to the amount of the contested Future Oversight
6
7 Costs. Settling Defendant shall send to the United States, as provided in Section
8
9 XXVII (Notices and Submissions), a copy of the transmittal letter and check or a
10
11 copy of the EFT paperwork paying the uncontested Future Oversight Costs, and a
12
13 including, but not limited to, information containing the identity of the bank and
14
15 bank account under which the escrow account is established as well as a bank
16
17 statement showing the initial balance of the escrow account. Simultaneously with
18
19 establishment of the escrow account, Settling Defendant shall initiate the Dispute
20
21 Resolution procedures in Section XX (Dispute Resolution). If the United States
22
23 prevails in the dispute Settling Defendant shall pay the sums due (with accrued
24
25 interest) to the Forest Service within five days of the resolution of the dispute. If
26
27 Settling Defendant prevails concerning any aspect of the contested costs, Settling
28
29 Defendant shall pay that portion of the costs (plus associated accrued interest) for
30
31 which they did not prevail to the Forest Service within five days of the resolution
32
33 of the dispute. Settling Defendant shall be disbursed any balance of the escrow
34
35 account. The dispute resolution procedures set forth in this Paragraph in

1 conjunction with the procedures set forth in Section XX (Dispute Resolution)
2 shall be the exclusive mechanisms for resolving disputes regarding Settling
3 Defendant's obligation to reimburse the Forest Service for its Future Oversight
4 Costs.
5

6
7 55. Interest. In the event that any payment of Past Response Costs or
8 Future Oversight Costs required under this Section is not made by the date
9 required, Settling Defendant shall pay Interest on the unpaid balance. The
10 Interest to be paid on Past Response Costs under this Paragraph shall begin to
11 accrue 45 days from the Effective Date. The Interest on Future Oversight Costs
12 shall begin to accrue on the 31st day of mailing of the bill. The Interest shall
13 accrue through the date of Settling Defendant's payment. Payments of Interest
14 made under this Paragraph shall be in addition to such other remedies or sanctions
15 available to the United States by virtue of Settling Defendant's failure to make
16 timely payments under this Section including, but not limited to, payment of
17 stipulated penalties pursuant to Paragraph 79.
18
19
20
21

22
23 56. Payments by the United States.

24
25 a. As soon as reasonably practicable after the Effective Date, the
26 United States, on behalf of the Forest Service, shall pay to Settling Defendant
27 \$1,612,349 in payment of Settling Defendant Past Response Costs and Settling
28

1 Defendant Future OU-1 Response Costs in accordance with instructions provided
2 by Settling Defendant.
3

4 b. In the event that payment required by Paragraph 56.a is not
5 made within 45 days of the Effective Date, Interest on the unpaid balance shall be
6 paid commencing on the 46th day after the Effective Date and accruing through
7 the date of the payment.
8

9 c. To the extent that Settling Defendant incurs and pays Settling
10 Defendant Excess Future OU-1 Construction Costs, the United States, on behalf
11 of the Forest Service, shall pay to Settling Defendant an amount equal to 20% of
12 Settling Defendant Excess Future OU-1 Construction Costs in payment of
13 Settling Defendant Excess Future OU-1 Construction Costs in accordance with
14 instructions provided by Settling Defendant, provided that Settling Defendant
15 complies with the procedure set forth in Paragraphs 56.d through 56.i.
16
17
18
19

20 d. Within 90 days after Settling Defendant incurs and pays
21 Settling Defendant Excess Future OU-1 Construction Costs, Settling Defendant
22 shall submit to the United States a "Statement of Costs." A Statement of Costs
23 shall include: (i) a comprehensive description of the expenses for which payment
24 under Paragraph 56.c is sought, including sufficient documentation that identifies
25 the work and the costs alleged to be Settling Defendant Excess Future OU-1
26
27
28

1 Construction Costs to allow the United States to verify the claim and the
2 consistency of the alleged Settling Defendant Excess Future OU-1 Construction
3 Costs with this Partial Consent Decree and CERCLA; (ii) proof that all the
4 purported Settling Defendant Excess Future OU-1 Construction Costs included in
5 the Statement of Costs have actually been incurred and paid and are exclusive of
6 any Waste Board Grant; (iii) a certification by the Chief Accounting Officer of
7 the County's Environmental Management Department or an independent
8 Certified Public Accountant that the Statement of Costs include only costs that
9 qualify as Settling Defendant Excess Future OU-1 Construction Costs that were
10 actually incurred and paid by Settling Defendant. Each certification shall contain
11 the following statement:
12
13
14
15

16
17 To the best of my knowledge, after thorough investigation and
18 review of Settling Defendant's documentation of costs incurred and paid
19 for Settling Defendant Excess Future OU-1 Construction Costs, I certify
20 that the information contained in or accompanying this submission is true,
21 accurate, and complete. I am aware that there are significant penalties for
22 knowingly submitting false information, including the possibility of fine
23 and imprisonment.

24 The Chief Accounting Officer of the County's Environmental Management
25 Department or Independent Certified Public Accountant shall also provide the
26 Forest Service a list of the documents that he or she reviewed in support of the
27 Statement of Costs Certification. Upon request by the Forest Service, Settling
28

1 Defendant shall submit to the Forest Service any additional information that the
2 Forest Service deems necessary for its review and approval of a Statement of
3 Costs and Certification. Settling Defendant bears the burden of proof that an
4 expense claimed is subject to payment by the United States in accordance with
5 Paragraph 56.c. A new Statement of Costs may be submitted every 90 days to the
6 extent Settling Defendant continues to incur and pay Settling Defendant Excess
7 Future OU-1 Construction Costs.
8
9
10

11 e. Within 30 days of receiving a Statement of Costs (or a longer
12 period of time if agreed to in writing by the Parties), the United States shall
13 submit to Settling Defendant a written notice as to whether the United States
14 disputes any portion of such Statement of Costs and, if so, a brief explanation of
15 any such dispute.
16
17

18 f. Within 30 days of receiving a Statement of Costs (or a longer
19 period of time if agreed to in writing by the Parties), the United States may
20 submit to Settling Defendant a written request for additional information.
21 Settling Defendant shall respond in writing within 30 days of receiving the
22 request (or a longer period of time as agreed to in writing by the Parties). The
23 submission of the United States' request for additional information tolls the time
24 set forth in Paragraph 56.e. until 30 days after Settling Defendant responds to the
25 request for additional information.
26
27
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1 g. To the extent that the United States submits to Settling
2 Defendant a written notice of a dispute to any portion of a Statement of Costs,
3
4 Settling Defendant may initiate the dispute resolution process set forth in
5 Paragraph 76 (Dispute Resolution) of this Partial Consent Decree.
6

7 h. To the extent that the United States does not dispute any
8 portion of a Statement of Costs, the United States shall make payment as soon as
9 reasonably practicable after its receipt of such Statement of Costs. In the event
10 that payment is not made within 150 days of the United States' receipt of such
11 Statement of Costs, Interest on the unpaid balance shall be paid at the rate
12 established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
13 commencing on the 151st day after the United States' receipt of such Statement of
14 Costs and accruing through the date of the payment.
15
16
17

18 i. After the Forest Service issues a Certification of the
19 Completion of the Remedial Action as set forth in Paragraph 49.c., Settling
20 Defendant may no longer submit any Statement of Costs to the United States
21 pursuant to Paragraphs 56.c. or d. The United States' obligation under Paragraph
22 56.c. automatically terminates upon issuance of the Certification of Completion
23 of the Remedial Action or final resolution of any timely-submitted Statement of
24 Costs, whichever is later.
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1 57. The Parties to this Consent Decree recognize and acknowledge that
2 the payment obligations of the United States under this Partial Consent Decree
3 can only be paid from appropriated funds legally available for such purpose.
4 Nothing in this Partial Consent Decree shall be interpreted or construed as a
5 commitment or requirement that the United States obligate or pay funds in
6 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
7 applicable provision of law.
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11 **XVII. Funding and Disbursement of Special Account Funds**

12 58. Creation of Meyers Landfill Site Disbursement Special Account,
13 County Meyers Landfill Site Special Account and Agreement to Disburse Funds
14 to Settling Defendant.
15

16 a. Within 30 days after the Effective Date, the Forest Service
17 shall establish a new special account, the Meyers Landfill Site Disbursement
18 Special Account (“Disbursement Account”). The Forest Service shall transfer
19 \$1,622,000.00, as funds become available, from the Meyers Landfill Site Special
20 Account to the Disbursement Account.
21
22

23 b. Within 30 days of Settling Defendant’s receipt of the U.S.
24 Payment made pursuant to Paragraph 56.a., Settling Defendant shall transfer
25 \$1,612,349 and any Interest paid pursuant to Paragraph 56.b., by certified check
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27
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1 (made payable to the "USDA Forest Service" and reference the Settling
2 Defendant's name, address, tax-identification number, the Meyers Landfill Partial
3 Consent Decree, and the Collection Number referenced on the bill) or by EFT in
4 accordance with instructions provided by the Forest Service for deposit by the
5 Forest Service into the Meyers Landfill Site Special Account. Within 15 days
6 thereafter the Forest Service will transfer those funds into the Disbursement
7 Account. Interest and Stipulated Penalties shall accrue if this amount is not
8 transferred by Settling Defendant within 30 days of receipt.
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11

12
13 c. On the date this Partial Consent Decree is executed by the
14 County, the County shall establish the County Meyers Landfill Special Account
15 (the "County Account") solely for the receipt and disbursement of funds used in
16 connection with the Work.
17

18
19 Subject to the terms and conditions set forth in this Section, the Forest Service
20 agrees to make the funds in the Disbursement Account available for disbursement
21 to Settling Defendant as partial reimbursement for performance of the Work
22 under this Partial Consent Decree. The Forest Service shall disburse funds from
23 the Disbursement Account to Settling Defendant in accordance with the
24 procedures for disbursement set forth in this Section.
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1 59. Pre-Conditions to Disbursing of Funds from the Disbursement

2 Account.

3
4 a. Settling Defendant must exhaust the funds in the Court
5 Registry Account in performance of Work pursuant to this Partial Consent
6 Decree, excluding costs not eligible for disbursement under Paragraph 61, before
7 it receives disbursements from the Disbursement Account pursuant to this
8 paragraph.
9

10
11 b. Within 30 days after Settling Defendant has exhausted all the
12 funds in the Court Registry Account, Settling Defendant shall provide to the
13 Forest Service a Statement of Costs and Certification for all costs incurred and
14 paid with funds from the Court Registry Account at the Site following the
15 procedures set forth in Paragraphs 60.b and this Paragraph.
16
17

18
19 c. Within 30 days of receiving a Statement of Costs and
20 Certification for all costs incurred and paid with funds from the Court Registry
21 Account (or a longer period of time if agreed to in writing by the parties), the
22 Forest Service shall submit to Settling Defendant a written notice as to whether
23 the Forest Service accepts or objects to any portion of such Statement of Costs. If
24 there is an objection, the Forest Service shall provide a brief explanation of any
25 such objection in its written notice.
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1 d. Within 30 days of receiving a Statement of Costs (or a longer
2 period of time if agreed to in writing by the parties), the Forest Service may
3 submit to Settling Defendant a written request for additional information.
4 Settling Defendant shall respond in writing within 30 days of receiving the
5 request (or a longer period of time as agreed to in writing by the parties). The
6 submission of the Forest Service's request for additional information tolls the
7 time set forth in Paragraph 59.c until 30 days after Settling Defendant responds to
8 the request for additional information.
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11

12 e. To the extent that the Forest Service submits to Settling
13 Defendant a written notice of an objection to any portion of a Statement of Costs,
14 Settling Defendant shall, within 14 days of the date of the Forest Service's written
15 notice of an objection, accept the Forest Service's findings or initiate the dispute
16 resolution process set forth in Paragraph 76 (Dispute Resolution). If Settling
17 Defendant accepts the Forest Service's findings or as a result of the dispute
18 resolution process in Paragraph 76, it is determined that Settling Defendant was
19 not entitled to expend a certain amount of funds from the Court Registry Account,
20 or that any amount was excluded from disbursement pursuant to Paragraph 61,
21 Settling Defendant shall send a certified or cashier check or EFT in the amount of
22 the ineligible funds to the Forest Service, in accordance with instructions
23 provided by the Forest Service, plus Interest on that amount covering the period
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1 from the date of withdrawal of funds by Settling Defendant from the Court
2 Registry Account to the date of repayment of the funds by Settling Defendant.
3
4 The Forest Service shall deposit these funds in the Disbursement Account.

5
6 60. Requests for Disbursement of Funds from Disbursement Account.

7 a. After exhaustion of the Court Registry Account Settling
8 Defendant may submit to the Forest Service a Cost Summary and Certification, as
9 defined in Paragraph 60.b, covering Work performed pursuant to this Partial
10 Consent Decree for reimbursement. Settling Defendant shall not include in any
11 submission costs included in a previous Cost Summary and Certification if those
12 costs have been previously sought or reimbursed pursuant to this Section.
13
14 Settling Defendant may not submit more than one Cost Summary and
15 Certification to the Forest Service every 45 days.

16
17 b. Each Cost Summary and Certification shall include a complete
18 and accurate written cost summary and certification of the necessary costs
19 incurred and paid by Settling Defendant for the Work covered by the particular
20 submission, excluding costs not eligible for disbursement under Paragraph 61.
21
22 Each Cost Summary and Certification shall contain the following statement
23 signed by the Chief Accounting Officer of the County's Environmental
24 Management Department or an Independent Certified Public Accountant:
25
26
27
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1 To the best of my knowledge, after thorough investigation and review of
2 Settling Defendant's documentation of costs incurred and paid for Work
3 performed pursuant to this Partial Consent Decree [Insert as appropriate,
4 "the Court Registry Account funds have been exhausted by the County or
5 "following exhaustion of the Court Registry Account" and none of these
6 costs have been submitted to the Waste Board for reimbursement], I
7 certify that the information contained in or accompanying this submission
8 is true, accurate, and complete. I am aware that there are significant
9 penalties for knowingly submitting false information, including the
10 possibility of fine and imprisonment.

11 The Chief Accounting Officer of the County's Environmental Management
12 Department or Independent Certified Public Accountant shall also provide the
13 Forest Service a list of the documents that he or she reviewed in support of the
14 Cost Summary and Certification. Upon request by the Forest Service, Settling
15 Defendant shall submit to the Forest Service any additional information that the
16 Forest Service deems necessary for its review and approval of a Cost Summary
17 and Certification.

18
19
20 c. If the Forest Service finds that a Cost Summary and
21 Certification includes a mathematical error, costs excluded under Paragraph 61,
22 costs that are inadequately documented or otherwise lacking information
23 necessary for Forest Service review, or costs submitted in a prior Cost Summary
24 and Certification, it will notify Settling Defendant and provide it an opportunity
25 to cure the deficiency by submitting a revised Cost Summary and Certification. If
26 Settling Defendant fails to cure the deficiency within 14 days after being notified
27
28

1 of, and given the opportunity to cure, the deficiency, the Forest Service will
2 recalculate Settling Defendant's costs eligible for disbursement for that
3 submission and disburse the corrected amount to Settling Defendant. Settling
4 Defendant may dispute the Forest Service's recalculation under this Paragraph
5 pursuant to Paragraph 76 (Dispute Resolution). In the event Settling Defendant
6 decides to dispute the Forest Service's recalculation, it shall do so no later than 14
7 days following receipt of the Forest Service's recalculation.
8
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11 d. Within 45 days of the Forest Service's receipt of a Cost
12 Summary and Certification, as defined by Paragraph 60.b, or if the Forest Service
13 has requested additional information under Paragraph 60.c or a revised Cost
14 Summary and Certification under Paragraph 60.c, within 45 days of receipt of the
15 additional information or revised Cost Summary and Certification, or within 45
16 days of the completion of the dispute resolution process initiated by Settling
17 Defendant pursuant to Paragraph 60.c, the Forest Service shall disburse funds
18 from the Disbursement Account for costs approved by the Forest Service in
19 accordance with this Paragraph. In no event shall Settling Defendant be
20 disbursed funds from the Disbursement Account prior to exhaustion of funds in
21 the Court Registry account, or in excess of amounts properly documented in a
22 Cost Summary and Certification accepted or modified by the Forest Service, or in
23 excess of the maximum funds available as set forth in Paragraph 59, or excluded
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25
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1 from disbursement pursuant to Paragraph 61. Subject to the requirements of this
2 Section, the Forest Service shall disburse the funds from the Disbursement
3 Account to Settling Defendant in accordance with the wire transfer instructions
4 previously provided by the Settling Defendant to the Forest Service
5

6
7 61. Costs Excluded from Disbursement. The following are excluded
8 from, and shall not be sought by Settling Defendant for, disbursement from the
9 Disbursement Account: (a) response costs paid pursuant to Section XVI
10 (Payments for Response Costs); (b) with the exception of the transfer of
11 \$1,612,349 made by the County to the Forest Service referenced in Paragraph
12 58.b. of this Partial Consent Decree, any other payments made by Settling
13 Defendant to the United States pursuant to this Partial Consent Decree, including,
14 but not limited to, any interest or stipulated penalties paid pursuant to Section
15 XXI (Stipulated Penalties); (c) attorneys' fees and costs; (d) costs of any response
16 activities Settling Defendant performs that are not required under, or approved by
17 the Forest Service pursuant to, this Partial Consent Decree; (e) costs related to
18 Settling Defendant's litigation, settlement, development of potential contribution
19 claims, or identification of defendants; (f) internal costs of Settling Defendant,
20 including but not limited to, salaries, travel, or in-kind services, except for those
21 costs that represent the work of employees of Settling Defendant directly
22 performing the Work; (g) any costs incurred by Settling Defendant prior to the
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1 date the County executes this Partial Consent Decree; or (h) any costs incurred by
2 Settling Defendant pursuant to Section XX (Dispute Resolution); (i) any costs for
3 which the County seeks reimbursement from the Waste Board and which are
4 reimbursed from the Waste Board Grant; or (j) any costs of Settling Defendant
5 paid using funds from the Court Registry Account.
6
7

8 62. Termination of Disbursements from the Disbursement Account. The
9 Forest Service's obligation to disburse funds from the Disbursement Account
10 under this Partial Consent Decree shall terminate upon the Forest Service's
11 determination that Settling Defendant: (a) has knowingly submitted a materially
12 false or misleading Cost Summary and Certification; (b) has submitted a
13 materially inaccurate or incomplete Cost Summary and Certification, and has
14 failed to correct the materially inaccurate or incomplete Cost Summary and
15 Certification within 14 days after being notified of, and given the opportunity to
16 cure, the deficiency; (c) failed to submit a Cost Summary and Certification as
17 required by Paragraph 60 within 30 days (or such longer period as the Forest
18 Service agrees) after being notified that the Forest Service intends to terminate its
19 obligation to make disbursements pursuant to this Section because of Settling
20 Defendant's failure to submit the Cost Summary and Certification as required by
21 Paragraph 60; or (d) has exhausted all the funds in the Disbursement Account in
22 performance of the Work. The Forest Service's obligation to disburse funds from
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1 the Disbursement Account shall also terminate upon the Forest Service's
2 assumption of performance of any portion of the Work pursuant to Paragraph 95
3 (Work Takeover), when such assumption of performance of the Work is not
4 challenged by Settling Defendant or, if challenged, is upheld under Section XX
5 (Dispute Resolution). Settling Defendant may dispute the Forest Service's
6 termination of Disbursement Account disbursements under Section XX (Dispute
7 Resolution).
8
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11 63. Recapture of Meyers Landfill Site Disbursement Account

12 Disbursements. Upon termination of disbursements from the Disbursement
13 Account under Paragraph 62, if the Forest Service has previously disbursed funds
14 from the Disbursement Account for activities specifically related to the reason for
15 termination, e.g., discovery of a materially false or misleading submission after
16 disbursement of funds based on that submission, the Forest Service shall submit a
17 bill to Settling Defendant for those amounts already disbursed from the
18 Disbursement Account specifically related to the reason for termination, plus
19 Interest on that amount covering the period from the date of disbursement of the
20 funds by the Forest Service to the date of repayment of the funds by Settling
21 Defendant. Within 30 days of receipt of the Forest Service's bill, Settling
22 Defendant shall reimburse the Forest Service for the total amount billed.
23
24 Payment shall be made in accordance with Paragraph 53.b. Upon receipt of
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1 payment, the Forest Service may deposit all or any portion thereof in the Meyers
2 Landfill Site Special Account or the Disbursement Account. The determination
3 of where to deposit or how to use the funds shall not be subject to challenge by
4 Settling Defendant pursuant to the dispute resolution provisions of this Partial
5 Consent Decree or in any other forum. Settling Defendant may dispute the Forest
6 Service's determination as to recapture of funds pursuant to Paragraph 76
7 (Dispute Resolution).

11 64. Termination of Disbursement Account. The Forest Service shall
12 terminate and close the Disbursement Account upon the exhaustion of the funds
13 in the Disbursement Account for performance of the Work by Settling Defendant
14 or pursuant to paragraph 62 a. or b. If the Forest Service's obligation to disburse
15 funds terminates pursuant to paragraph 62.a. or b., and after the Forest Service
16 completes pending requests for disbursement by Settling Defendant in accordance
17 with this section, if any funds remain in the Disbursement Account, the Forest
18 Service may transfer such funds to the Meyers Landfill Site Special Account or to
19 the United States Treasury. Any transfer of funds to the Meyers Landfill Site
20 Special Account or the United States Treasury shall not be subject to challenge by
21 Settling Defendant pursuant to the dispute resolution provisions of this Partial
22 Consent Decree or in any other forum.

1 pursuant to this Partial Consent Decree. The United States shall not be held out
2 as a party to any contract entered into by or on behalf of Settling Defendant in
3 carrying out activities pursuant to this Partial Consent Decree. Neither Settling
4 Defendant nor any such contractor shall be considered an agent of the United
5 States.
6
7

8 b. Notwithstanding the foregoing, the Settling Defendant
9 reserves, and this Partial Consent Decree is without prejudice to, claims against
10 the United States, subject to the provisions of Chapter 171 of Title 28 of the
11 United States Code, for money damages for injury or loss of property or personal
12 injury or death caused by the negligent or wrongful act or omission of any
13 employee of the United States while acting within the scope of his office or
14 employment under circumstances where the United States, if a private person,
15 would be liable to the claimant in accordance with the law of the place where the
16 act or omission occurred. However, any such claim shall not include a claim for
17 any damages caused, in whole or in part, by the act or omission of any person,
18 including any contractor, who is not a federal employee as that term is defined in
19 28 U.S.C. § 2671; nor shall any such claim include a claim based on the FS's
20 selection of response actions, or the oversight or approval of the Settling
21 Defendant's plans or activities. The foregoing applies only to claims which are
22 brought pursuant to any statute other than CERCLA and for which the waiver of
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1 sovereign immunity is found in a statute other than CERCLA.

2
3 c. The United States shall give Settling Defendant notice of any
4 claim for which the United States plans to seek indemnification pursuant to
5 Paragraph 66 and shall consult with Settling Defendant prior to settling such
6
7 claim.

8
9 66. Settling Defendant covenants not to sue and agrees not to assert any
10 claims or causes of action against the United States for damages or
11 reimbursement or for set-off of any payments made or to be made to the United
12 States, arising from or on account of any contract, agreement, or arrangement
13 between Settling Defendant and any person for performance of Work on or
14 relating to the Site, including, but not limited to, claims on account of
15 construction delays. In addition, Settling Defendant shall indemnify and hold
16 harmless the United States with respect to any and all claims for damages or
17 reimbursement arising from or on account of any contract, agreement, or
18 arrangement between Settling Defendant and any person for performance of
19 Work on or relating to the Site, including, but not limited to, claims on account of
20 construction delays.
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26 67. No later than 15 days before commencing any on-Site Work, Settling
27 Defendant shall secure, and shall maintain until the first anniversary of the Forest
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1 Service's Certification of Completion of the Remedial Action for OU-1 pursuant
2 to Subparagraph 49.b. of Section XIV (Certification of Completion) commercial
3 general liability insurance with limits of \$2 million dollars, for any one
4 occurrence, and automobile liability insurance with limits of \$2 million dollars,
5 combined single limit, naming the United States as an additional insured with
6 respect to all liability arising out of the activities performed by or on behalf of
7 Settling Defendant pursuant to this Partial Consent Decree. In addition, the
8 District shall be named as an additional insured with respect to Work to be
9 conducted in the vicinity of the Site Portion of the Trout Creek Trunk Pipeline.
10 In addition, for the duration of this Partial Consent Decree, Settling Defendant
11 shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all
12 applicable laws and regulations regarding the provision of worker's compensation
13 insurance for all persons performing the Work on behalf of Settling Defendant in
14 furtherance of this partial Consent Decree. Prior to commencement of the Work
15 under this Consent Decree, Settling Defendant shall provide to the Forest Service
16 and the District certificates of such insurance and a copy of each insurance policy.
17 Settling Defendant shall resubmit such certificates and copies of policies each
18 year on the anniversary of the Effective Date. If Settling Defendant demonstrates
19 by evidence satisfactory to the Forest Service that any contractor or subcontractor
20 maintains insurance equivalent to that described above, or insurance covering the
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1 same risks but in a lesser amount, then, with respect to that contractor or
2 subcontractor, Settling Defendant need provide only that portion of the insurance
3 described above that is not maintained by the contractor or subcontractor.
4

5
6 **XIX. FORCE MAJEURE**

7 68. "Force majeure," for purposes of this Partial Consent Decree,
8 is defined as any event arising from causes beyond the control of Settling
9 Defendant, of any entity controlled by Settling Defendant, or of Settling
10 Defendant's contractors, that delays or prevents the performance of any
11 obligation under this Partial Consent Decree despite Settling Defendant's best
12 efforts to fulfill the obligation. The requirement that Settling Defendant exercises
13 "best efforts to fulfill the obligation" includes using best efforts to anticipate any
14 potential force majeure and best efforts to address the effects of any potential
15 force majeure (1) as it is occurring and (2) following the potential force majeure,
16 such that the delay and any adverse effects of the delay are minimized to the
17 greatest extent possible. "Force majeure" does not include financial inability to
18 complete the Work or a failure to achieve the Performance Standards.
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24 69. If any event occurs or has occurred that may delay the performance
25 of any obligation under this Partial Consent Decree for which Settling Defendant
26 intends or may intend to assert a claim of force majeure, Settling Defendant shall
27
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1 notify orally the Forest Service's Project Coordinator or, in his or her absence, the
2 Forest Service's Alternate Project Coordinator or, in the event both of the Forest
3 Service's designated representatives are unavailable, the Forest Service Regional
4 Office CERCLA Coordinator at (707) 562-8729, within 48 hours of when
5 Settling Defendant first knew that the event might cause a delay. Within 5 days
6 thereafter, Settling Defendant shall provide in writing to the Forest Service an
7 explanation and description of the reasons for the delay; the anticipated duration
8 of the delay; all actions taken or to be taken to prevent or minimize the delay; a
9 schedule for implementation of any measures to be taken to prevent or mitigate
10 the delay or the effect of the delay; Settling Defendant's rationale for attributing
11 such delay to a force majeure; and a statement as to whether, in the opinion of
12 Settling Defendant, such event may cause or contribute to an endangerment to
13 public health, or welfare, or the environment. Settling Defendant shall include
14 with any notice all available documentation supporting their claim that the delay
15 was attributable to a force majeure. Settling Defendant shall be deemed to know
16 of any circumstance of which Settling Defendant, any entity controlled by
17 Settling Defendant, or Settling Defendant's contractors knew or should have
18 known. Failure to comply with the above requirements regarding an event shall
19 preclude Settling Defendant from asserting any claim of force majeure regarding
20 that event, provided, however, that if the Forest Service, despite the late notice, is

1 able to assess to its satisfaction whether the event is a force majeure under
2 Paragraph 68 and whether Settling Defendant has exercised its best efforts under
3 Paragraph 68, the Forest Service may, in its unreviewable discretion, excuse in
4 writing Settling Defendant's failure to submit timely notices under this Paragraph.
5
6

7 70. If the Forest Service agrees that the delay or anticipated delay is
8 attributable to a force majeure, the time for performance of the obligations under
9 this Partial Consent Decree that are affected by the force majeure will be
10 extended by the Forest Service for such time as is necessary to complete those
11 obligations. An extension of the time for performance of the obligations affected
12 by the force majeure shall not, of itself, extend the time for performance of any
13 other obligation. If the Forest Service does not agree that the delay or anticipated
14 delay has been or will be caused by a force majeure, the Forest Service will notify
15 Settling Defendant in writing of its decision. If the Forest Service agrees that the
16 delay is attributable to a force majeure, the Forest Service will notify Settling
17 Defendant in writing of the length of the extension, if any, for performance of the
18 obligations affected by the force majeure.
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24 71. If Settling Defendant elects to invoke the dispute resolution
25 procedures set forth in Section XX (Dispute Resolution), it shall do so no later
26 than 15 days after receipt of the Forest Service's notice. In any such proceeding,
27 Settling Defendant shall have the burden of demonstrating by a preponderance of
28

1 the evidence that the delay or anticipated delay has been or will be caused by a
2 force majeure, that the duration of the delay or the extension sought was or will
3 be warranted under the circumstances, that best efforts were exercised to avoid
4 and mitigate the effects of the delay, and that Settling Defendant complied with
5 the requirements of Paragraphs 68 and 69, above. If Settling Defendant carries
6 this burden, the delay at issue shall be deemed not to be a violation by Settling
7 Defendant of the affected obligation of this partial Consent Decree identified to
8 the Forest Service and the Court.
9
10
11

12 **XX. DISPUTE RESOLUTION**

13
14 72. Unless otherwise expressly provided for in this Partial Consent
15 Decree, the dispute resolution procedures of this Section shall be the exclusive
16 mechanism to resolve disputes regarding this Partial Consent Decree. However,
17 the procedures set forth in this Section shall not apply to actions by the United
18 States to enforce obligations of Settling Defendant that have not been disputed in
19 accordance with this Section.
20
21
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23 73. Any dispute regarding this Partial Consent Decree shall in the first
24 instance be the subject of informal negotiations between the parties to the dispute.
25 The period for informal negotiations shall not exceed 10 days from the time the
26 dispute arises, unless it is modified by written agreement of the parties to the
27
28

1 dispute. The dispute shall be considered to have arisen when one party sends the
2 other parties a written Notice of Dispute. In addition, by written agreement of the
3 parties, the assistance of a mediator may be sought in conjunction with the
4 informal dispute resolution process on an expedited basis.
5

6
7 74. Statements of Position.

8
9 a. In the event that the parties cannot resolve a dispute by
10 informal negotiations under the preceding Paragraph, then the position advanced
11 by the Forest Service shall be considered binding unless, within 14 days after the
12 conclusion of the informal negotiation period, Settling Defendant invokes the
13 formal dispute resolution procedures of this Section by serving on the United
14 States a written Statement of Position on the matter in dispute, including, but not
15 limited to, any factual data, analysis or opinion supporting that position and any
16 supporting documentation relied upon by Settling Defendant. The Statement of
17 Position shall specify Settling Defendant's position as to whether formal dispute
18 resolution should proceed under Paragraph 75 or Paragraph 76.
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23 b. Within 30 days after receipt of a Settling Defendant's
24 Statement of Position, the Forest Service will serve on Settling Defendant its
25 Statement of Position, including, but not limited to, any factual data, analysis, or
26 opinion supporting that position and all supporting documentation relied upon by
27
28

1 the Forest Service. The Forest Service's Statement of Position shall include a
2 statement as to whether formal dispute resolution should proceed under Paragraph
3 75 or 76. Within 14 days after receipt of the Forest Service's Statement of
4 Position, Settling Defendant may submit a Reply.
5
6

7 c. If there is disagreement between the Forest Service and
8 Settling Defendant as to whether dispute resolution should proceed under
9 Paragraph 75 or 76, the Parties to the dispute shall follow the procedures set forth
10 in the paragraph determined by the Forest Service to be applicable. However, if
11 Settling Defendant ultimately appeals to the Court to resolve the dispute, the
12 Court shall determine which paragraph is applicable in accordance with the
13 standards of applicability set forth in Paragraphs 75 and 76.
14
15
16

17 75. Record Review. Formal dispute resolution for disputes pertaining to
18 the selection or adequacy of any response action and all other disputes that are
19 accorded review on the administrative record under applicable principles of
20 administrative law shall be conducted pursuant to the procedures set forth in this
21 Paragraph. For purposes of this Paragraph, the adequacy of any response action
22 includes, without limitation, the adequacy or appropriateness of plans, procedures
23 to implement plans, or any other items requiring approval by the Forest Service
24 under this Partial Consent Decree, and the adequacy of the performance of
25 response actions taken pursuant to this Partial Consent Decree. Nothing in this
26
27
28

1 Partial Consent Decree shall be construed to allow any dispute by Settling
2 Defendant regarding the validity of the OU-1 ROD's provisions.
3

4 a. An administrative record of the dispute shall be maintained by
5 the Forest Service and shall contain all statements of position, including
6 supporting documentation, submitted pursuant to this Section. Where
7 appropriate, the Forest Service may allow submission of supplemental statements
8 of position by the parties to the dispute.
9
10

11 b. The Regional Forester, Region 5, or his designee ("Regional
12 Forester"), will issue a final administrative decision resolving the dispute based
13 on the administrative record described in Paragraph 75.a. This decision shall be
14 binding upon Settling Defendant, subject only to the right to seek judicial review
15 pursuant to Paragraph 75.c and 75.d.
16
17

18 c. Any administrative decision made by the Forest Service
19 pursuant to Paragraph 75.b. shall be reviewable by this Court, provided that a
20 motion for judicial review of the decision is filed by Settling Defendant with the
21 Court and served on all Parties within ten days of receipt of the Forest Service's
22 decision. The motion shall include a description of the matter in dispute, the
23 efforts made by the parties to resolve it, the relief requested, and the schedule, if
24 any, within which the dispute must be resolved to ensure orderly implementation
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1 of this Partial Consent Decree. The United States may file a response to Settling
2 Defendant's motion.

3
4 d. In proceedings on any dispute governed by this Paragraph,
5 Settling Defendant shall have the burden of demonstrating that the decision of the
6 Regional Forester is arbitrary and capricious or otherwise not in accordance with
7 law. Judicial review of the Forest Service's decision shall be on the
8 administrative record compiled pursuant to Paragraph 75.a.
9

10
11 76. Formal dispute resolution for disputes that neither pertain to the
12 selection or adequacy of any response action nor are otherwise accorded review
13 on the administrative record under applicable principles of administrative law,
14 shall be governed by this Paragraph.
15

16
17 a. Following receipt of Settling Defendant's Statement of
18 Position submitted pursuant to Paragraph 74, the Regional Forester will issue a
19 final decision resolving the dispute. The Regional Forester's decision shall be
20 binding on Settling Defendant unless, within ten days of receipt of the decision,
21 Settling Defendant files with the Court and serves on the parties a motion for
22 judicial review of the decision setting forth the matter in dispute, the efforts made
23 by the parties to resolve it, the relief requested, and the schedule, if any, within
24 which the dispute must be resolved to ensure orderly implementation of the
25
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1 Partial Consent Decree. The United States may file a response to Settling
2 Defendant's motion.

3
4 b. Notwithstanding Paragraph I (CERCLA Section 113(j) Record
5 Review of ROD and Work) of Section I (Background), judicial review of any
6 dispute governed by this Paragraph shall be governed by applicable principles of
7 law.
8

9
10 77. The invocation of formal dispute resolution procedures under this
11 Section shall not extend, postpone or affect in any way any obligation of Settling
12 Defendant under this Partial Consent Decree, not directly in dispute, unless the
13 Forest Service or the Court agrees otherwise. Stipulated penalties with respect to
14 the disputed matter shall continue to accrue but payment shall be stayed pending
15 resolution of the dispute as provided in Paragraph 82. Notwithstanding the stay
16 of payment, stipulated penalties shall accrue from the first day of noncompliance
17 with any applicable provision of this Partial Consent Decree. In the event that
18 Settling Defendant does not prevail on the disputed issue, stipulated penalties
19 shall be assessed and paid as provided in Section XXI (Stipulated Penalties).
20
21
22
23

24 **XXI. STIPULATED PENALTIES**

25
26 78. Settling Defendant shall be liable for stipulated penalties in the
27 amounts set forth in Paragraphs 79 and 80 to the United States for failure to
28

1 comply with the requirements of this Partial Consent Decree specified below,
2 unless excused under Section XIX (Force Majeure). "Compliance" by Settling
3 Defendant shall include completion of all payments and activities required under
4 this Partial Consent Decree, or any plan, report, or other deliverable approved
5 under this Partial Consent Decree, in accordance with all applicable requirements
6 of law, this Partial Consent Decree, the SOW, and any plans, reports, or other
7 deliverables approved under this Partial Consent Decree and within the specified
8 time schedules established by and approved under this Partial Consent Decree.

12
13 79. Penalty Amounts - Work (Including Payments and Excluding Plans,
14 Reports and Other Deliverables).

15
16 a. The following stipulated penalties shall accrue per violation
17 per day for any noncompliance identified in Paragraph 79.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250.00	1st through 14th day
\$ 750.00	15th through 30th day
\$ 1,250.00	31st day and beyond

25
26 b. Compliance Milestones.

27 (1) Failure to pay or timely pay any amounts due under this
28

1 Partial Consent Decree, including but not limited to, Paragraph 52.a, 53, and 58
2 under this Partial Consent Decree;

3
4 (2) Initiation of construction of Remedial Action for OU-1;

5
6 (3) Completion of Construction of Remedial Action;

7
8 (4) Pre-Certification Inspection;

9
10 (5) Timely payment of Past Response Costs

11
12 (6) Timely payment of Future Oversight Costs;

13
14 (7) providing or arranging for access.

15 80. Stipulated Penalty Amounts - Plans, Reports, and Other
16 Deliverables.

17
18 The following stipulated penalties shall accrue per violation per day for
19 failure to submit timely or adequate reports or other plans or deliverables as
20 otherwise required in this Partial Consent Decree and the SOW:
21

22	Penalty Per Violation Per Day	Period of Noncompliance
23		
24	\$ 250.00	1st through 14th day
25		
26	\$ 750.00	15th through 30th day
27		
28	\$ 1,250.00	31st day and beyond

1 81. In the event that the Forest Service assumes performance of a portion
2 or all of the Work pursuant to Paragraph 95 (Work Takeover), Settling Defendant
3 shall be liable for a stipulated penalty in the amount of \$400,000. Stipulated
4 penalties under this paragraph are in addition to the remedies available under
5 Paragraphs 47 (Funding for Work Takeover) and 95 (Work Takeover).
6
7

8 82. All penalties shall begin to accrue on the day after the complete
9 performance is due or the day a violation occurs, and shall continue to accrue
10 through the final day of the correction of the noncompliance or completion of the
11 activity. However, stipulated penalties shall not accrue: (a) with respect to a
12 deficient submission under Section XI (Forest Service Approval of Plans and
13 Other Submissions), during the period, if any, beginning on the 31st day after the
14 Forest Service's receipt of such submission until the date that the Forest Service
15 notifies Settling Defendant of any deficiency; (b) with respect to a decision by the
16 Regional Forester, under Paragraph 75.b or 76.a of Section XX (Dispute
17 Resolution), during the period, if any, beginning on the 21st day after the date that
18 Settling Defendant's reply to the Forest Service's Statement of Position is
19 received until the date that the Director issues a final decision regarding such
20 dispute; or (c) with respect to judicial review by this Court of any dispute under
21 Section XX (Dispute Resolution), during the period, if any, beginning on the 31st
22 day after the Court's receipt of the final submission regarding the dispute until the
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1 date that the Court issues a final decision regarding such dispute. Nothing in this
2 Partial Consent Decree shall prevent the simultaneous accrual of separate
3 penalties for separate violations of this Partial Consent Decree.
4

5
6 83. Following the Forest Service's determination that Settling Defendant
7 has failed to comply with a requirement of this Partial Consent Decree, the Forest
8 Service may give Settling Defendant written notification of the same and describe
9 the noncompliance. The Forest Service may send Settling Defendant a written
10 demand for the payment of the penalties. However, penalties shall accrue as
11 provided in the preceding Paragraph regardless of whether the Forest Service has
12 notified Settling Defendant of a violation.
13
14

15
16 84. a. All penalties accruing under this Section shall be due and
17 payable to the United States Treasury within 30 days of Settling Defendant's
18 receipt from the Forest Service of a demand for payment of the penalties, unless
19 Settling Defendant invokes the Dispute Resolution procedures under Section XX
20 (Dispute Resolution) within the 30-day period. All payments to the United States
21 under this Section shall be identified as "stipulated penalties" and shall be made
22 by certified or cashier's check made payable to "United States Treasury." The
23 check, or a letter accompanying the check shall reference the name and address of
24 the party making payment, the Site name, and DOJ Case Number 90-11-3-06554,
25
26
27
28 and shall be sent to:

1 United States Attorney's Office
2 Financial Litigation Unit
3 501 "I" Street, Suite 10-100
4 Sacramento, CA 95814

5 b. At the time of payment of any stipulated penalties to the
6 United States, the Settling Defendant shall send copies of check(s), and any
7 accompanying transmittal letter(s), to the United States, Forest Service and the
8 Forest Service Regional Financial Management Officer as provided in Section
9 XVII (Notices and Submissions) of this Consent Decree.
10
11

12
13 85. Penalties shall continue to accrue as provided in Paragraph 82 during
14 any dispute resolution period, but need not be paid until the following:
15

16 a. If the dispute is resolved by agreement of the Parties or by a
17 decision of the Forest Service that is not appealed to this Court, accrued penalties
18 determined to be owed shall be paid to the Forest Service within 15 days of the
19 agreement or the receipt of the Forest Service's decision or order;
20

21
22 b. If the dispute is appealed to this Court and the United States
23 prevails in whole or in part, Settling Defendant shall pay all accrued penalties
24 determined by the Court to be owed to the Forest Service within 60 days of
25 receipt of the Court's decision or order, except as provided in Paragraph 85.c;
26

27
28 c. If the District Court's decision is appealed by any Party,

1 Settling Defendant shall pay all accrued penalties determined by the District
2 Court to be owed to the United States into an interest-bearing escrow account
3 within 60 days of receipt of the Court's decision or order. Penalties shall be paid
4 into this account as they continue to accrue, at least every 60 days. Within 15
5 days of receipt of the final appellate court decision, the escrow agent shall pay the
6 balance of the account to the Forest Service or to Settling Defendant to the extent
7 that they prevail.
8
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11 86. If Settling Defendant fails to pay stipulated penalties when due,
12 Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows:

13 (a) if Settling Defendant has timely invoked dispute resolution such that the
14 obligation to pay stipulated penalties has been stayed pending the outcome of
15 dispute resolution, Interest shall accrue from the date stipulated penalties are due
16 pursuant to Paragraph 85 until the date of payment; and (b) if Settling Defendant
17 fails to timely invoke dispute resolution, Interest shall accrue from the date of
18 demand under Paragraph 82 until the date of payment. If Settling Defendant fails
19 to pay stipulated penalties and Interest when due, the United States may institute
20 proceedings to collect the penalties and interest.
21
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24

25 87. The payment of penalties and Interest, if any, shall not alter in any
26 way Settling Defendant's obligation to complete the performance of the Work
27 required under this Partial Consent Decree.
28

1 the Work, Past Response Costs and Future Oversight Costs. These covenants
2 shall take effect upon the receipt by the Forest Service of the payments required
3 by Paragraph 52.a (Payments for Past Response Costs), Paragraph 53 (Payments
4 for Future Oversight Costs) and any Interest or stipulated penalties due thereon
5 under Paragraph 55 (Interest) or Section XXI (Stipulated Penalties) as well as
6 Completion of the Work required under this Partial Consent Decree. These
7 covenants are conditioned upon the satisfactory performance by Settling
8 Defendant of its obligations under this Partial Consent Decree. These covenants
9 extend only to Settling Defendant and do not extend to any other person.
10
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14 91. United States' Pre-certification Reservations. Notwithstanding any
15 other provision of this Partial Consent Decree, the United States reserves, and this
16 Partial Consent Decree is without prejudice to, the right to institute proceedings in
17 this action or in a new action, or to issue an administrative order, seeking to
18 compel Settling Defendant to perform further response actions relating to the
19 Remedial Action at the Site and/or to pay the United States for additional costs of
20 response if, (a) prior to Certification of Completion of the Remedial Action, (i)
21 conditions at the Site, previously unknown to the Forest Service, are discovered,
22 or (ii) information, previously unknown to the Forest Service, is received, in
23 whole or in part, and (b) the Forest Service determines that these previously
24 unknown conditions or information together with any other relevant information
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1 indicates that the Remedial Action is not protective of human health or the
2 environment.

3
4 92. United States' Post-certification Reservations. Notwithstanding any
5 other provision of this Partial Consent Decree, the United States reserves, and this
6 Partial Consent Decree is without prejudice to, the right to institute proceedings in
7 this action or in a new action or to issue an administrative order, seeking to
8 compel Settling Defendant to perform further response actions relating to the Site
9 and/or to pay the United States for additional costs of response if, (a) subsequent
10 to Certification of Completion of the Remedial Action, (i) conditions at the Site,
11 previously unknown to the Forest Service, are discovered, or (ii) information,
12 previously unknown to the Forest Service, is received, in whole or in part, and (b)
13 the Forest Service determines that these previously unknown conditions or this
14 information together with other relevant information indicate that the Remedial
15 Action is not protective of human health or the environment.
16
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21 93. For purposes of Paragraph 91, the information and the conditions
22 known to the Forest Service will include only that information and those
23 conditions known to Forest Service as of the date the OU-1 ROD was signed and
24 set forth in the OU-1 ROD for the Site and the administrative record supporting
25 the OU-1 ROD For purposes of Paragraph 92, the information and the conditions
26 known to the Forest Service shall include only that information and those
27
28

1 conditions known to the Forest Service as of the date of Certification of
2 Completion of the Remedial Action and set forth in the OU-1 ROD Decision, the
3 administrative record supporting the OU-1 ROD, the post-OU-1 ROD
4 administrative record, or in any information received by the Forest Service
5 pursuant to the requirements of this Partial Consent Decree prior to Certification
6 of Completion of the Remedial Action.
7
8

9
10 94. General Reservations of Rights. The United States reserves, and this
11 Partial Consent Decree is without prejudice to, all rights against Settling
12 Defendant with respect to all matters not expressly included within Plaintiff's
13 covenants. Notwithstanding any other provision of this Partial Consent Decree,
14 the United States reserves all rights against Settling Defendant with respect to:
15

16
17 a. claims based on a failure by Settling Defendant to meet a
18 requirement of this Partial Consent Decree;
19

20 b. liability arising from the past, present, or future disposal,
21 release, or threat of release of Waste Material outside of the Site;
22

23 c. liability based on ownership or operation of the Site by
24 Settling Defendant when such ownership or operation commences after signature
25 of this Partial Consent Decree;
26

27
28 d. liability based on Settling Defendant's transportation,

1 treatment, storage, or disposal, or the arrangement for the transportation,
2 treatment, storage, or disposal of Waste Material at or in connection with the Site,
3 other than as provided in the OU-1 ROD, the Work, or otherwise ordered by the
4 Forest Service, after signature of this Partial Consent Decree;
5

6
7 e. liability for damages for injury to, destruction of, or loss of
8 natural resources, and for the costs of any natural resource damage assessments;
9

10 f. criminal liability;

11
12 g. liability for violations of federal or state law which occur
13 during or after implementation of the Work;
14

15 h. liability for additional operable units at the Site, including but
16 not limited to the Groundwater ROD, or the final response action for the Site; and
17

18 i. liability for Interim Response Costs and Future Response
19 Costs that the United States will incur related to the Site but are not within the
20 definition of Future Oversight Costs.
21

22
23 95. Work Takeover.

24 a. In the event the Forest Service determines that Settling
25 Defendant has (1) ceased implementation of any portion of the Work, or (2) is
26 seriously or repeatedly deficient or late in its performance of the Work, or (3) is
27 implementing the Work in a manner that may cause an endangerment to human
28

1 health or the environment, the Forest Service may issue a written notice (“Work
2 Takeover Notice”) to Settling Defendant. Any Work Takeover Notice issued by
3 the Forest Service will specify the grounds upon which such notice was issued
4 and will provide Settling Defendant a period of ten days within which to remedy
5 the circumstances giving rise to the Forest Service’s issuance of such notice.
6
7

8 b. If, after expiration of the ten day notice period specified in
9 Paragraph 95.a, Settling Defendant has not remedied to the Forest Service’s
10 satisfaction the circumstances giving rise to the Forest Service’s issuance of the
11 relevant Work Takeover Notice, the Forest Service may at any time thereafter
12 assume the performance of all or any portion(s) of the Work as the Forest Service
13 deems necessary (“Work Takeover”). The Forest Service will notify Settling
14 Defendant in writing (which writing may be electronic) if the Forest Service
15 determines that implementation of a Work Takeover is warranted under
16 Paragraph 95.b. Funding of Work Takeover costs is addressed under Paragraph
17 47.
18
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23 c. Settling Defendant may invoke the procedures set forth in
24 Paragraph 75 (Record Review), to dispute the Forest Service's implementation of
25 a Work Takeover under Paragraph 95.b. However, notwithstanding Settling
26 Defendant’s invocation of such dispute resolution procedures, and during the
27 pendency of any such dispute, the Forest Service may in its sole discretion
28

1 commence and continue a Work Takeover under Paragraph 95.b until the earlier
2 of (1) the date that Settling Defendant remedies, to the Forest Service's
3 satisfaction, the circumstances giving rise to the Forest Service's issuance of the
4 relevant Work Takeover Notice, or (2) the date that a final decision is rendered in
5 accordance with Paragraph 75 (Record Review) requiring the Forest Service to
6 terminate such Work Takeover.
7
8

9
10 96. Notwithstanding any other provision of this Partial Consent Decree,
11 the United States retains all authority and reserves all rights to take any and all
12 response actions authorized by law.
13

14 **XXIII. COVENANTS BY SETTLING DEFENDANT**
15

16 97. Covenant Not to Sue by Settling Defendant. Subject to the
17 reservations in Paragraph 99, Settling Defendant covenants not to sue and agrees
18 not to assert any claims or causes of action against the United States with respect
19 to the Work, Past Response Costs, Future Oversight Costs, Settling Defendant
20 Past Response Costs, and Settling Defendant Future OU-1 Response Costs,
21 Settling Defendant Excess Future OU-1 Construction Costs, and this Partial
22 Consent Decree, including, but not limited to:
23
24
25

26 a. any direct or indirect claim for reimbursement from the
27 Hazardous Substance Superfund (established pursuant to the Internal Revenue
28

1 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112,
2 113 or any other provision of law;

3
4 b. any claims against the United States, including any
5 department, agency or instrumentality of the United States under CERCLA
6 Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law
7 regarding the Work, past response actions regarding the Site, Past Response
8 Costs, Future Oversight Costs and this Partial Consent Decree;

9
10 c. any claims arising out of response actions at or in connection
11 with the Site, including any claim under the United States Constitution, the
12 Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412,
13 as amended, or at common law; or

14
15 d. any direct or indirect claim for disbursement from the Meyers
16 Landfill Site Special Account or Meyers Landfill Site Disbursement Special
17 Account (established pursuant to this Partial Consent Decree), except as provided
18 in Section XVII (Disbursement of Special Account Funds).

19
20 98. Covenant by the Forest Service. The Forest Service agrees not to
21 assert any direct or indirect claim for reimbursement from the Hazardous
22 Substance Superfund (established pursuant to the Internal Revenue Code, 26
23 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any
24
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1 other provision of law with respect to the Work, Past Response Costs, Future
2 Oversight Costs and this Partial Consent Decree. This covenant does not
3 preclude demand for reimbursement from the Superfund of costs incurred by the
4 Forest Service in the performance of its duties (other than pursuant to this Partial
5 Consent Decree) as lead or support agency under the National Contingency Plan
6 (40 C.F.R. Part 300).
7
8

9
10 99. Except as provided in Paragraph 102 (Claims Against MSW
11 Generators and Transporters), the covenants in this Section shall not apply if the
12 United States brings a cause of action or issues an order pursuant to any of the
13 reservations in Section XXII (Covenants by Plaintiffs), other than in Paragraphs
14 94.a (claims for failure to meet a requirement of the Decree), 94.f (criminal
15 liability), and 94.g (violations of federal/state law during or after implementation
16 of the Work), but only to the extent that Settling Defendant's claims arise from
17 the same response action, response costs, or damages that the United States is
18 seeking pursuant to the applicable reservation.
19
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23 100. Settling Defendant reserves, and this Partial Consent Decree is
24 without prejudice to: (a) claims against the United States, subject to the
25 provisions of Chapter 171 of Title 28 of the United States Code, and brought
26 pursuant to any statute other than CERCLA or RCRA and for which the waiver of
27 sovereign immunity is found in a statute other than CERCLA or RCRA, for
28

1 money damages for injury or loss of property or personal injury or death caused
2 by the negligent or wrongful act or omission of any employee of the United
3 States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope
4 of his or her office or employment under circumstances where the United States,
5 if a private person, would be liable to the claimant in accordance with the law of
6 the place where the act or omission occurred. However, the foregoing shall not
7 include any claim based on the Forest Service's selection of response actions, or
8 the oversight or approval of Settling Defendant's plans, reports, other deliverables
9 or activities. Settling Defendant also reserves, and this Partial Consent Decree is
10 without prejudice to, contribution claims against the United States in the event
11 any claim is asserted by the United States against Settling Defendants pursuant to
12 any of the reservations in Section XXII (Covenants by Plaintiffs) other than in
13 Paragraphs 94.a (claims for failure to meet a requirement of the Decree), 94.f
14 (criminal liability), and 94.g (violations of federal/state law during or after
15 implementation of the Work), but only to the extent that Settling Defendant's
16 claims arise from the same response action, response costs or damages that the
17 United States is seeking pursuant to the applicable reservation.

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25 101. Nothing in this Consent Decree shall be deemed to constitute
26 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
27 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
28

1 102. Claims Against MSW Generators and Transporters. Settling
2 Defendant agrees not to assert any claims and to waive all claims or causes of
3 action (including but not limited to claims or causes of action under Sections
4 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site
5 against any person where the person's liability to Settling Defendant with respect
6 to the Site is based solely on having arranged for disposal or treatment, or for
7 transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the
8 Site, if the volume of MSW disposed, treated or transported by such person to the
9 Site did not exceed 0.2 percent of the total volume of waste at the Site.
10

11 103. The waiver in Paragraph 102 shall not apply with respect to any
12 defense, claim, or cause of action that Settling Defendant may have against any
13 person meeting the criteria in Paragraph 102 if such person asserts a claim or
14 cause of action relating to the Site against Settling Defendant. This waiver also
15 shall not apply to any claim or cause of action against any person meeting the
16 above criteria if the Forest Service determines that: (a) the MSW contributed
17 significantly or could contribute significantly, either individually or in the
18 aggregate, to the cost of the response action or natural resource restoration at the
19 Site; (b) the person has failed to comply with any information request or
20 administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA,
21 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;
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1 or (c) the person impeded or is impeding, through action or inaction, the
2 performance of a response action or natural resource restoration with respect to
3 the Site.
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6 **XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION**

7 104. Except as provided in Paragraph 102 (Claims against MSW
8 Generators and Transporters), nothing in this Partial Consent Decree shall be
9 construed to create any rights in, or grant any cause of action to, any person not a
10 Party to this Partial Consent Decree. The preceding sentence shall not be
11 construed to waive or nullify any rights that any person not a signatory to this
12 decree may have under applicable law. Except as provided in Paragraph 102
13 (Claims against MSW Generators and Transporters), each of the Parties expressly
14 reserves any and all rights (including, but not limited to, pursuant to Section 113
15 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action
16 which each Party may have with respect to any matter, transaction, or occurrence
17 relating in any way to the Site against any person not a Party hereto. Nothing in
18 this Partial Consent Decree diminishes the right of the United States, pursuant to
19 Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any
20 such persons to obtain additional response costs or response action and to enter
21 into settlements that give rise to contribution protection pursuant to Section
22 113(f)(2).
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1 105. The Parties agree, and by entering this Partial Consent Decree this
2 Court finds, that this Partial Consent Decree constitutes a judicially-approved
3 settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2),
4 and Settling Defendant and the United States are entitled, as of the Effective Date,
5 to protection from contribution actions or claims as provided by Section 113(f)(2)
6 of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for
7 matters addressed in this Partial Consent Decree. The “matters addressed” in this
8 Partial Consent Decree are the Work, Past Response Costs, Future Oversight
9 Costs, Settling Defendant Past Response Costs, Settling Defendant Future OU-1
10 Response Costs, and Settling Defendant Excess Future OU-1 Construction Costs.
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15 106. Settling Defendant shall, with respect to any suit or claim brought by
16 it for matters related to this Partial Consent Decree, notify the United States in
17 writing no later than 60 days prior to the initiation of such suit or claim.
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20 107. Settling Defendant shall, with respect to any suit or claim brought
21 against it for matters related to this Partial Consent Decree, notify in writing the
22 United States within ten days of service of the complaint on it. In addition,
23 Settling Defendant shall notify the United States within ten days of service or
24 receipt of any Motion for Summary Judgment and within ten days of receipt of
25 any order from a court setting a case for trial.
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1 this Partial Consent Decree, including, but not limited to, sampling, analysis,
2 chain of custody records, manifests, trucking logs, receipts, reports, sample traffic
3 routing, correspondence, or other documents or information regarding the Work.
4 Settling Defendant shall also make available to the Forest Service, for purposes of
5 investigation, information gathering, or testimony, their employees, agents, or
6 representatives with knowledge of relevant facts concerning the performance of
7 the Work.
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11 110. Business Confidential and Privileged Documents.
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13 a. Settling Defendant may assert business confidentiality claims
14 covering part or all of the Records submitted to Plaintiff under this Partial
15 Consent Decree to the extent permitted by and in accordance with Section
16 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
17 Records determined to be confidential by the Forest Service will be afforded the
18 protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality
19 accompanies Records when they are submitted to the Forest Service, or if the
20 Forest Service has notified Settling Defendant that the Records are not
21 confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.
22 Part 2, Subpart B, the public may be given access to such Records without further
23 notice to Settling Defendant.
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1 b. Settling Defendant may assert that certain Records are
2 privileged under the attorney-client privilege or any other privilege recognized by
3 federal law. If Settling Defendant asserts such a privilege in lieu of providing
4 Records, they shall provide Plaintiff with the following: (1) the title of the
5 Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company
6 or firm), and address of the author of the Record; (4) the name, of each addressee
7 and recipient; (5) a description of the contents of the Record: and (6) the privilege
8 asserted by Settling Defendant. If a claim of privilege applies only to a portion of
9 a Record, the Record shall be provided to the United States in redacted form to
10 mask the privileged portion only. Settling Defendant shall retain all Records that
11 it claims to be privileged until the United States has had a reasonable opportunity
12 to dispute the privilege claim and any such dispute has been resolved in Settling
13 Defendant's favor.
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19 c. No Records created or generated pursuant to the requirements
20 of the Partial Consent Decree shall be withheld on the grounds that they are
21 privileged or confidential.
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24 111. No claim of confidentiality or privilege shall be made with respect to
25 any data, including, but not limited to, all sampling, analytical, monitoring,
26 hydrogeologic, scientific, chemical, or engineering data, or any other documents
27 or information evidencing conditions at or around the Site.
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1 **XXVI. RETENTION OF RECORDS**

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3 112. Until ten years after Settling Defendant's receipt of the Forest
4 Service's notification pursuant to Paragraph 49.b of Section XIV (Certification of
5 Completion of the Remedial Action), Settling Defendant shall preserve and retain
6 all non-identical copies of Records (including Records in electronic form) now in
7 its possession or control or which come into its possession or control that relate in
8 any manner to its liability under CERCLA with respect to the Site, provided,
9 however, that Settling Defendant must retain, in addition, all Records that relate
10 to the liability of any other person under CERCLA with respect to the Site.
11 Settling Defendant must also retain, and instruct its contractors and agents to
12 preserve, for the same period of time specified above all non-identical copies of
13 the last draft or final version of any Records (including Records in electronic
14 form) now in its possession or control or which come into its possession or
15 control that relate in any manner to the performance of the Work, provided,
16 however, that Settling Defendant (and its contractors and agents) must retain, in
17 addition, copies of all data generated during the performance of the Work and not
18 contained in the aforementioned Records required to be retained. Each of the
19 above record retention requirements shall apply regardless of any retention policy
20 to the contrary.
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28 113. At the conclusion of this record retention period, Settling Defendant

1 shall notify the United States at least 90 days prior to the destruction of any such
2 records or documents, and, upon request by the United States, Settling Defendant
3 shall deliver any such Records to the Forest Service. Settling Defendant may
4 assert that certain Records are privileged under the attorney-client privilege or
5 any other privilege recognized by federal law. If Settling Defendant asserts such
6 a privilege, it shall provide the Plaintiff with the following: (a) the title of the
7 Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company
8 or firm), and address of the author of the Record; (d) the name and title of each
9 addressee and recipient; (e) a description of the subject of the Record; and (f) the
10 privilege asserted by Settling Defendant. If a claim of privilege applies only to a
11 portion of a Record, the Record shall be provided to the United States in redacted
12 form to mask the privileged portion only. Settling Defendant shall retain all
13 Records that it claims to be privileged until the United States has had a reasonable
14 opportunity to dispute the privilege claim and any such dispute has been resolved
15 in the Settling Defendant's favor. However, no Records created or generated
16 pursuant to the requirements of this Partial Consent Decree shall be withheld on
17 the grounds that they are privileged or confidential

25 114. Settling Defendant hereby certifies individually that, to the best of its
26 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
27 discarded, destroyed or otherwise disposed of any Records (other than identical
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1 copies) relating to its potential liability regarding the Site since the earlier of
2 notification of potential liability by the United States or the filing of suit against it
3 regarding the Site and that it has fully complied with any and all Forest Service
4 requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42
5 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.
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8 **XXVII. NOTICES AND SUBMISSIONS**
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10 115. Whenever, under the terms of this Partial Consent Decree, written
11 notice is required to be given or a report or other document is required to be sent
12 by one Party to another, it shall be directed to the individuals at the addresses
13 specified below, unless those individuals or their successors give notice of a
14 change to the other Parties in writing. All notices and submissions shall be
15 considered effective upon receipt, unless otherwise provided. Written notice as
16 specified in this Section shall constitute complete satisfaction of any written
17 notice requirement of the Partial Consent Decree with respect to the United
18 States, the Forest Service, and Settling Defendant. Notices required to be sent to
19 the Forest Service, and not the United States, under the terms of this Partial
20 Consent Decree should not be sent to the U.S. Department of Justice.
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1 As to the United States:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611
6 Washington, D.C. 20044-7611
7 Re: DJ # 90-11-3-06554

8 and

9 Chief, Environmental Defense Section
10 United States Department of Justice
11 Environment and Natural Resources Division
12 P.O. Box 23986
13 Washington D.C. 20026-3986
14 Re: DJ # 90-11-8-05384

15 As to the U.S.D.A., Forest Service:

16 Dennis Geiser
17 Regional Environmental Engineer
18 Pacific Southwest Region, Region 5
19 1323 Club Drive
20 Vallejo, CA 94592

21 and

22 Rose Miksovsky
23 Staff Attorney
24 Office of the General Counsel
25 33 New Montgomery Street, 17th Floor
26 San Francisco, CA 94105

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As to the Regional Financial Management Officer, USDA, Forest Service:

John De La Torre
Director, Program Development & Budget
Pacific Southwest Region, Region 5
1323 Club Drive
Vallejo, CA 94592

As to the Settling Defendant:

Michael Ciccozzi
Deputy County Counsel
Office of County Counsel
330 Fair Lane
Placerville, CA 95667

Greg Stanton, Deputy Director
Environmental Management Dept.
El Dorado County
2850 Fairlane Court, Bldg. C.
Placerville, CA 95667

Thomas F. Vandenburg
Dongell, Lawrence, Finney LLP
707 Wilshire Blvd, 45th Floor
Los Angeles, CA 90017

Gerri Silva, Director
Environmental Management Dept.
El Dorado County
2850 Fairlane Court, Bldg. C
Placerville, CA 95667

1 **XXVIII. RETENTION OF JURISDICTION**

2 116. This Court retains jurisdiction over both the subject matter of this
3 partial Consent Decree and Settling Defendant for the duration of the
4 performance of the terms and provisions of this Partial Consent Decree for the
5 purpose of enabling any of the Parties to apply to the Court at any time for such
6 further order, direction, and relief as may be necessary or appropriate for the
7 construction or modification of this Partial Consent Decree, or to effectuate or
8 enforce compliance with its terms, or to resolve disputes in accordance with
9 Section XX (Dispute Resolution).
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13 **XXIX. APPENDICES**

14 117. The following appendices are attached to and incorporated into this
15 Consent Decree:
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18 "Appendix A" is the OUI ROD.
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20 "Appendix B" is a Map of the Site.
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22 "Appendix C" is the SOW.
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24 "Appendix D" [RESERVED].
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26 "Appendix E" is the initial performance guarantee.
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28 "Appendix F" is a map generally depicting the Site Portion of Trout Creek

1 Trunk Pipeline.

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3 **XXX. COMMUNITY RELATIONS**

4 118. If requested by the Forest Service, Settling Defendant shall
5 participate in community relations activities pursuant to the community relations
6 plan to be developed by the Forest Service. The Forest Service will determine the
7 appropriate role for Settling Defendant under the Plan. Settling Defendant shall
8 also cooperate with the Forest Service in providing information regarding the
9 Work to the public. As requested by the Forest Service, Settling Defendant shall
10 participate in the preparation of such information for dissemination to the public
11 and in public meetings which may be held or sponsored by the Forest Service to
12 explain activities at or relating to the Site. Costs incurred by the United States
13 under this Section, including the costs of any technical assistance grant under
14 Section 117(e) of CERCLA, 42 U.S.C. §9617(e), shall be considered Future
15 Oversight Costs that Settling Defendant shall pay pursuant to Section XVI
16 (Payments for Response Costs)

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23 **XXXI. MODIFICATION**

24 119. Except as provided in Paragraph 12 (Modification of SOW or
25 Related Work Plans), material modifications to this Partial Consent Decree,
26 including the OU-1 SOW, shall be in writing, signed by the United States and
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1 Settling Defendant, and shall be effective upon approval by the Court. Except as
2 provided in Paragraph 12 (Modification of SOW or Related Work Plans),
3 non-material modifications to this Partial Consent Decree, including revisions to
4 Section XVII (Funding and Disbursement of Special Account Funds) and the OU-
5 1 SOW, shall be in writing and shall be effective when signed by duly authorized
6 representatives of the United States and Settling Defendant. A modification to
7 the OU-1 SOW shall be considered material if it fundamentally alters the basic
8 features of the selected remedy within the meaning of 40 C.F.R. §
9 300.435(c)(2)(ii). Before providing its approval to any modification to the OU-1
10 SOW, the United States will provide the State with a reasonable opportunity to
11 review and comment on the proposed modification.
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17 120. Nothing in this Partial Consent Decree shall be deemed to alter the
18 Court's power to enforce, supervise or approve modifications to this Partial
19 Consent Decree.
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1 124. Settling Defendant agrees not to oppose entry of this Partial Consent
2 Decree by this Court or to challenge any provision of this Partial Consent Decree
3 unless the United States has notified Settling Defendant in writing that it no
4 longer supports entry of the Partial Consent Decree.
5

6
7 125. Settling Defendant shall identify, on the attached signature page, the
8 name, address and telephone number of an agent who is authorized to accept
9 service of process by mail on behalf of that Party with respect to all matters
10 arising under or relating to this Partial Consent Decree. Settling Defendant agrees
11 to accept service in that manner and to waive the formal service requirements set
12 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local
13 rules of this Court, including, but not limited to, service of a summons.
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1 **XXXIV. FINAL JUDGMENT**

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3 126. This Partial Consent Decree and its appendices constitute the final,
4 complete, and exclusive agreement and understanding among the Parties
5 regarding the settlement embodied in the Partial Consent Decree. The Parties
6 acknowledge that there are no representations, agreements or understandings
7 relating to the settlement other than those expressly contained in this Partial
8 Consent Decree.
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11 127. Upon entry of this Partial Consent Decree by the Court, this Partial
12 Consent Decree shall constitute a final judgment between and among the United
13 States and Settling Defendant. The Court finds that there is no just reason for
14 delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P.
15 54 and 58.
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20 SO ORDERED THIS __ DAY OF _____, 2010.

21
22
23 Honorable Morrison C. England, Jr.
24 United States District Judge,
25 Eastern District of California
26
27
28

1 FOR THE UNITED STATES OF AMERICA

2
3 6/17/10
4 Date

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

5
6
7
8
9
10 6/28/10
11 Date

KARL J. FINGERHOD
Trial Attorney,
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

12
13
14
15
16 6/28/10
17 Date

ANDREW J. DOYLE
Trial Attorney
Environmental Defense Section
Environment and Natural Resources
Division
U.S. Department of Justice

1 FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST
2 SERVICE

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Dated: 6/25/2010

RANDY MOORE
Regional Forester
U.S. Department of Agriculture
Forest Service
1323 Club Drive
Vallejo, California 94592

1 FOR THE COUNTY OF EL DORADO, CALIFORNIA

2
3 Date: 5-18-10

4
5 Signature: _____

6
7 Name (print): Raymond J. Nutting

8 Title: Vice Chair

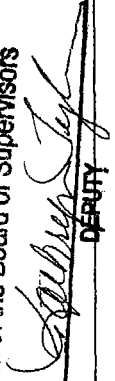
9 Address: 330 FAIR LANE
10 Placerville, CA 95667
11 _____

12
13 Agent Authorized To Accept Service On Behalf Of
14 Above-Signed Party:

15 Name (print): Suzanne Allen de Sanchez

16 Title: Clerk of the Board

17 Address: 330 FAIR LANE
18 Placerville, CA 95667
19 _____

ATTEST: SUZANNE ALLEN de SANCHEZ,
Clerk of the Board of Supervisors
By: 
DEPUTY