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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107(a), and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9606(a), 9607(a), and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators by EPA Delegation No. 14-14-C. This authority has been redelegated from the Regional Administrator to the Region 10 Director and Unit Managers, Environmental Cleanup Office, by delegation No. R10 14-14-C. This Settlement Agreement is also issued pursuant to the authority vested in the EPA Administrator by Section 7003(a) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6973(a). The authority vested in the Administrator to issue orders under RCRA Section 7003(a) has been delegated to the Regional Administrators by EPA Delegation Nos. 8-22, and has been further delegated by the Regional Administrator for Region 10 to the Director of the Office of Compliance and Enforcement pursuant to delegation No. R10 8-22-C.

2. This Settlement Agreement is entered between EPA and Alaska Railroad Corporation (ARRC), Respondent. ARRC is an owner of property known as the Anchorage Terminal Reserve, with offices located at 327 West Ship Creek Avenue, Anchorage, Alaska.

3. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this

Settlement Agreement do not constitute an admission of any liability. Respondent does not

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admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the EPA findings of fact, conclusions of law and determinations made in this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest EPA's jurisdiction to issue this Settlement Agreement or to enforce its terms. Respondent does not admit the jurisdiction of any entities other than EPA or the United States with respect to the Site. Except in any judicial or administrative proceeding by EPA or the United States to enforce this Settlement Agreement or any judgment relating to it, the EPA findings of fact, conclusions of law and determinations set forth herein shall not be admissible in evidence.

II. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or RCRA or in regulations promulgated thereunder shall have the meaning assigned to them in CERCLA, RCRA or in such regulations. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. "Acceptable," in the phrase "in a manner acceptable to EPA," shall mean Submittals or Work meeting the terms and conditions of this Settlement Agreement and EPA's written comments and guidance documents that EPA identifies and makes available to Respondent.

b. "Additional work" shall mean any activity or requirement that is not expressly covered by this Settlement Agreement but is determined by EPA to be necessary to fulfill the purposes of this Settlement Agreement as presented in Section III, Statement of Purpose.

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c. “Administrative Record” shall mean the record compiled and maintained by EPA in support of this Settlement Agreement.

d. “ADEC” shall mean the Alaska Department of Environmental Conservation.

e. “Alaska Railroad Corporation” or “ARRC” shall mean the present entity of that name created by Alaska statute AS 42.40 in 1984 to accept transfer of the Alaska Railroad in 1985 and operate the same on behalf of the State of Alaska. “Alaska Railroad” shall mean the federal entity that owned and operated the railroad prior to its transfer to ARRC in 1985 pursuant to the Alaska Railroad Transfer Act, 45 U.S.C §1201 *et seq.* (“ARTA”).

f. “Anchorage Terminal Reserve” or the “Site” shall mean ARRC-owned property within the area depicted in the map at Attachment A, which includes a rail yard and parcels leased to third parties, covering a total area of approximately 600 acres.

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

h. “Comply” or “Compliance” may be used interchangeably and shall mean completion of Work required by this Settlement Agreement in a manner acceptable to EPA and in the manner and time specified in this Settlement Agreement or written EPA directives.

Respondent must meet both the quality and timeliness components of a particular requirement to comply with the terms and conditions of this Settlement Agreement.

i. “Contractor” shall include any subcontractor, consultant, or laboratory retained to conduct or monitor any portion of the Work pursuant to this Settlement Agreement.

j. “Corrective Measure” shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of Solid Waste into the environment.

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k. “Corrective Measures Study” or “CMS” shall mean the investigation and evaluation of potential remedies which will protect human health and/or the environment and for purposes of this Settlement Agreement alone may be used interchangeably with “feasibility study,” as that term is used under CERCLA, the NCP, and implementing EPA guidances.

l. “Data Quality Objectives” shall mean qualitative or quantitative statements, the application of which is designed to ensure that data of known and appropriate quality are obtained.

m. “Day” shall mean a calendar day unless expressly stated to be a business day. “Business day” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next business day.

n. “Engineering Controls” shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

o. “EPA” or “U.S. EPA” shall mean the United States Environmental Protection Agency, and any successor departments or agencies of the United States.

p. “Feasibility Study” shall have the meaning defined under the National Contingency Plan, 40 C.F.R. Part 300, and implementing EPA guidances, and for purposes of this Settlement Agreement alone may be used interchangeably with “Corrective Measures Study.”

q. “Hazardous Substances” shall mean hazardous substances as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

r. “Hazardous Waste” shall mean hazardous waste as defined at 42 U.S.C. § 6903(5).

s. “Innovative Technologies” shall mean those technologies for treatment of soil, sediment, sludge, and debris other than incineration or solidification/stabilization and those technologies for treatment of groundwater contamination that are alternatives to pump and treat.

t. “Institutional Controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

u. “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.

v. “Interim Actions” or “IAs,” for purposes of this Settlement Agreement only, shall mean actions, including Removals as defined in this Settlement Agreement, that can be initiated in advance of implementation of any final Remedial Action for a facility to achieve the goal of contaminant reduction, control or stabilization, or to provide focused and accelerated environmental characterization regarding the Site. Interim Actions that control or eliminate the

release or potential release of hazardous substances and/or solid wastes at or from the Site in some circumstances can be chosen as a final Remedial Action or Corrective Measure.

w. “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.

x. “Settlement Agreement” shall mean the present Administrative Settlement Agreement and Order on Consent issued to Alaska Railroad Corporation, U.S. EPA Docket No. **CERCLA 10-2004-0065**, as may be modified pursuant to Section XXVI, together with all attachments and including all Submittals approved by EPA pursuant to this Settlement Agreement.

y. “Parties” shall mean EPA and ARRC, as defined herein and consistent with Section IV.

z. “Presumptive Remedies” shall mean preferred treatment technologies or other remedies for common categories of sites or contaminants, as established under EPA guidance documents or other EPA approvals.

aa. “Receptors” shall mean those humans, animals, or plants and their habitats which are or may receive or be affected by releases of solid waste or hazardous substances from the Site.

bb. “Remedial Action” shall have the meaning defined under CERCLA Section 101(24), 42 U.S.C. § 9601(24), and includes but is not limited to those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous substances into the environment at or from the Site.

cc. “Removal” shall have the meaning defined under CERCLA Section 101(23), 42 U.S.C. § 9601(23), and includes but is not limited to actions to evaluate, prevent, minimize and control the release or potential release of hazardous substances into the environment at or from the Site.

dd. “Response Costs” shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by EPA in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Section XIII (*Access and Information*). Response costs shall be supported by a Superfund Cost Recovery Package Imaging and On-line System (SCORPIOS) report or similar cost summary certified by EPA.

ee. “Remedial Investigation” shall have the meaning defined under the National Contingency Plan, 40 C.F.R. Part 300, and implementing EPA guidances, and for purposes of this Settlement Agreement alone may be used interchangeably with “RCRA Facility Investigation.”

ff. “RCRA Facility Investigation” or “RFI” shall mean the investigation and characterization of the sources of contamination and the nature, extent, direction, rate, movement, and concentration of the sources of contamination and releases of solid wastes that have been, or are likely to be, released into the environment and for purposes of this Settlement Agreement alone may be used interchangeably with “remedial investigation” or “RI” as those terms are used in CERCLA, the NCP, or implementing guidances.

gg. “Solid Waste” shall mean solid waste as defined at 42 U.S.C. § 6903(27).
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hh. “Solid Waste Management Unit” or “SWMU” shall mean any discernible unit at which Solid Waste has been placed at any time irrespective of whether the unit was intended for the management of such waste.

ii. “Statement of Work” or “SOW” shall mean the outline of work Respondent must use to develop all work plans and reports required by this Settlement Agreement, set forth as Attachment B to this Settlement Agreement.

jj. “Submittal” shall include any work plan, report, progress report, or any other written document Respondent is required by this Settlement Agreement to send to EPA.

kk.” Violations” of this Settlement Agreement shall mean those actions or omissions, failures, or refusals to act by Respondent that result in a failure to meet the terms and conditions of this Settlement Agreement, including attachments and approved Submittals.

ll. “Work” or “Obligation” shall mean any activity Respondent must perform to comply with the requirements of this Settlement Agreement, including attachments and approved Submittals.

mm. “Work Plan” shall mean the detailed plans prepared by Respondent to satisfy the requirements of this Settlement Agreement.

III. STATEMENT OF PURPOSE

5. In entering into this Settlement Agreement, the mutual objectives of EPA and ARRC include the following:

(1) to perform an investigation to determine fully the nature and extent of any release of hazardous substances and solid waste at the Site, by performing a CERCLA Remedial Investigation with respect to hazardous substance releases and a RCRA Facility Investigation

with respect to releases of other materials that constitute solid waste (collectively, this investigation is referred to herein as the “RI”);

(2) based on the findings of the RI and other information that may be applicable or relevant, to identify and evaluate alternatives for remedial actions and Corrective Measures that may be necessary to prevent, mitigate, and/or remediate any releases of hazardous substances or solid waste at or from the Site, by performing a CERCLA Feasibility Study with respect to hazardous substance releases and a RCRA Corrective Measures Study with respect to releases of other materials that are solid waste (collectively, this evaluation is referred to herein as the “FS”);

(3) to perform expedited activities to which EPA and ARRC may agree, such as Interim Actions, that may be necessary to timely evaluate or address potential threats to human health and/or the environment resulting from the release or potential release of hazardous substances and/or solid wastes at or from the Site;

(4) to perform all such activities in a manner consistent with the National Contingency Plan; and

(5) to recover Response Costs incurred by EPA as provided in this Settlement Agreement. Work performed under this Settlement Agreement under CERCLA authority addressing hazardous substance releases shall meet not only CERCLA requirements but also, consistent with EPA guidances including the “One Cleanup Program” (see e.g., EPA 500-F-03-002, April 2003), parallel RCRA corrective action requirements including those relating to performance of a RCRA Facility Investigation/Corrective Measures Study (RFI/CMS).

IV. PARTIES BOUND

6. This Settlement Agreement shall apply to and be binding upon EPA, Respondent, and Respondent's officers, directors, employees, agents, successors and assigns, heirs, trustees, receivers, and upon all persons, including, but not limited to, contractors and consultants, acting on behalf of Respondent.

7. Respondent shall provide a copy of this Settlement Agreement to all contractors, laboratories, and consultants retained to conduct or monitor any portion of the Work performed pursuant to this Settlement Agreement within 14 days of the issuance of this Settlement Agreement or the retention of such persons, whichever occurs later, and shall condition all such contracts on compliance with the terms of this Settlement Agreement.

8. Respondent shall give written notice of this Settlement Agreement to any successor in interest prior to Respondent's transfer of any property interest of the Site or a portion thereof, and shall notify EPA at least 18 days prior to such transfer.

9. It is the expectation of the Parties that other parties with potential environmental liability will contribute to certain elements or areas of work required by this Settlement Agreement, as appropriate. Such contribution may be through conducting, funding, or otherwise assisting Respondent with required work. Notwithstanding such assistance or lack thereof, Respondent agrees to undertake all actions required by the terms and conditions of this Settlement Agreement, including any portions of this Settlement Agreement incorporated by reference.

V. NOTICE TO STATE

10. By providing a copy of this Settlement Agreement to the state prior to its effective date, EPA has notified the State of Alaska that this Settlement Agreement is being issued and

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that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Settlement Agreement.

VI. EPA FINDINGS OF FACT

11. Respondent is a statutory corporation and instrumentality of the State of Alaska established under AS 42.40.010 that is chartered to hold and operate the Alaska Railroad. Respondent is an owner and operator of a rail yard within the Site, and an owner of properties contiguous to that yard. The Site was owned by the Alaska Railroad when that entity was owned by various departments of the federal government including the former War Department, the Department of the Interior, and most recently the Department of Transportation. The federal government transferred the Alaska Railroad to the state-owned Alaska Railroad Corporation in 1985, pursuant to the provisions of ARTA.

A. PHYSICAL ENVIRONMENT

12. Surface Hydrology. The Site lies within the floodplain of Ship Creek, one of several drainages running from the Chugach Mountains to the east through Anchorage into Knik Arm. Ship Creek discharges into the salt water of Knik Arm, west of the Anchorage Terminal Reserve. Ship Creek is tidally influenced up to a weir located south of the main rail yard, near the old power plant within the Site. Elmendorf Air Force Base lies atop a bluff to the north, topographically upgradient of the Site. Some surface drainage from the bluff is intercepted by a drainage ditch which routes the surface water to a drainage line that crosses the Site. Drainage collection points along the line within the Site collect additional surface water drainage. This drain line eventually discharges to Ship Creek at the west end of the Site. Another drainage line beginning east of the General Repair Shop also discharges runoff from the Site to Ship Creek.

13. Geology. The Site lies in the Cook Inlet-Susitna lowland physiographic province within a subsection referred to as the Anchorage Lowland. The entire lowland is covered by Quaternary age unconsolidated deposits of gravel, sand, peat, silt, and clay. The region between the Elmendorf Moraine and the bluff located on the north boundary of the Site consists of an outwash plain, sands and gravels laid down by fast flowing waters. These highly permeable, glaciofluvial deposits unconformably overlie the glaciolacustrine or glacioestuarine deposit known as the Bootlegger Cove Formation. The Bootlegger Cove Formation consists of silt, clay and silt-clay mixtures with isolated, discontinuous beds of sand and gravel. The formation outcrops just above the base of the bluff on the north edge of the property. The thickness of the Bootlegger Formation near the Site is approximately 150 feet. Recent fluvial sediments comprised of silt, sand and gravel have been encountered by drilling investigations along the lower Ship Creek floodplain. The fluvial deposits consist of reworked outwash plain sediments with silt in some locations. The Site is situated on fluvial deposits that overlie the Bootlegger Cove Formation.

14. Groundwater Hydrology. Two distinct water bearing units have been identified in the Anchorage Lowland beneath the Site: an unconfined aquifer within the outwash plain and a deep confined aquifer. The unconfined aquifer is recharged from alluvial fans along the slopes of the Chugach Mountains and extends to the top of the Bootlegger Cove Formation. The underlying Bootlegger Cove Formation has very low permeability and serves as an aquitard. Groundwater flow in the Ship Creek aquifer is generally toward the south-southwest, but moves in more of a westerly direction in the vicinity of Ship Creek.

15. The Municipality of Anchorage derives most of its drinking water from surface water sources, specifically Eklutna Lake and Ship Creek, located several miles upgradient of the

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Site. Groundwater from the deeper confined aquifer is used occasionally as a backup supply during peak demand periods. The Municipality of Anchorage Well No. 3 extracts water from the confined aquifer approximately 4,000 horizontal feet to the southeast of the Site. This confined aquifer underlies the entire Anchorage area and is utilized by numerous wells. The flow direction in this deep aquifer is generally from east to west toward Knik Arm. Hydraulic communication between the unconfined aquifer and the confined aquifer beneath the Site has not been established. The unconfined aquifer is brackish and tidally influenced at the western end near Knik Arm.

B. ANCHORAGE RAIL YARD

16. Of approximately 600 acres of property owned by Respondent within the Site, approximately 313 acres comprise the Anchorage rail yard. (See Attachment A: Site Map.) The Anchorage rail yard includes a railroad track system, maintenance and repair buildings, a refueling area, a steam rack for steaming rail cars, warehouses, and administrative offices. Past or present operations conducted at the rail yard include fueling, painting, steam cleaning, loading freight onto railcars, putting train consists together, and maintenance and repair work on locomotives and railroad cars. The rail yard has been the subject of a number of separate environmental evaluations, including a 1986 CERCLA Site Inspection, several RCRA compliance inspections, and Visual Site Inspections (VSIs) in 1994 and 2001. Results of the 1994 VSI are reported in a RCRA Facility Assessment (RFA) completed in 1996. The 1996 RFA identified 73 SWMUs and 7 Areas of Concern (AOCs). Of these, the RFA recommended further investigation at 35 SWMUs and all 7 AOCs. ARRC provided comments regarding the rail yard RFA through a letter to EPA dated February 21, 1997.

17. In 1983, an EPA Notice of Violation stated that there was an “illegal disposal . . . of approximately 800 gallons of xylene and varnish material . . . within the Alaska Railroad property. . . .” Samples collected by the Alaska Department of Environmental Conservation along a roadway near the Paint Shop have disclosed material containing 8.6 mg/kg toluene, 70 to 130 mg/kg ethylbenzene, and 300 to 540 mg/kg xylenes. Subsequent soil sampling in the area indicated xylene concentrations less than one mg/kg. A consultant’s report states that, prior to 1994, rail cars were steam cleaned in an area of the railyard before “drip pans, steam lines, scaffolding,” and an oil/water separator were removed. The consultant’s 1994 report states that contaminants at the former steam cleaning site, including diesel range organics, appeared to be the result of “numerous smaller events occurring over the history of the steam cleaning operation.”

18. In the refueling area for locomotives, oil staining was observed on the ground during a 1994 VSI by inspectors including EPA and ARRC representatives. Within the refueling area, diesel fuel is stored in a 74,700-gallon above-ground tank. In 1991, approximately 600 gallons of fuel from this tank spilled, with 150 to 200 gallons reaching the roadway.

19. Pursuant to RCRA Section 3010, Respondent notified EPA of its hazardous waste activity at the Anchorage rail yard. In its notification dated June 7, 1983, Respondent identified itself as a generator of hazardous waste, including characteristic wastes (corrosive and toxic) and listed wastes (F001, F002, and F003). In its notification dated June 25, 1987, Respondent further identified itself as a used oil generator and marketer. On July 21, 1993, Respondent identified itself as a used oil transporter.

20. The 1996 RFA states that “In December 1985, a sheen was observed on Ship Creek which was traced to a seep on the bank of Ship Creek.” Following this observation,
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ARRC engaged the consulting firm of Shannon and Wilson, Inc. to identify the source of the seep. In 1986, ten monitoring wells were installed and two test pits were dug. The water in all test pits and wells had oily sheens, with one test pit containing a layer of dark brown oil floating on the groundwater in the pit. The 1996 RFA states, “Based on the water results and historical information, the oil was determined to possibly be leaking from the oil/water separator near the former tank car steaming area . . . and underground storage tanks and piping at . . . an ARRC leaseholder.”

21. In addition to the groundwater monitoring wells installed in 1986, as described in the preceding Paragraph, 15 wells were installed in the shallow unconfined aquifer in 1989. The wells were sampled and analyzed for benzene, ethylbenzene, toluene, xylene (BETX), and total petroleum hydrocarbons (TPH). The maximum concentrations of TPH and BETX were 340 mg/l and 0.826 mg/l, respectively. Pursuant to the federal Safe Drinking Water Act, a Maximum Concentration Level has been established for benzene at 0.005 mg/l. Benzene concentrations exceeding this MCL were detected in six wells. Of the 20 samples collected, 14 contained petroleum hydrocarbons and/or BETX. Up to 0.55 feet of product was present in Well B-9. Monitoring wells C-2, C-7, C-8, and C-9 all are located on the northeast portion of the main rail yard and had TPH and benzene detected. The 1996 RFA states that, “The source of TPH and benzene in these wells is not the former tank car steam rack and oil/water separator since the wells are upgradient and on the opposite side of the Site. Potential sources in the area include AOCs 2 and 3 (the nearby former refueling area and the diesel fuel aboveground storage tank).” To capture some of the groundwater contamination, the ARRC contractor recommended that an oil collection gallery be installed and soil excavated. During installation of the gallery in the

southwest corner of the Site, which took place in 1989, between 100 and 150 cubic yards of soil were removed and thermally remediated.

22. Within the former tank car steaming area, consultants in 1992 conducted Level I and Level II site assessments.

a. The monitoring wells were sampled and contained the following:

arsenic	0.25 mg/l	MCL 0.01 mg/l
cadmium	0.022 mg/l	MCL 0.005 mg/l
chromium	0.62 mg/l	MCL 0.1 mg/l
trichloroethene	0.006 mg/l	MCL 0.005 mg/l

b. From August through November 1993, soil excavation and sampling occurred in this area. The maximum concentrations identified in soil samples from two sampling efforts are listed below:

diesel range organics	3,170 mg/kg
total petroleum hydrocarbons	4,410 mg/kg

c. In September 1993, soil sampling was performed in conjunction with construction excavation activities. Drilling and further sampling also occurred in May 1994. Two new monitoring wells were installed, and these, plus an existing well, were sampled. The maximum concentrations identified in soil samples from these two sampling efforts are listed below:

benzene	0.17 mg/kg
toluene	1.07 mg/kg
ethylbenzene	0.83 mg/kg
xylene	4.5 mg/kg
total petroleum hydrocarbons	11,200 mg/kg
diesel range organics	25,800 mg/kg

gasoline range organics	242 mg/kg
arsenic	9.5 mg/kg
cadmium	24 mg/kg
chromium	42 mg/kg
lead	2790 mg/kg

The maximum concentrations in groundwater samples from these two sampling efforts are listed below:

benzene	0.013 mg/l
ethylbenzene	0.0034 mg/l
xylene	0.032 mg/l
gasoline range petroleum hydrocarbons	0.12 mg/l
diesel range petroleum hydrocarbons	1.34 mg/l

23. In the Refueling Area, there have been a number of documented fuel spills. In 1986, between approximately 1,500 to 2,000 gallons of diesel fuel spilled on snow-covered ground. In 1988, approximately 300 gallons of fuel spilled, contaminating a 20 to 30 foot area. In 1993, there were two diesel fuel spills, one of 50 gallons, the other of an unspecified amount. In October 1993, approximately 245 tons of soil were removed from this area. Soil sampling in conjunction with this removal identified a maximum diesel range organics level of 76,900 ppm. The same sampling identified a maximum TPH value of 8,740 ppm, with a sample from the stockpiled soil indicating 21,500 ppm TPH.

24. Respondent has stored hazardous wastes within the rail yard for periods greater than 90 days. In 1994, for example, EPA found that Respondent had stored at least 147 drums containing listed and characteristic hazardous wastes in an area identified as the “barrel farm” for periods exceeding 700 days in some instances.

C. ADJOINING ARRC PROPERTIES

25. The Site includes land owned by ARRC outside the rail yard and leased in part to a number of other parties. This adjoining land currently consists of approximately 137 parcels comprising approximately 287 acres. This land was the subject of a Visual Site Inspection in 2001. Results of the 2001 VSI are reported in a RCRA Facility Assessment completed in 2002 and provided to Respondent in February 2003. Out of 139 sites designated by the 2002 RFA, 73 were recommended for no further action and 66 were identified as either a SWMU or AOC. ARRC provided comments regarding the adjoining properties RFA report through a letter to EPA dated May 1, 2003.

26. The Site includes property located at 568 Whitney Road, ARRC lot Nos. 101 and 102. The site currently includes an industrial building that was constructed in 1972 and first occupied by Westinghouse for assembly of electrical transformers. A division of Westinghouse, Eastern Electric, continued the transformer operations at the site until 1995. Samples of water and sediments from drains and sumps indicated the presence of BETX up to 9.56 mg/l and polychlorinated biphenyls (PCBs) up to 35 mg/l. Soil samples collected in 1995 indicated TPH levels up to 17,200 ppm.

27. The Site includes an area impacted by the Municipal Light & Power (ML&P) First Avenue Power Plant No. 1, including a spill from an above-ground diesel fuel tank at the ML&P site that ruptured during an earthquake in 1964 that measured between 8.3 and 8.6 on the Richter Scale. Based on analysis of soil and groundwater samples, a 1996 study estimated the 1964 spill on the order of 380,000 gallons of diesel fuel. The study calculated concentrations of diesel range organics within the ML&P site averaging 3,900 mg/kg, with DRO levels beyond the ML&P site averaging 3,700 mg/kg.

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28. The Site includes several properties along Whitney Road, adjacent to Ship Creek, where petroleum product has been observed in groundwater monitoring wells. In 1999, ARRC conducted an investigation in which four properties within this area were identified with contamination, including the following:

a. Former Arctic Cooperage site, 932 Whitney Road, ARRC lot number 87. From 1958 to 1964, the site included an oil re-refinery, accepting used oil from gas stations, maintenance shops, electrical utility transformers, and military bases. About 22 drums of material were removed from this site in 1996. In 1997, based upon application of EPA's Hazard Ranking System, EPA made an initial determination not to propose the site for the Superfund National Priorities List (NPL), allowing for future NPL consideration or other CERCLA action if new or additional information becomes available. In 2000, EPA obtained new information of free product and a sheen visible in groundwater monitoring wells. Groundwater sampling determined the release of hazardous substances and solid wastes including benzene up to 3.6 mg/l (MCL of 0.005 mg/l) and vinyl chloride up to 0.024 ug/l (MCL of 0.002 mg/l). In October 2000, approximately 50 cubic yards of soil were excavated near the monitoring well that contained the most free product.

b. 1048 Whitney Road, ARRC lot Nos. 82 to 85. In 1990, five USTs used to store gasoline, diesel, and used oil were removed, revealing free product at the bottom of the excavations. Since that time, a number of site assessments have confirmed the presence of benzene, vinyl chloride, diesel range organics, polyaromatic hydrocarbons, and other hazardous substances and/or solid waste in soils and groundwater. In 1994, soil sampling indicated diesel range organics at a highest measured concentration of 4,070 mg/kg. In 1998, soil sampling at this property again identified concentrations of benzene, DRO, and gasoline range organics

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exceeding state cleanup levels. In addition, one groundwater sample identified a benzene concentration of 0.01 mg/l.

29. The Site includes the former Knik Arm Power Plant (KAPP), located at 229 Whitney Road. In November 1999, EPA Region 10 completed a report concerning the KAPP facility, entitled “Ship Creek Targeted Brownfields Assessment Report, Ship Creek Brownfields Site, Anchorage, Alaska.” The report documented the findings of an investigation conducted by EPA contractors, based upon interviews, file reviews, site visits, and limited field sampling. Soil sampling determined the consistent presence of metals above background levels and petroleum-related contaminants, with DRO exceeding State of Alaska Soil Cleanup Levels. Sediment samples from the KAPP cooling pond and the adjacent bank of Ship Creek determined the presence of contaminants including copper, manganese, nickel, lead, mercury, PCBs, SVOCs, and toluene, at various points, all found elevated with respect to background and ecological screening benchmarks. The report concluded by recommending further investigation “to determine the vertical and lateral extent of contamination” at the KAPP, to include sampling of surface and subsurface soils, as well as sediments and macroinvertebrates associated with Ship Creek.

30. Additional findings reported in the 2002 RCRA Facility Assessment for the leased properties included the following sites within the Site:

a. 2530 Railroad Avenue. Approximately 30 55-gallon drums and 30 5-gallon containers were observed during the VSI. The drums and containers were located over exposed ground, and several of the drums were visibly leaking onto the ground. While some of the drums and containers were unlabelled, others had labels including methylethylketone, paint, stripper, and “poison.”

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b. 720 Whitney Road. During the VSI, approximately 75 drums were stored outdoors in an area draining directly to Ship Creek. Many of the drums were rusted, with visible staining on the ground. As a result of a Compliance Evaluation Inspection on May 22, 2002, EPA discovered a number of drums labeled “used oil,” but with analytical data identifying halogen levels exceeding 1000 ppm. As such, EPA determined that 42 out of approximately 106 55-gallon drums contained hazardous waste.

c. 250 Post Road. The VSI observed a large area on the banks of Ship Creek containing numerous containers including about 15 55-gallon drums, 20 5-gallon plastic containers, and 17 metal paint cans. Containers appeared rusted and in poor condition, with at least one drum visibly leaking onto the ground. Labels indicated some containers contained chemicals including benzene and ethylbenzene. A Phase I site assessment of this waste storage area identified a soil sample with a trichloroethylene level of 0.978 ppm, exceeding the state cleanup level of 0.027 ppm.

D. RELEASE OF HAZARDOUS SUBSTANCES AND/OR SOLID WASTES

31. Over the history of the Anchorage Terminal Reserve, there have been documented releases of hazardous substances and solid wastes into soils, surface waters, and groundwaters of the Site.

32. Respondent and its predecessors have managed the following materials at the Site:

a. Hazardous wastes exhibiting the characteristics of ignitability, corrosivity, reactivity, or toxicity identified at 40 C.F.R. §§261.20 - 261.24 (D001-D042), including, for example, waste caustics, petroleum solvents, waste paint and thinner, contaminated waste oil,

contaminated solids and absorbent materials, used journal pads, glass abrader dust, waste acid, and waste batteries; and

b. Hazardous wastes from non-specific sources identified at 40 C.F.R. § 261.31 (F001, F028), including, but not limited to, chlorinated solvents, waste paint thinner, and contaminated waste oil.

33. Hazardous substances and solid wastes at the Site, including those identified in the preceding Findings of Fact, may pose a threat to human health or the environment. Lead at toxic levels has known chronic and acute impacts on human health. Cobalt, nickel, benzene, arsenic, 1,2-dichloroethane, and PCBs are known or probable human carcinogens. As shown by the results of previous sampling efforts, indicated above, all of these hazardous substances and solid wastes are known to have been released into the groundwater as well as soils and surface waters within the Site. Past or potential future releases of hazardous substances and solid wastes at the Site also could affect Ship Creek. The Creek flows through the Site, provides a habitat for aquatic life and is used for recreational purposes. Contamination that affected the surface water and/or sediments at Ship Creek could adversely impact aquatic life and recreational users of the Creek. In addition to direct transport by Ship Creek, hazardous substances and solid wastes may have migrated beyond the Site via groundwater, storm water, erosion, wind, or other mechanisms, potentially impacting human health and the environment.

VII. EPA CONCLUSIONS AND DETERMINATIONS

34. Based on the foregoing EPA Findings of Fact, and after consideration of the Administrative Record, the Director of the Environmental Cleanup Office and the Director of the Office of Waste and Chemicals Management, EPA Region 10, have made the following conclusions of law and determinations:

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- a. The Site is a “facility” within the meaning of CERCLA Section 101(9) and an area where solid wastes have been or may be released within the meaning of RCRA Section 7003(a).
- b. Respondent is a “person” within the meaning of CERCLA Section 101(21) and RCRA Section 1004(15).
- c. Respondent is the owner or operator of a facility, within the meaning of CERCLA Section 107(a), and an owner or operator of a hazardous waste treatment, storage, and/or disposal facility, within the meaning RCRA Section 7003(a).
- d. Respondent is a responsible party under Section 107 of CERCLA.
- e. Respondent has generated and managed materials that are solid wastes within the meaning of RCRA Section 1004(27).
- f. Wastes and/or substances released within the Site, including but not limited to, arsenic, cadmium, chromium, copper, lead, manganese, nickel, zinc, PCBs, benzene, toluene, xylene, mercury, methylethylketone, vinyl chloride, discarded used oil, diesel range organics and gasoline range organics, constitute CERCLA hazardous substances and/or RCRA solid wastes.
- g. There has been a release of hazardous substances and solid wastes into the environment at or from the Site.
- h. The release or threat of release of hazardous substances and solid wastes and the past or present handling, storage, treatment, transportation, or disposal of hazardous substances and solid wastes within or from the Site may present an imminent and substantial endangerment to public health, welfare, or the environment.

i. Respondent has contributed to the handling, storage, treatment, transportation, and/or disposal of solid wastes that may present an imminent and substantial endangerment to public health and the environment, within the meaning of RCRA Section 7003(a).

j. The actions required by this Settlement Agreement may be necessary to protect human health and the environment.

VIII. PROJECT COORDINATORS

35. EPA and Respondent shall each maintain a Project Coordinator for the purpose of overseeing the implementation of this Settlement Agreement. EPA and Respondent shall each designate their respective Project Coordinator on or before the effective date of this Settlement Agreement. Unless and until further notice, EPA's designated Project Coordinator is Jacques Gusmano. Unless and until further notice, Respondent's Project Coordinator is Ernie Piper, and documents shall be directed to the Project Coordinators at the following addresses:

Jacques Gusmano
U.S. EPA Alaska Operations Office
West 7th Ave. #19 327

Ernie Piper
Alaska Railroad Corporation
222 West Ship Creek Avenue
Anchorage, AK 99513-7588
Anchorage, AK 99501

36. All communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Settlement Agreement shall be directed through the Project Coordinators. Except as otherwise directed by the EPA Project Coordinator or this Settlement Agreement, all documents submitted by Respondent pursuant to this Settlement Agreement shall be delivered to the EPA Project Coordinator in four copies by United States mail. Documents that constitute Submittals under this Settlement Agreement shall be delivered by hand, overnight express mail, or certified mail,

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return receipt requested. The EPA Project Coordinator may also direct Respondent to send copies of documents submitted pursuant to this Settlement Agreement to other addressees as the EPA Project Coordinator designates. Approvals, disapprovals, or partial approvals or disapprovals of Submittals from Respondent shall be delivered by EPA via hand, overnight mail, or United States mail.

37. The Parties may change their Project Coordinator, but agree to provide at least 14 days written notice prior to changing a Project Coordinator.

38. The absence of the EPA Project Coordinator from the Anchorage Terminal Reserve shall not be cause for the stoppage of work.

IX. WORK TO BE PERFORMED

39. Pursuant to CERCLA Section 106(a) and RCRA Section 7003(a), Respondent agrees to and is hereby ordered to perform the work specified in this Settlement Agreement, including this Section, the attached Scope of Work, the EPA-approved RI/FS Work Plan, and all other EPA-approved work plans. The work shall be carried out in the manner and by the dates specified in this Settlement Agreement, including any work plan approved by EPA. The work shall also be carried out consistent with the NCP and in compliance with CERCLA, RCRA, other applicable state and federal laws consistent with Paragraph 116 of this Settlement Agreement, and consistent with implementing EPA regulations and applicable EPA guidance documents, including “Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA” (Interim Final), OSWER Dir. 9355.3-01 (Oct. 1988) and RCRA Facility Investigation Guidance, EPA Doc. No. EPA 530/SW89-01 (May 1989). Consistent with the provisions of Section XVIII (*Force Majeure*), and with Respondent’s obligation to use best efforts to seek access (see Paragraph 78), Respondent shall not be required to carry out any work

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under this Settlement Agreement that would cause Respondent to violate the provisions of any existing lease or other binding real property agreement between Respondent and any tenant within the Site, except as may be authorized under EPA authority. As required by Section XVIII (*Force Majeure*), Respondent shall inform EPA in writing as soon as it has knowledge of any potential conflict between the requirements of this Settlement Agreement, including the enforceable provisions of any deliverable or document under this Settlement Agreement, and the requirements of such lease or other binding real property agreement.

A. REMOVALS/INTERIM ACTIONS

40. a. Throughout the duration of this Settlement Agreement, Respondent shall evaluate available data and assess the need for removal actions or other interim actions (IAs) pursuant to CERCLA and/or RCRA within the Site. IAs shall be used when appropriate to (1) control or abate immediate threats to human health and/or the environment; (2) conduct focused and accelerated environmental characterization at the Site; and (3) prevent or minimize the spread of contaminants while long-term remedial action alternatives are being evaluated. Except as otherwise agreed in writing, IAs are not mandatory under this Settlement Agreement but may be conducted by the Respondent voluntarily under the procedures specified in this Section. Any IAs performed under this Settlement Agreement that address hazardous substances shall be selected by EPA, consistent with the NCP, and all IAs, whether they address hazardous substances or solid wastes, shall be consistent with appropriate EPA guidances.

b. Within 60 days of the effective date of this Settlement Agreement, Respondent shall submit an Interim Action Report to EPA. The Interim Action Report shall consist of (1) an identification of any prospective IAs that Respondent may propose carrying out, (2) a rationale for proposal of such prospective IAs based on existing information, and (3) an

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identification of any new data needed for making decisions on potential IAs. EPA will review any proposed IAs set forth in the IA Report and will notify Respondent in writing of any IA which EPA selects. Following any such notice, Respondent shall develop an IA Work Plan and perform the IA in the time and manner specified below.

c. In addition to any proposed IAs that Respondent may identify in the IA Report, either the Respondent or EPA may propose IAs at any time during the performance of Work under this Settlement Agreement. Respondent shall develop an IA Work Plan and perform the IA in the time and manner specified below with respect to any IA to which the Parties may agree and that EPA may select. Respondent shall secure prior written EPA approval to perform any IAs within the Site.

41. In the event Respondent identifies an immediate threat to human health or the environment at any time while this Settlement Agreement is in effect, Respondent shall within 24 hours notify the EPA Project Coordinator, and shall notify EPA in writing within five days of such discovery describing the immediacy and magnitude of the identified threats and response actions to be taken. This reporting requirement is in addition to, and not in lieu of, any other applicable reporting requirements, including but not limited to, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11004, *et seq.* EPA also may notify Respondent at any time regarding any EPA finding that specific Site conditions create an immediate threat to human health or the environment. The Parties shall confer regarding any immediate threats that Respondent or EPA identify, and Respondent shall develop a Work Plan for an IA and implement it in the time and manner specified below with respect to any IA that Respondent proposes or agrees to conduct. If EPA determines that an immediate IA is required, the EPA

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Project Coordinator may authorize Respondent to act prior to EPA's receipt and approval of such Work Plan. Such authorization by the EPA Project Coordinator will be in writing.

42. a. Within 20 days (or by such other date as may be agreed by the Parties) of (1) Respondent's receipt of EPA's written selection of any IA that Respondent has proposed, or (2) EPA's receipt of written agreement from Respondent regarding any IA that EPA has proposed, Respondent shall submit to EPA an Interim Action Work Plan for each such IA. The IA Work Plan and activities specified thereunder shall be carried out subject to EPA review and approval.

b. Unless otherwise approved by EPA, the IA Work Plan shall include the following:

Interim Action Description and Objectives;

Public Involvement Plan;

Sampling and Analysis Plan in accordance with Section XII;

Design Plans and Specifications;

Operation and Maintenance Plan;

Project Schedule;

Construction Quality Assurance;

Performance Standards for evaluating the effectiveness of the IAs; and

Reporting Requirements.

Deviations from these requirements may be made only with prior written EPA approval, based on the nature of the Interim Action. EPA will attempt to promptly review and act upon such requests.

43. All IA Work Plans shall (1) ensure that the IAs are designed to mitigate current or potential threats to human health and/or the environment, (2) be consistent with the NCP for any IA that addresses hazardous substances and consistent with appropriate EPA guidances whether the IA addresses hazardous substances or solid wastes, and (3) contribute to the performance of any long-term remedy that may be required at the Site.

B. CERCLA REMEDIAL INVESTIGATION/RCRA FACILITY INVESTIGATION

44. Within 110 days of the effective date of this Settlement Agreement, Respondent shall submit to EPA a Data Compilation/Site Background Report (“Site Background Report”). The Site Background Report shall review existing environmental data related to the Site, evaluate the quality of such existing data, and assist the planning of further data collection for the Site, as described in the Statement of Work (Attachment B to this Settlement Agreement). The Site Background Report shall be subject to EPA review and approval as required under the Statement of Work.

45. Within 90 days of EPA approval of the complete Site Background Report, Respondent shall submit a work plan for a Remedial Investigation/Feasibility Study (RI/FS Work Plan) for the Site, which shall be subject to approval by EPA and developed as required by the attached Statement of Work. The RI/FS Work Plan may be submitted by Respondent and approved by EPA in discrete parts, corresponding to phases of site investigation as the Parties may agree appropriate.

46. In support of the Remedial Investigation for the Site, the RI/FS Work Plan shall detail the methodology Respondent shall use to: (1) gather data needed for the RI; (2) identify and characterize all sources of the contamination identified within the Site; (3) define the degree and extent of contamination at or from the Site; (4) characterize the potential pathways of

contaminant migration; (5) identify actual or potential human and/or ecological receptors; and (6) support the development of alternatives for any EPA selection of remedial actions or corrective measures, all as consistent with Attachment B to this Settlement Agreement.

47. The RI/FS Work Plan shall include a Conceptual Site Model, Project Management Plan, Sampling and Analysis Plan, Identification of Applicable or Relevant and Appropriate Requirements, and the other components set forth in the attached Statement of Work. A specific schedule for implementation of all activities shall be included in the RI/FS Work Plan.

48. Respondent shall submit a Remedial Investigation Report to EPA for approval in accordance with the EPA-approved RI/FS Work Plan schedule. EPA will review the RI Report and notify Respondent, in writing, of EPA's approval, disapproval, or modification in accordance with Section XI of this Settlement Agreement.

C. BASELINE RISK ASSESSMENT

49. The major components of the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization. Respondent shall conduct this Baseline Risk Assessment subject to EPA review and approval as specified in the attached Statement of Work.

D. FEASIBILITY STUDY/CORRECTIVE MEASURES STUDY

50. In support of the Feasibility Study for the Site, the RI/FS Work Plan shall detail the methodology for developing and evaluating potential remedial actions and corrective measures to remedy contamination at or from the Site. In particular, consistent with Attachment B, the RI/FS Work Plan shall provide for the following:

- refinement and documentation of remedial action objectives as prescribed in Section 6.1.1. of the attached Statement of Work;
- preliminary screening of remedial alternatives;
- detailed analysis of remedial alternatives; and
- conduct of treatability studies, as necessary.

51. Respondent shall submit a FS Report to EPA for approval in accordance with the EPA-approved RI/FS Work Plan schedule. EPA will review the FS Report and notify Respondent, in writing, of EPA's approval, disapproval, or modification in accordance with Section XI of this Settlement Agreement. Following receipt of any public comments as provided for in Section X, EPA may approve the FS Report or require Respondent to revise the Report and/or perform additional evaluations.

E. REMEDIAL ACTION/CORRECTIVE MEASURES IMPLEMENTATION

52. After any selection by EPA of remedial actions and/or corrective measures for the Site, EPA may provide Respondent with an opportunity to negotiate a consent decree and/or consent order for implementation of such actions or measures. Nothing in this Settlement Agreement shall limit EPA's authority to require that selected remedial actions or corrective measures be implemented or to take any other appropriate action under CERCLA, RCRA or any other legal authority, including issuance of a Unilateral Administrative Order or the filing of a civil action seeking a judicial order directing Respondent to implement such actions and measures.

F. COMPLIANCE WITH OSHA AND FRA REQUIREMENTS

53. Concurrent with submission of the RI/FS Work Plan or any work plan for an IA, Respondent shall submit to EPA a separate Health and Safety Plan for the activities to be

conducted under that work plan. No such Health and Safety Plan shall be subject to EPA approval, but any work performed under this Settlement Agreement and under an approved work plan shall comply with the applicable Health and Safety Plan, and shall comply with applicable regulations of the Occupational Safety and Health Administration (OSHA) and the Federal Railroad Administration (FRA) and applicable state and local regulations. Respondent may incorporate by reference any previously submitted Health and Safety Plan to meet this requirement in any work plan submitted after the initial work plan if the OSHA and FRA requirements are met.

G. OFF-SITE WASTES

54. Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed ten cubic yards.

55. The notification provided above shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

56. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the RI. The receiving facility shall meet the criteria

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specified at 40 C.F.R. § 300.440. Respondent shall provide all relevant information, including information under the categories noted in the preceding Paragraph, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

X. PUBLIC PARTICIPATION AND COMMENT IN REMEDY SELECTION

57. Consistent with EPA guidance and the NCP, EPA will prepare a Community Involvement Plan to ensure meaningful opportunities for public involvement in the work to be conducted at the Site under this Settlement Agreement. Consistent with Section 3 of the SOW, Respondent shall provide information to support EPA's community involvement program for the Site. In addition, within 30 days of a request by EPA, Respondent shall provide EPA with a proposed Technical Assistance Plan (TAP). If EPA disapproves of or requires revisions to the TAP, in whole or in part, Respondent shall amend and submit to EPA a revised TAP that is responsive to EPA's comments within 30 days of receiving EPA's comments. The TAP shall provide for up to \$50,000 of Respondent's funds to be used by a qualified community group meeting the requirements of 40 C.F.R. § 35.4020, except that the requirements of 40 C.F.R. § 35.4020(a)(1) shall be considered satisfied if the group could be affected by actual or potential releases at the Site notwithstanding the fact that the Site is neither listed nor proposed for listing on the CERCLA National Priorities List. The TAP funding shall be used consistent with 40 C.F.R. Part 35, Subpart M, to hire independent technical advisors to review documents or provide other assistance related to Respondent's work under this Settlement Agreement. Respondent shall ensure that the funding for a qualified community group is allocated to cover the entire RI/FS and other work under the AOC, including review of the Proposed Plan.

58. Consistent with EPA guidance including “Community Relations in Superfund,” EPA 540-R-92/009 (Jan. 1992), and “RCRA Public Participation Manual,” EPA 530-R-96-007 (Sept. 1996), EPA will provide the public with an opportunity to review the RI Report, FS Report, and any Statement of Basis/Proposed Plan describing and justifying any remedial actions and/or corrective measures that EPA may propose for the Site.

59. Following review and consideration of any written and oral comments received upon a Statement of Basis/Proposed Plan, EPA will select final remedial actions and/or corrective measures for the Site. Any EPA decision document shall be accompanied by a written response to all timely, significant comments received upon the Statement of Basis/Proposed Plan.

XI. AGENCY APPROVALS / PROGRESS REPORTS / PROPOSED CONTRACTOR / ADDITIONAL WORK

A. EPA APPROVALS

60. EPA will provide Respondent with its written approval, approval with conditions and/or modifications, disapproval, or disapproval with comments for any work plan, report (except progress reports), specification, or schedule submitted pursuant to or required by this Settlement Agreement. Comments or suggestions by EPA shall not be construed as a disapproval unless they so specify.

61. Respondent shall revise any work plan, report, specification, or schedule in accordance with EPA’s written comments. Respondent shall submit to EPA any revised submittals in accordance with the due date specified by EPA. Revised submittals are subject to EPA approval, approval with conditions and/or modifications, disapproval, or disapproval with comments.

62. Upon receipt of EPA's written approval, Respondent shall commence work and implement any approved work plan in accordance with the schedule and provisions contained therein.

63. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding or modifying. Oral direction concerning the work may be provided by the EPA Project Coordinator, but shall not be considered a requirement of this Settlement Agreement unless set forth in writing.

B. PROGRESS REPORTS

64. Beginning with the first full month following the effective date of this Settlement Agreement, and throughout the period that this Settlement Agreement is effective, Respondent shall provide EPA with monthly progress reports. Progress reports are due on the tenth day of each month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) include all results of sampling and tests and all other data received by Respondent, (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for RI/FS completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

C. PROPOSED CONTRACTOR/CONSULTANT

65. All work performed pursuant to this Settlement Agreement shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist, with expertise in CERCLA and RCRA site cleanup. Respondent's contractor or

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consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Within 7 days of the effective date of this Settlement Agreement, Respondent shall notify the EPA Project Coordinator, in writing, of the name, title, and qualifications of the engineer, hydrologist, geologist, or environmental scientist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Settlement Agreement. Respondent shall identify whether any contractor is on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs. EPA reserves the right to disapprove Respondent's contractor and/or consultant. If EPA disapproves a contractor or consultant, then Respondent must, within 30 days of receipt from EPA of written notice of disapproval, notify EPA, in writing, of the name, title, and qualification of any replacement proposed for EPA approval, consistent with this Paragraph. EPA's disapproval shall not be subject to review under Section XVII (*Dispute Resolution*).

D. ADDITIONAL WORK

66. EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluations, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any EPA-approved work plan, when such additional work is necessary to meet the purposes set forth in Section III (*Statement of Purpose*). EPA may determine that Respondent shall perform the additional work and EPA will specify, in writing, the basis for its determination that the additional work is necessary. Within 30 days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. Such work plan shall be submitted within 30 days of receipt of EPA's determination that additional work is necessary, or according to an

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alternative schedule established by EPA. Upon approval of a work plan, Respondent shall implement it in accordance with the schedule and provisions contained therein, subject to the provisions of Section XVII (*Dispute Resolution*).

XII. SAMPLING/QUALITY ASSURANCE/FIELD ACTIVITIES

67. Each work plan shall include a Sampling and Analysis Plan (SAP) for EPA review and approval. Each SAP shall consist of two parts: a Field Sampling Plan and a Quality Assurance Project Plan, collectively addressing field sampling activities and quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities, and shall be prepared in accordance with the attached Statement of Work. Respondent shall follow EPA guidance for analysis in accordance with the latest approved edition of “EPA Requirements for Quality Assurance Project Plans,” as well as other guidance identified by EPA. EPA guidance documents related to quality assurance and sampling can currently be found on the Internet at <http://yosemite.epa.gov/r10/oea.nsf>.

68. The name, address, and telephone number of each analytical laboratory Respondent proposes to use must be specified in the applicable SAP.

69. All SAPs required under this Settlement Agreement shall include Data Quality Objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use.

70. Respondent shall ensure that high quality data are obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of “Test Methods for Evaluating Solid Waste (SW-846),” or other methods satisfactory to EPA. If methods other than EPA

methods are to be used, Respondent shall specify all such protocols in the applicable work plan. EPA may reject any data that does not meet the requirements of the approved work plan and EPA analytical methods and may require re-sampling and additional analysis.

71. Respondent shall ensure that all field and laboratory contractors and organizations it uses for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA, or as the Parties may otherwise agree in writing. Respondent shall, upon request by EPA, make arrangements for EPA to conduct a performance and quality assurance/quality control audit of the laboratories chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratories perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or quality assurance/quality control, Respondent shall submit a plan for EPA review and approval to address the deficiencies and conduct re-sampling and additional analysis as EPA requires. Upon approval by EPA, such plan shall be implemented by Respondent.

72. Respondent shall notify EPA in writing at least ten days before engaging in any well drilling, installation of equipment, sampling, or other Work at properties specified for evaluation subject to this Settlement Agreement, unless otherwise agreed to by EPA. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the EPA Project Coordinator or, if the EPA Project Coordinator is unavailable, the Project Coordinator's immediate supervisor. At the request of EPA, Respondent shall provide or allow EPA to take split samples or duplicate samples of all samples collected by Respondent pursuant to this Settlement Agreement.

Similarly, at the request of Respondent, EPA will allow Respondent or its authorized

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representatives to take split or duplicate samples of all samples collected by EPA under this Settlement Agreement.

73. Respondent shall, upon request, submit to EPA the results (including raw data) of all sampling and/or tests or other data generated by its divisions, agents, tenants, lessees, consultants, contractors or others pursuant to this Settlement Agreement.

74. Notwithstanding any other provisions of this Settlement Agreement, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

75. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Settlement Agreement. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

XIII. ACCESS AND INFORMATION

76. EPA, its contractors, employees, and/or any EPA representatives are authorized upon presentation of their identification to enter and freely move about the Respondent's rail yard and any other Respondent-owned areas at the Site not under current leases to third parties to carry out, *inter alia*, the following actions as they relate to determining actual or potential

releases of hazardous substances or solid waste within the Site or Respondent's implementation

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of this Settlement Agreement: interviewing Respondent's personnel and contractors; inspecting records, operating logs, and contracts; reviewing the progress of Respondent in carrying out the terms of this Settlement Agreement, including observing performance of work other than office work; conducting such tests, sampling, or monitoring as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data that Respondent submits to EPA. With respect to properties within the Site under current leases from Respondent to third parties, Respondent will not interfere with reasonable EPA access and will authorize such access to the extent allowed under the lease or other agreements for those properties. Respondent agrees to provide EPA and its authorized representatives access, subject to Paragraph 78 below, to these leased properties or any other property to which access is required for implementation of this Settlement Agreement. All persons with access under this Paragraph shall be advised in writing and provided with a copy of all approved health and safety plans developed pursuant to this Settlement Agreement, and all health and safety plans developed by Respondent or its lessees that are applicable to employees, contractors or visitors. Respondent shall permit such persons to inspect and copy all records, files, photographs and documents, including all sampling and monitoring data, that pertain to Work undertaken pursuant to this Settlement Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

77. Respondent's obligation to produce documents under the preceding Paragraph or other provisions of this Settlement Agreement may exclude those portions of documents that are privileged from discovery as attorney-client privileged communications, or as attorney work product as defined in Federal Rule of Civil Procedure 26. For any document or portion thereof

sought to be withheld hereunder, Respondent shall identify in writing the subject, author,
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addressees, and date, as well as any other information necessary to determine the basis of Respondent's claim of privilege. EPA may at any time challenge claims of privilege.

Respondent agrees not to assert any privilege claim with regard to physical or analytical data or documents required to be produced pursuant to this Settlement Agreement.

78. To the extent that Work being performed pursuant to this Settlement Agreement must be done at properties within the Site that Respondent leases to third parties or properties located beyond the Site boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete Work required by this Settlement Agreement from the present lessees, owners, or operators of such property within 30 days of approval of any work plan for which access is required. Best efforts as used in this Paragraph shall include, at a minimum, a certified letter from Respondent to the present lessee, owner, or operator of such property requesting an access agreement to permit Respondent, EPA, and its authorized representatives to access such property. Best efforts shall also include, as appropriate, the payment of reasonable sums of money, in consideration of granting access, to any party other than a lessee or other tenant of Respondent within the Site. Any such access agreement shall provide for access by EPA and its authorized representatives. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements entered into pursuant to this Settlement Agreement. In the event that agreements for access are not obtained within 30 days of approval of any work plan for which access is required, or of the date that the need for access became known to Respondent, Respondent shall notify EPA, in writing, within 14 days thereafter of both the efforts undertaken to obtain access and the failure to obtain such agreements. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access for itself and Respondent or its contractors, Respondent shall undertake EPA-approved work on such property.

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79. The Respondent agrees to indemnify the United States as provided in Section XXII (*Indemnification of the United States Government*), for any and all claims arising from activities on such property.

80. Nothing in this Section limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including CERCLA and RCRA.

81. Nothing in this Section shall be construed to limit or otherwise affect any liability or obligation on the part of Respondent to conduct an RI or FS, or to perform Interim Actions, Removals, Remedial Actions or Corrective Measures including such actions or measures beyond the Site, notwithstanding the lack of access.

XIV. RECORD PRESERVATION

82. Respondent shall retain, during the effective period of this Settlement Agreement and for a minimum of ten years after its termination, all data, records, and documents now in its possession or control or which come into its possession which relate in any way to this Settlement Agreement or to management and/or disposal of hazardous substances and solid wastes at the Site, except as EPA may otherwise agree in writing. Respondent shall notify EPA, in writing, 90 days prior to the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Settlement Agreement and shall be addressed to the EPA Project Coordinator and the following individual:

Director
Environmental Cleanup Office
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

83. Respondent shall, within 30 days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Settlement Agreement, or within 30 days of the effective date of this Settlement Agreement, whichever is later, enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, or contractors will be required to provide Respondent a copy of all documents produced pursuant to this Settlement Agreement.

84. All documents pertaining to this Settlement Agreement shall be stored by the Respondent in secure locations and made available in accordance with this Settlement Agreement to EPA or its representatives.

XV. NOTIFICATION AND DOCUMENT CERTIFICATION

85. Any report or other document submitted by Respondent pursuant to this Settlement Agreement which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Settlement Agreement shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

86. Certification required by the preceding Paragraph shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information

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submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

Signature: _____

Name: _____

Title: _____

Date: _____

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

87. Respondent shall be liable for stipulated penalties in the amounts set forth below any time Respondent fails to comply with any requirement of this Settlement Agreement, unless a *Force Majeure* has occurred as defined in Section XVIII and EPA has approved the extension of a deadline. Compliance by Respondent shall include timely submission of documents with quality acceptable to EPA, and timely completion of any matter under this Settlement Agreement in accordance with this Settlement Agreement. Respondent shall pay stipulated penalties as set forth below upon written demand from EPA.

a. The stipulated penalties set forth in this subparagraph a. shall apply with respect to noncompliance in submitting the following major deliverables:

- 1) Submittal of Site Background Report
- 2) Submittal of RI/FS Work Plan
- 3) Submittal of draft RI and FS reports
- 4) Submittal of final RI and FS reports

Period of Violation	Penalty Per Violation Per Day
First 7 days	\$500
8th through 21 st day	\$1250
Each day thereafter	\$2500

b. The stipulated penalties set forth in this subparagraph b. shall apply with respect to noncompliance in submitting the following:

- 1) Submittal of financial assurance documentation
- 2) Notifying EPA of proposed contractors or consultants
- 3) Notifying EPA before engaging in field activities

Period of Violation	Penalty per violation per day
First 7 days	\$200
8th through 21st day	\$750
Each day thereafter	\$1,500

c. The stipulated penalties set forth in this subparagraph c. shall apply with respect to noncompliance in submitting monthly progress reports and for failure to comply with other requirements of this Settlement Agreement not otherwise specified in subparagraphs (a), (b), or (d):

Period of Violation	Penalty per violation per day
First 7 days	\$100
8th through 21st day	\$300

Each day thereafter	\$750
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d. The stipulated penalties set forth in this subparagraph d. shall apply with respect to failure to commence, perform, and/or complete the work specified in any work plan submitted pursuant to this Settlement Agreement, as required:

Period of Violation	Penalty per violation per day
First 7 days	\$1,000
8th through 21st day	\$1,750
Each day thereafter	\$2,500

88. 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 day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Settlement Agreement. Penalties shall continue to accrue regardless of whether EPA has notified the Respondent of a violation. EPA may, in its sole discretion, waive stipulated penalties.

89. All penalties owed to the United States under this Section shall be due and payable within 30 days of the Respondent's receipt from EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVII. Such a written demand will describe the violation and will indicate the amount of penalties due.

90. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31st day after Respondent's receipt of EPA's demand letter. Interest shall accrue at the

Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of six percent (6%) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 days or more. If EPA decides corrections to any deliverable shall be reflected in any subsequent deliverable and does not require resubmission of the original deliverable, any stipulated penalties for the initial deliverable shall cease to accrue on the date of such decision by EPA.

91. All penalties shall be paid by Electronic Funds Transfer (EFT), in accordance with EFT instructions provided by EPA, or by certified or cashier's check made payable to the "EPA Hazardous Substance Superfund." All such checks shall reference the Site ID No. 10CA, the docket number of this Settlement Agreement, and Respondent's name and address. Copies of all such checks and letters forwarding the checks shall be sent to the EPA Project Coordinator.

Payments under this Section shall be delivered to the following address:

Mellon Client Services Center
EPA Region 10
500 Ross Street
P.O. Box 360903
Pittsburgh, PA 15251-6903

92. By invoking the dispute resolution procedures under Section XVII, Respondent may dispute whether a failure to comply with this Settlement Agreement did in fact occur and the number of days of any such violation. Respondent shall not dispute the accrual rate for any stipulated penalties under this Section. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to EPA within seven days of receipt of such resolution in accordance with Paragraph 91 of this Section.

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93. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Settlement Agreement.

94. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this Settlement Agreement.

95. No payments under this Section shall be tax deductible for federal tax purposes.

XVII. DISPUTE RESOLUTION

96. The Parties shall use their best efforts informally and in good faith to resolve all disputes or differences of opinion. The Parties agree that the procedures contained in this Section are the sole procedures for resolving disputes arising under this Settlement Agreement. Any written direction or disapproval, in whole or in part, from EPA under this Settlement Agreement may be addressed through the dispute resolution procedures of this Section, whether or not specifically authorized by the provisions of this Settlement Agreement, except as may be expressly excluded herein.

97. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by EPA pursuant to this Settlement Agreement, Respondent's Project Coordinator shall notify the EPA Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

98. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the EPA Project Coordinator. This written notice must be

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delivered to such person within 14 days of Respondent's receipt of the Initial Written Decision. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this Settlement Agreement, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. If Respondent fails to follow any of the requirements contained in this Paragraph, then it shall have waived its right to further consideration of the disputed issue.

99. EPA and Respondent shall have 14 days from EPA's receipt of Respondent's written objections to attempt to resolve the dispute through formal negotiations. This time period may be extended by EPA for good cause. During such time period (Negotiation Period), Respondent may request a conference with the Project Coordinator's immediate supervisor to discuss the dispute and Respondent's objections. EPA agrees to confer in person or by telephone to resolve any such disagreement with the Respondent as long as Respondent's request for a conference will not extend the Negotiation Period.

100. If the Parties reach agreement on the dispute at any stage, the agreement shall be set forth in writing, and shall, upon signature of the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the EPA Region 10 Environmental Cleanup Office shall provide to Respondent its written decision on the dispute (EPA Dispute Decision). Such decision shall be incorporated into and become an enforceable element of this Settlement Agreement.

101. Except as provided in Section XVI (*Delay in Performance/Stipulated Penalties*), the existence of a dispute as defined in this Section and EPA's consideration of matters placed

into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Settlement Agreement during the pendency of the dispute resolution process.

XVIII. FORCE MAJEURE AND EXCUSABLE DELAY

102. *Force majeure*, for purposes of this Settlement Agreement, is defined as any event arising from causes unforeseen and beyond the control of Respondent or any person or entity controlled by Respondent, including, but not limited to, Respondent's contractors, that delays or prevents the timely performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential *force majeure* event and address it before, during, and after its occurrence, to prevent or minimize any delay of performance to the greatest extent possible. *Force majeure* does not include increased costs of the work under this Settlement Agreement or financial inability to complete the Work.

103. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall telephone EPA's Project Coordinator or designated alternate, or, if both are unavailable, the EPA

Project Coordinator's immediate supervisor, within 48 hours of when Respondent first knew or should have known that the event might cause a delay. Within five days thereafter, Respondent shall provide to EPA, in writing, the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the *force majeure* event, and any measures taken or to be taken to minimize the effect of the event on

those obligations; a schedule for any measures to be taken to prevent or mitigate the delay or the

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effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in Respondent's opinion, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

104. If EPA determines that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of such obligation under this Settlement Agreement that is affected by the *force majeure* event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the *force majeure* event. If EPA determines that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the *force majeure* event.

105. If EPA disagrees with Respondent's assertion of a *force majeure* event, Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures and time frames set forth in Section XVII (*Dispute Resolution*). 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* event, that the duration

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of the delay or the extension sought was or will be warranted under the circumstance, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

XIX. RESERVATIONS OF RIGHTS

106. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, in the event of Respondent's failure to comply with any of the requirements of this Settlement Agreement. These include, without limitation, the assessment of penalties under CERCLA Sections 106(b) and 109 and RCRA Section 7003(b). EPA further reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to lessees, tenants, and other parties with environmental liability for releases or threats of release of hazardous substances or solid wastes or hazardous wastes within or adjacent to the Site. Pursuant to these authorities, without limitation, EPA may issue orders (1) under CERCLA Section 106 for the release or threat of release of hazardous substances or (2) under RCRA Section 7003 for the past or present handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste, which may present an imminent and substantial endangerment to public health or the environment. This Settlement Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, administrative, civil or criminal, which EPA has under CERCLA, RCRA or any other statutory, regulatory, or common law authority of the United States, except as provided under Paragraph 116 of this Settlement Agreement.

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107. Except as may be specifically provided in this Settlement Agreement, Respondent reserves the right to assert any claims, counterclaims, or third party claims it may have under applicable law against any person or entity, including the United States, and reserves its defenses against any and all claims and actions.

108. EPA reserves the right to disapprove work performed by Respondent pursuant to this Settlement Agreement.

109. EPA reserves the right to perform any portion of the work consented to herein or any additional work as it deems necessary to protect human health and/or the environment. EPA may exercise its authority under CERCLA to undertake or order response actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondent for costs incurred by the United States as may be authorized by law. Notwithstanding compliance with the terms of this Settlement Agreement, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA before or after the effective date of this Settlement Agreement, other than those response costs reimbursed by Respondent pursuant to Section XXVI.

110. If EPA determines that activities in compliance or noncompliance with this Settlement Agreement have caused or may cause a release of hazardous substances, solid wastes, or hazardous waste, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this Settlement Agreement for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

111. This Settlement Agreement is not intended to be nor shall it be construed to be a permit. The Parties acknowledge and agree that EPA's approval of the SOW or any final work plan does not constitute a warranty or representation that the SOW or work plans will achieve the required cleanup or performance standards.

112. Notwithstanding any other provision of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement, including, without limitation, decisions of the Regional Administrator, the Director of the Environmental Cleanup Office, the Director of the Office of Waste and Chemicals Management, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Settlement Agreement, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Settlement Agreement.

113. In any action brought by EPA for a violation of this Settlement Agreement, Respondent shall bear the burden of proving that EPA's actions were arbitrary, capricious, or otherwise not in accordance with law.

114. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XX. OTHER CLAIMS

115. Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, corporation or governmental entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, solid wastes, hazardous wastes, pollutants, or contaminants released or found at, taken to, or taken or migrating from the Site, except as provided under Paragraph 116 of this Settlement Agreement. This Settlement Agreement does not constitute any decision on preauthorization of funds under CERCLA Section 111(a)(2). The Respondent waives any claims or demands for compensation or payment under CERCLA Sections 106(b), 111, and 112 against the EPA or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred pursuant to this Settlement Agreement. Respondent further waives any claim against EPA for attorneys' fees and costs related to any matter arising from this Settlement Agreement.

116. Covenant Not to Sue by EPA. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Section 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Response Costs.

XXI. CONTRIBUTION

117. The parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and that

Respondent is entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(b)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(b)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Response Costs.

118. The parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §9613(f)(3)(B), pursuant to which Respondent has, as of the effective date of this Settlement Agreement, resolved its liability to the United States for the Work and Response Costs.

119. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the rights of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXII. OTHER APPLICABLE LAWS

120. Respondent shall comply with all laws that are applicable or relevant and appropriate when performing the RI and FS. As provided under CERCLA Section 121(e), 42 U.S.C. § 9621(e), no local, state, or federal permit shall be required for any portion of any action conducted entirely onsite, including studies, where such action is selected and carried out in compliance with the NCP and Section 121 of CERCLA, 42 U.S.C. § 9621. All other actions taken pursuant to this Settlement Agreement shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Whenever

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necessary, Respondent shall obtain or cause its representatives to obtain all permits and approvals under such laws and regulations.

XXIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

121. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Settlement Agreement. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under applicable federal statutes and their various contracts.

XXIV. INSURANCE

122. At least seven days prior to commencing any on-site work under this Settlement Agreement, Respondent shall secure, and shall maintain in force for the duration of this Settlement Agreement and for two years after the completion of all activities required by this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of three million dollars, combined single limit, naming the United States as an additional insured. Within the same time period, and annually thereafter on the anniversary of the effective date of this Settlement Agreement, Respondent shall provide EPA with certificates of such insurance. If Respondent demonstrates by evidence satisfactory to EPA that its contractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor.

123. Respondent and its contractors shall also secure, and maintain in force for the duration of this Settlement Agreement and for two years after the completion of all activities required by this Settlement Agreement the following: (1) Professional Errors and Omissions Insurance in the amount of two million dollars per occurrence, and (2) Pollution Liability Insurance in the amount of three million dollars per occurrence, covering, as appropriate, both general liability and professional liability arising from pollution conditions. Upon request, Respondent shall provide EPA with certificates of such insurance.

124. For the duration of this Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing Work on behalf of Respondent, in furtherance of this Settlement Agreement.

125. At least seven days prior to commencing any Work under this Settlement Agreement, Respondent shall certify to EPA that the required insurance has been obtained by its contractors.

XXV. FINANCIAL ASSURANCE

126. Within 30 days after the effective date of this Settlement Agreement, Respondents shall submit to EPA for review and approval documents that would establish financial assurance in the amount of \$3,700,000 for completion of the RI and FS required under this Settlement Agreement, in one or more of the following forms:

- a. a surety bond guaranteeing payment or performance of the work;
- b. one or more irrevocable letters of credit with a standby trust, payable to or at the direction of EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA; or

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d. a demonstration that Respondent meets the financial test specified at 40 C.F.R. § 264.143(f)(1).

127. Within 30 days of EPA approval, or approval with modifications, Respondent shall cause its proposed financial assurance documents(s) to be issued. Financial assurance for the work required to be performed under this Settlement Agreement shall remain in force until EPA releases Respondent from this financial assurance obligation in writing upon EPA approval of the RI and FS reports and approved completion of any Interim Actions pursuant to Section IX.

128. If Respondent seeks to demonstrate its ability to complete the work by means of the financial test pursuant to Paragraph 122(d), it shall submit sworn statements annually on the anniversary of the effective date of this Settlement Agreement demonstrating that it continues to meet the financial test requirements based on the year-end audit performed by independent certified public accountants for Respondent's most recent fiscal year.

129. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate to assure that the work required by this Settlement Agreement will be completed in a timely manner, Respondent shall, within 30 days of receipt of written notice of EPA's determination, obtain and present to EPA for approval adequate financial assurance in one or more of the forms listed in Paragraph 122 of this Settlement Agreement, excluding 122(d). Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

130. Each financial document obtained pursuant to this Section must be established and used solely for the purpose of conducting the activities required by this Settlement

Agreement. Each letter of credit, trust fund agreement, surety bond or financial test sworn
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statement that Respondent submits to EPA pursuant to this Section shall satisfy the requirements for such instruments specified at 40 C.F.R. § 264.151, except that references to closure and closure regulatory requirements shall be replaced with references to the work required by this Settlement Agreement. Each financial assurance document established and maintained by Respondent in accordance with this Section must allow the funds provided by the financial assurance to be available in the event that Respondent proves unable or unwilling to undertake any actions prescribed in this Settlement Agreement while it is in effect so that the activities covered by the document may be completed by Respondent or EPA, as determined by EPA.

131. If Respondent can show that the estimated cost to complete the remaining work has diminished below the amount set forth in the financial assurance document(s), Respondent may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed by EPA, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed, upon written approval by EPA. Respondent shall submit such requests to EPA for review and approval.

132. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section.

133. A copy of each document related to the financial assurance required by this Section shall be delivered to the designated EPA Project Coordinator and original documents shall be directed to:

Clifford J. Villa
Assistant Regional Counsel
U.S. EPA Region 10
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

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XXVI. PAYMENT OF RESPONSE COSTS

134. Within 30 days of the effective date of this Settlement Agreement, Respondent shall pay to EPA \$60,000 in prepayment of oversight costs. Following this payment, the amount shall be excluded from any future demand by EPA for reimbursement of Response Costs under this Settlement Agreement.

135. Consistent with the preceding Paragraph, Respondent shall reimburse EPA, upon EPA's written demand, for all Response Costs incurred after the effective date of this Settlement Agreement in overseeing Respondent's implementation of the requirements of this Settlement Agreement or in performing any response action which Respondent fails to perform in compliance with this Settlement Agreement. EPA may submit to Respondent, on a periodic basis not to exceed every six months, an accounting of all Response Costs incurred with respect to this Settlement Agreement. EPA's SCORPIOS report, or such other summary as may be certified by EPA, shall serve as the accounting and basis for EPA's payment demands under the preceding Paragraph. Respondent shall, within 30 days of receipt of EPA's accounting, remit payment for the amount of those costs. If payment is not made within 30 days of receipt of the accounting, interest shall accrue from the date of receipt of billing through the date paid. The interest rate is the rate established by the Treasury Department pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

136. All payments to EPA under this Section shall be made by Electronic Funds Transfer (EFT), in accordance with EFT instructions provided by EPA, or by certified or cashiers check payable to the "EPA Hazardous Substance Superfund," referencing the Site ID No. 10CA, the docket number of this Settlement Agreement, and the name and address of the party making

the payment. Respondent shall send copies of each transmittal letter and check to the EPA Project Coordinator and shall deliver the checks to the following address:

Mellon Client Services Center
EPA Region 10
500 Ross Street
P.O. Box 360903M
Pittsburgh, PA 15251-6903

137. The total amount of payments by Respondent pursuant to this Section shall be deposited in the Anchorage Terminal Reserve 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.

138. Respondent agrees to limit any disputes concerning costs to accounting errors, the inclusion of costs outside the scope of this Settlement Agreement, and Respondent's determination that EPA has incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Any disputes regarding payment of costs shall be governed by the resolution procedures of Section XVII of this Settlement Agreement. Respondent shall identify any contested costs and the basis of its objection. Respondent shall pay all undisputed costs as set forth above. Respondent shall pay all disputed costs into an escrow account while the dispute is pending and shall bear the burden of establishing the grounds listed above for disputing these costs.

XXVII. MODIFICATION

139. This Settlement Agreement may only be modified by mutual agreement of EPA and Respondent. Any agreed modifications, including all changes to work and schedules, shall

be in writing, be signed by both Parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this Settlement Agreement.

140. Any requests for a compliance date modification or revision of an approved work plan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or work plan revision. EPA has no obligation to approve such requests, but if it does so, such approval must be in writing. Any approved compliance date or work plan modification shall be incorporated by reference into this Settlement Agreement.

XXVIII. SEVERABILITY AND INTEGRATION

141. If any provision or authority of this Settlement Agreement or the application of this Settlement Agreement to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Settlement Agreement shall remain in force and shall not be affected thereby.

142. This Settlement Agreement and its attachments constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XXIX. TERMINATION AND SATISFACTION

143. The provisions of this Settlement Agreement shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment"). EPA will prepare the **ALASKA RAILROAD CORPORATION – ANCHORAGE TERMINAL RESERVE ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT MODIFICATION NO. 1**

Acknowledgment for Respondent’s signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Settlement Agreement, including any additional tasks determined by EPA to be required pursuant to this Settlement Agreement, have been satisfactorily completed. Respondent’s execution of the Acknowledgment will affirm Respondent’s continuing obligation (1) to preserve all records, and (2) to recognize EPA’s reservation of rights, in accordance with these respective sections of the Settlement Agreement after the rest of the Settlement Agreement is satisfactorily completed.

XXX. SUBMITTAL SUMMARY

144. The following is a summary of the major deadlines required by this Settlement Agreement. To the extent that this Section is inconsistent with any other Section of the Settlement Agreement, such other Section and not this summary shall apply.

<u>Section</u>	<u>Action</u>	<u>Due Date</u>
XXV	Submit financial assurance documentation	30 days from effective date
SOW	Benthic report and proposal	15 days of effective date
2.2.2.1		
IX	Submit Interim Action Report	60 days from effective date
SOW	Northern boundary investigation work	60 days of effective date
2.2.2.2	plan	
IX	Submit Site Background Report	110 days from effective date
IX	Submit RI/FS Work Plan	90 days from EPA approval of Site Background Report

IX	Notify EPA of new information concerning potential threats	Oral notice within 48 hours of discovery, written notice within 7days
IX	Submit draft RI and FS reports	As scheduled in approved work plans
IX	Submit final RI and FS reports	30 days after final EPA comments
IX	Conduct Interim Actions	On-going as appropriate
XI	Submit progress reports	First Friday of each month
IX	Implement approved work plans	Upon notice of EPA approval
XI	Notify EPA of proposed contractors or consultants	7 days of effective date
XII	Notify EPA before engaging in field activities	At least 10 days before activities scheduled to commence

XXXI. EFFECTIVE DATE

145. The undersigned signatory for Respondent certifies that he or she is fully authorized to execute and legally bind Respondent to the terms and conditions of this Settlement Agreement.

146. This Settlement Agreement shall be effective when it has been signed by both Respondent and EPA.

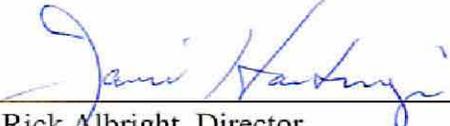
IT IS SO AGREED:

Date: 05/17/04

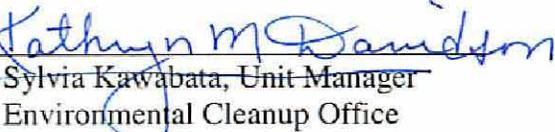
By: 
FOR Patrick K. Gamble
President and CEO
Alaska Railroad Corporation

IT IS SO ORDERED:

Date: 6/29/04

By: 
for Rick Albright, Director
Office of Waste and Chemicals Management
United States Environmental Protection Agency
Region 10

Date: 6/29/04

By: 
~~Sylvia Kawabata, Unit Manager~~
Environmental Cleanup Office
United States Environmental Protection Agency
Region 10
Kathryn M. Davidson,
Acting Director