

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff

v.

THE CITY OF ST. MARIES; CARNEY PRODUCTS CO., LTD; U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE OF THE TESTAMENTARY TRUST OF MILO P. FLANNERY fbo JEROME F. NEVIN; TESTAMENTARY TRUST OF MILO P. FLANNERY fbo CHARLEE O'MALLEY; LIVING FAMILY TRUST OF MAUD O. FLANNERY fbo JEROME F. NEVIN; LIVING FAMILY TRUST OF MAUD O. FLANNERY fbo CHARLEE O'MALLEY; LIVING CHARITABLE TRUST OF MAUD O. FLANNERY fbo GONZAGA UNIVERSITY; LIVING CHARITABLE TRUST OF MAUD O. FLANNERY fbo GONZAGA PREPARATORY SCHOOL; TESTAMENTARY TRUST OF AILEEN FLANNERY NEVIN, FUND A fbo JOHN C. NEVIN; and TESTAMENTARY TRUST OF AILEEN FLANNERY NEVIN, FUND B fbo JOHN C. NEVIN, JEROME F. NEVIN and CHARLEE O'MALLEY,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**CONSENT DECREE**

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607. The Coeur d’Alene Tribe filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

B. The United States and the Tribe in their respective complaints seek, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice and by the Tribe for response actions at the St. Maries Creosote Superfund Site in St. Maries, Idaho (“Site”), together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Idaho (the “State”) by letter dated March 20, 2008, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Coeur d’Alene Tribe, the U.S. Fish and Wildlife Service, the National Oceanic Atmospheric Administration, and the State of Idaho on January 22, 2008, as well as the U.S. Department of the Interior on February 6, 2008, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal, State, and Tribal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. Neither the defendants that have entered into this Consent Decree (“Settling Defendants”) nor the Voluntary Remediation Party (as defined below) admit any issue of fact or law or any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints or this Consent Decree nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. In response to a release or a substantial threat of a release of one or more hazardous substances at or from the Site, the City of St. Maries (“City”) and Carney Products Company, Ltd. (“Carney Products”) commenced a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site in 2001 pursuant to 40 C.F.R. § 300.430.

G. The City and Carney Products completed a Remedial Investigation (“RI”) Report in 2003, a Feasibility Study (“FS”) Report in 2004, and a Supplemental FS in 2006.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notices of the proposed plan and a revised proposed plan for remedial action on July 21, 2005, August 17, 2005, and November 29, 2006, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan and revised proposed plan for remedial action. A copy of the transcripts of the public meetings is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on July 20, 2007, on which the Tribe has given its concurrence. The ROD includes EPA’s explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

J. On or about September 26, 2005, the Settling Defendants and ARCADIS U.S., Inc. ("Voluntary Remediation Party") entered into a confidential Guaranteed Remediation Program Agreement ("Guarantee Agreement") by which the Voluntary Remediation Party assumed specified obligations and liabilities associated with the remediation of the Site, including providing a guarantee to perform the VRP Work at the Site. As part of the Guarantee Agreement, the Settling Defendants also funded the cleanup by placing funds into an interest-bearing escrow account dedicated to the VRP Work and by funding a Contractor Remediation Stop Loss Insurance Policy, procured by the Voluntary Remediation Party from Zurich Insurance Company.

K. The Parties have determined that the performance of the Work will be enhanced by adding the Voluntary Remediation Party as a signatory to this Consent Decree. ARCADIS U.S., Inc. acknowledges that the rights and privileges accorded under its Guarantee Agreement with Settling Defendants and this Consent Decree provide adequate consideration for its agreement to perform the VRP Work hereunder.

L. The Settling Defendants and Voluntary Remediation Party agree that the terms and conditions of this Consent Decree should not be construed nor are they intended to alter their existing rights and obligations to each other under the Guarantee Agreement dated September 26, 2005.

M. Based on the information presently available to EPA and the Tribe, EPA and the Tribe believe that the Work will be properly and promptly conducted by the Voluntary Remediation Party and Settling Defendants ("Participating Parties") if conducted in accordance with the requirements of this Consent Decree and its appendices. The Voluntary Remediation Party acknowledges that the rights and privileges accorded to it under this Consent Decree provide adequate consideration from the United States and the Tribe for its agreement to perform the VRP Work in accordance with this Consent Decree. While the Voluntary Remediation Party may receive technical direction from EPA in the Voluntary Remediation Party's performance of the Work, it is understood by the Parties that, as between the Voluntary Remediation Party and the United States, this Consent Decree is not, and should not be construed as, a contract governed by the Federal Acquisition Regulations, 48 C.F.R. § 2.100 *et seq.*

N. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Participating Parties shall constitute a response action taken or ordered by the President.

O. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). For purposes of this Consent Decree, including its entry and enforcement, the Participating Parties hereby voluntarily submit themselves to the jurisdiction of this Court. In addition, solely for the purposes of this Consent Decree and the underlying complaint, the Participating Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Participating Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the Tribe and upon Participating Parties and their successors and assigns. Any change in ownership or corporate status of a

Participating Parties including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Participating Parties' responsibilities under this Consent Decree.

3. The Participating Parties shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Participating Party with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Participating Parties or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The Participating Parties shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Participating Parties within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Consultation" shall mean effective notice and collaboration in a significant attempt to reach a common position as between the United States and the Tribe, in accordance with the Memorandum of Understanding Between the United States and the Coeur d'Alene Tribe Regarding Remedial Action at the St. Maries Creosote Site.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Dismissal" shall mean dismissal of the Voluntary Remediation Party from further obligations under this Consent Decree as further described in Paragraph 13(b).

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 118.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing, or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 9 (Notice to Successors-in-Title), Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV (Emergency

Response), and Paragraph 98 of Section XXI (Work Takeover). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Participating Parties have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from, with respect to EPA costs, July 1, 2009, or with respect to DOJ costs, April 26, 2009, to the date of entry of this Consent Decree.

“Guarantee Agreement” shall mean the confidential Guaranteed Remediation Program Agreement entered into by the Voluntary Remediation Party and the Settling Defendants on or about September 26, 2005, by which ARCADIS U.S. Inc., assumed specified obligations and liabilities associated with the remediation of the Site.

“Institutional Controls” shall mean Proprietary Controls and tribal, state, or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (ii) limit land, water and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (iii) provide information intended to modify or guide human behavior at the Site.

“Institutional Control Implementation and Assurance Plan” or “ICIAP” shall mean the plan for implementing, maintaining, monitoring and reporting on the Institutional Controls selected in the ROD, prepared in accordance with the SOW.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between, with respect to EPA costs, July 1, 2009, or with respect to DOJ costs, April 26, 2009, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

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

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

“Non-Owner Settling Defendants” shall mean U.S. Bank National Association, as Trustee of the Testamentary Trust of Milo P. Flannery fbo Jerome F. Nevin; Testamentary Trust of Milo P. Flannery fbo Charlee O’Malley; Living Family Trust of Maud O. Flannery fbo Jerome F. Nevin; Living Family Trust of Maud O. Flannery fbo Charlee O’Malley; Living Charitable Trust of Maud O. Flannery fbo Gonzaga University; Living Charitable Trust of Maud O. Flannery fbo Gonzaga Preparatory School; Testamentary Trust of Aileen Flannery Nevin, Fund A fbo John C. Nevin; and Testamentary Trust of Aileen Flannery Nevin, Fund B fbo John C. Nevin, Jerome F. Nevin and Charlee O’Malley.

“Notice of Termination” shall mean a written notice pursuant to Paragraph 12 by the Participating Parties to EPA of Termination of the Guarantee Agreement.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

“Owner Settling Defendants” shall mean the City of St. Maries and Carney Products Company Ltd.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

“Parties” shall mean the United States, the Coeur d’Alene Tribe, and the Participating Parties.

“Participating Parties” shall mean the Settling Defendants and Voluntary Remediation Party.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through, with respect to EPA costs, June 30, 2009, or, with respect to DOJ costs, April 25, 2009, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD and the SOW, including any future amendments or modifications thereto.

“Plaintiffs” shall mean the United States and the Coeur d’Alene Tribe.

“Proprietary Controls” shall mean easements or covenants running with the land that (i) limit land, water or resource use and/or provide access rights and (ii) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on July 20, 2007, by the Regional Administrator, EPA Region 10, or her delegate, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Participating Parties to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 18 of this Consent Decree and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by the Participating Parties to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 17 of this Consent Decree and approved by EPA, and any amendments thereto.

“Replacement Contractor” means a contractor retained by the Settling Defendants to perform the VRP Work at the Site in the event of Dismissal of the Voluntary Remediation Party.

“Riverbank” shall mean the Subarea of the Site located between the Uplands and the Sediments Subarea.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Sediments Subarea” shall mean the Subarea of the Site for which sediment remediation is required under the SOW and the ROD.

“Settling Defendants” shall mean the City of St. Maries, Carney Products Company Ltd., and U.S. Bank National Association, as Trustee of the Testamentary Trust of Milo P. Flannery fbo Jerome F. Nevin; Testamentary Trust of Milo P. Flannery fbo Charlee O’Malley; Living Family Trust of Maud O. Flannery fbo Jerome F. Nevin; Living Family Trust of Maud O. Flannery fbo Charlee O’Malley; Living Charitable Trust of Maud O. Flannery fbo Gonzaga University; Living Charitable Trust of Maud O. Flannery fbo Gonzaga Preparatory School; Testamentary Trust of Aileen Flannery Nevin, Fund A fbo John C. Nevin; and Testamentary Trust of Aileen Flannery Nevin, Fund B fbo John C. Nevin, Jerome F. Nevin and Charlee O’Malley



“Site” shall mean the St. Maries Creosote Superfund Site, located within the boundaries of the Coeur d’Alene Reservation, in the City of St. Maries, Benewah County, Idaho, with the legal description being Section 22, Township 46, Range 2, West of the Boise Meridian, and depicted generally on the map attached as Appendix C.

“State” shall mean the State of Idaho.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Subarea” shall mean those distinct areas of the Site requiring remediation that include the Uplands, the Riverbank, and the Sediments Subarea.

“Termination” shall mean Termination of the Guarantee Agreement.

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

“Tribal Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the Tribe incurs in its support agency role under this Consent Decree in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access), and XV (Emergency Response). Tribal Future Response Costs shall also include all Tribal Interim Response Costs.

“Tribal Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the Tribe in connection with the Site between June 30, 2009, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Tribal Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the Tribe paid at or in connection with the Site through June 30, 2009.

“Tribe” shall mean the Coeur d’Alene Tribe of Indians.

“United States” shall mean the United States of America.

“Uplands” shall mean the Subarea of the Site containing both Upland Portion 1 and Upland Portion 2.

“Upland Portion 1” shall mean the property parcels within the boundary of the Site owned by Carney Products Co. Ltd and more specifically described by the legal description in Appendix E.

“Voluntary Remediation Party” (“VRP”) shall mean ARCADIS U.S., Inc., the party retained by the Settling Defendants under a Guaranteed Remediation Program Agreement dated September 26, 2005 to undertake remedial actions at the Site.

“VRP Work” shall mean all “Work” related to impacts from historic wood treatment activities at the Site except for any activities that may be necessary in order to remediate contamination in the sediments located in the Sediments Subarea to a concentration more restrictive than 100 mg/kg TPAH or the equivalent for individual PAH analytes identified as Contaminants of Concern on Table 25 of the ROD.

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

any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material” under state law.

“Work” shall mean all activities and obligations, except those required by Section XXV (Retention of Records), and including the VRP Work, that Settling Defendants are required to perform under this Consent Decree.

#### V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design, implementation and O&M of response actions at the Site by the Participating Parties, to reimburse response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants and Participating Parties.

a. The Settling Defendants shall finance and perform the Work, and the Voluntary Remediation Party shall perform the VRP Work, in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by the Participating Parties and approved by EPA pursuant to this Consent Decree. The Participating Parties shall also reimburse the United States and the Tribe, respectively, for Past Response Costs and Tribal Past Response Costs and Future Response Costs and Tribal Future Responses Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States and the Tribe under this Consent Decree are joint and several. With respect to the VRP Work, including the payment of any stipulated penalties in connection therewith, the Voluntary Remediation Party’s obligations are also joint and several with those of the Settling Defendants until Dismissal, subject to the provisions of Paragraph 13. In the event of the insolvency or other failure of any one or more Participating Parties to implement the requirements of this Consent Decree, the remaining Participating Parties shall complete all such requirements, except that the Voluntary Remediation Party is only obligated to implement the requirements of this Consent Decree to the extent it relates to the VRP Work until Dismissal, subject to the provisions of Paragraph 13.

7. Compliance With Applicable Law. All activities undertaken by the Participating Parties pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and tribal laws and regulations. The Participating Parties must also comply with all applicable or relevant and appropriate requirements (ARARs) of all Federal, state, and Tribal environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or tribal permit or approval, the Participating Parties shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Participating Parties may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal, state, or tribal statute or regulation.

9. Notice to Successors-in-Title.

a. For any real property owned or controlled by Owner Settling Defendants located at the Site, Owner Settling Defendants shall, within 15 days after the Effective Date submit to EPA for review and approval and to the Tribe for review a proposed notice to be filed with the appropriate land records office that provides a description of the real property and provide notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. The notice shall also describe the land use restrictions, if any, set forth in Paragraphs 32.b and 33.b. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Owner Settling Defendants shall record the notice(s) within 10 days of EPA's approval of the notices. Owner Settling Defendants shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. Owner Settling Defendants shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (i) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property, and (ii) to EPA and the Tribe regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

c. Owner Settling Defendants may Transfer any real property located at the Site only if: (1) any Proprietary Controls required by Paragraph 32.c have been recorded with respect to the real property; or (2) Owner Settling Defendants have obtained an agreement from the transferee, enforceable by Settling Defendants and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 33.a and 33.b, (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 33.c, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 33.c, and EPA has approved in writing the agreement. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 9.c, the Owner Settling Defendants shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist the Owner Settling Defendants in obtaining compliance with the agreement. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including but not limited to the cost of attorney time.

d.

In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Defendants shall continue to comply with their obligations under the Consent Decree, including, but not limited to, their obligation to provide and/or secure access and Institutional Controls, and to abide by such Institutional Controls.

VI. PERFORMANCE OF THE VRP WORK BY VOLUNTARY REMEDIATION PARTY

10. Retention of a Voluntary Remediation Party. The Settling Defendants have retained a Voluntary Remediation Party to perform the VRP Work as described in Sections VI (Performance of the VRP Work by Voluntary Remediation Party), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree and to satisfy certain other obligations of the Settling Defendants under this Consent Decree as expressly referenced and defined herein. Notwithstanding the Settling Defendants' retention of a Voluntary Remediation Party, each of the Participating Parties is obligated jointly and severally with respect to the VRP Work.

11. Enforcement Discretion.

a. Where this Consent Decree assigns a requirement to the Participating Parties, the United States and the Tribe shall each retain their respective authority to enforce the terms and conditions of this Consent Decree against any of the Participating Parties. Notwithstanding this authority, EPA acknowledges that the Voluntary Remediation Party will be the party primarily responsible for the performance of the VRP Work as defined in the SOW and any work plans referenced therein or subsequently submitted thereunder, and in its enforcement discretion, EPA will initially seek performance, corrective measures, and stipulated penalties for noncompliance with those requirements only from the Voluntary Remediation Party, unless and until:

- i. the Voluntary Remediation Party fails to perform the VRP work, take corrective measures required by EPA, or pay stipulated penalties in accordance with this Consent Decree;
- ii. the Voluntary Remediation Party is dismissed from its obligations pursuant to Paragraph 13 under this Consent Decree;
- ii. the terms of this Consent Decree are otherwise unenforceable against the Voluntary Remediation Party; or
- iv. EPA notifies the Participating Parties of the completion of the Work pursuant to Paragraph 60(b) of this Consent Decree.

b. If any of the conditions described in Paragraphs 11.a.i., 11.a.ii., 11.a.iii., or 11.a.iv. occur, EPA shall immediately thereafter seek performance, corrective measures, and stipulated penalties for noncompliance with the terms of this Consent Decree from Settling Defendants.

c. The Settling Defendants may seek to achieve compliance or to remedy circumstances giving rise to the issuance of a Work Takeover Notice by EPA pursuant to Paragraph 98 herein through the selection and employment of a "Replacement Contractor," using the procedures set forth in Paragraph 13 of this Consent Decree.

12. Termination. The Participating Parties shall immediately notify EPA and the Tribe in the event of Termination ("Notice of Termination"). In the event of Termination, the Voluntary Remediation Party shall be Dismissed from the Consent Decree in accordance with the terms of Paragraph 13 and the Settling Defendants shall propose a Replacement Contractor to EPA in accordance with the terms of Paragraph 13. Termination of the Guarantee Agreement shall have no effect on any of the Settling Defendants' obligations under this Consent Decree.

13. Supplementation, Dismissal, and Replacement of the Voluntary Remediation Party.

a. Supplementation of the Voluntary Remediation Party. To the extent remediation is required for sediments to a concentration more restrictive than 100 mg/kg TPAH or the equivalent for individual PAH analytes, the Settling Defendants shall have three (3) days from EPA's approval of the Verification of Excavation Volumes Report to provide written notice to EPA either: (i) that ARCADIS will remediate sediments to the approved standard, in which case the Parties will jointly move the Court to amend the Consent Decree such that the definition of "VRP Work" shall be the same as the definition of "Work" under this Consent Decree, or (ii) that ARCADIS will not remediate sediments to the approved standard, in which case, (A) the Settling Defendants shall propose in their written notice an additional remediation contractor ("Sediment Contractor") to conduct sediment remediation in compliance with the ROD and SOW necessary to comply with the approved standard and (B) the Settling Defendants shall provide an additional Performance Guarantee as described in Paragraph 52(a)-(f) for that portion of the Work.

b. Dismissal of the Voluntary Remediation Party. Upon Termination or a Work Takeover, the Voluntary Remediation Party will no longer remain subject to the requirements of this Consent Decree except for the requirements in Paragraph 13(c); *provided, however*, that in the event that implementation of a Work Takeover is disputed by any Participating Party pursuant to Section XIX (Dispute Resolution) of this Consent Decree, the Voluntary Remediation Party shall remain subject to all requirements of this Consent Decree during the resolution of that dispute.

c. Upon Dismissal as described in Paragraph 13(b), the Voluntary Remediation Party shall no longer be liable for any remaining obligations under this Consent Decree including the implementation of the VRP Work, provided that the former Voluntary Remediation Party shall continue to perform such activities as may be necessary to preserve and protect the Site until the Replacement Contractor takes over and shall comply with any applicable provisions under Sections XIII (Assurance of Ability to Complete Work), XXIV (Access to Information), XXV (Retention of Records), XVII (Indemnification and Insurance) (solely to the extent that such indemnification and insurance pertains to activities necessary to preserve and protect the Site until the Replacement Contractor takes over or to the period before Dismissal), and shall remain responsible for the payment of Future Response Costs and Tribal Future Response Costs under Section XVI (Reimbursement of Response Costs) (but only to the extent such costs were incurred in connection with activities necessary to preserve and protect the Site until the Replacement Contractor takes over or during the period before Dismissal), and Section XX (Stipulated Penalties) (but only to the extent such Stipulated Penalties were assessed for noncompliance by the former Voluntary Remediation Party in connection with activities necessary to preserve and protect the Site until the Replacement Contractor takes over or before dismissal). The Voluntary Remediation Party's obligations under Section XIII shall terminate upon the earlier of: (a) payment and/or performance by the Voluntary Remediation Party in full of all Guaranteed Obligations (as defined in the Guarantee Agreement, attached hereto as Exhibit D) in accordance with this Consent Decree, as evidenced by EPA's issuance of a certificate of completion in accordance with the terms of this Consent Decree; or (b) the substitution by the Voluntary Remediation Party or Settling Defendants of a different financial assurance mechanism in accordance with Section XIII as consented to in writing by EPA. The Voluntary Remediation Party specifically acknowledges and agrees that, upon the occurrence and during the continuance of a "Work Takeover" as specified in Section XXI, at the election of EPA, the Voluntary Remediation Party shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining VRP Work to be performed as of such date, as determined by EPA.

d. Replacement of the Voluntary Remediation Party.

i. Within 21 days of EPA's receipt of a Notice of Termination under Paragraph 12, the Settling Defendants shall propose in writing, for EPA's prior written approval, after a reasonable opportunity for concurrent review and comment by the Tribe, a permanent Replacement Contractor for the Voluntary Remediation Party. EPA, upon written request of the Settling Defendants, may extend such time period. At any time, in its discretion, EPA may require the Settling Defendants to obtain a temporary contractor to perform the VRP Work or Work while a permanent Replacement Contractor is being identified.

ii. If EPA disapproves a proposed Replacement Contractor pursuant to Paragraph 13(d)(i) or a Sediment Contractor pursuant to Paragraph 13(a), EPA will notify Settling Defendants in writing explaining the reasons for the disapproval. Settling Defendants shall submit to EPA and the Tribe a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 10 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor

from that list that is not disapproved and shall notify EPA and the Tribe of the name of the contractor selected within 21 days of EPA's authorization to proceed.

iii. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in Paragraph 13(d)(i) and (d)(ii) and this failure prevents the Participating Parties from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Participating Parties may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

iv. If the Settling Defendants elect to seek to remedy the circumstances giving rise to a Work Takeover Notice by replacement of the Voluntary Remediation Party, they shall, within the period provided in Paragraph 98(a), propose in writing, for EPA's prior written approval, after a reasonable opportunity for concurrent review and comment by the Tribe, a permanent Replacement Contractor for the Voluntary Remediation Party. EPA, upon written request of the Settling Defendants, may extend such time period. At any time, in its discretion, EPA may require the Settling Defendants to obtain a temporary contractor to perform the Work while a permanent Replacement Contractor is being identified. If EPA disapproves a proposed Replacement Contractor pursuant to this subparagraph 13.d.iv, it may either implement the Work Takeover pursuant to Paragraph 98 or, after providing a written notification explaining the reasons for the disapproval, order the Settling Defendants to follow the procedures set forth in subparagraph 13.d.ii for selecting a Replacement Contractor.

14. Criteria for Replacement Contractor or Sediment Contractor. Pursuant to this Section, Settling Defendants must submit in writing to EPA and the Tribe the proposed Replacement Contractor's or Sediment Contractor's qualifications and demonstrate that it has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

15. Notice to Proposed Replacement Contractor or Sediment Contractor. Settling Defendants shall submit the following information to any potential Replacement Contractor or Sediment Contractor:

- a. a copy of this Consent Decree;
- b. notice that any Replacement Contractor or Sediment Contractor shall be subject to prior EPA approval.

16. Amendment to the Consent Decree for Dismissal of Voluntary Remediation Party. Upon Dismissal of the Voluntary Remediation Party under Paragraph 13, the Parties will seek the Court's approval of an amendment to this Consent Decree, pursuant to Section XXXI (Modification) to dismiss the Voluntary Remediation Party, but only upon resolution of any existing dispute under Paragraph 13.b pursuant to Section XIX (Dispute Resolution) of this Consent Decree. The Settling Defendants and the Voluntary Remediation Party agree not to oppose such request for Court approval.

17. Remedial Design.

a. Within 90 days after the effective date of this Consent Decree the Participating Parties shall submit to EPA and the Tribe a draft work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 60 days after the receipt of EPA comments on the Draft RD Work Plan the Participating Parties shall submit to EPA and the Tribe a Health and Safety Plan for

field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a Construction Quality Assurance Plan; (3) an Institutional Control Implementation and Assurance Plan; and (4) a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, and submittal of the Health and Safety Plan for all field activities to EPA and the Tribe, Participating Parties shall implement the Remedial Design Work Plan. The Participating Parties shall submit to EPA and the Tribe all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Participating Parties shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The prefinal design submittal, if required by EPA or if independently submitted by the Participating Parties, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

18. Remedial Action.

a. Within 60 days after the approval of the final design submittal, Participating Parties shall submit to EPA and the Tribe a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and the ICIAP and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan as approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Participating Parties shall submit to EPA and the Tribe a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include at least the following applicable elements outlined and required by the approved SOW: (1) schedule for completion of the Remedial Action; (2) groundwater monitoring plan; (3) methods for satisfying permitting requirements if necessary; (4) methodology for implementation of the Operation, Maintenance and Monitoring Plan; (5) methodology

for implementation of any Contingency Plan; (6) construction quality control plan (by constructor); (7) procedures and plans for the decontamination of equipment and the disposal of contaminated materials; and (8) a schedule for implementation of Institutional Controls. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal.

c. Upon approval of the Remedial Action Work Plan by EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, Participating Parties shall implement the activities required under the Remedial Action Work Plan. The Participating Parties shall submit to EPA and the Tribe all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Participating Parties shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

19. The Participating Parties shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

20. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 20 and Paragraphs 59 and 60 only, the "scope of the remedy selected in the ROD" is set forth in pages 2-3, and 59-63 of the ROD.

c. If Participating Parties object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 78 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Participating Parties shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of Further Response Actions as otherwise provided in this Consent Decree.

21. Participating Parties acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

22. a. Participating Parties shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state, to the EPA Project Coordinator, and to the Tribe of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. The Participating Parties shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste



Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Participating Parties shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by the Participating Parties following the award of the contract for Remedial Action construction. The Participating Parties shall provide the information required by Paragraph 22.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Participating Parties shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Participating Parties shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

#### VII. REMEDY REVIEW

23. Periodic Review. The Participating Parties shall conduct any studies and investigations as requested by EPA, after consultation with the Tribe, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121 of CERCLA and any applicable regulations.

24. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

25. Opportunity To Comment. The Participating Parties and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any Further Response Actions proposed by EPA as a result of the review conducted pursuant to Section 121 of CERCLA and to submit written comments for the record during the comment period.

26. Participating Parties' Obligation To Perform Further Response Actions. If EPA selects Further Response Actions for the Site, the Participating Parties shall undertake such Further Response Actions to the extent that the reopener conditions in Paragraph 94 or Paragraph 95 (United States' reservations of liability based on unknown conditions or new information) are satisfied, provided however that the Voluntary Remediation Party shall only be responsible for any such Further Response Actions that involve VRP Work. The Participating Parties may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 94 or Paragraph 95 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the Further Response Actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of Further Response Actions shall be resolved pursuant to Paragraph 78 (record review).

27. Submissions of Plans. If the Participating Parties are required to perform the Further Response Actions pursuant to Paragraph 24, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the VRP Work by Voluntary Remediation Party) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

28. The Participating Parties shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001) “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to the Participating Parties of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the Participating Parties shall submit to EPA for approval, with a reasonable opportunity for concurrent review and comment by the Tribe, a Quality Assurance Project Plan (“QAPP”) that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The Participating Parties shall ensure that EPA and Tribe personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the Participating Parties in implementing this Consent Decree. In addition, the Participating Parties shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Participating Parties shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the “Contract Lab Program Statement of Work for Inorganic Analysis” and the “Contract Lab Program Statement of Work for Organic Analysis,” dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, the Participating Parties may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. The Participating Parties shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Participating Parties shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs,” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2),” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. The Participating Parties shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

29. Upon request, the Participating Parties shall allow split or duplicate samples to be taken by EPA and the Tribe or their authorized representatives. The Participating Parties shall notify EPA and the Tribe not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA and the Tribe. In addition, EPA and the Tribe shall have the right to take any additional samples that EPA or the Tribe deem necessary. Upon request, EPA and the Tribe shall allow the Participating Parties to take split or duplicate samples of any samples they take as part of the their oversight of the Participating Parties' implementation of the Work and VRP Work.

30. The Participating Parties shall submit to EPA and the Tribe two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Participating Parties with respect to the Site and/or the implementation of this Consent Decree unless EPA and the Tribe agree otherwise.

31. Notwithstanding any provision of this Consent Decree, the United States and the Tribe hereby retains all of their information gathering and inspection authorities and rights, including

enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

32. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by any of Settling Defendants:

a. such Settling Defendants shall, commencing on the date of lodging of the Consent Decree, provide the United States, the Tribe, the Participating Parties, and their representatives, including contractors and subcontractors, with access at all reasonable times to the Site, or such other real property to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work and VRP Work;
- (2) Verifying any data or information submitted to the United States or the Tribe;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work and VRP Work pursuant to the conditions set forth in Paragraph 98 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
- (9) Assessing Participating Parties' compliance with this Consent Decree;
- (10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and
- (11) Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls and the requirements of the ICIAP.

b. commencing on the date of lodging of the Consent Decree, such Settling Defendants shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions shall include, but not be limited to, protecting the integrity of the subsurface stabilization and restricting groundwater use; and

c. such Settling Defendants shall:

(1) execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not

limited to, those activities listed in Paragraph 32.a, and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 32.b, including but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP, as further specified in Paragraph 32.c(2)-(4).

(2) (i) The Proprietary Controls that grant a right of access pursuant to Paragraph 32(c)(1)(i) shall be granted to (A) the other Settling Defendants and their representatives (who shall monitor, maintain, report on, and enforce such Proprietary Controls), (B) the United States, on behalf of EPA, and its representatives, and (C) the Tribe and its representatives. To the extent not inconsistent with Idaho law, the Proprietary Controls shall include a designation that the Tribe is a "third-party beneficiary," allowing the Tribe to maintain the right to enforce the Proprietary Controls granting a right of access without acquiring an interest in real property.

(i) The Proprietary Controls that grant the right to enforce land/water use restrictions pursuant to Paragraph 32(c)(1)(ii) shall be granted to (A) the Settling Defendants and their representatives (who shall monitor, maintain, report on, and enforce such Proprietary Controls), and (B) the United States, on behalf of EPA, and its representatives.

(3) In accordance with the schedule set forth in the ICIAP, submit to EPA for review and approval regarding such real property:

(i) A draft Proprietary Control that is enforceable under State law and is consistent with the Uniform Environmental Covenant Act, Chapter 30, Title 55, Idaho Code, and

(ii) A current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

(4) within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control with the appropriate land records office. Within 30 days of recording the Proprietary Control, such Settling Defendants shall provide EPA and the Tribe with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

33. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for the United States, the Tribe, and Settling Defendants, and their representatives, contractors, and subcontractors to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 32.a;

b. an agreement, enforceable by Settling Defendants and the United States, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The agreement shall include, but not be limited to the land/water use restrictions listed in Paragraph 32.b; and

c. (1) the execution and recordation in the appropriate land records office of Proprietary Controls that (i) grants a right of access to conduct any activity regarding the Consent Decree

including, but not limited to, those activities listed in Paragraph 32.a, and (ii) grants the right to enforce the land/water use restrictions set forth in Paragraph 32.b, including but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP.

(2) (i) The Proprietary Controls that grant a right of access pursuant to Paragraph 33(c)(1)(i) shall be granted to (A) the other Settling Defendants and their representatives (who shall monitor, maintain, report on, and enforce such Proprietary Controls), (B) the United States, on behalf of EPA, and its representatives, and (C) the Tribe and its representatives. The Proprietary Controls shall include a designation that the Tribe is a "third-party beneficiary," allowing the Tribe to maintain the right to enforce the Proprietary Controls granting a right of access without acquiring an interest in real property.

(ii) The Proprietary Controls that grant the right to enforce land/water use restrictions pursuant to Paragraph 33(c)(1)(ii) shall be granted to (A) the Settling Defendants and their representatives (who shall monitor, maintain, report on, and enforce such Proprietary Controls), and (B) the United States, on behalf of EPA, and its representatives.

(3) In accordance with the schedule set forth in the ICIAP, Settling Defendants shall submit to EPA for review and approval regarding such property:

(i) a draft Proprietary Control that is enforceable under State law and is consistent with the Uniform Environmental Covenant Act, Chapter 30, Title 55, Idaho Code, and

(ii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances)

(4) Within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Proprietary Control shall be recorded with the appropriate land records office. Within 30 days of the recording of the Proprietary Control, Settling Defendants shall provide EPA and the Tribe with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

34. For purposes of Paragraphs 32 and 33, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, a Proprietary Control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 45 days of EPA's approval of the ICIAP, Settling Defendants have not: (a) obtained agreements to provide access, restrict land/water use, or record Proprietary Controls, as required by Paragraphs 33.a, 33.b, or 33.c, or (b) obtained, pursuant to Paragraphs 32.c(1) or 33.c(1), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendants shall promptly notify the United States and the Tribe in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 32 or 33. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the

United States in obtaining such access, agreements to restrict land/water use, Proprietary Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

35. If EPA determines that Institutional Controls in the form of state, tribal, or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Settling Defendants shall cooperate with efforts by EPA, in consultation with the Tribe, or the State to secure and ensure compliance with such governmental controls.

36. Notwithstanding any provision of the Consent Decree, the United States and the Tribe retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

#### X. REPORTING REQUIREMENTS

37. In addition to any other requirement of this Consent Decree, Participating Parties shall submit to EPA and the Tribe 1 copy each of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Participating Parties or their subcontractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Participating Parties have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Participating Parties shall submit these progress reports to EPA and the Tribe by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 63.b of Section XIV (Certification of Completion). If requested by EPA or the Tribe, Participating Parties shall also provide briefings for EPA and the Tribe to discuss the progress of the Work.

38. The Participating Parties shall notify EPA and the Tribe of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

39. Upon the occurrence of any event during performance of the Work that Participating Parties are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Participating Parties shall within 24 hours of the onset of such event orally notify the Tribal Project Coordinator and the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 10, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

40. Within 20 days of the onset of such an event, Participating Parties shall furnish to Plaintiffs a written report, signed by the Voluntary Remediation Party, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion

of such an event, Participating Parties shall submit a report setting forth all actions taken in response thereto.

41. Participating Parties shall submit 2 copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Participating Parties shall simultaneously submit 1 copy of all such plans, reports and data to the Tribe. Upon request by EPA or the Tribe, the Participating Parties shall submit in electronic form all portions of any report or other deliverable. Participating Parties are required to submit pursuant to the provisions of this Consent Decree.

42. All reports and other documents submitted by Participating Parties to EPA and the Tribe (other than the monthly progress reports referred to above) which purport to document Participating Parties compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Participating Parties.

#### XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

43. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for concurrent review and comment by the Tribe, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Participating Parties modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the Participating Parties at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

44. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 43(a), (b), or (c), the Participating Parties shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 43(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

#### 45. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 43(d), the Participating Parties shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified applicable cure period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 43 and 44.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 43(d), the Participating Parties shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the Participating Parties of any liability for stipulated penalties under Section XX (Stipulated Penalties).

46. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Participating Parties to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. The Participating Parties shall implement any such plan, report, or item as modified

or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

47. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the Participating Parties shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

48. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

## XII. PROJECT COORDINATORS

49. Within 20 days of lodging this Consent Decree, the Participating Parties, the Tribe and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Participating Parties' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Participating Parties' Project Coordinator shall not be an attorney for any of the Participating Parties in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

50. Plaintiffs may designate other representatives, including, but not limited to, EPA and Tribal employees, and federal and Tribal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

51. EPA's Project Coordinator, the Tribe's Project Coordinator, and the Participating Parties' Project Coordinator will meet either in person or telephonically, at a minimum, on a monthly basis.

## XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

52. In order to ensure the full and final completion of the VRP Work, the Participating Parties shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$12,007,000 (hereinafter "Estimated Cost of Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:



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

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

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

e. A demonstration by one or more Participating Parties that each such Participating Party meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the VRP Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;

f. A written guarantee to fund or perform the VRP Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Participating Party, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Participating Party; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirement of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the VRP Work that it proposes to guarantee hereunder.

53. The Participating Parties have selected, and EPA has approved, as an initial Performance Guarantee a written guarantee to fund or perform the VRP Work by the Voluntary Remediation Party pursuant to Paragraph 52.f, in the form attached hereto as Appendix D. Within ten days after entry of this Consent Decree, the Voluntary Remediation Party shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the documents attached hereto as Appendix D and such Performance Guarantee shall thereupon be fully effective. Within 30 days of entry of this Consent Decree, the Voluntary Remediation Party shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA as specified in Section XXVI.

54. [Omitted]

55. If at any time during the effective period of this Consent Decree, the Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 52.(e) or Paragraph 52.(f) above, such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii)

the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to “closure,” “post closure,” and “plugging and abandonment” shall be deemed to refer to the Work required under this Consent Decree, and the terms “current closure cost estimate” “current post-closure cost estimate,” and “current plugging and abandonment cost estimate” shall be deemed to refer to the Estimated Cost of the Work.

56. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendants, within thirty days of receipt of notice of EPA’s determination or, as the case may be, within thirty days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 52 of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 58.b.ii of this Consent Decree. Settling Defendants’ inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendants to complete the Work in strict accordance with the terms hereof.

57. The commencement of a Work Takeover pursuant to Paragraph 98 of this Consent Decree shall trigger EPA’s right to receive the benefit of any Performance Guarantee provided pursuant to Paragraph 52(a), (b), (c), (d), or (f). If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 52(e), Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

58. Modification of Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 52 above, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 58(b)(ii) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendants of such decision in writing. After receiving EPA’s written acceptance, Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to

the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 55 or 58.b of this Consent Decree.

b. Change of Form of Performance Guarantee.

i. If, after entry of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the EPA and the Settling Defendants, petition EPA in writing to request a change in the form of the Performance guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 58.b.ii of this Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree.

ii. Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree. EPA shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee shall thereupon be fully effective. Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA and the Tribe as specified in Section XXVI.

c. Release of Performance Guarantee. If Settling Defendants receive written notice from EPA in accordance with Paragraph 60 hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

59. Completion of the Remedial Action.

a. Within 60 days after the Participating Parties conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, the Participating Parties shall schedule and conduct a pre-final inspection as described in the SOW to be attended by the Participating Parties, EPA and the Tribe. If, after the pre-final inspection, the Participating Parties still believe that the Remedial Action has been fully performed and the Performance Standards have been

attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Tribe, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer retained by the Participating Parties or the Participating Parties' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of the Participating Parties' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-final inspection and receipt and review of the written report, EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify the Participating Parties in writing of the activities that must be undertaken by the Participating Parties pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require the Participating Parties to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 20.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Participating Parties to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Participating Parties shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for concurrent review and comment by the Tribe, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to the Participating Parties. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect the Participating Parties' obligations under this Consent Decree.

60. Completion of the Work.

a. Within 60 days after the Participating Parties conclude that all phases of the Work (including Institutional Controls and O & M), have been fully performed, the Participating Parties shall schedule and conduct a pre-certification inspection to be attended by the Participating Parties, EPA and the Tribe. If, after the pre-certification inspection, the Participating Parties still believe that the Work has been fully performed, the Participating Parties shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Participating Party or the Participating Parties' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify the Participating Parties in writing of the activities that must be undertaken by the Participating Parties pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require the Participating Parties to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 20.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Participating Parties to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and with a reasonable opportunity for concurrent review and comment by the Tribe, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

#### XV. EMERGENCY RESPONSE

61. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Participating Parties shall, subject to Paragraph 62 immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Tribe's Project Coordinator and EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If these persons are not available, the Participating Parties shall notify the EPA Emergency Response Unit, Region 10. The Participating Parties shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable 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 Participating Parties fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the Tribe takes such action instead, Participating Parties shall reimburse EPA and the Tribe all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

62. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or of the Tribe to a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

#### XVI. PAYMENTS FOR RESPONSE COSTS

##### 63. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, the Participating Parties shall pay to EPA \$555,951.23 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2009V00172, EPA Site/Spill ID Number 106B, and DOJ Case Number 90-11-3-06673. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of

Idaho following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, the Participating Parties shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by the Participating Parties pursuant to Subparagraph 63.a shall be deposited in the St. Maries Creosote Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. Within 30 days of the Effective Date, the Participating Parties shall pay to the Tribe \$5,204.81 in the form of a certified or cashier's check or checks made payable to the Coeur d'Alene Tribe, in reimbursement of Tribal Past Response Costs. The Participating Parties shall send the certified or cashier's check(s) to Debbie Groom, Director of Finance, Coeur d'Alene Tribe, PO Box 408, 850 'A' Street, Plummer, ID 83851.

The notation on the payment shall state "Tribal Past Response Costs – St. Maries Creosote Site." A photocopy of such payment shall also be sent to Rebecca Stevens, Program Manager, Hazardous Waste Management Program, Coeur d'Alene Tribe, 424 Sherman Avenue, Coeur d'Alene, Idaho 83814.

64. Payments for Future Response Costs.

a. The Participating Parties shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill requiring payment that includes a prepared cost summary, currently known as Superfund Cost Recovery Package Imaging Online System (SCORPIOS), which includes direct and indirect costs incurred by EPA and its contractors, and the DOJ cost summary which reflects costs incurred by DOJ and its contractors, if any. The Participating Parties shall make all payments within 30 days of the Participating Parties' receipt of each bill requiring payment, except as otherwise provided in Paragraph 66. The Participating Parties shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 106B, and DOJ Case Number 90-11-3-06673. Settling Defendants shall send the check(s) to:

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

b. At the time of payment, the Participating Parties shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by the Participating Parties pursuant to Paragraph 63.a shall be deposited in the St. Maries Creosote Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

65. The Participating Parties shall reimburse the Tribe for all Tribal Future Response Costs not inconsistent with the National Contingency Plan. The Tribe will send Participating Parties a bill requiring payment that includes a Tribal cost summary, which includes direct and indirect costs incurred

by the Tribe and its contractors on a monthly basis. Participating Parties shall make all payments within 30 days of Participating Parties' receipt of each bill requiring payment, except as otherwise provided in Paragraph 66. The Participating Parties shall make all payments to the Tribe required by this Paragraph in the manner described in Paragraph 63.d.

66. The Participating Parties may contest payment of any Future Response Costs under Paragraph 64 or Tribal Future Response Costs under Paragraph 65 if they determine that the United States or the Tribe has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the Tribe (if the Tribe's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs or Tribal Future Response Costs and the basis for objection. In the event of an objection, the Participating Parties shall within the 30 day period pay all uncontested Future Response Costs to the United States or Tribal Future Response Costs to the Tribe in the manner described in Paragraphs 64 and 65. Simultaneously, the Participating Parties shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Idaho and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or Tribal Future Response Costs. The Participating Parties shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the Tribe a copy of the transmittal letter and check paying the uncontested Future Response Costs or Tribal Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Participating Parties shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the Tribe prevails in the dispute, within 5 days of the resolution of the dispute, the Participating Parties shall pay the sums due (with accrued interest) to the United States or the Tribe, if Tribal costs are disputed, in the manner described in Paragraphs 64 and 65. If the Settling Defendants prevail concerning any aspect of the contested costs, the Participating Parties shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the Tribe, if Tribal costs are disputed in the manner described in Paragraphs 64 and 65; the escrow agent shall then disburse the balance of the escrow account to the Participating Parties. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Participating Parties' obligation to reimburse the United States' Future Response Costs and the Tribal Future Response Costs.

67. In the event that the payments required by Paragraph 63.a are not made within 30 days of the Effective Date or the payments required by Paragraphs 64 or 65 are not made within 30 days of the Participating Parties' receipt of the bill, the Participating Parties shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs and Tribal Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs and Tribal Future Oversight Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Participating Parties' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the Participating Parties' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX. The Participating Parties shall make all payments required by this Paragraph in the manner described in Paragraphs 64 and 65.

#### XVII. INDEMNIFICATION AND INSURANCE

68. Participating Parties' Indemnification of the United States and the Tribe.

a. The United States and the Tribe do not assume any liability by entering into this agreement or by virtue of any designation of Participating Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Participating Parties shall indemnify, save and hold harmless the United States, the Tribe, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Participating Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Participating Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Participating Parties agree to pay the United States and the Tribe all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Tribe based on negligent or other wrongful acts or omissions of Participating Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the Tribe shall be held out as a party to any contract entered into by or on behalf of Participating Parties in carrying out activities pursuant to this Consent Decree. Neither the Participating Parties nor any such contractor shall be considered an agent of the United States or the Tribe.

b. The United States and the Tribe shall give Settling Defendants notice of any claim for which the United States or the Tribe plans to seek indemnification pursuant to Paragraph 68, and shall consult with Settling Defendants prior to settling such claim.

69. Participating Parties waive all claims against the United States and the Tribe for damages or reimbursement or for set-off of any payments made or to be made to the United States or the Tribe, arising from or on account of any contract, agreement, or arrangement between any one or more of Participating Parties and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States and the Tribe with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

70. No later than 15 days before commencing any on-site Work, Participating Parties shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 59.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, and automobile liability insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, combined single limit, naming the United States and the Tribe as additional insureds. In addition, for the duration of this Consent Decree, Participating Parties shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Participating Parties in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Participating Parties shall provide to EPA and the Tribe certificates of such insurance and a copy of each insurance policy. Participating Parties shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Participating Parties demonstrate by evidence satisfactory to EPA and the Tribe that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Participating Parties need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. The Settling Defendants may, in EPA's discretion, satisfy the requirements of this paragraph if they submit to EPA for approval one of the financial assurance



mechanisms of Section XIII (Assurance of Ability to Complete VRP Work) demonstrating an ability to pay the amounts required under this Paragraph above and beyond the amount required by Section XIII.

#### XVIII. Force Majeure

71. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Participating Parties, of any entity controlled by Participating Parties, or of Participating Parties' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Participating Parties' best efforts to fulfill the obligation. The requirement that the Participating Parties exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Participating Parties shall notify orally the Tribe's Project Coordinator and EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Environmental Cleanup, EPA Region 10, within 5 days of when Participating Parties first knew that the event might cause a delay. Within 7 days thereafter, Participating Parties shall provide in writing to EPA and the Tribe an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Participating Parties' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Participating Parties, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Participating Parties shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Participating Parties from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Participating Parties shall be deemed to know of any circumstance of which Participating Parties, any entity controlled by Participating Parties, or Participating Parties' contractors knew or should have known.

73. If EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Participating Parties in writing of its decision. If EPA, with a reasonable opportunity for concurrent review and comment by the Tribe, agrees that the delay is attributable to a force majeure event, EPA will notify the Participating Parties in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

74. If the Participating Parties elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Participating Parties shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that

the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Participating Parties complied with the requirements of Paragraphs 71 and 72, above. If Participating Parties carry this burden, the delay at issue shall be deemed not to be a violation by Participating Parties of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XIX. DISPUTE RESOLUTION

75. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the Tribe to enforce obligations of the Participating Parties that have not been disputed in accordance with this Section.

76. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

#### 77. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, the Participating Parties invoke the formal dispute resolution procedures of this Section by serving on the United States and the Tribe a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Participating Parties. The Statement of Position shall specify the Participating Parties' position as to whether formal dispute resolution should proceed under Paragraph 78 or Paragraph 79.

b. Within 14 days after receipt of the Participating Parties Statement of Position, EPA will serve on the Participating Parties its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 78 or 79. Within 10 days after receipt of EPA's Statement of Position, the Participating Parties may submit a Reply.

c. If there is disagreement between EPA and the Participating Parties as to whether dispute resolution should proceed under Paragraph 78 or 79, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Participating Parties ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 78 or 79

78. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by the Participating Parties regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this

Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Office of Environmental Cleanup, EPA Region 10, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 78.a. This decision shall be binding upon the Participating Parties, subject only to the right to seek judicial review pursuant to Paragraph 78.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 78.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Participating Parties with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Participating Parties' motion.

d. In proceedings on any dispute governed by this Paragraph, the Participating Parties shall have the burden of demonstrating that the decision of the Director of the Office of Environmental Cleanup Office is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 78.a.

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

a. Following receipt of the Participating Parties' Statement of Position submitted pursuant to Paragraph 77, the Director of the Office of Environmental Cleanup, EPA Region 10, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Participating Parties unless, within 10 days of receipt of the decision, the Participating Parties file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Participating Parties' motion.

b. Notwithstanding Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

80. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Participating Parties under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 89. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

#### XX. STIPULATED PENALTIES

81. Participating Parties shall be liable for stipulated penalties to the United States for failure to comply with the requirements of this Consent Decree in the amount and as specified below in paragraphs 82 and 83, unless excused under Section XVIII (Force Majeure). Consistent with and subject to Section VI (Performance of the VRP Work by Voluntary Remediation Party), EPA will initially seek stipulated penalties from the Voluntary Remediation Party, but only to the extent such stipulated penalties are

assessed for noncompliance related to the performance of the VRP Work that occurs prior to Dismissal of the Voluntary Remediation Party or in connection with activities necessary to preserve and protect the Site until the Replacement Contractor takes over following Dismissal. "Compliance" by Participating Parties shall include completion of the activities under this Consent Decree and the SOW, or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree. Stipulated penalties will begin to accrue on the date of the original violation.

82. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents required by this Consent Decree and/or SOW:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 7th day
\$1,000.00	8th through 14th day
\$1,500.00	15th day through the 30th day
\$2,000.00	31st day and beyond

83. Stipulated Penalty Amounts – Performance of the Work.

The following stipulated penalties shall accrue per violation per day for any noncompliance of Work specified in any work plan required under this Consent Decree and/or SOW by the Participating Parties, other than the failure to submit timely or adequate reports, which is addressed in Paragraph 82 above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750.00	1st through 7th day
\$1,500.00	8th through 14th day
\$2,250.00	15th through 30th day
\$3,000.00	31st day and beyond

84. In the event that EPA assumes performance of all of the Work pursuant to Paragraph 98 of Section XXI (Covenants Not to Sue by Plaintiffs), the Voluntary Remediation Party shall be liable for a stipulated penalty in the amount of \$150,000.00 to the extent that the work takeover relates to the performance or non-performance of VRP Work. If the work takeover does not relate to the performance or non-performance of VRP Work, then the Settling Defendants shall be liable for a stipulated penalty in the amount of \$150,000.00.

85. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date

that EPA notifies Participating Parties of any deficiency; (2) with respect to a decision by the Director of the Office of Environmental Cleanup, EPA Region 10, under Paragraph 78.b or 79.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Participating Parties' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

87. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Participating Parties' receipt from EPA of a demand for payment of the penalties, unless Participating Parties invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #106B, the DOJ Case Number 90-11-3-06673, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

88. The payment of penalties shall not alter in any way Participating Parties' obligation to complete the performance of the Work or VRP Work required under this Consent Decree.

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

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Participating Parties shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Participating Parties shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Participating Parties to the extent that they prevail.

90. If Participating Parties fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Participating Parties shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 87.

91. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Tribe to seek any other remedies or sanctions available by

virtue of Participating Parties' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

92. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

93. In consideration of the actions that will be performed and the payments that will be made by the Participating Parties under the terms of the Consent Decree, and except as specifically provided in Paragraph 94, 95, and 97 of this Section, the United States covenants not to sue or to take administrative action against Participating Parties pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 63.a of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 59.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Participating Parties of their obligations under this Consent Decree. These covenants not to sue extend only to the Participating Parties and do not extend to any other person.

93A. In consideration of the actions that will be performed and the payments that will be made by the Participating Parties under the terms of the Consent Decree, and except as specifically provided in Paragraph 94A, 95A, and 97A of this Section, the Tribe covenants not to sue Participating Parties pursuant to Sections 107(a) and Section 113(f) of CERCLA relating to the Site. Nothing herein shall be construed as an admission by the Tribe that it is a "person" as defined in Section 101(21) of CERCLA. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by the Tribe of the payments required by Paragraph 63.d of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 59.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Participating Parties of their obligations under this Consent Decree. These covenants not to sue extend only to the Participating Parties and do not extend to any other person.

94. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Participating Parties

- a. to perform Further Response Actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if,

prior to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in

part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

94A. Tribe's Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the Tribe reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action seeking to compel Participating Parties

a. to reimburse the Tribe for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

95. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Participating Parties

a. to perform Further Response Actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

95A. Tribe's Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the Tribe reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action seeking to compel Participating Parties

a. to reimburse the Tribe for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
  - (2) information, previously unknown to EPA, is received, in whole or in part,
- and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

96. For purposes of Paragraphs 94, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraphs 95, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

97. United States' General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Participating Parties with respect to all matters not expressly included within the United States' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Participating Parties with respect to:

- a. claims based on a failure by Participating Parties to meet a requirement of this Consent Decree;
- b. liability on behalf of the Settling Defendants arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work or VRP Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Participating Parties;
- d. liability on behalf of the Settling Defendants for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 20 (Modification of the SOW or Related Work Plans).

97A. Tribe general reservation of rights. The Tribe reserves, and this Consent Decree is without prejudice to, all rights against Participating Parties with respect to all matters not expressly included within the Tribe's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the Tribe reserves all rights with respect to:

- a. claims based on a failure by Participating Parties to meet a requirement of this Consent Decree;
- b. liability on behalf of the Settling Defendants arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work or VRP Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Participating Parties;
- d. liability on behalf of the Settling Defendants for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;



f. liability for violations of tribal law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 20 (Modification of the SOW or Related Work Plans).

98. Work Takeover

a. In the event EPA determines that the Participating Parties have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to the Participating Parties. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Participating Parties a period of 21 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 21-day notice period specified in Paragraph 98(a), Settling Defendants have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the VRP Work or Work as EPA deems necessary (“Work Takeover”). EPA shall notify Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 98b).

c. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 78, to dispute EPA’s implementation of a Work Takeover under Paragraph 98(b). However, notwithstanding Settling Defendants’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 98(b) until the earlier of (i) the date that Settling Defendants remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 78 requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of the Consent Decree, in accordance with the provisions of Paragraph 57 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Defendants fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 57, any unreimbursed costs, not inconsistent with the NCP, incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

99. Notwithstanding any other provision of this Consent Decree, the United States and the Tribe retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY PARTICIPATING PARTIES

100. Covenant Not to Sue. Subject to the reservations in Paragraph 101, Participating Parties hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the Tribe with respect to the Site or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c. any claims against the Tribe, including any department, program, or instrumentality of the Tribe under CERCLA Sections 107 or 113 related to the Site, or
- d. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, tribal law, or at common law.

Except as provided in Paragraph 104 (Waiver of Claims Against *De Micromis* Parties), Paragraph 105 (Waiver of Claims Against *De Minimis* Parties), and Paragraph 110 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply as against the United States in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 94, 95, or 97 (b) - (d) or (g), but only to the extent that Participating Parties' claims arise from the same response action, response costs, or damages that the United States or the Tribe is seeking pursuant to the applicable reservation.

Likewise, except as provided in Paragraph 104 (Waiver of Claims Against *De Micromis* Parties), Paragraph 105 (Waiver of Claims Against *De Minimis* Parties), and Paragraph 110 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply as against the Tribe in the event that the Tribe brings a cause of action pursuant to the reservations set forth in Paragraphs 94A, 95A, or 97A(b)-(d) or (g), but only to the extent that Participating Parties' claims arise from the same response action, response costs, or damages that the Tribe is seeking pursuant to the applicable reservation.

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

102. The Parties acknowledge and agree that nothing in this Consent Decree is intended to render the Voluntary Remediation Party a responsible party with regard to the Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) or any similar state or Tribal law; provided, however, that nothing in this Consent Decree is intended to prevent the Voluntary Remediation Party from, by its conduct, becoming a responsible party with regard to the Site under Section 107(a) of CERCLA or any similar state or Tribal law to the extent such conduct would otherwise render it as such. The Parties further acknowledge and agree that nothing in this Consent Decree should be construed to, nor is it intended to, create any direct and/or joint and several liability against the Voluntary Remediation Party for any act or omission of the Settling Defendants except for those liabilities expressly assumed pursuant to this Consent Decree.

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

104. Claims against *De Micromis* Parties. Participating Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Participating Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

104A The waiver in Paragraph 104 shall not apply with respect to any defense, claim or cause of action that a Participating Party may have against any person meeting the criteria in Paragraph 104 if such person asserts a claim or cause of action relating to the Site against such Participating Party. This waiver shall also not apply to any claim or cause of action against any person meeting the criteria in Paragraph 104 if EPA determines:

- a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or
- b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the costs of response action or natural resource restoration at the Site.

105. Claims against *De Minimis* and Ability to Pay Parties. Participating Parties agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Participating Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Participating Party.

#### XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION

106. Except as provided in Paragraph 104 (Waiver of Claims Against *De Micromis* Parties) and Paragraph 105 (Waiver of Claims Against *De Minimis* Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 104 (Waiver of Claims Against *De Micromis* Parties) and Paragraph 105 (Waiver of Claims Against *De Minimis* and Ability to Pay Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to

Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

107. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for matters addressed in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, if the United States or the Tribe exercises rights against the Participating Parties under the reservations in Section XXI (Covenants not to sue by Plaintiffs), other than in Paragraphs 97(a) or 97A(a) (claims for failure to meet a requirement of the Consent Decree), 97(e) or 97A(e) (criminal liability), or 97(f) or 97A(f) (violations of federal/state law during or after implementation of the Remedial Action), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservations.

108. Participating Parties shall, with respect to any suit or claim brought by them for matters related to this Consent Decree, notify the United States and the Tribe in writing no later than 60 days prior to the initiation of such suit or claim.

109. Participating Parties shall, with respect to any suit or claim brought against them for matters related to this Consent Decree, notify in writing the United States and the Tribe within 10 days of service of the complaint on Participating Parties. In addition, Participating Parties shall notify the United States and the Tribe within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

110. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the Tribe for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Participating Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Tribe in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

#### XXIV. ACCESS TO INFORMATION

111. The Participating Parties shall provide to EPA and the Tribe, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work and VRP Work. The Participating Parties shall also make available to EPA and the Tribe, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

#### 112. Business Confidential and Privileged Documents.

a. The Participating Parties may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents

or information when they are submitted to EPA and the Tribe, or if EPA has notified the Participating Parties that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Participating Parties may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Participating Parties assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Participating Parties. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

113. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### XXV. RETENTION OF RECORDS

114. Until 10 years after the Participating Parties' receipt of EPA's notification pursuant to Paragraph 60 of Section XIV (Certification of Completion of the Work), each Participating Party shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Participating Party must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or VRP Work, provided, however, that each Participating Party (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

115. At the conclusion of this document retention period, the Participating Parties shall notify the United States and the Tribe at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the Tribe, the Participating Parties shall deliver any such records or documents to EPA or the Tribe. The Participating Parties may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Participating Parties assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Participating Parties. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

116. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the Tribe or the

filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

117. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Tribe, and the Participating Parties, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-06673

As to EPA:

Daniel D. Opalski, Director  
Office Of Environmental Cleanup  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Joe Wallace, Remedial Project Manager  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

As to EPA Regional Financial Management Officer:

Regional Financial Management Officer  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

As to the Tribe:

Chief Allan, Chairman  
Coeur d'Alene Tribe  
850 A. Street  
P.O. Box 408

Plummer, Idaho 83851

As to the Tribe Hazardous Waste Management Program:

Rebecca Stevens, Program Manager  
Hazardous Waste Program  
Coeur d'Alene Tribe  
424 Sherman Avenue  
Coeur d'Alene, ID 83814

As to Tribe Financial Office:

Debbie Groom,  
Director of Finance  
Coeur d'Alene Tribe  
PO Box 408, 850 'A' Street  
Plummer, ID 83851

As to the Participating Parties:

For ARCADIS:

Allan Steckelberg  
ARCADIS  
630 Plaza Drive, Suite 200  
Highlands Ranch, CO 80129

With Copy to:

ARCADIS U.S., Inc. Legal Department  
Attn: Steve Fox  
630 Plaza Drive, Suite 100  
Highlands Ranch, CO 80129

For U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE OF THE TESTAMENTARY TRUST OF MILO P. FLANNERY fbo JEROME F. NEVIN; TESTAMENTARY TRUST OF MILO P. FLANNERY fbo CHARLEE O'MALLEY; LIVING FAMILY TRUST OF MAUD O. FLANNERY fbo JEROME F. NEVIN; LIVING FAMILY TRUST OF MAUD O. FLANNERY fbo CHARLEE O'MALLEY; LIVING CHARITABLE TRUST OF MAUD O. FLANNERY fbo GONZAGA UNIVERSITY; LIVING CHARITABLE TRUST OF MAUD O. FLANNERY fbo GONZAGA PREPARATORY SCHOOL; TESTAMENTARY TRUST OF AILEEN FLANNERY NEVIN, FUND A fbo JOHN C. NEVIN; and TESTAMENTARY TRUST OF AILEEN FLANNERY NEVIN, FUND B fbo JOHN C. NEVIN, JEROME F. NEVIN and CHARLEE O'MALLEY:

Craig Korthase on behalf of B.J.Carney  
Senior Vice President and Senior Managing Director  
U.S. Bank  
1420 Fifth Avenue, Suite 2100  
Seattle, WA 98101

With Copy to:

Linda Rockwood  
Faegre & Benson, LLP  
3200 Wells Fargo Center  
1700 Lincoln Street  
Denver, CO 80203

For Carney Products Co. Ltd.:

James B. Comerford  
President  
Carney Products Co. Ltd.  
222 North Wall Street, Suite 306  
Spokane, WA 99201

With Copy to:

Tisha Pagalilauan  
K&L Gates, LLP  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104

For the City of St. Maries, Idaho:

Mayor Robert Allen  
City of St. Maries  
City Hall  
602 College Avenue  
St. Maries, ID 83861

With Copy to:

Louis A. Ferreira IV  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204

XXVII. EFFECTIVE DATE

118. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.



XXVIII. RETENTION OF JURISDICTION

119. This Court retains jurisdiction over both the subject matter of this Consent Decree, and the Participating Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

120. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” is the description and/or map of the Site.

“Appendix D” is the Performance Guarantee.

“Appendix E” is the legal description for the parcels constituting Upland Portion 1

XXX. COMMUNITY RELATIONS

121. Participating Parties shall propose to EPA and the Tribe their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Participating Parties under the Plan. Participating Parties shall also cooperate with EPA and the Tribe in providing information regarding the Work to the public. As requested by EPA or the Tribe, Participating Parties shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the Tribe to explain activities at or relating to the Site.

XXXI. MODIFICATION

122. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Participating Parties. All such modifications shall be made in writing.

123. Except as provided in Paragraph 20 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, the Participating Parties, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(ii). Prior to providing its approval to any modification, the United States will provide the Tribe with a reasonable opportunity for concurrent review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(ii), may be made by written agreement between EPA, after providing the Tribe with a reasonable opportunity for concurrent review and comment on the proposed modification, and the Participating Parties.

124. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

125. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Participating Parties consent to the entry of this Consent Decree without further notice.

126. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

127. Each undersigned representative of a Participating Party to this Consent Decree, the Tribe, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

128. Each Participating Party hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Participating Parties in writing that it no longer supports entry of the Consent Decree.

129. Each Participating Party shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Participating Parties hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

130. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

131. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Tribe, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

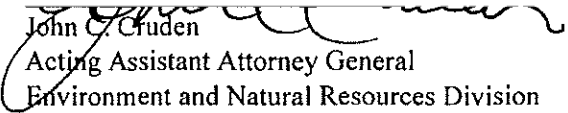
SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 2009.

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United States District Judge

FOR THE UNITED STATES OF AMERICA

9/30/09  
Date

  
John C. Cruden  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

9/30/09  
Date

  
Eric D. Albert  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-2800  
(202) 514-4180 (fax)

THOMAS E. MOSS  
United States Attorney  
District of Idaho

11/9/09  
Date

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Nick Woychick  
Civil Chief  
United States Attorney's Office  
District of Idaho  
Washington Group Plaza IV  
Boise, Idaho 83712  
208-334-1211  
n

9/18/09

Date

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Lori Cohen  
Acting Director  
Office of Environmental Cleanup  
U.S. Environmental Protection Agency,  
Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

9/18/09

Date

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Lisa A. Castañon  
Assistant Regional Counsel  
U.S. Environmental Protection Agency,  
Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

FOR THE COEUR D'ALENE TRIBE

10-27-09  
Date

Signature: \_\_\_\_\_  
Name (print): Chief Allan  
Title: Chairman  
Coeur d'Alene Tribe  
Address: 850 A. Street  
P.O. Box 408  
Plummer, ID 83851

10.27.2009  
Date

Signature: \_\_\_\_\_  
Name (print): Brian J. Cleary  
Title: Counsel to Coeur d'Alene Tribe  
Address: The Cleary Law Group, P.C.  
101 West Prairie Center, #362  
Hayden, ID 83835  
Phone No.: (208) 762-1081

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Eric Van Orden  
Title: In-House Counsel  
Coeur d'Alene Tribe  
Address: 850 A. Street  
P.O. Box 408  
Plummer, ID 83851  
Phone No.: (208) 686-0400

FOR CARNEY PRODUCTS CO., LTD.

9/8/09  
Date

Signature: \_\_\_\_\_  
Name (print): WALTER B COHERFORD  
Title: PRESIDENT  
Address: 3009 S. HT VERNON  
SUITE # 4  
SPOKANE WA 99223

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): K&L:Gates, LLP  
Title: c/o Tisha Pagalilauan  
Address: 925 Fourth Avenue, Suite 2900  
Seattle, WA 98104  
Ph. Number: (206) 623-7580

FOR THE CITY OF ST. MARIES

9-8-09  
Date

Signature: \_\_\_\_\_  
Name (print): Robert Allen  
Title: Mayor  
Address: 1602 College Avenue  
St. Maries, Idaho 83861  
\_\_\_\_\_  
\_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Stoel Rives c/o Louis A. Ferreira  
Title: Attorney  
Address: 900 SW Fifth Ave.  
Suite 2600  
Portland OR 97204  
Ph. Number: (503) 224-3380



FOR U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE OF THE TESTAMENTARY TRUST OF MILO P. FLANNERY fbo JEROME F. NEVIN; TESTAMENTARY TRUST OF MILO P. FLANNERY fbo CHARLEE O'MALLEY; LIVING FAMILY TRUST OF MAUD O. FLANNERY fbo JEROME F. NEVIN; LIVING FAMILY TRUST OF MAUD O. FLANNERY fbo CHARLEE O'MALLEY; LIVING CHARITABLE TRUST OF MAUD O. FLANNERY fbo GONZAGA UNIVERSITY; LIVING CHARITABLE TRUST OF MAUD O. FLANNERY fbo GONZAGA PREPARATORY SCHOOL; TESTAMENTARY TRUST OF AILEEN FLANNERY NEVIN, FUND A fbo JOHN C. NEVIN; and TESTAMENTARY TRUST OF AILEEN FLANNERY NEVIN, FUND B fbo JOHN C. NEVIN, JEROME F. NEVIN and CHARLEE O'MALLEY

9-4-09  
Date

Signature: \_\_\_\_\_  
Name (print): CRAIG F. KOZTMASS  
Title: SR VICE PRESIDENT  
Address: U.S. BANK PRIVATE CLIENT RESERVE  
PO-VA-TZIP  
1420 - FIFTH AVE ST. 2100  
SEATTLE, WA 98101

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): FREGE + BENSON LLP  
Title: of LINDA ROCKWOOD  
Address: 1700 LINCOLN ST.  
3200 WELLS FARGO CENTER  
DENVER, CO 80203  
Ph. Number: (303) 607-3500

FOR ARCADIS, U.S. INC.

9/8/09  
Date

Signature: \_\_\_\_\_  
Name (print): ✓ / Gary Cortez  
Title: Environmental Division President  
Address: 630 Plaza Drive, Suite 100  
Highlands Ranch, CO 80129  
\_\_\_\_\_  
\_\_\_\_\_

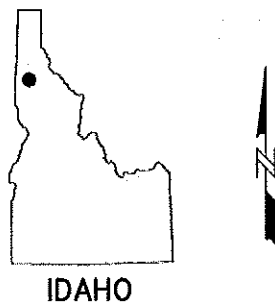
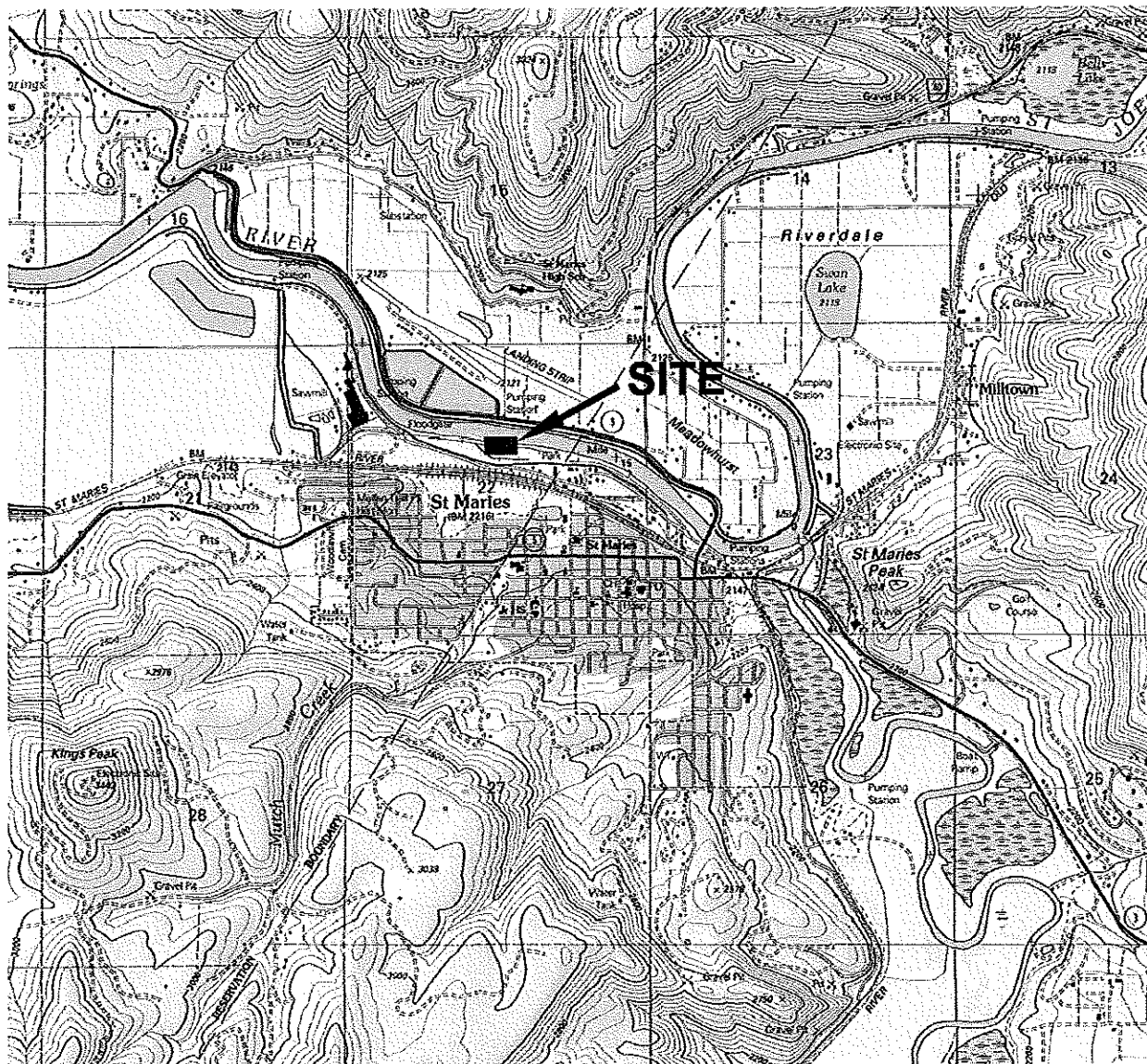
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Steve Fox  
Title: Associate General Counsel  
Address: 630 Plaza Drive, Suite 100  
Highlands Ranch, CO 80129  
\_\_\_\_\_  
Ph. Number: 720-344-3500

**Appendix A – Record of Decision**

**Appendix B – Statement of Work**

**Appendix C – Site Map**



**Appendix D – Performance Guarantee**

**Appendix E – Uplands Area Portion 1**