

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF:)
)
MOTOROLA 52nd STREET SUPERFUND SITE)
OPERABLE UNIT 3)
)
Honeywell International Inc. and)
Arizona Public Service Company,)
)
)
RESPONDENTS)
)
Proceeding Under Sections 104, 107, 122(a),)
and 122(d)(3) of the Comprehensive)
Environmental Response, Compensation,)
and Liability act as amended)
(42 U.S.C. §§ 9604, 9607, 9622(a),)
9622(d)(3)).)
_____)

U.S. EPA Region IX
Docket No. 2008-17

ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

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I. INTRODUCTION

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and Honeywell International Inc. (“Honeywell”) and Arizona Public Service Company (“APS”). Honeywell and APS are hereinafter referred to collectively as “Respondents.” The Settlement Agreement concerns the preparation and performance of, and reimbursement for future costs incurred by EPA in connection with the final phases of field work for a Remedial Investigation and Feasibility Study (“RI/FS”) and the preparation of an RI/FS Report for groundwater contamination in Operable Unit 3 (“OU3”) of the Motorola 52nd Street Superfund Site in Phoenix, Arizona.

II. JURISDICTION AND GENERAL PROVISIONS

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, 9622(a), 9622(d)(3) (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926, further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-c, and further re-delegated to Region IX Superfund Branch Chief level by the Regional Administrator of Region IX on September 25, 1997.

3. Respondents agree to undertake all actions required by the terms and conditions of this Settlement Agreement. In any action by EPA or the United States to enforce the terms of this Settlement Agreement, Respondents consent to and agree not to contest the authority or jurisdiction of the Superfund Assistant Director to issue or enforce this Settlement Agreement, and agree not to contest the validity of this Settlement Agreement or its terms.

4. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the Arizona Department of Environmental Quality, Arizona Game and Fish Department, U.S. Department of Defense, U.S. Department of Interior, National Oceanic and Atmospheric Administration, and U.S. Department of Agriculture on September 3, 2003, and the U.S. Department of Energy on October 3, 2003 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and state trusteeship.

III. PARTIES BOUND

5. This Settlement Agreement shall apply to and be binding upon EPA and shall be binding upon Respondents, their agents, successors, assigns, officers, directors, and principals. Respondents are responsible for carrying out all actions required of them by this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he/she is authorized to execute and legally bind the party he/she represents to this Settlement Agreement. No change in the ownership or corporate status of Respondents shall alter Respondents' responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement.

7. Respondents shall provide a copy of this Settlement Agreement to any of Respondents' subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Settlement Agreement to all contractors, subcontractors, and consultants that are retained to conduct any work performed under this Settlement Agreement, within fourteen (14) days after the Effective Date of this Settlement Agreement or the date of retaining their services, whichever is later.

Respondents shall condition any such contracts upon satisfactory compliance with this Settlement Agreement. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Settlement Agreement and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents, and attorneys comply with this Settlement Agreement.

IV. STATEMENT OF PURPOSE

8. In entering into this Settlement Agreement, the objectives of EPA and Respondents are (a) for Respondents to conduct the work set forth in the Statement of Work (attached hereto as Appendix A) (“SOW”) and (b) for EPA to recover Future Response Costs it incurs with respect to the Respondents’ implementation of the SOW and with respect to this Settlement Agreement. The purposes of the SOW include (a) performance of certain investigative field activities to further determine the nature and extent of groundwater contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants in groundwater at or from the OU3 RI/FS Site; (b) preparation and submission of a Remedial Investigation Report (“RI”) concerning the nature and extent of groundwater contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants in groundwater at or from the OU3 RI/FS Site, as determined in the various groundwater investigations at the OU3 RI/FS Site; and (c) preparation and submission of a Feasibility Study Report (“FS”) that identifies and evaluates alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or

contaminants in groundwater at or from the OU3 RI/FS Site, and which also includes conduct of a treatability study, if appropriate.

9. The activities conducted under this Settlement Agreement are subject to approval by EPA and shall provide all appropriate and necessary information to assess OU3 conditions and evaluate alternatives to the extent necessary to select a remedy for OU3 that is consistent with CERCLA and the National Contingency Plan (“NCP”), 40 C.F.R. Part 300. This Settlement Agreement is not intended to require Respondents to perform RI/FS work for the West Van Buren WQARF Site. The activities conducted under this Settlement Agreement shall be conducted in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures.

V. DEFINITIONS

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

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

b. “Day” shall mean a calendar day. 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 close of business of the next working day.

c. “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXXII (Effective Date).

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

e. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, not inconsistent with the NCP, that EPA incurs after the Effective Date of this Settlement Agreement in connection with the Respondents’ implementation of the requirements of this Settlement Agreement, including but not limited to 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, the costs incurred pursuant to Paragraph 52 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 32 (emergency response), and Paragraph 84 (work takeover).

f. “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.

g. For purposes of this Settlement Agreement, “Motorola 52nd Street Superfund Site” or “Site” shall mean Operable Units 1, 2, and 3 of the Motorola 52nd Street Superfund Site, located within the approximate boundaries of 52nd Street to the east, 7th Avenue to the west, McDowell Road to the north, and Buckeye Road to the south, and depicted generally on the map, attached as Appendix B.

h. “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.

i. For purposes of this Settlement Agreement, “Operable Unit 3” or “OU3” shall mean that portion of the Motorola 52nd Street Superfund Site that is bordered generally by McDowell Road to the north, 20th Street to the east, Buckeye Road to the south, and 7th Avenue to the west, but not that area west of 3rd Avenue and south of Buchanan Street.

j. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. “Parties” shall mean EPA and Respondents.

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

m. “Respondents” shall mean Honeywell International Inc. and Arizona Public Service Company.

n. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto listed in Section XXX (Severability/Integration/Appendices), and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any Appendix, this Settlement Agreement shall control.

p. “OU3 RI/FS Site” shall mean the geographical locations where the Work is conducted in OU3 under this Settlement Agreement.

q. “Statement of Work” or “SOW” shall mean the Statement of Work attached as Appendix A to this Settlement Agreement. The SOW is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

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

s. “Work” shall mean all activities Respondents are required to perform in OU3 under this Settlement Agreement and the SOW.

VI. FINDINGS OF FACT

11. The Motorola 52nd Street Superfund Site is located in Phoenix, Arizona and was listed on the EPA Superfund National Priorities List (“NPL”) on October 4, 1989, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. Releases of hazardous substances, primarily volatile organic compounds such as trichloroethylene (“TCE”), tetrachloroethylene (“PCE”), and 1, 1, 1 trichloroethane (“TCA”), from various facilities have contributed to the groundwater contamination at the Motorola 52nd Street Superfund Site. Response activities have been conducted in three operable unit study areas. Under the oversight of EPA and the Arizona Department of Environmental Quality (“ADEQ”), Freescale Semiconductor, Inc. (“Freescale”) and Respondent Honeywell are implementing response actions in Operable Units 1 and 2 (“OU1” and “OU2”, respectively). The sources, nature, and extent of contamination in

12. The Motorola 52nd Street Superfund Site was originally listed on the NPL following the discovery of contaminant releases to groundwater from the Motorola Semiconductor Products Sector Plant (“Motorola Facility”), located at 5005 East McDowell Road, in Phoenix, Arizona. The Motorola Facility was owned and operated by Motorola from 1956 until 1999. In 2004, Motorola spun off its semiconductor business to Freescale.

13. As part of its electronics manufacturing operation at the Motorola Facility, Motorola used solvents, including TCE and TCA, to clean and degrease parts and equipment. Motorola disposed of these solvents at the Motorola Facility. In 1982, Motorola discovered a leaking 5,000 gallon underground storage tank containing TCA at its facility. A preliminary investigation of soil and groundwater contamination also revealed releases of TCA and other VOCs. The Remedial Investigation for OU1 identified twenty-five (25) potential source areas at the Motorola Facility. Motorola and ADEQ have conducted significant amounts of groundwater sampling at and downgradient from the Motorola Facility. In 1991, TCE was detected in groundwater at the Site at levels up to 4,100,000 parts per billion (“ppb”) and TCA was detected at levels up to 271,000 ppb. Releases of these solvents from the Motorola Facility have contributed to the groundwater contamination within OU2.

14. The Honeywell International facility (“Honeywell Facility”), located at 111 South 34th Street, has been owned by Respondent Honeywell and its predecessors (including the AiResearch Manufacturing Company, the Garrett Corporation, the Garrett Turbine Engine Company, and AlliedSignal Inc.) since 1952. In 1999, Respondent Honeywell merged with AlliedSignal Corporation. Honeywell is a Delaware corporation doing business

in Phoenix, Arizona. The Honeywell Facility occupies approximately 118 acres. Since 1975, Honeywell has manufactured, repaired, overhauled and tested equipment, turbines, and motors for aircraft engines and ancillary equipment at the facility. The operations at the Honeywell Facility have included the use of a variety of chemicals for degreasing and plant maintenance, including TCE and TCA, and TCE as a heat transfer medium for cooling engine test facilities. An estimated 10,000,000 pounds of TCE and 16,000,000 pounds of TCA were purchased for use at the facility between 1952 and 1995. The 2006 Remedial Investigation for the Honeywell Facility identified several historic potential source areas throughout the Honeywell Facility, including various degreasers, drywells, and sumps, as well as spills in the chemical storage areas, dispensing drum racks, loading and transfer operations, satellite drum accumulation areas, recycling stills, plating shops, outdoor engine test stands, drywells, floor drains, sewers, stormwater drains, discharge wells, and ditches. Releases of these solvents from the Honeywell Facility have contributed to the groundwater contamination within OU2 of the Motorola 52nd Street Superfund Site.

15. Groundwater samples collected from monitoring wells at and downgradient from the Honeywell Facility contain elevated levels of TCE; cis-1,2-dichloroethylene (“cis-1,2 DCE”); TCA; 1,1 dichloroethylene (“1, 1 -DCE”); and vinyl chloride (“VC”) contamination. Since 1992, groundwater data has been collected which shows elevated concentrations of chlorinated solvents underlying the Honeywell Facility. Analytical results of these groundwater samples show levels of TCA up to 40,000 ppb; 10,000 ppb of 1,1 dichloroethane (“1,1-DCA”); 4,800 ppb of 1,1-DCE; 500 ppb of TCE; 230 ppb of cis-1, 2-DCE, and 1,300 ppb of VC at the Honeywell Facility or immediately downgradient of the Honeywell Facility.

16. The City of Phoenix owns and has owned a portion of the property on which the Honeywell Facility is located. In 1952, Honeywell leased a portion of the Honeywell Facility from the City of Phoenix. Honeywell subsequently either acquired or leased additional property to comprise the current boundaries of the 34th Street Honeywell Facility.

17. Groundwater contaminated with VOCs from the Motorola and Honeywell Facilities as well as other potential sources within OU1 and OU2 commingle and flow westward into OU3, where it commingles with contamination from sources within OU3.

18. Respondent APS owns and operates a facility within OU3, located at 505, 502, 501 South Second Avenue in Phoenix, Arizona (“APS Facility”). APS is an Arizona corporation doing business in Phoenix, Arizona. Since at least 1954, portions of the APS Facility have been used for electrical services, including a maintenance facility containing a vehicle repair garage, paint and carpentry shops, and other operation support functions. The APS Facility used VOCs, including PCE, TCE, and TCA in the maintenance area. Solvents and products containing solvents were used to clean and lubricate equipment, repair tires, decal removal, brake cleaning, adhesion, and degreasing. In 1991, PCE was detected at 44 milligrams per kilogram (“mg/Kg”) in one soil sample. In a 1992 soil gas survey, PCE was detected in numerous soil gas samples. In 1999, PCE was detected in soil gas up to 100 ppb. Soil gas sampling conducted in 2005, 2006, and 2007 detected up to 42 ppb of PCE and 62 ppb of TCE. Since 1997, groundwater concentrations up to 9.4 ppb of TCE have been detected in groundwater monitoring wells at the APS Facility.

19. The groundwater within OU3 is contaminated with VOCs including TCE, PCE and VOC degradation by-products, cis-1,2-dichloroethylene (cis-1,2-DCE) and 1,1-

DCE, and VC, above the federal and state drinking water standards. 1,1,1-TCA and its degradation by-products 1,1-DCA, VC, and chloroethane (“CE”) have also been detected.

VII. CONCLUSIONS OF LAW AND DETERMINATIONS

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

21. TCE, TCA, and PCE found at the Site, as identified in the Findings of Fact, above, are “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute “any pollutant or contaminant” that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

22. The presence of hazardous substances at the Site or the past, present, or potential future migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened “releases” as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

23. Respondents are each a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

24. Respondents are current owners and/or operators of facilities within the Motorola 52nd Street Superfund Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) or (2) of CERCLA, 42 U.S.C. § 9607(a)(1) or (2), and are each responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

25. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest are consistent

26. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

VIII. SETTLEMENT AGREEMENT AND ORDER

27. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for the Motorola 52nd Street Superfund Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

IX. WORK TO BE PERFORMED

28. Selection of Contractors, Personnel. All work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the Effective Date of this Settlement Agreement, and before the work outlined below begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National

Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

29. Activities and Deliverables. Respondents shall conduct activities and submit deliverables as provided by the attached SOW, which is incorporated by reference, and is binding upon Respondents. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive #9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, as well as guidance referenced in the SOW, as may be amended or modified by EPA. All work performed under the Settlement Agreement shall be in accordance with the schedules in the SOW, and in full accordance with the standards, specifications, and other requirements of the Health and Safety Plan and the Work Plan, Field Sampling Plan, and Quality Assurance Project Plan, as initially approved or modified by EPA, as may be amended or modified by EPA from time to time.

30. As set forth in paragraph 84 of this Settlement Agreement, EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any tasks, activities or deliverables required by this Settlement Agreement.

31. Off-Site Shipments of Waste Material. Respondents shall, fourteen (14) days 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 shipment requirements shall not apply to any such off-site shipments when the total volume of such shipments will not exceed ten (10) cubic yards. The notification 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. Respondents 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. Prior to shipping any hazardous substances, pollutants, or contaminants (as those terms are defined in Section 101 of CERCLA) from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

32. Emergency Response and Notification of Releases. In the event of conditions posing an immediate threat to human health or welfare or the environment at the OU3 RI/FS Site, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the

Regional Duty Officer at (415) 947-4400, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP in the manner described in Section XXI (Payment of Response Costs).

33. In addition, in the event of any release of a hazardous substance from the OU3 RI/FS Site, Respondents shall immediately notify the EPA Project Coordinator or Regional Duty Officer at (415) 947-4400, and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, 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 of 1986, 42 U.S.C. §§ 11004, *et seq.*

X. MODIFICATION OF THE RI/FS WORK PLAN

34. If at any time during the RI Field Activities process, Respondents identify a need for additional data, Respondents shall submit a technical memorandum documenting the need for additional data to the EPA Project Coordinator within twenty (20) days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

35. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the SOW. EPA may require that the Respondents

perform such response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete RI/FS. Respondents shall confirm their willingness to perform the additional work in writing to the EPA within ten (10) days of receipt of the EPA request or Respondents shall invoke Dispute Resolution. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks that EPA determines are necessary. Respondents shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan, or any written Work Plan supplement. As set forth in paragraph 84 of this Settlement Agreement, EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and or to seek any other appropriate relief. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

36. In the event of unanticipated or changed circumstances at the OU3 RI/FS Site, Respondents shall notify the EPA Project Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. Respondents shall perform the Work Plan as modified or amended.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, EPA shall: (a) approve, in

whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondents at least one written notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, as set forth in paragraph 37 above, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission in accordance with the procedures set forth in paragraph 37, above, to cure the deficiencies and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XIX (Stipulated Penalties). Pursuant to Paragraphs 82 and 84 of this Settlement Agreement, EPA also retains the right to perform its own studies, complete the SOW (or any portion thereof) under CERCLA and the NCP, and seek reimbursement from Respondents for its costs, and/or seek any other appropriate relief.

39. Resubmission of Plans.

a. Upon receipt of a written notice of disapproval, Respondents shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval.

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

c. In the event that a resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again require Respondents to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report, or other item. Respondents shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

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

40. In the event that EPA takes over some of the tasks, but not the preparation of any report required under the SOW, Respondents shall incorporate and integrate information supplied by EPA into the final reports.

41. All plans, reports, and other items required to be submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other item in accordance with the procedures set forth in Paragraph 38 that is required to be submitted to EPA under this Settlement Agreement, the approved or modified portion shall be enforceable under this Settlement Agreement.

XII. QUALITY ASSURANCE

42. Respondents shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan (QAPP), and guidance identified therein. Respondents shall assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories that have a documented quality system that complies with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

XIII. PROGRESS REPORTS AND MEETINGS

43. Respondents shall, upon receiving reasonable notice, and until completion of the Work, make presentations at, and participate in, meetings at the request of EPA.

44. Respondents shall provide to EPA periodic progress reports as required in Section 5.0 of the SOW.

XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

45. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on Respondents' behalf, pursuant to implementation of this Settlement Agreement, shall be submitted to EPA in the subsequent progress report as described in Section XIII of this Settlement Agreement (Progress Reports and Meetings).

46. Respondents shall notify EPA in writing at least fourteen (14) days prior to conducting significant field events as described in the SOW. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondents in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

47. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all areas of the OU3 RI/FS Site where Work, if any, is being performed for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the OU3 RI/FS Site or Respondents and their contractor pursuant to this Settlement Agreement; reviewing the progress of the Respondents in carrying out the terms of this Settlement Agreement; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device, or other documentary type equipment; and verifying the data submitted to EPA by Respondents. Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Settlement Agreement, in accordance with paragraph 50 below. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority

under federal law. All parties with access to the OU3 RI/FS Site under this paragraph shall comply with all approved health and safety plans. EPA shall provide notice to the Respondents of entry and inspection. If EPA or its representatives take samples as part of EPA's oversight of the Respondents' implementation of the Work, EPA shall provide the results of such sampling, including raw data, to the Respondents. EPA shall provide notice to the Respondents of its intention to take samples. Upon request, EPA shall allow the Respondents to take split or duplicate samples of any samples that EPA or its representatives take as part of the EPA's oversight of Respondents' implementation of the Work.

48. Respondents may assert claims of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Settlement Agreement under 40 C.F.R. § 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604 (e)(7). These claims shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondents assert business confidentiality claims.

49. Respondents may assert that certain documents, records, or other information are privileged under the attorney-client or any other privilege recognized by federal or state law.

50. Respondents agree not to assert confidentiality claims with respect to any documents, reports, or other information created or generated pursuant to the requirements

of this Settlement Agreement or to make any claim of confidentiality or privilege with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

51. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the ADEQ, or Respondents in the performance or oversight of the work that have been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement Agreement or any EPA-approved work plans or sampling and analysis plans. If Respondents object to such data, Respondents shall submit to EPA a report that identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within thirty (30) days of the initial submission of Respondents' validated data, or within thirty (30) days of Respondents' receipt of EPA or ADEQ data.

52. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. If Respondents cannot obtain access agreements, EPA may (i) obtain access for Respondents or assist Respondents in gaining access, to the extent necessary

XV. DESIGNATED PROJECT COORDINATORS

53. Documents including reports, approvals, disapprovals, and other correspondence that must be submitted under this Settlement Agreement, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondents and EPA designate in writing:

a. Respondents shall send copies of all documents to be submitted to EPA's Project Coordinator as identified below:

2 hard copies and 1 electronic copy to:

Janet Rosati
Remedial Project Manager
Superfund Division (SFD-6-2)
US EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Rosati.Janet@epa.gov

Respondents shall also send copies of all documents submitted to EPA to:

1 hard copy, 3 electronic copies to:

Joellen Meitl
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007-2935
Meitl.Joellen@azdeq.gov

1 electronic copy to:

James Maes
US Army Corps of Engineers
3636 No. Central Avenue, Suite 900
Phoenix, Arizona 85012

2 hard copies and 1 electronic copy to:

Sue Kraemer
Shaw Environmental, Inc.
1326 N. Market Street
Sacramento, CA 95834-1912
Sue.Kraemer@shawgrp.com

EPA will send 1 hard copy and 1 electronic copy of all documents to the Respondents' Project Coordinator as follows:

David Abranovic
ERM
7272 E. Indian School Road, Suite 100
Scottsdale, AZ 85251
davidabranovic@erm.com

EPA will also send 1 hard copy and 1 electronic copy of all documents submitted to Respondents' Project Coordinator to the following:

Troy J. Kennedy
Remediation Portfolio Director
Honeywell International Inc.
101 Columbia Road
Sol-4
Morristown, New Jersey 07962
troy.j.meyer@honeywell.com

Judith Heywood
Arizona Public Service Company
400 North 5th Street, M.S. 8376
Phoenix, Arizona 85004
Judith.Heywood@aps.com

54. Within fifteen (15) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during OU3 RI/FS Site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications with thirty (30) days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA fifteen (15) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondents.

55. Each Project Coordinator shall be responsible for overseeing the implementation of this Settlement Agreement. To the maximum extent possible, communications between the Respondents and EPA shall be directed to each Project Coordinator by mail, with copies to such other persons as EPA and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Settlement Agreement.

56. EPA and Respondents each have the right to change their respective Project Coordinator. EPA and Respondents also have the right to change the number of copies

of documents required pursuant to this Settlement Agreement. The other parties must be notified in writing at least ten (10) days prior to the change.

57. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

XVI. COMPLIANCE WITH OTHER LAWS

58. Respondents shall comply with all local, state, and federal laws that are applicable when performing the SOW. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with Section 121 of CERCLA and the applicable portions of the NCP. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVII. RETENTION OF RECORDS

59. During the pendency of this Settlement Agreement and for a minimum of ten (10) years after commencement of construction of any remedial action, each Respondent

shall preserve and retain all non-identical copies of documents, records and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the OU3 RI/FS Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the commencement of construction of any remedial action, Respondents shall also instruct their contractors and agents to preserve all documents, records and other information of whatever kind, nature, or description relating to the performance of Work at the OU3 RI/FS Site. After this ten (10) year period, Respondents shall notify EPA at least ninety (90) days before the documents, records, or other information are scheduled to be destroyed. If EPA requests that the documents be saved, Respondents shall, at no cost to EPA, deliver any such documents, records, or other information to EPA. Respondents may assert that certain documents, records or other information are privileged under the attorney-client or any other privilege recognized by federal or state law. If Respondents assert such a privilege, they shall provide EPA with the following: i) the title of the document, record, or other information; (ii) the date of the document, record, or other information; (iii) the name and title of the author of the document, record, or other information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or other information; and (vi) the privilege asserted by Respondents. However, no documents, records, or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

60. Each Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise

disposed of any records, documents, or other information (other than exactly identical copies) relating to their potential liability regarding the OU3 RI/FS Site or the Motorola 52nd Street Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(3) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVIII. DISPUTE RESOLUTION

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

62. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within ten (10) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have ninety (90) days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

63. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents'

obligations under this Settlement Agreement that are not directly in dispute shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance either with the agreement reached or with EPA's decision.

XIX. STIPULATED PENALTIES

64. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in this Section for failure to comply with the requirements of this Settlement Agreement specified below unless excused under Section XX (Force Majeure). "Compliance" by Respondents shall include completion of the activities identified in this Settlement Agreement, the SOW, or other plan approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

65. Stipulated Penalty Amounts - Major Deliverables

a. The following stipulated penalties shall accrue per day for any failure to submit any of the items listed in subsection (b) in a timely fashion and/or free of material deficiency:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1 st through 14 th day
\$ 5,000	15 th through 30 th day
\$ 10,000	31 st day and beyond

b. Compliance Milestones

1. Draft and Final RI/FS Work Plan (SOW Section 2)
2. Draft and Final Field Sampling Plan (SOW Section 3.1)
3. Draft and Final Quality Assurance Project Plan (SOW Section 3.1)
4. Site Health and Safety Plan (SOW Section 3.2)
5. Draft and Final Groundwater Well Installation Report (SOW Section 4.3)
6. Draft and Final Groundwater Monitoring Reports (SOW Section 4.4)
7. Draft and Final Soil Vapor Monitoring Well Installation Report (SOW Section 4.6)
8. Draft and Final Soil Vapor Monitoring Report (SOW Section 4.7)
9. Draft and Final Aquifer Test Report (SOW Section 4.8)
10. Draft and Final In-Situ Treatability Study Technical Memorandum (SOW Section 4.9)
12. Draft and Final Bench Scale Treatability Study Report (SOW Section 4.10)
13. Notification of Initiation of Field Work (SOW Section 5.1)
14. Notification of Completion of Field Work (SOW Section 5.1)
15. Draft and Final OU3 Remedial Investigation Report (SOW Section 10.0)
16. Draft and Final Groundwater Baseline Risk Assessment (SOW Section 11.0)
17. Draft and Final OU3 Feasibility Study Report (SOW Section 12.0)

66. Stipulated Penalty Amounts - Other Reporting.

a. The following stipulated penalties shall accrue per day for any failure to submit any of the items listed in subsection (b) in a timely fashion and/or free of material deficiency:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000.00	1 st through 14 th day
\$ 2,000.00	15 th through 30 th day
\$ 4,000.00	31 st day and beyond

b. Compliance Milestones

The compliance milestones for this subsection are as follows:

1. Weekly Progress Reports (SOW Section 5.2)
2. Monthly Progress Reports (SOW Section 5.3)

67. For any failure to perform any other Work required by this Settlement Agreement, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first fourteen (14) days of noncompliance, \$1,000 per day, per violation, for days fifteen (15) through thirty (30), and in the amount of \$2,000 per day, per violation, thereafter. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 of Section XXIII (Reservation of Rights by EPA), Respondents shall be liable for a stipulated penalty in the amount of two hundred thousand dollars (\$200,000).

68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA

Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (2) with respect to a decision by the EPA Management Official at the Assistant Director level or higher, under Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

70. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-1000

At the time of payment, Respondents shall indicate that the payment is for stipulated penalties, and shall reference EPA Region IX and the Site/Spill ID Number 09BE, the EPA docket number 2008-17, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to EPA's Project Coordinator.

71. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

72. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

73. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of EPA's demand.

74. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9722(1), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XX. FORCE MAJEURE

75. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

76. 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, Respondents shall notify by telephone the Project Coordinator or, in his or her absence, EPA's Chief of the Superfund Arizona and Navajo Site Section ("Section Chief), within forty-eight (48) hours of when the Respondents knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Respondents shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure*.

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

XXI. PAYMENT OF RESPONSE COSTS

78. Payment for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment, including, but not limited to EPA's certified Agency Financial Management System summary data (SCORES Reports), or such other summary as certified by EPA. Respondents shall make all payments within forty-five (45) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 80 of this Settlement Agreement. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, OU3 RI/FS Site and the name of the Motorola 52nd Street Superfund Site, EPA Region IX, Site/Spill ID Number 09BE, and the EPA docket number 2008-17.

Respondents shall send the check(s) to:

US Environmental Protection Agency Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Alternatively, Respondents may make payments required by this Paragraph by Electronic Funds Transfer (“EFT”) in accordance with EFT procedures to be provided to Respondents by EPA Region IX, and shall be accompanied by a statement identifying the name and address of the party making payment, OU3 RI/FS Site and the name of the Motorola 52nd Street Superfund Site, the EPA Region (Region 9), Site/Spill ID Number 09BE, and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that payment has been made to the EPA Project Coordinator.

c. The total amount to be paid by Respondents pursuant to Subparagraph 79.a shall be deposited in the Motorola 52nd Street Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Motorola 52nd Street Superfund Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

79. In the event that the payments for Future Response Costs are not made within forty-five (45) days of Respondents’ receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents’ failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XIX

(Stipulated Penalties). Respondents shall make all payments required by this Paragraph in the manner described in Subparagraph 78.a.

80. Respondents may contest payment of any Future Response Costs if they determine that EPA has made an accounting error, the costs are not Future Response Costs, or the costs are inconsistent with the NCP. Such objection shall be made in writing within forty-five (45) days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested cost(s) and the basis for objection. In the event of an objection, Respondents shall within the forty-five (45) day period pay all uncontested Future Response Costs to EPA in the manner described in Subparagraph 78.a. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Arizona and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Subparagraph 78.a. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Subparagraph 78.a. Respondents

shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XXII. EPA COVENANT

81. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant shall take effect on the date that this Settlement Agreement is signed by EPA. This covenant is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XXI (Payment of Response Costs). This covenant extends only to Respondents and does not extend to any other person.

XXIII. RESERVATIONS OF RIGHTS

82. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement

Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

83. The covenant not to sue set forth in Section XXII (EPA Covenant) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site that are not paid by Respondents as Future Response Costs.

84. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an

endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XXI (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. RESPONDENTS' COVENANT

85. Except for claims against the United States Air Force, specifically and exclusively with respect to the Air National Guard Facility located at 3200 East Old Tower Road in Phoenix, Arizona, and recognizing that the United States does not acknowledge any such claims, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to;

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

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

87. By signing this Settlement Agreement and taking actions under this Settlement Agreement, Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondents in this Settlement Agreement shall not be considered an admission of liability and is not admissible in evidence against the Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Settlement Agreement or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the Motorola 52nd Street Superfund Site. However, Respondents agree not to contest the validity or terms of this Settlement Agreement, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XXV. OTHER CLAIMS

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

89. Except as expressly provided in Section XXIII (Reservation of Rights) and Section XXII (EPA Covenant), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXVI. CONTRIBUTION PROTECTION

91.

a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for the purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or other applicable law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, and Future Response Costs. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not a party to this Settlement Agreement for indemnification, contribution, or cost recovery.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for the purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §

9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work and Future Response Costs.

XXVII. INDEMNIFICATION

92. Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

93. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages

or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site.

XXVIII. INSURANCE

94. At least fifteen (15) days prior to Notification of Initiation of Fieldwork as required by Section 5.1 of the SOW, Respondents shall secure and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance and automobile insurance with limits of two million dollars, combined single limit, naming the United States as an additional insured. Within the same period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need to provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIX. FINANCIAL ASSURANCE

95. Respondents hereby represent that, collectively, they have the financial ability to perform the Work required hereunder. If the financial ability of any Respondent or Respondents changes, such that the previous sentence may no longer be accurate, Respondents shall immediately notify EPA. If EPA determines that the financial certification and/or the

financial assurances provided pursuant to this Section are inadequate, Respondents shall, within thirty (30) days of receipt of EPA's determination, obtain and present to EPA for approval one of the forms of financial assurance listed below, for the establishment and maintenance of financial security for the benefit of EPA in the amount of One Million Dollars (\$1,000,000.00) or such amount as may be appropriate, in EPA's discretion, in light of the estimated cost of the Work then remaining:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondents, or by one or more unrelated corporations that have a substantial business relationship with Respondents; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. a corporate guarantee to perform the Work by Respondents, including a demonstration that Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

96. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instruments evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 95 above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

97. Should Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 95.e or 95.f of this Settlement Agreement, Respondents shall (a) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (b) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) to EPA annually on the anniversary of the Effective Date. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the cost estimate for the Work as identified in the RI Work Plan (section 2.0 of the SOW) and FS Work Plan (section 12.0 of the SOW) shall be used in relevant financial test calculations.

98. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, the result of which includes a diminished estimated cost to complete the remaining work, Respondents may reduce the amount of security in accordance with the written decision resolving the dispute.

99. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXX. SEVERABILITY/INTEGRATION/APPENDICES

100. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

101. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among 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. The following Appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” is the SOW.

“Appendix B” is the map of the Motorola 52nd Street Superfund Site.

XXXI. SUBSEQUENT MODIFICATION

102. The EPA Project Coordinator may make modifications to any plan or schedule or SOW in accordance with this Settlement Agreement, in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator’s oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

103. If Respondents seek permission to deviate from any approved Work Plan or schedule or SOW, Respondents’ Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator.

104. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXXII. ADMINISTRATIVE RECORD

105. EPA will determine the contents of the administrative record file for selection of the remedial action for OU3. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the response actions.

XXXIII. EFFECTIVE DATE

106. The effective date of this Settlement Agreement shall be the date it is signed by EPA.

XXXIV. NOTICE OF COMPLETION OF WORK

107. When EPA determines, after EPA's review of the RI/FS Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, EPA will provide written notice of completion of Work to Respondent.

Agreed this ____ day of _____, 2009

For Honeywell International Inc.:

By: _____

Title: _____

Agreed this ____ day of _____, 2009

For Arizona Public Service Company:

By: _____

Title: _____

For EPA:

Clancy Tenley
Assistant Director, Superfund Division
Partnerships, Land Revitalization, and Cleanup Branch
U.S. Environmental Protection Agency
Region 9

Date

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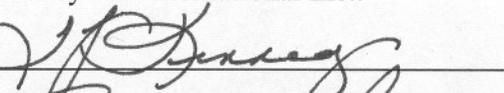
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Agreed this 30th day of August, 2009

For Honeywell International Inc.:

By:


Title: Remediation Portfolio Director

Agreed this 24th day of August, 2009

For Arizona Public Service Company:

By: 

Title: Vice President

For EPA:


Clancy Tenley
Assistant Director, Superfund Division
Partnerships, Land Revitalization, and Cleanup Branch
U.S. Environmental Protection Agency
Region 9

9/22/09
Date