UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF: Harbor Island Superfund Site, East Waterway Operable Unit, Terminal 25 South, Seattle, Washington Port of Seattle, Respondent. Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION ENGINEERING EVALUATION AND COST ANALYSIS**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the Port of Seattle (Respondent). This Settlement provides for the performance of a removal action, including an engineering evaluation and cost analysis (EE/CA), by Respondent and the payment by Respondent of certain response costs incurred by EPA at or in connection with the Terminal 25 South Site (referred to as Terminal 25, T-25 Site, or Site) within the East Waterway Operable Unit (EWOU) of the Harbor Island Superfund Site located in Seattle, Washington.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 10 through the Director, Superfund and Emergency Management Division, to the Branch Chiefs of the Emergency Management Branch and Remedial Cleanup Branch, or equivalents by R10 14-14-C (April 15, 2019) and R10 14-14-D (April 15, 2019).

3. EPA has notified the State of Washington (State) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

II. PARTIES BOUND

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

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

7. Respondent shall provide written notice of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondent

with respect to the Site or the Work. Respondent's contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement and shall be responsible for any violations of this Settlement committed by its contractors and sub-contractors.

III. DEFINITIONS

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

"Action Memorandum" shall mean the Action Memorandum relating to Terminal 25 issued by EPA, and all attachments thereto.

"Affected Property" shall mean all real property at Terminal 25 (defined below) and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the Work.

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

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

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

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

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

"Ecology" shall mean the Washington State Department of Ecology 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 EPA incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions,

including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 73 (Work Takeover), Paragraph 96 (Access to Financial Assurance), Paragraph 23 (Community Involvement Plan) including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs related to implementation or enforcement of this Settlement. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding Terminal 25.

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

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

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

"Non-Settling Owner" shall mean any person, other than Respondent, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Owner Respondent" shall mean the Port of Seattle. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.

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

"Parties" shall mean EPA and Respondent.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP, 40 C.F.R. §§ 300.415(*l*) and 300.5, and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

"Respondent" shall mean the Port of Seattle.

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

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

"State" shall mean the State of Washington.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondent must perform to implement the Work pursuant to this Settlement, as set forth in Appendix B, and any modifications made thereto in accordance with this Settlement.

"Terminal 25" or "T-25" shall mean the upland area and in-water sediments encompassing approximately 10 acres, generally located at the southwestern portion of parcel number 7666207905, 2917 East Marginal Way S, in the City of Seattle, King County, Washington, as depicted on the map attached as Appendix A.

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

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous substance" under the Washington State Model Toxics Control Act, Revised Code of Washington (RCW) Chapter 70A.305.

"Work" shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

9. EPA makes the following findings of fact:

a. The Harbor Island Superfund Site encompasses a man-made industrial island of over 400 acres in the City of Seattle and associated sediments surrounding the island within Elliot Bay at the mouth of the Lower Duwamish Waterway. Harbor Island was created with, among other materials, dredged materials from a widening and straightening of the Lower Duwamish River by the United States Army Corps of Engineers, completed in 1911.

b. The EWOU consists of contaminated sediments off the eastern shore of Harbor Island, and associated sources to the extent necessary to control those sources. The

EWOU is one of seven Harbor Island Superfund Site OUs. Remedial actions have been selected by EPA and have been implemented by various parties for all of the OUs except the EWOU.

c. Major activities at Harbor Island have included: port and rail transport; petroleum product transfer and storage; secondary lead smelting; ship building, repair and maintenance; lead and other metals fabrication; plating; metals reclamation and recycling; and stormwater collection and discharge. Activities in the upland area at Terminal 25 may have affected the sediments of Terminal 25 .

d. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

e. Respondent is a Washington Port District, duly created under RCW Chapter 53. Respondent has owned and operated facilities along the eastern shore of Harbor Island and has operated in the EWOU. Respondent owns the upland area of Terminal 25 and a portion of the submerged land at Terminal 25. The Washington State Department of Natural Resources owns the remaining area of submerged land at Terminal 25.

f. An island-wide (except for the Lockheed Shipyard Upland and Petroleum Tank Farm OUs) remedial investigation and feasibility study (RI/FS), including sediments, was conducted by EPA in the late 1980s and early 1990s. Supplemental sediment data was collected by various parties under the oversight and direction of EPA in the late 1990s. Respondent performed a removal of 200,000 cubic yards of highly contaminated sediments in the EWOU pursuant to the Administrative Order on Consent, CERCLA Docket No. 10-2003-0166, that was issued by EPA on September 9. 2003. Respondent also performed a Supplemental RI/FS of the EWOU pursuant to an Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 10-2007-0030, that was issued by EPA on October 11, 2006.

g. Prior investigations show that there is contamination in the sediments of Terminal 25 that includes, but is not limited to, polychlorinated biphenyls (PCBs), poly-aromatic hydrocarbons (PAHs), mercury and other metals, and organic compounds.

h. Respondent has collected preliminary soil data from the upland portion of Terminal 25. This data shows there is PCB contamination in the soil of the upland portion of Terminal 25.

i. EPA is preparing to issue a Proposed Plan which will set forth the preferred remedial action alternative for the cleanup of sediments in the EWOU. Respondent and the Natural Resource Trustees (Trustees) are engaged in negotiations to settle claims of natural resource damages for the Site. As a possible consequence of those negotiations, Respondent may agree to perform a habitat restoration project within Terminal 25. In advance of that project, there would need to be a cleanup of the sediments and soil within the area of Terminal 25. A removal action for the Terminal 25 portion of the EWOU performed in advance of the eventual remedial action for other areas of the EWOU would provide for a cleanup of contamination in advance of a habitat restoration project.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined, and Respondent neither admits nor denies, that:

a. Terminal 25 is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at Terminal 25, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

d. Respondent is a responsible party under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9607(a) & 9607(a), and is liable for the performance of response actions and the payment of response costs incurred and to be incurred for Terminal 25.

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from Terminal 25 as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP, 40 C.F.R. § 300.700(c)(3)(ii).

VI. SETTLEMENT AGREEMENT AND ORDER

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

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, contact information, and qualifications of such contractors or subcontractors within 90 days after the Effective Date of this Settlement. Respondent shall also notify EPA of the names, contact information, and qualifications of any

other contractors or subcontractors retained to perform the Work at least 14 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 90 days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), 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, Reissued May 2006) or equivalent documentation as determined by EPA.

13. Within 7 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present at Terminal 25 or readily available during the on-site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 14 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

14. EPA has designated Ravi Sanga of the Superfund and Emergency Management Division as its Remedial Project Manager/On-Scene Coordinator (RPM/OSC). Mr. Sanga's contact information is as follows:

Ravi Sanga

U.S. Environmental Protection Agency, Region 10

1200 Sixth Avenue, Suite 155, M/S 12-D12-1

Seattle, Washington 98101

(206) 553-4092

sanga.ravi@epa.gov

15. EPA and Respondent shall have the right, subject to Paragraph 13, to change their respective designated RPM/OSC or Project Coordinator. Respondents shall notify EPA 14 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified,

and be submitted by email to the RPM/OSC. Any document that is equal to or greater than 8.5 by 11 inches in size must be provided in paper form to the RPM/OSC.

16. The RPM/OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The RPM/OSC shall have the authority vested in an RPM/OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at Terminal 25 or in the event this Settlement is later amended to include a removal action. Absence of the RPM/OSC from Terminal 25 shall not be cause for stoppage of work unless specifically directed by the RPM/OSC.

VIII. WORK TO BE PERFORMED

17. Respondent shall perform, at a minimum, all actions necessary to implement the SOW, including, but not limited to, the performance of an Engineering Evaluation and Cost Analysis (EE/CA). All response actions undertaken pursuant to this Settlement shall be performed as described in the SOW and as approved by EPA.

18. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

19. **Work Plan and Implementation**

a. In accordance with Paragraph 20 (Submission of Deliverables), and as provided in the SOW, Respondent shall submit to EPA for approval a draft EE/CA Work Plan that includes a schedule for performance of the EE/CA. EPA may approve, disapprove, require revisions to, or modify and approve the draft EE/CA Work Plan and schedule in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft EE/CA Work Plan and schedule within 30 days after receipt of EPA's notification of the required revisions. The revised draft EE/CA Work Plan and schedule shall be prepared and submitted by Respondent in accordance with all revisions specified by EPA.

b. Respondent shall implement the EE/CA Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved by EPA, the EE/CA Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon EPA approval of the EE/CA Work Plan and schedule, Respondent shall commence implementation of the Work in accordance with the EE/CA Work Plan and schedule. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW or this Settlement shall be reviewed and approved by EPA in accordance with this Paragraph.

20. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the RPM/OSC at the address provided in Paragraph 14. Respondent shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the applicable required schedule.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 20.b. All other deliverables shall be submitted to EPA in the form specified by the RPM/OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide EPA with paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format;(b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum; and (c) consistent with OLEM Directive 9202.2-191, Geospatial Superfund Site Data Definitions and Recommended Practices (November 29, 2017). If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://www.epa.gov/geospatial/epa-metadata-editor.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

21. **Health and Safety Plan.** As part of the EE/CA Work Plan submittal, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

22. **Quality Assurance, Sampling, and Data Analysis**

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. In accordance with the schedule provided in the SOW, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondent shall ensure that EPA and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories analyze all samples submitted pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondent shall further ensure that the laboratories utilized for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses

according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (https://www.epa.gov/amtic/air-toxics-ambient-monitoring#methods).

d. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

f. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Terminal 25 Site and/or the implementation of this Settlement.

g. Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

23. **Community Involvement Plan**. EPA intends to use the EWOU community involvement plan to include the public in Work related to this Settlement. If requested by EPA, Respondent shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to Terminal 25. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

24. **Post-Removal Site Control**. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to, prohibitions against (a) activities that may interfere with or compromise the effectiveness of the response actions undertaken at or near Terminal 25; (b) land uses inconsistent with the protectiveness of the implemented response actions; and (c) use of groundwater wells for consumptive purposes. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

25. **Progress Reports**. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the EE/CA Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the RPM/OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

26. **Final Report**. Within 45 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 103 (Notice of Completion of Work), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, 40 C.F.R § 300.165, entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g.,

manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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."

27. **Off-Site Shipments**

a. Respondent may ship hazardous substances, pollutants and contaminants from Terminal 25 to an off-site facility only if Respondent complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and Section 300.440 of the NCP, 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and Section 300.440 of the NCP, 40 C.F.R. § 300.440, regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of Section 300.440(b) of the NCP, 40 C.F.R. § 300.440(b). Respondent may ship Investigation Derived Waste (IDW) from Terminal 25 to an off-site facility only if Respondent complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. Respondent may ship Waste Material from Terminal 25 to an out-of-state waste management facility only if, prior to any shipment, Respondent provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM/OSC. This written notice requirement shall not apply to any off-site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the RPM/OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

IX. PROPERTY REQUIREMENTS

28. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and EPA, providing that such Non-Settling Owner, and Respondent shall, with respect to Non-Settling Owner's Affected Property: (i) provide the EPA, Respondent, and their representatives, contractors, and

subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 28.a (Access Requirements); and (ii) if EPA provides written notification regarding Non-Settling Owner's and/or Settling Owner's Affected Property, refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, including the restrictions listed in Paragraph 28.b (Land, Water, or Other Resource Use Restrictions). Respondent shall provide a copy of such access and use restriction agreement(s) to EPA.

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

(1) Monitoring the Work;

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

(3) Conducting investigations regarding contamination at or near the Terminal 25;

(4) Obtaining samples;

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

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

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 73 (Work Takeover);

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

(9) Assessing Respondent's compliance with the Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

b. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions that EPA may determine to be applicable to the Affected Property:

(1) Prohibiting activities which could interfere with the removal action;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting activities which could result in exposure to contaminants in subsurface soils and groundwater;

(4) Ensuring that any new structures on the Affected Property will not be constructed in the following manner which could interfere with the removal action; and

(5) Ensuring that any new structures on the Affected Property will be constructed in the following manner which will minimize potential risk of inhalation of contaminants.

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

30. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondent shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

31. Respondent shall not transfer its Affected Property unless it has first secured EPA's approval of, and transferee's consent to, an agreement that: (a) is enforceable by Respondent and EPA; and (b) requires the transferee to provide access to and refrain from using the Affected Property to the same extent as provided under Paragraph 28.a and, if applicable, Paragraph 28.b.

32. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

33. **Notice to Successors-in-Title**

a. Respondent shall, within 15 days after receiving a request from EPA to file a notice to successors in title, submit for EPA approval a notice to be filed regarding Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Terminal 25 Site; (ii) EPA has selected a removal action for the Terminal 25 Site; and (iii) the Port has entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of that removal action; and (3) identify the name, docket number, and effective date of this Settlement. Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a removal action regarding the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such removal action, (identifying the name, docket number, and the effective date of this Settlement); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

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

X. ACCESS TO INFORMATION

35. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at Terminal 25 or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

36. **Privileged and Protected Claims**

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 36.b, and except as provided in Paragraph 36.c.

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

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

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

38. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

39. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent

must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any organizational retention policy to the contrary.

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

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

XII. COMPLIANCE WITH OTHER LAWS

42. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) and 300.415(j) of the NCP, 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

43. No local, state, or federal 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), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that Respondent has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

44. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from Terminal 25 that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the RPM/OSC or, in the event of his/her unavailability, the Regional Duty Officer at 1-(800) 424-4372 or 1-(206) 553-4973 of the incident or site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Future Response Costs).

45. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the RPM/OSC or, in the event of his/her unavailability, the Regional Duty Officer at 1-(800) 424-4372 or 1-(206) 553-4973, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004.

46. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF FUTURE RESPONSE COSTS

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

a. **Periodic Bills**. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 49 (Contesting Future Response Costs). EPA may, if requested by Respondent, provide Respondent with the work performed documentation supporting the bill to the extent that such information is not subject ot a claim of privilege, confidential business information, or personal identified information. Nonetheless, payment by Respondent is due within 30 days of receipt of each bill and accompanying SCORPIOS report. Respondent shall make all payments and send notice of the payments, in accordance with the procedures under

Paragraph 47.b. To facilitate timely payment, Respondent prefers that EPA send the periodic bills to:

Port of Seattle Environmental Finance Department
P.O. Box 1209
Seattle, WA 98111-1209

With copies provided by email to maritime.env.invoices@portseattle.org.

b. Respondent shall make all payments required by this Paragraph to EPA by Electronic Funds Transfer (ETF) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

And shall reference Site/Spill ID Number 10TT and the EPA docket number for this Settlement.

c. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondent pursuant to Paragraph 47.a (Periodic Bills) shall be deposited by EPA in the Harbor Island Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Harbor Island Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. A decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

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

49. **Contesting Future Response Costs**. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 47 (Payments for Future Response Costs) if Respondent determines that EPA has

made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if Respondent believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the RPM/OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 47, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the RPM/OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 47.b. If Respondent prevail concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which Respondent did not prevail to EPA in the manner described in Paragraph 47.b. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

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

51. **Informal Dispute Resolution**. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, Respondent shall send EPA a written Notice of Dispute describing the objection(s) within 7 days after such action. EPA and Respondent shall have 21 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

52. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM/OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Director of the EPA Region 10 Superfund and Emergency Management Division or designee will issue a written decision on the dispute to

Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

53. Except as provided in Paragraph 49 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 63, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

54. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, increased cost of performance, or a failure to attain an EPA-approved performance standard.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondent shall notify EPA's RPM/OSC orally or, in his or her absence, the alternate EPA RPM/OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the EPA Region 10 Superfund and Emergency Management Division, within 48 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under

Paragraph 54 and whether Respondent has exercised its best efforts under Paragraph 54, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

57. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), Respondent shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 54 and 55. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

XVII. STIPULATED PENALTIES

59. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 60.a and 61 for failure to comply with the obligations specified in Paragraphs 60.b and 61, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

60. **Stipulated Penalty Amounts – Work (Including Payments and Excluding Deliverables).**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 60.b:

Penalty Per Violation Per Day	Period of Noncompliance

$750	1st through 14th day
$2,000	15th through 30th day
$4,000	31st day and beyond

b. **Compliance Milestones.** Establishment and maintenance of financial assurance in accordance with the timelines and other substantive and procedural requirements of Section XXV (Financial Assurance) within 30 days of the Effective Date, paying Future Response Costs on the date required by Section XIV (Payment of Future Response Costs), initiating field sampling on the date approved by EPA, completing a field sampling on the date approved by EPA, or submitting a field sampling report on the date approved by EPA.

61. **Stipulated Penalty Amounts – Deliverables**. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement.

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

62. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 73 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount selected by EPA that shall not exceed 33% of the cost of EPA's performance of the takeover Work. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 73 (Work Takeover) and 96 (Access to Financial Assurance).

63. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 19 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Region 10 Director of the Superfund and Emergency Management Division or designee under Paragraph 52 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Region 10 Director of the Superfund and Emergency Management Division issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

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

66. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 62 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 64 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

68. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 73 (Work Takeover).

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

XVIII. COVENANTS BY EPA

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

XIX. RESERVATIONS OF RIGHTS BY EPA

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

72. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

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

b. liability for costs not included within the definition of Future Response Costs;

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

d. criminal liability;

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

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

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of Terminal 25; and

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

73. **Work Takeover**

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by EPA (which writing

may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 73.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 73.b. Funding of Work Takeover costs is addressed under Paragraph 96 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Paragraph 52 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 73.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 73.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 52 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENT

74. Except as provided in Paragraph 78 below, Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

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

b. any claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

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

75. Except as provided in Paragraph 79 (Waiver of Claims by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of

Rights by EPA), other than in Paragraph 72.a (liability for failure to meet a requirement of the Settlement), 72.d (criminal liability), or 72.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

78. Notwithstanding any other provision of this Settlement, this Settlement shall not have any effect on claims or causes of action that Respondent has or may have pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), against the United States on behalf of the United States General Services Administration, the United States Coast Guard, and the United States Department of Defense based on a claim that the United States is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Work, Future Response Costs, and this Settlement. The United States Department of Defense shall mean the United States Department of Defense as described in 10 U.S.C. § 111 and its successor departments, agencies, or instrumentalities.

79. **Waiver of Claims by Respondent**

a. Respondent agrees 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, 42 U.S.C. §§ 9607(a) and 9613) that they may have:

(1) **De Micromis Waiver**. For all matters relating to Terminal 25 against any person where the person's liability to Respondent with respect to the Terminal 25 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at Terminal 25, or having accepted for transport for disposal or treatment of hazardous substances at the Terminal 25, 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 Terminal was less than 110 gallons of liquid materials or 200 pounds of solid materials.

(2) ***De Minimis*/Ability to Pay Waiver**. For response costs relating to Terminal 25 against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to Terminal 25.

b. **Exceptions to Waivers**

(1) The waivers under this Paragraph 79 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to Terminal 25 against Respondent.

(2) The waiver under Paragraph 79.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to Terminal 25 by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at Terminal 25; or (ii) such person has failed to comply with any information request or administrative subpoena 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 Terminal 25; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXI. OTHER CLAIMS

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

81. Except as expressly provided in Paragraphs 79 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

83. Except as provided in Paragraph 79 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to Terminal 25 against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA 42 U.S.C. § 9613(f)(2).

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

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

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

87. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to Terminal 25, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

XXIII. INDEMNIFICATION

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

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

90. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of work on or relating to Terminal 25, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to Terminal 25, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

91. No later than 30 days before commencing any on-site Work, Respondent or its contractor(s) shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of at least $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and, upon request, a copy of each insurance

policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its 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 Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

92. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of $1,000,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

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

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

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

e. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through use of a financial test or guarantee; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's

satisfaction that it meets the financial test criteria of 40 C.F.R. § 264.141(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through use of a financial test or guarantee.

93. Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the RPM/OSC at the address specified in Paragraph 14 with a copy to Richard Mednick, Associate Regional Counsel at EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Suite 155, Mail Stop 11-C07, Seattle, WA 98101. Respondent shall submit the executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance by June 30, 2022.

94. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 92.e or 92.f, Respondent shall also comply and ensure that its guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the affected entity's chief financial officer and independent certified public accountant no later than June 30, 2022; (b) the annual resubmission of such documents by June 30th of each year; and (c) the notification of EPA no later than 30 days, in accordance with Paragraph 93, after such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondent agrees that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 92.e or 92.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purpose of this Section, references in 40 C.F.R. Part 64, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms "owner" and "operator" include Respondent making a demonstration or obtaining a guarantee under Paragraph 92.e or 92.f ; and (4) the terms "facility" and "hazardous waste management facility" include Terminal 25.

95. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and

submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of Paragraph 97 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

96. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 73.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 96.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 96.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 73.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [and/or related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 92.e or 92.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 97 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Harbor Island East Waterway Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 96 must be reimbursed as Future Response Costs under Section XIV (Payment of Future Response Costs).

97. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 93, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the

cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondent of EPA's decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Respondent may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 92.

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

XXVI. MODIFICATION

99. Subject to Paragraph 102, the RPM/OSC may modify any plan or schedule or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM/OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

100. If Respondent seeks permission to deviate from any approved work plan or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM/OSC pursuant to Paragraph99.

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

XXVII. ADDITIONAL REMOVAL ACTION

102. Respondent or EPA may propose a modification to this Settlement or the SOW to provide for additional required actions, potentially including a Non-Time-Critical Removal Action or other removal action addressing hazardous substances, pollutants, or contaminants at Terminal 25. Such a modification to this Settlement shall be based on mutual agreement of the

Parties in written form. Upon signature of Respondent and EPA, the agreed-upon modification shall be incorporated into and become an enforceable part of this Settlement. Any additional removal actions undertaken under this Settlement shall conform to the applicable requirements of Section VIII (Work to be Performed) of this Settlement and all related plans shall be subject to EPA's approval of the plan pursuant to Paragraph 19 (Work Plan and Implementation), and Respondent shall implement the plan(s) for additional removal actions in accordance with the provisions and schedules approved by EPA. This Section does not alter or diminish the RPM/OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification). This Section does not alter or diminish Respondent's obligation to perform response actions pursuant to Section XIII (Emergency Response and Notification of Releases) of this Settlement.

XXVIII. NOTICE OF COMPLETION OF WORK

103. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post-Removal Site Controls, land, water, or other resource use restrictions, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the EE/CA or Removal Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved EE/CA or Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified EE/CA or Removal Work Plan shall be a violation of this Settlement.

XXIX. INTEGRATION/APPENDICES

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

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

b. "Appendix B" is the SOW.

XXX. EFFECTIVE DATE

105. This Settlement shall be effective on the date the Settlement is signed by the EPA Regional Administrator or his/her delegatee.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Dated

Kira Lynch, Remedial Program Manager
Superfund and Emergency Management Division
Region 10

Signature Page for Settlement Regarding Terminal 25 Superfund Site

FOR PORT OF SEATTLE

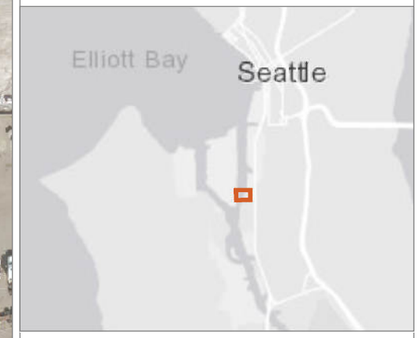
_____
Dated

_____
Stephen P. Metruck
Executive Director

DRAFT

LEGEND:

- Terminal 25 South Site
- King County Parcel Boundary



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APPENDIX B STATEMENT OF WORK

Terminal 25 South
East Waterway Operable Unit – Harbor Island Superfund Site
Seattle, Washington

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION
ENGINEERING EVALUATION AND COST ANALYSIS

I. PURPOSE

This Statement of Work (SOW) is Appendix B to the Administrative Settlement Agreement and Order on Consent (ASAOC or Settlement Agreement) for the Terminal-25 South Site (T-25 Site or the Site, as shown in Appendix A), which is located along the southeastern portion of the East Waterway Operable Unit of the Harbor Island Superfund Site (East Waterway or EWOU), EPA Docket No. CERCLA-10-2007-0030. The SOW sets forth an outline of the requirements for the Removal Action Engineering Evaluation and Cost Analysis (EE/CA) for the T-25 Site.

The Port of Seattle (Port) is considering constructing a habitat restoration project at the 10-acre T-25 Site as shown in Appendix A. As part of that project, the Port would restore intertidal and shallow subtidal habitat by removing contaminated sediments and fill from the East Waterway and adjacent upland to create off-channel emergent marsh and riparian habitat. The Site is in a critical estuarine and marine transition area, important to juvenile salmon.

The United States Environmental Protection Agency (EPA) is overseeing cleanup studies in the East Waterway under an existing ASAOC with the Port (EPA Docket No. CERCLA-10-2007-0030), including completion of the Supplemental Remedial Investigation/Feasibility Study (SRI/FS). The SRI was approved by EPA in 2014 (Windward and Anchor QEA 2014), which included the baseline ecological risk assessment, baseline human health risk assessment, and assembled data to identify the nature and extent of contamination in the East Waterway, evaluate sediment transport processes, and identify potential sources and pathways of contamination to the East Waterway. The FS was approved by EPA in 2019 and develops and evaluates East Waterway-wide remedial alternatives to address risks posed by contaminants of concern (COCs) within the East Waterway. EPA has indicated it intends to release a Proposed Plan in 2022 that recommends a preferred remedy and cleanup plan for the East Waterway. After public, state, and tribal comments on the Proposed Plan, EPA will select the final remedial alternative in the Record of Decision. This ASAOC supports and provides regulatory oversight for developing an EE/CA within the T-25 Site.

Sediment characterization has been and is still being conducted under the existing East Waterway SRI/FS ASAOC. The nature and extent of East Waterway sediment contamination, including within the T-25 Site, is described in the SRI and summarized in the *Quality Assurance Project Plan: Soil and Subsurface Sediment Characterization* (QAPP; Anchor QEA and Windward 2019). Historical and current Site use, and existing data from upland areas of the T-25 Site are also described in the QAPP; recent Site characterization data are described in the EPA-approved *Data Report: Soil and Subsurface Sediment Characterization, Port of Seattle T-25 South Design Characterization* (Anchor QEA 2021). Additional sediment characterization was conducted in 2021 and 2022, as summarized in the *Terminal 25 QAPP Addendum 2: Subsurface Sediment Characterization* (Anchor QEA 2021). The recent data collected is intended to support planning and design of the potential T-25 restoration project and implementation of the East Waterway remedial alternative that will be selected by EPA in the ROD. Potential remedial

technologies that could be employed to address sediment contamination at the T-25 Site are described in the East Waterway FS.

This SOW sets forth the tasks necessary to complete the EE/CA for the T-25 Site pursuant to this Settlement Agreement. The primary objectives of the EE/CA are as follows:

- Evaluate the adequacy of previously screened data, identify data gaps, and develop a sampling plan for necessary media and a groundwater monitoring plan for any data gaps that need to be filled to characterize the Site
- Present a conceptual site model (CSM) that determines complete and incomplete contaminant migration pathways and exposure pathways and evaluates receptors and exposure scenarios
- Evaluate the potential human health and ecological risks posed by Site contaminants of potential concern (COPCs) for complete pathways and receptors that are not already addressed in the East Waterway RI/FS through a streamlined risk evaluation. Any Site COPCs not already identified by the East Waterway RI/FS will also be evaluated.
- Evaluate the need for a removal action to support habitat restoration within the T-25 Site
- Identify removal action objectives and evaluate removal action alternatives for the Site, if appropriate. The removal action objectives need to include addressing:
    - direct contact exposure and protection of benthic invertebrates, juvenile salmon, flatfish, and specific bird assemblages following habitat restoration and
    - evaluation of potential recontamination of the T-25 Site from adjacent upland areas and the East Waterway. Adjacent upland areas include the remainder of the T-25 terminal and adjacent rights-of-way.

II. WORK TO BE PERFORMED BY RESPONDENTS

General Requirements:

Respondents shall conduct the EE/CA in accordance with and subject to the terms of the Settlement Agreement and consistent with the removal action requirements at 40 CFR 300.415, EPA's Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA (EPA 1993), and other published EPA policy and guidance for conducting removal actions.

A list of the major deliverables and a schedule for their submittal is attached (Attachment 1). Consistent with the Settlement Agreement, all deliverables required by the Settlement Agreement or this SOW shall be subject to EPA review and approval. Respondents shall complete the following four tasks:

1) EE/CA Work Plan

    a) Quality Assurance Project Plan

    b) Health and Safety Plan

2) Work Plan Implementation

3) EE/CA

4) Community Involvement Activities

SOW Tasks

Task 1. EE/CA Work Plan

Respondents shall submit a Draft and Final EE/CA Work Plans and its appendices, unless otherwise approved by EPA.

The EE/CA Work Plan shall include a CSM and data gaps analysis. The data gaps analysis shall include, but not be limited to, data gaps related to: the sufficiency of the existing data to characterize contamination sources; identification of extent of contamination and migration pathways from adjacent areas to the T-25 Site and East Waterway Sediments; identification of exposure pathways and risk; and evaluation of the extent of a removal action to support T-25 habitat restoration and, if warranted, removal action alternatives. The EE/CA Work Plan shall include a plan for additional data collection based on the data gaps analysis, if needed. The Work Plan shall provide a summary of existing data from previous T-25 documents and any relevant East Waterway RI/FS data, including chemical and physical data in soil, sediment, biota, and groundwater, and shall identify preliminary data gaps relative to assessing the extent of the removal action and potential for recontamination of existing East Waterway sediments and sediments created through T-25 habitat restoration.

The data gaps analysis shall consider the completeness of existing data and the significance of the exposure pathways to be evaluated. The CSM shall include pathways evaluated in the East Waterway Operable Unit Baseline Human Health Risk Assessment (Windward 2012a) and Baseline Ecological Risk Assessment (Windward 2012b) and shall consider the *Environmental Cleanup Best Management Practices: Effective Use of the Project Life Cycle Conceptual Site Model, EPA 542-F-11-011, July 2011.* The data gaps analysis shall specifically address whether existing site characterization data (considering all media and Model Toxics Control Act (MTCA), East Waterway COCs, and other COPCs relevant to T-25 as directed by EPA) are adequate to support preparation of an EE/CA and implementation of any selected removal action. The data gaps analysis shall determine if sufficient data are available to conduct a streamlined human health risk evaluation and streamlined ecological risk evaluation for any COPCs and complete pathways and receptors not already evaluated in the East Waterway RI/FS documents and shall evaluate the potential for recontamination of sediments at concentrations exceeding East Waterway clean up levels (CULs) and remedial action levels (RALs) as anticipated in the forthcoming Proposed Plan and Record of Decision (ROD). Risks from benthic invertebrate and ecological receptors and human consumption of seafood and sediment direct contact have been assessed in the East Waterway SRI/FS documents and anthropogenic background documentation, and actions needed to address those risks within the existing East Waterway will be decided in the East Waterway ROD. Further assessment of those risks is not required for the T-25 streamlined risk evaluation.

The CSM shall include sources of contamination to the T-25 Site. The CSM shall consider contamination from upland, groundwater, and in-water sources to T-25 following habitat restoration.

The Work Plan shall include a schedule for project activities, including field sample collection efforts, laboratory testing and data validation and reporting.

If data gaps are identified, the EE/CA Work Plan shall include the following appendices to support EE/CA data collection activities: Quality Assurance Project Plan (QAPP) and Health and Safety Plan. The Draft EE/CA Work Plan shall be submitted to EPA for review first and the appendices will be submitted to EPA 45 days following receipt of EPA comments on the Draft EE/CA Work Plan.

Task 1a. Quality Assurance Project Plan

Respondents shall develop a project-specific QAPP for sample analysis and data handling for any samples collected at T-25 in accordance with Paragraph 22 of the Settlement Agreement, this SOW, and EPA guidance. The QAPP will be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/8-01/003, March 2001) and "Guidance on Quality Assurance Project Plans (QA/G-5)" (EP A/240/R-02/009, December 2002). The QAPP will ensure that sample collection and analytical activities are conducted in accordance with the Puget Sound Estuary Program protocols, where appropriate.

In addition, the QAPP shall clarify the following requirements:

- The QAPP will define in detail the sampling and data-gathering methods that will be used on the project for each media. It will include sampling objectives and data quality objectives (DQOs), a detailed description of sampling activities, sample locations, sample analysis, sampling equipment and procedures, sampling schedule, station positioning, and sample handling (e.g., sample containers and labels, sample preservation, sample compositing). The QAPP will also describe the quality assurance and quality control (QA/QC) protocols necessary to achieve required DQOs and the points where EPA approval is required.

- All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance, such as "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-0 1-002, March 2001) or equivalent documentation as determined by EPA and be accredited by the Washington State Department of Ecology (or equivalent) for the analyses to be performed. Respondents will provide assurances that EPA has access to laboratory personnel, equipment and records for sample collection, transportation. and analysis.

- Upon request by EPA, Respondents shall have the laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents agree that EPA personnel may audit any laboratory that performs analytical work under this Settlement Agreement. Prior to awarding any work to an analytical laboratory, Respondents will inform the laboratory that an audit may be performed, and that the laboratory agrees to coordinate with EPA on the audit prior to performing analyses.

- Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

- Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 7 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. If the sampling design specified in the QAPP cannot be met in the field due to unexpected conditions or circumstances, the Respondents shall consult with EPA and EPA shall have the right to take or to require any additional samples that EPA deems necessary during the sampling event to ensure adequate data are collected to support drafting the EE/CA. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

- All analytical data collected under this Settlement Agreement shall be provided electronically to EPA and Ecology, uploaded into SCRIBE, and uploaded into EIM.

Task 1b. Health and Safety Plan

The Health and Safety Plan shall be completed in accordance with Paragraph 21 of the Settlement Agreement.

Task 2. Work Plan Implementation

Field work shall be initiated and performed in accordance with the approved Work Plan schedule and appendices. After sampling and analysis and receipt of final, validated data, Respondents shall submit a Draft Data Package for EPA review to determine if the QAPP has been fully implemented and if there are any additional data needs. If there are additional data needs, a QAPP addendum may be required. All investigation results will be summarized and reported in the EE/CA.

Task 3. EE/CA

Respondents shall submit a Draft, Draft Final, and Final EE/CA, which assess the extent of a removal action to support T-25 habitat restoration and, if warranted, provide a recommended removal action alternative(s) for the Site and the information listed below, unless otherwise approved by EPA. The Draft Final EE/CA will be released for public comment. EPA will review public comments received and provide direction to Respondents. Respondents shall revise the EE/CA in response to EPA direction and submit a Final EE/CA to EPA for approval.

The Final EE/CA report submittal shall be stamped by a professional engineer licensed in the State of Washington. The final report shall include data summary tables, plus appendices with complete data, validation reports, chain of custody, etc. The final report, including analytical data and graphics, shall be provided electronically, in native format and web-ready pdf, to EPA. The report shall comply with EPA's Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA (EPA 1993) and shall provide as a minimum the following items.

EE/CA Outline

- Executive Summary
- Site Characterization
    - Site description and background
    - Previous removal actions
    - Source, nature, and extent of contamination
    - Conceptual Site Model
    - Analytical data
    - Human health and ecological risk summary, or streamlined risk evaluation, if needed
    - Identification of applicable or relevant and appropriate requirements (ARARs)
- Assessment of Extent of Removal Action and Identification of Removal Action Objectives
    - Statutory limits on removal actions
    - Determination of removal action and preliminary scope
    - Determination of removal schedule
- Identification and Analysis of Removal Action Alternatives
    - Effectiveness
    - Implementability
    - Cost

- Comparative Analysis of Removal Action Alternatives
- Recommended Removal Action Alternative including description and rationale

Task 4. Community Involvement Activities

In accordance with Paragraph 23 of the Settlement Agreement, as requested by EPA, Respondents shall provide information supporting EPA's community involvement programs related to the Work performed pursuant to this Settlement Agreement and shall participate in public meetings that may be held or sponsored by EPA to discuss activities concerning this Work. Respondents shall coordinate with EPA on any other community involvement activities they undertake related to the Work.

III. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE OF ACTIVITIES

The schedule for activities and submission to EPA of deliverables described in the SOW is presented in Attachment 1, unless otherwise approved by EPA in the schedule provided in the EE/CA Work Plan.

ATTACHMENT 1 TO SOW: SCHEDULE

"Day" is calendar day. If the date for submission of any item or notification required by this SOW occurs on a weekend or state or federal holiday, the date for submission of that item or notification is extended to the next working day following the weekend or holiday.

#	**Activity/Submission**	**Due Date**
	Consultant Contract Notice to Proceed (NTP)	90 days after Effective Date
	Progress Reports	Quarterly, after Effective Date
Task 1 EE/CA Work Plan	1.1 Draft EE/CA Work Plan	1.1 Within 90 days after Consultant NTP
	1.2 Draft EE/CA Work Plan Appendices: Draft QAPP and Draft Health and Safety Plan	1.2 Within 45 days after receipt of EPA comments on the Draft EE/CA Work Plan
	1.3 Final EE/CA Work Plan with Final Appendices	1.3 Within 45 days after receipt of EPA comments on Draft EE/CA Work Plan Appendices
Task 2 Work Plan Implementation	2.1 Initiate Field Investigations	2.1 In accordance with the schedule in the approved Work Plan, unless otherwise approved by EPA
	2.2 Draft Data Package	2.2 10 days after Respondents' receipt of final, validated sampling data
	2.3 Draft QAPP Addendum for any necessary additional field investigations, if required after EPA review of Draft Data Package	2.3 Within 60 days after EPA review of Draft Data Package
	2.4 Initiate any necessary additional field investigations, if required after EPA review of Draft Data Package	2.4 Within 30 days after EPA approval of QAPP Addendum
	2.5 Complete Field Investigations	2.5 In accordance with the schedule in the approved Work Plan and Appendices, unless otherwise approved by EPA
Task 3 Engineering Evaluation/Cost	3.1 Draft EE/CA	3.1 Within 90 days after receipt of final, validated sampling data or acknowledgement from EPA that remaining data gaps are design-related and would not affect the EE/CA

Analysis (EE/CA)	3.2 Draft Final EE/CA (for 30-day public comment)	3.2 Within 45 days after receipt of EPA comments on Draft EE/CA
	3.3 Final EE/CA	3.3 Within 45 days after receipt of public comments and responsiveness summary from EPA.
Task 4 Community Involvement Activities		Throughout the process