

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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CITY OF LAS CRUCES and DOÑA)	
ANA COUNTY,)	
)	
Plaintiffs,)	CIVIL NO. 2:17-cv-00809 JCH-GBW
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
UNITED STATES DEPARTMENT OF)	
DEFENSE, and NATIONAL GUARD)	
BUREAU, THE LOFTS AT ALAMEDA)	
LLC; AMERICAN LINEN SUPPLY OF)	
NEW MEXICO, INC; RAWSON)	
LEASING LIMITED LIABILITY CO.;)	
CHISHOLM'S VILLAGE PLAZA)	
L.L.C.; and Does 1-5,)	
)	
Defendants.)	
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CONSENT DECREE

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I. BACKGROUND

A. On August 9, 2017, the City of Las Cruces (the “City”) and Doña Ana County (the “County”) (collectively “Settling Local Governmental Entities”) jointly filed a Complaint against the United States of America (“United States”), the United States Department of Defense and the National Guard Bureau (collectively, the “Settling Federal Defendants”), pursuant to Sections 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607, 9613(g), seeking recovery of past response costs incurred, contribution and a declaratory judgment for future response costs to be incurred in connection with response actions at the Griggs and Walnut Ground Water Plume Superfund Site, located in Las Cruces, Doña Ana County, New Mexico (“the Site”).

B. On November 14, 2017, the United States, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed counterclaims against the Settling Local Governmental Entities pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, seeking the recovery of costs incurred by the United States in connection with the Site and a declaratory judgment for future costs and for the continued performance of the response actions at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (“NCP”). The United States also filed on behalf of the Settling Federal Defendants a counterclaim for contribution against the Settling Local Governmental Entities under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f) for equitable allocation in the event the United States were to be found liable with respect to claims alleged by the Settling Local Governmental Entities.

C. On August 23, 2018, the Settling Local Governmental Entities amended their Complaint to add claims pursuant to CERCLA Section 107 and 113(f), 42 U.S.C. §§ 9607 and 9613(f), against entities alleged to be current and former owners and operators of area dry cleaners.

D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Mexico (the “State”) on July 28, 2010, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree. The State has elected not to participate in this settlement.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior (“DOI”) of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree. The DOI has elected not to participate in this settlement.

F. On June 14, 2001, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register, 66 Fed. Reg. 32,235.

G. On or about April 29, 2002, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA, with some of the funding provided by the Settling Local Governmental Entities, commenced a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430. EPA completed a Remedial Investigation (“RI”) Report and a Feasibility Study (“FS”) Report on November 21, 2006.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on December 1, December 4, and December 7, 2006, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Superfund and Emergency Management Division Director, EPA Region 6 based the selection of the response action.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on June 18, 2007, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

J. On October 15, 2009, EPA issued a unilateral administrative order styled *In re: Griggs and Walnut Ground Water Plume Superfund Site*, U.S. EPA Docket No. 06-05-09 (hereinafter the “Remedial Design Order”) to the Settling Local Governmental Entities. Pursuant to that order, the Settling Local Governmental Entities collectively developed a Remedial Design for the implementation of EPA’s remedy. Pursuant to a Modified Administrative Order for Remedial Action, issued May 17, 2011, and styled *In re: Griggs and Walnut Ground Water Plume Superfund Site*, U.S. EPA Docket No. 06-02-11, the Settling Local Governmental Entities collectively constructed a ground water extraction and treatment system to address the contaminated ground water. Following the construction of the treatment system, the Settling Local Governmental Entities have operated the system in an effort to reduce the PCE concentrations in the ground water.

K. In 2016, EPA completed its first five-year review of the remedial action. As part of that investigation, it determined that potential indoor air intrusion pathways warranted investigation, and in 2017, EPA initiated a two-phase investigation of those pathways. On September 25, 2019, at a community meeting for the Site, EPA stated that Phase 2 of the investigation found that “no contaminants exceeded health-based screening levels in indoor air samples” and that it would amend the 2016 five-year review to reflect these results.

L. On December 19, 2017, EPA issued a final unilateral administrative order (“UAO”) to the Settling Local Governmental Entities for the operation and maintenance (“O&M”) of the remedial action, styled *In re: Griggs and Walnut Ground Water Plume Superfund Site*, U.S. EPA Docket No. 06-05-17 (hereinafter the “O&M UAO”). This O&M UAO requires the Settling Local Governmental Entities to perform Pre-Achievement O&M of the extraction and treatment system until Performance Standards—including remedial action objectives and remediation goals described in the ROD—are met. In particular, as provided in

the ROD, Pre-Achievement O&M must continue until PCE concentrations in the ground water meet the Maximum Contaminant Level (“MCL”) established under the Safe Drinking Water Act, 42 U.S.C. §§ 300f – 300j-26. Those requirements were set forth in a Statement of Work attached to the O&M UAO, as Appendix B (“the UAO SOW”). In addition, the UAO SOW requires the Settling Local Governmental Entities to undertake Post-Achievement O&M to ensure the continued effectiveness of the remedy.

M. The settlement embodied in this Consent Decree requires the Settling Local Governmental Entities to continue to perform the work set forth in the UAO SOW as modified herein and to make required payments to EPA for Past Response Costs and Future Response Costs, as described herein. The modified UAO SOW is incorporated into this Consent Decree as Appendix B (Statement of Work). This Consent Decree also requires the United States, on behalf of the Settling Federal Defendants, to make payments to the Settling Local Governmental Entities as provided herein.

N. The Settling Federal Defendants that have entered into this Consent Decree do not admit any liability to the Settling Local Governmental Agencies arising out of the transactions or occurrences alleged in the amended complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The Settling Local Governmental Entities that have entered into this Consent Decree do not admit any liability to the United States arising out of the transactions or occurrences alleged in the counterclaims or complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Settling Local Governmental Entities do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the United States.

O. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Local Governmental Entities if conducted in accordance with the requirements of this Consent Decree and its appendices.

P. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by the Settling Local Governmental Entities shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

Q. The EPA, the Settling Local Governmental Entities, and the Settling Federal Defendants (collectively, “the Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Local Governmental Entities and the Settling Federal Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Local Governmental Entities and the Settling Federal Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Local Governmental Entities and the Settling Federal Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the Parties and their successors and assigns. Any change in political organization, ownership or corporate status of either of the Settling Local Governmental Entities including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Local Governmental Entity's responsibilities under this Consent Decree.

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

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

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

“Consent Decree” or “CD” shall mean this consent decree and all appendices attached hereto (listed in Section XXVI). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

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

"Deliverable" shall mean any action, activity, task, or submission (as defined below) required to be done by the Settling Local Governmental Entities under this Consent Decree. A Deliverable is Work. A Deliverable is a requirement of this Consent Decree.

“DOJ” shall mean the United States Department of Justice and its subordinate departments, agencies, or components and successor departments, agencies or components.

“Effective Date” shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

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

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

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising the Settling Local Governmental Entities’ performance of the Work to determine whether such performance is consistent with the requirements of this CD, including costs incurred in reviewing Deliverables submitted pursuant to this CD, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Section XIII (Emergency Response), Section VII (Remedy Review), Section VIII (Access and Institutional Controls), and Section XI (Financial Assurance), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XVII (Dispute Resolution), and all litigation costs.

“Future Response Costs” shall mean all costs that the United States pays at or in connection with the Site after July 1, 2019, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing Deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing or enforcing this CD including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XIII (Emergency Response), Section VII (Remedy Review), Section VIII (Access and Institutional Controls), and Section XI (Financial Assurance), Section XXVII (Community Involvement) (including the cost of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and Section XVII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include (a) all

Interim Response Costs; (b) all Interest on those Past Response Costs Settling Local Governmental Entities have agreed to pay under this Consent Decree that has accrued during the period from July 1, 2019 to the Effective Date; and (c) all Agency for Toxic Substances and Disease Registry (“ATSDR”) costs regarding the Site incurred since April 1, 2017.

“Griggs and Walnut Ground Water Plume Superfund Site Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and by *In re: Griggs and Walnut Ground Water Plume Superfund Site*, Agreement for Funding of EPA’s Remedial Investigation/Feasibility Study, CERCLA Docket No.06-06-04.

“Griggs and Walnut Ground Water Plume Superfund Site Future Response Costs Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph 43.a (Prepayment of Future Response Costs).

“Institutional Control Implementation and Assurance Plan” or “ICIAP” shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the ROD, prepared in accordance with the Statement of Work (“SOW”).

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

“Interim Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that were (a) paid by the United States in connection with the Site between July 1, 2019 and the Effective Date, or (b) incurred by the United States prior to the Effective Date but paid after that date.

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

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

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

“Parties” shall mean the United States on behalf of EPA and the Settling Federal Defendants, and the Settling Local Governmental Entities.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site prior to July 1, 2019, plus the Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD and the SOW and any modified standards established pursuant to this Consent Decree. Performance standards include the Remedial Action Objectives and the Remediation Goals described in Section 8 of the ROD.

“Post-Achievement O&M” shall mean all activities required to maintain the effectiveness of the Remedial Action after Performance Standards are met, as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Local Governmental Entities) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls after Performance Standards are met, as provided in the ICIAP. Post-Achievement O&M does not include normal operation of the City of Las Cruces water supply system or any operation of the water supply system that is not required to maintain the effectiveness of the Remedial Action.

“Pre-Achievement O&M” shall mean all operation and maintenance activities required for the Remedial Action to achieve Performance Standards, as provided under the Operation and Maintenance Plan approved by EPA pursuant to Section VI (Performance of the Work by Settling Local Governmental Entities) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls as provided in the ICIAP, until Performance Standards are met. Pre-Achievement O&M does not include normal operation of the City of Las Cruces water supply system or any operation of the water supply system that is not required to achieve Performance Standards.

“Project Coordinator” shall mean the principal individual or entity retained or employed by the Settling Local Governmental Entities to supervise and direct the implementation of the Work under this Consent Decree.

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

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on June 18, 2007, by the Superfund and Emergency Management Division Director, EPA Region 6, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” or “RA” shall mean the remedial action selected in the ROD. The remedial design and construction of the ground water extraction and treatment system is complete. Remedial Action activities to be completed include implementation of the

Institutional Controls and implementation of both Pre-Achievement and Post-Achievement O&M.

“Remedial Design” or “RD” shall mean the EPA-approved final Remedial Design (approved by EPA on June 2, 2011) that the Settling Local Governmental Entities completed under the Remedial Design Order. The Remedial Design is complete. The Remedial Design includes the final plans and specifications for the ground water extraction and treatment system that the Settling Local Governmental Entities constructed under the Remedial Action Order.

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

“Settling Federal Defendants” shall mean the Department of Defense, as described in 10 U.S.C. §111, and its successor departments, agencies, or instrumentalities. This includes the National Guard Bureau in accordance with 10 U.S.C. §111(b)(11) and 10 U.S.C. §10501.

“Settling Local Governmental Entities” shall mean, collectively, the City of Las Cruces and Doña Ana County. The Settling Local Governmental Entities are each, individually, a Settling Local Governmental Entity.

“Settling Local Governmental Entities’ Past Response Costs” shall mean all costs of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), incurred by Settling Local Governmental Entities at the Site prior to the date that this Consent Decree is entered, including Interest on all such costs that has accrued through such date.

“Settling Local Governmental Entities’ Future Response Costs” shall mean all costs of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to be incurred by Settling Local Governmental Entities’ at the Site after the date that this Consent Decree is entered.

“Site” shall mean the Griggs and Walnut Ground Water Plume Superfund Site, located in Las Cruces, New Mexico, which includes the following: a) a PCE-contaminated ground water plume that begins at about 190 feet below ground surface and affects the aquifer that was used as the Las Cruces municipal water supply to depths of about 650 feet below ground surface; b) any PCE contaminated soil; c) the land surface that overlies the plume—generally located between Spruce Avenue to the north, East Lohman Avenue to the south, the Dam Trail east of Telshor Boulevard (North and South) to the east, and Hermosa Street and Del Monte Street to the west; and d) all suitable areas in very close proximity to the contamination necessary for the implementation of the response action described in the ROD. The surface of the Site is generally depicted on the map that is attached as Appendix C to this Order.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Action (including Pre-Achievement O&M), and Post-Achievement O&M at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Submission” shall mean any and all written materials that any Party is required to submit for EPA approval pursuant to this Consent Decree including without limitation correspondence,

notifications, plans, reports, specifications, and schedules. A Submission is a Deliverable. A Submission is Work. Once a Submission is approved in writing by EPA as described in Section IX (EPA Approval of Plans, Reports, and Other Submissions) of this Consent Decree, the Submission is incorporated into this Consent Decree and becomes an enforceable part of this Consent Decree.

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

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, the Settling Federal Defendants, and any federal natural resource trustee.

“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); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous waste” under NMSA 1978, § 74-4-3(K); (5) any “solid waste” under NMSA 1978, § 74-4-3(O) and NMSA 1978, § 74-9-3(N); and (6) any “water contaminant” under NMSA 1978, § 74-6-2(B).

“Work” shall mean all activities and obligations the Settling Local Governmental Entities are required to perform under this Consent Decree, except the activities required under Section XXIII (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are as follows: to protect public health or welfare or the environment by the implementation of response actions at the Site by the Settling Local Governmental Entities; to pay the response costs of the United States and the Settling Local Governmental Entities as provided in this Consent Decree; to resolve the claims of United States against the Settling Local Governmental Entities; and to resolve the claims of the Settling Local Governmental Entities that have been or could have been asserted against the United States with regard to the Site as provided in this CD.

6. Commitments by Settling Local Governmental Entities and by the Settling Federal Defendants.

a. The Settling Local Governmental Entities shall finance and perform the Work in accordance with this Consent Decree and all Deliverables developed by Settling Local Governmental Entities and approved or modified by EPA pursuant to this Consent Decree. Settling Local Governmental Entities shall pay the United States for its response costs as provided in this Consent Decree. The Settling Federal Defendants shall pay the Settling Local Governmental Entities for their response costs as provided in this Consent Decree.

b. The obligations of Settling Local Governmental Entities to finance and perform the Work, including obligations to pay amounts due under this Consent Decree, are joint and several. In the event of the insolvency of any Settling Local Governmental Entity or the failure by any Settling Local Governmental Entity to implement any requirement of this Consent Decree, the remaining Settling Local Governmental Entity shall complete all such requirements.

7. Compliance With Applicable Law.

a. Nothing in this CD limits Settling Local Governmental Entities' obligations to comply with the requirements of all applicable federal and state laws and regulations. Settling Local Governmental Entities must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

b. Upon the Effective Date of this Consent Decree, the requirements of this Consent Decree supersede the O&M UAO.

8. Permits.

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

b. Settling Local Governmental Entities may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

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

9. Notice to Successors-in-Title and Transfers of Real Property.

a. For any real property owned or controlled by a Settling Local Governmental Entity located at the Site, the Settling Local Governmental Entity shall, within 15 days after the Effective Date, submit to EPA for review and approval a proposed notice to be filed with the appropriate land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. The notice also shall describe the land

use restrictions, set forth in the legal mandate described in Paragraph 22, and shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Local Governmental Entity shall record the notice within ten days after EPA's approval of the notice. The Settling Local Governmental Entity shall provide EPA with a certified copy of the recorded notice within ten days after recording such notice.

b. The Settling Local Governmental Entity shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (1) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (2) to EPA regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

c. The Settling Local Governmental Entity may Transfer any real property located at the Site only if the Settling Local Governmental Entity has obtained an agreement from the transferee, enforceable by the Settling Local Governmental Entities and the United States, to allow access pursuant to Paragraphs 21, and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 9.c, the Settling Local Governmental Entity shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist the Settling Local Governmental Entity in obtaining compliance with the agreement. The Settling Local Governmental Entity shall reimburse the United States under Section XIV (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

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

VI. PERFORMANCE OF THE WORK BY SETTLING LOCAL GOVERNMENTAL ENTITIES

10. Selection of Project Coordinator.

a. All aspects of the Work to be performed by Settling Local Governmental Entities pursuant to Sections VI (Performance of the Work by Settling Local Governmental Entities), VII (Remedy Review), VIII (Access and Institutional Controls), and XIII (Emergency Response) shall be under the direction and supervision of the Project Coordinator, the selection of which shall be subject to disapproval by EPA. Within ten days after the lodging of this Consent Decree, Settling Local Governmental Entities shall notify EPA in writing of the name, title, and qualifications of any individual or entity proposed to be the Project Coordinator. With respect to any individual or entity proposed to be Project Coordinator, Settling Local

Governmental Entities shall demonstrate that the proposed individual or entity has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed regarding use of the proposed Project Coordinator. If at any time thereafter, Settling Local Governmental Entities propose to change a Project Coordinator, Settling Local Governmental Entities shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Project Coordinator performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Project Coordinator, EPA will notify Settling Local Governmental Entities in writing. Settling Local Governmental Entities shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days after receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Local Governmental Entities may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days after EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Local Governmental Entities from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Settling Local Governmental Entities may seek relief under Section XVI (Force Majeure).

11. Remedial Action.

a. Design and construction of the Remedial Action is complete. Settling Local Governmental Entities shall operate, maintain and monitor the effectiveness of the Remedial Action in accordance with the SOW (Appendix B to this Consent Decree) and all EPA-approved, conditionally approved or modified Deliverables required by the SOW.

b. Pursuant to the Statement of Work, which is Appendix B to this Consent Decree, Settling Local Governmental Entities shall perform Pre-Achievement Operation and Maintenance ("O&M") until the Remedial Action Objectives and Remediation Goals described in the ROD are attained. Once the Remedial Action Objectives and Remediation Goals are attained, Defendants shall perform Post-Achievement O&M until EPA issues a Certificate of Completion of the Remedial Action, as provided in Paragraph 39.b of the Consent Decree.

12. Modification of SOW or Related Work Plans.

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the

Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, and such modification is consistent with the scope of the remedy set forth in the ROD, then EPA may issue such modification in writing and shall notify Settling Local Governmental Entities of such modification. For the purposes of this Paragraph and Paragraphs 38 (Completion of the Pre-Achievement O&M) and 39 (Completion of the Remedial Action) only, the “scope of the remedy set forth in the ROD” includes the following elements:

- Standards; (1) Treatment of contaminated ground water to meet Performance
- pumping; (2) Hydraulic control of contaminated ground water plume by targeted
- supply; (3) Conveying treated ground water so that it is available for public
- (4) Ground water monitoring well sampling to measure contaminant concentration level and extent of contamination;
- (5) Operation and maintenance of the constructed ground water extraction and treatment system; and
- (6) Using Institutional Controls.

If Settling Local Governmental Entities object to the modification they may, within 30 days after EPA’s notification, seek dispute resolution under Paragraph 61 (Record Review).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Local Governmental Entities invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Local Governmental Entities shall implement all work required by such modification.

c. Nothing in this Paragraph shall be construed to limit EPA’s authority to require performance of further response actions as otherwise provided in this Consent Decree.

13. Nothing in this Consent Decree, the SOW, or in any plan approved by EPA, constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

14. Off-Site Shipment of Waste Material.

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

b. Settling Local Governmental Entities may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Local Governmental Entities also shall notify the state environmental official referenced above and the EPA Remedial Project Manager of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Local Governmental Entities shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VII. REMEDY REVIEW

15. Periodic Review. This remedy will allow for unrestricted use of the Site upon completion, but it will take more than five years to attain the Remedial Action Objectives. The EPA will conduct a review every five years from the start of the Remedial Action until remedial action objectives are reached to ensure the remedy protects human health and the environment as described in CERCLA Section 121(c), 42 U.S.C. § 9621(c). EPA conducted its first five-year review in 2016. Settling Local Governmental Entities shall conduct any studies and investigations that EPA requests in order to permit EPA to conduct its reviews.

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

17. Opportunity To Comment. Settling Local Governmental Entities and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. Settling Local Governmental Entities' Obligation To Perform Further Response Actions. If EPA selects further response actions relating to the Site, EPA may require Settling Local Governmental Entities to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 78 or Paragraph 79 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Local Governmental Entities may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 78 or Paragraph 79 are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 61 (Record Review).

19. Submission of Plans. If Settling Local Governmental Entities are required to perform further response actions pursuant to Paragraph 18, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by Settling Local Governmental Entities). Settling Local Governmental Entities shall implement the approved plan in accordance with this Consent Decree.

VIII. ACCESS AND INSTITUTIONAL CONTROLS

20. If the Site, or any other real property where access is needed, is owned or controlled by any of Settling Local Governmental Entities, such Settling Local Governmental Entities shall, commencing on the date of lodging of the Consent Decree, provide the United States and its representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 82 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Local Governmental Entities or their agents, consistent with Section XXII (Access to Information);
- (9) Assessing Settling Local Governmental Entities' compliance with the Consent Decree;
- (10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls and the requirements of the ICIAP.

21. If the Site, or any other real property where access is needed, is owned or controlled by persons other than any a Settling Local Governmental Entity, the Settling Local Governmental Entities shall use best efforts to secure from such persons an agreement to provide access thereto for the United States, Settling Local Governmental Entities, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 20.

22. The Office of the State Engineer (“OSE”) has issued a memorandum that prohibits well drilling at the Site until the Remedial Action, including Pre-Achievement O&M, has attained the remediation goals and remedial action objectives specified in the ROD as determined by EPA. As provided in the SOW, Settling Local Governmental Entities shall periodically review the Institutional Controls, including this OSE memorandum, to ensure that they are in place and effective.

23. For purposes of Paragraph 21, “best efforts” includes the payment of reasonable sums of money to obtain access, but does not include initiating eminent domain proceedings. If, within 60 days after the Effective Date, Settling Local Governmental Entities have not: (a) obtained agreements to provide access as required by Paragraph 20 or 21, Settling Local Governmental Entities shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Local Governmental Entities have taken to attempt to comply with Paragraph 20 or 21. The United States may, as it deems appropriate, assist Settling Local Governmental Entities in obtaining access. Settling Local Governmental Entities shall reimburse the United States under Section XIV (Payments for Response Costs) for all costs incurred, direct or indirect, by the United States in obtaining such access including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

24. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, Settling Local Governmental Entities shall cooperate with EPA’s efforts to secure and ensure compliance with such governmental controls.

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

IX. EPA APPROVAL OF PLANS, REPORTS, AND OTHER SUBMISSIONS

26. Initial Submissions.

a. After review of any submission that is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing.

b. EPA also may modify the initial submission to cure deficiencies in the submission if: (1) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (2) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or Deliverable.

27. Resubmissions. Upon receipt of a notice of disapproval of a submission under Paragraph 26.a(3) or (4), or if required by a notice of approval upon specified conditions under Paragraph 26.a(2), Settling Local Governmental Entities shall, within 10 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the submission for approval. After review of the resubmitted submission, EPA may: (a) approve, in whole or in part, the resubmitted submission; (b) approve the resubmitted submission upon specified conditions; (c) modify the resubmitted submission; (d) disapprove, in whole or in part, the resubmitted submission, requiring Settling Local Governmental Entities to correct the deficiencies; or (e) any combination of the foregoing.

28. Material Defects. If an initially submitted or resubmitted submission contains a material defect, and the submission is disapproved or modified by EPA under Paragraph 26.b(2) or 27 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 64. The provisions of Section XVII (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Local Governmental Entities' submissions under this Section.

29. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 26 (Initial Submissions) or Paragraph 27 (Resubmissions), of any submission, or any portion thereof: (a) such submission, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Settling Local Governmental Entities shall take any action required by such submission, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a submission submitted or resubmitted under Paragraph 26 or 27 shall not relieve Settling Local Governmental Entities of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

X. PROJECT COORDINATORS AND REMEDIAL PROJECT MANAGERS

30. The Settling Local Governmental Entities shall have a Project Coordinator. EPA will have a Remedial Project Manager and an Alternate Remedial Project Manager. Within 20 days after lodging this Consent Decree, Settling Local Governmental Entities and EPA will notify each other, in writing, of the name, address, telephone number, and email address of their respective designated Remedial Project Managers and Project Coordinators. If a Remedial Project Manager or Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Local Governmental Entities' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling

Local Governmental Entities' Project Coordinator shall not be an attorney for any Settling Local Governmental Entity in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

32. EPA's Remedial Project Manager and Settling Local Governmental Entities' Project Coordinator will meet, at a minimum, on a quarterly basis.

XI. FINANCIAL ASSURANCE

33. In order to ensure the full and final completion of the Work, Settling Local Governmental Entities shall establish and maintain financial assurance, initially in the amount of \$9,144,190, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The financial assurance, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Settling Local Governmental Entities intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies):

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

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that (1) provides EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency; or

e. A legal mandate from each of the Settling Local Governmental Entities (*e.g.*, a resolution) authorizing and requiring the Settling Local Governmental Entity that issued the mandate to pay EPA the Estimated Cost of the Work in the event of a Work Takeover as described in Paragraph 82. Each mandate, by its terms, shall provide that it becomes effective 30 days after the Effective Date of this Consent Decree. Unless EPA notifies the Settling Local Governmental Entities otherwise in writing, neither mandate may be repealed except as provided in Paragraph 37.c. This mandate shall also provide, per its terms, that ten days after EPA issues any Work Takeover Notice as provided in Paragraph 82, Settling Local Governmental Entities shall either pay to EPA the entire Estimated Cost of the Work (*i.e.*, \$9,144,190) or Settling Local Governmental Entities shall make payments to EPA for each remaining year of Work, as specified by EPA in the schedule provided by EPA in the Work Takeover Notice. Settling Local Governmental Entities shall make their first payment, for the first of the remaining years identified by EPA in the Work Takeover Notice, ten days after EPA issues any Work Takeover Notice as provided in Paragraph 82 (hereinafter the first year due date), and Settling Local Governmental Entities shall make payments for the subsequent years listed in the schedule in EPA's Work Takeover Notice on the anniversary of the first year due date, unless EPA notifies Settling Local Governmental Entities otherwise in writing. EPA will, in any schedule of payments set forth by EPA in the Work Takeover Notice, endeavor to ensure that EPA sets payment amounts at a relatively constant level over time, except as EPA may deem necessary to provide for aspects of the Work that involve one-time or infrequent expenditures or activities that EPA deems necessary to protect human health or the environment.

34. Pursuant to Paragraph 33.e, Settling Local Governmental Entities have selected, and EPA has found satisfactory, as an initial financial assurance, resolutions authorizing and requiring, subject to New Mexico statutory and constitutional limitations, the Settling Local Governmental Entities to pay EPA the Estimated Cost of the Work in the event of a work takeover as described in Paragraph 82. A copy of each of these two resolutions, which remain pending final approval by the respective authorizing entities (*i.e.*, the City of Las Cruces City Council and the Doña Ana County Commission), are attached hereto as Appendix D.

35. In the event that EPA determines at any time that the financial assurance provided by any Settling Local Governmental Entity pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Local Governmental Entity becomes aware of information indicating that the financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Local Governmental Entities, within 30 days after receipt of notice of EPA's determination or, as the case may be, within 30 days after any Settling Local Governmental Entity becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance listed in Section XI that satisfies all requirements set forth in this Section XI; provided, however, that if any Settling Local Governmental Entity cannot obtain such revised or alternative form of financial assurance within such 30-day period, and provided further that the Settling Local Governmental Entity shall have commenced to obtain such revised or alternative form of financial assurance within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such

period for such time as is reasonably necessary for the Settling Local Governmental Entity in the exercise of due diligence to obtain such revised or alternative form of financial assurance, such additional period not to exceed 60 days. On day 30 of any time extension by EPA, Settling Local Governmental Entity shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of financial assurance, Settling Local Governmental Entities shall follow the procedures set forth in Paragraph 37.b(2). Settling Local Governmental Entities' inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Local Governmental Entities to complete the Work in strict accordance with the terms of this Consent Decree.

36. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 82 shall trigger EPA's right to receive the benefit of any financial assurance mechanism(s) provided pursuant to Paragraphs 33.a, 33.b, 33.c, 33.d, or 33.e, and at such time EPA shall have immediate access to payments guaranteed under any such financial assurance mechanism(s) in cash so that EPA may continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if for any reason EPA is unable to promptly secure the payments guaranteed under any such financial assurance mechanism(s) in cash necessary to continue and complete the Work assumed by EPA under the Work Takeover, Settling Local Governmental Entities shall immediately upon written demand from EPA pay to EPA in accordance with the payment instructions in Paragraphs 49.a (Instructions for Past Response Cost Payments and Future Response Costs Prepayments) or as EPA may specify in writing, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. The total amount to be paid by Settling Municipalities pursuant to this Paragraph 36 shall be deposited by EPA in the Griggs and Walnut Ground Water Plume Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. In addition, if at any time EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial assurance mechanism it has issued, then, unless Settling Local Governmental Entities provide a substitute financial assurance mechanism in accordance with this Section XI no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance mechanism. Upon written demand from EPA, Settling Local Governmental Entities shall pay EPA in immediately available funds and without setoff, counterclaim, or condition of any kind, for all EPA Work Takeover costs paid by EPA that are not reimbursed under this Paragraph, and Settling Local Governmental Entities shall make this payment in accordance with the payment instructions in Paragraphs 49.a (Instructions for Past Response Cost Payments and Future Response Costs Prepayments).

37. Modification of Amount and/or Form of Financial Assurance.

a. Reduction of Amount of Financial Assurance. If Settling Local Governmental Entities believe that the estimated cost of completing the Work has diminished below the amount set forth in Section XI, Settling Local Governmental Entities may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in

writing to request a reduction in the amount of the financial assurance provided pursuant to this Section so that the amount of the financial assurance is equal to the estimated cost of completing the Work. Settling Local Governmental Entities shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the financial assurance, Settling Local Governmental Entities shall follow the procedures set forth in Paragraph 37.b(2) for requesting a revised or alternative form of financial assurance, except as specifically provided in this Paragraph 37.a. If EPA decides to accept Settling Local Governmental Entities' proposal for a reduction in the amount of the financial assurance, either to the amount set forth in Settling Local Governmental Entities' written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Settling Local Governmental Entities of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the financial assurance, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written decision, Settling Local Governmental Entities may reduce the amount of the financial assurance in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance(s) legally binding in accordance with Paragraph 37.b(2). In the event of a dispute, Settling Local Governmental Entities may reduce the amount of the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVII (Dispute Resolution). No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 35 or 37.b.

b. Change of Form of Financial assurance.

(1) If, after the Effective Date, Settling Local Governmental Entities desire to change the form or terms of any financial assurance mechanism(s) provided pursuant to this Section, Settling Local Governmental Entities may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the financial assurance mechanism provided hereunder. The submission of such proposed revised or alternative financial assurance mechanism shall be as provided in Paragraph 37.b(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Local Governmental Entities pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Local Governmental Entities shall submit a written proposal for a revised or alternative financial assurance mechanism to EPA that shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised financial assurance mechanism, including all proposed instruments or other documents required in order to make the proposed financial assurance mechanisms legally binding. The proposed revised or alternative financial assurance mechanism must satisfy all requirements set forth or incorporated by reference in this Section. Settling Local Governmental Entities shall

submit such proposed revised or alternative financial assurance mechanism to the EPA Regional Financial Management Officer in accordance with Section XXIV (Notices and Submissions), with a copy to Ms. Lydia Johnson, Chief, Enforcement Section (SEDAE), U.S. EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75202-2012. EPA will notify Settling Local Governmental Entities in writing of its decision to accept or reject a revised or alternative financial assurance mechanism submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance mechanism, Settling Local Governmental Entities shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance mechanism(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such financial assurance mechanism(s) shall thereupon be fully effective. Settling Local Governmental Entities shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance mechanism(s) legally binding to the EPA Regional Financial Management Officer within 30 days after receiving a written decision approving the proposed revised or alternative financial assurance mechanism in accordance with Section XXIV (Notices and Submissions) and to the United States and EPA as specified in Section XXIV.

c. Release of Financial Assurance. Settling Local Governmental Entities shall not release, cancel, or discontinue any financial assurance mechanism provided pursuant to this Section except as provided in this Paragraph or as required by an order of this Court. If Settling Local Governmental Entities receive written notice from EPA in accordance with Paragraph 39 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Local Governmental Entities in writing, Settling Local Governmental Entities may thereafter release, cancel, or discontinue the financial assurance mechanism(s) provided pursuant to this Section. In the event of a dispute, Settling Local Governmental Entities may release, cancel, or discontinue the financial assurance mechanism(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XVII (Dispute Resolution).

XII. CERTIFICATION OF COMPLETION

38. Completion of the Pre-Achievement O&M.

a. Within 30 days after Settling Local Governmental Entities conclude that the Pre-Achievement O&M has been fully performed and the Performance Standards, including without limitation the Remediation Goal for PCE, have been achieved, Settling Local Governmental Entities shall so notify EPA and shall schedule and conduct an on-site, pre-certification inspection to be attended by Settling Local Governmental Entities and EPA. If, after the pre-certification inspection, Settling Local Governmental Entities still believe that the Pre-Achievement O&M has been fully performed and the Performance Standards have been achieved, they shall submit a written report requesting certification to EPA for approval pursuant to Section IX (EPA Approval of Plans, Reports, and Other Submissions) within 30 days after the inspection. In the report, a registered professional engineer and Settling Local Governmental Entities' Project Coordinator shall state that the Pre-Achievement O&M has been completed in

full satisfaction of the requirements of this Consent Decree. Settling Local Governmental Entities shall include in this report the most recent Annual O&M Report, including all the information described in Subsection V.D. of the SOW. The report shall contain the following statement, signed by a responsible official of the Settling Local Governmental Entities or the Settling Local Governmental Entities' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Pre-Achievement O&M, or any portion thereof, has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Local Governmental Entities in writing of the activities that must be undertaken by Settling Local Governmental Entities pursuant to this Consent Decree to complete the Pre-Achievement O&M and achieve the Performance Standards, provided, however, that EPA may only require Settling Local Governmental Entities to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 12.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Local Governmental Entities to submit a schedule to EPA for approval pursuant to Section IX (EPA Approval of Plans, Reports, and Other Submissions). Settling Local Governmental Entities shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Pre-Achievement O&M that the Pre-Achievement O&M has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Local Governmental Entities. This certification shall constitute the Certification of Completion of the Pre-Achievement O&M for purposes of this Consent Decree, including, but not limited to, Section XIX (Covenants by the United States). Certification of Completion of the Pre-Achievement O&M shall not affect Settling Local Governmental Entities' remaining obligations under this Consent Decree.

39. Completion of the Remedial Action.

a. Within 30 days after Settling Local Governmental Entities conclude that the Post-Achievement O&M has been fully performed and the Performance Standards, including without limitation the Remediation Goal for PCE, have been achieved, and all other Work required by this Consent Decree has been completed, Settling Local Governmental Entities shall

so notify EPA and shall schedule and conduct an on-site, pre-certification inspection to be attended by Settling Local Governmental Entities and EPA. If, after the pre-certification inspection, Settling Local Governmental Entities still believe that the Post-Achievement O&M has been fully performed, the Performance Standards have been achieved, and all other Work required by the Consent Decree has been performed, they shall submit a written report to EPA so stating and requesting EPA's approval and certification of the report, pursuant to Section IX (EPA Approval of Plans, Reports, and Other Submissions) within 30 days after the inspection. In the Settling Local Governmental Entities' report, a registered professional engineer and Settling Local Governmental Entities' Project Coordinator shall state that the Post-Achievement O&M has been completed in full satisfaction of the requirements of this Consent Decree including without limitation the Performance Standards, and all other Work required by the Consent Decree has been completed. Settling Local Governmental Entities shall include in this report the most recent Annual Post-Achievement O&M Report, including all the information described in Subsection 31.d. of the SOW. The report shall contain the following statement, signed by a responsible official of the Settling Local Governmental Entities or the Settling Local Governmental Entities' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the Settling Local Governmental Entities' written report, EPA determines that the Post-Achievement O&M, the Work required by this Consent Decree, or any portion thereof, has not been completed in accordance with this Consent Decree, or that the Performance Standards have not been achieved and maintained as required, EPA will notify Settling Local Governmental Entities in writing of the activities that must be undertaken by Settling Local Governmental Entities pursuant to this Consent Decree to complete the Post-Achievement O&M and achieve the Performance Standards, provided, however, that EPA may only require Settling Local Governmental Entities to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 12.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Local Governmental Entities to submit a schedule to EPA for approval pursuant to Section IX (EPA Approval of Plans, Reports, and Other Submissions). Settling Local Governmental Entities shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Post-Achievement O&M and the Work required by this Consent Decree that the Post-Achievement O&M and all Work required by this Consent Decree

have been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Local Governmental Entities. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XIX (Covenants by the United States).

XIII. EMERGENCY RESPONSE

40. If any action or occurrence during the performance of the Work causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Local Governmental Entities shall, subject to Paragraph 41, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Remedial Project Manager, or, if the Remedial Project Manager is unavailable, EPA's Alternate Remedial Project Manager. If neither of these persons is available, Settling Local Governmental Entities shall notify the EPA Emergency Response Unit, Region 6 at (866) 372-7745. Settling Local Governmental Entities shall take such actions in consultation with EPA's Remedial Project Manager or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Local Governmental Entities fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Local Governmental Entities shall reimburse EPA all costs of the response action under Section XIV (Payments for Response Costs).

41. Subject to Section XIX (Covenants by the United States), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIV. PAYMENTS FOR RESPONSE COSTS

42. Payment by Settling Local Governmental Entities for Past Response Costs.

a. Within 30 days after the Effective Date, Settling Local Governmental Entities shall pay to EPA \$1,140,000 in full and final payment and satisfaction for Past Response Costs. Payment shall be made in accordance with Paragraphs 49.a (Instructions for Past Response Cost Payments and Future Response Costs Prepayments).

b. The total amount to be paid by Setting Municipalities pursuant to Paragraph 42.a shall be deposited by EPA in the Griggs and Walnut Ground Water Plume Superfund Site Special Account to be retained and used by EPA 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.

43. Payments to be made by Settling Local Governmental Entities for Future Response Costs. Settling Local Governmental Entities shall pay to EPA all Future Response Costs, not inconsistent with the NCP, as provided in this Paragraph 43. Notwithstanding any other provision, payments by Settling Local Governmental Entities to EPA for Future Oversight Costs shall not exceed \$144,000 per year. Notwithstanding any other provision, payments by Settling Local Governmental Entities to EPA for Interim Response Costs shall not exceed \$800,000.

a. Prepayment of Future Response Costs. Within 30 days after the Effective Date, Settling Local Governmental Entities shall pay to EPA \$125,000 as an initial payment toward subsequent EPA Future Response Costs. This Prepayment shall be made in accordance with Paragraph 49.a (Instructions for Past Response Cost Payments and Future Response Costs Prepayments). The total amount paid shall be deposited by EPA in the Griggs and Walnut Ground Water Plume Superfund Site Future Response Costs Special Account. These funds shall be retained and used by EPA to pay Future Response Costs at or in connection with the Site.

b. Shortfall Payments. If at any time prior to the date EPA sends the Settling Local Governmental Entities the first bill under Paragraph 43.c (Periodic Bills), or one year after the Effective Date, whichever is earlier, the balance in the Griggs and Walnut Ground Water Plume Superfund Site Future Response Costs Special Account falls below \$10,000, EPA will so notify the Settling Local Governmental Entities. The Settling Local Governmental Entities shall, within 30 days after receipt of such notice, pay \$100,000 to EPA. Payment shall be made in accordance with Paragraph 49.a (Instructions for Past Response Cost Payments and Future Response Costs Prepayments). The amounts paid shall be deposited by EPA into the Griggs and Walnut Ground Water Plume Superfund Site Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

c. Periodic Bills. On a periodic basis, at least every twelve months, EPA will send Settling Local Governmental Entities a bill requiring payment that includes a Superfund Cost Recovery Package and Image On-Line System (“SCORPIOS”) report or an equivalent report as determined by EPA along with a DOJ case cost summary that identifies DOJ costs, which includes direct and indirect costs incurred by EPA, its contractors, the Agency for Toxic Substances and Disease Registry (“ATSDR”) and DOJ. Settling Local Governmental Entities shall make all payments within 30 days after Settling Local Governmental Entities’ receipt of each bill requiring payment, except as otherwise provided in Paragraph 50, in accordance with Paragraphs 49.b (Instructions for Future Response Costs Payments and Stipulated Penalties).

d. Deposit of Future Response Costs Payments. The total amount to be paid by Settling Local Governmental Entities pursuant to Paragraph 43.c (Periodic Bills) shall be deposited by EPA into the Griggs and Walnut Ground Water Plume Superfund Site Special Account to be used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Griggs and Walnut Ground Water Plume Superfund Site Special Account balance is sufficient to address currently

anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.

44. Unused Amount. After EPA issues the Certification of Completion of the Remedial Action pursuant to Paragraph 39.b and a final accounting of Future Response Costs (including crediting Settling Local Governmental Entities for any amounts received under Paragraphs 43.a (Prepayment of Future Response Costs) or 43.b (Shortfall Payments) or 43.c (Periodic Bills), EPA will (1) offset the final bill for Future Response Costs by the unused amount paid by Settling Local Governmental Entities pursuant to Paragraphs 43.a or 43.b or 43.d; (2) apply any unused amount paid by Settling Local Governmental Entities pursuant to Paragraphs 43.a or 43.b or 43.c to any other unreimbursed response costs or response actions remaining at the Site; or (3) transfer any unused amount to the Hazardous Substances Superfund. Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site or to the Hazardous Substances Superfund shall not be subject to challenge by Settling Local Governmental Entities pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

45. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Local Governmental Entities under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Local Governmental Entities obligate or pay funds in contravention of the New Mexico Constitution or any other applicable provision of New Mexico law.

46. Payments on Behalf of Settling Federal Defendants.

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Defendants, shall pay to Settling Local Governmental Entities \$6,389,407 in full and final payment and satisfaction of Settling Local Governmental Entities' Past Response Costs and Future Response Costs. Such payment shall be made by Automated Clearing House ("ACH") Electronic Funds Transfer in accordance with instructions provided by Settling Local Governmental Entities.

b. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Defendants, shall pay to EPA \$860,000 in payment of Past Response Costs. The total amount to be paid by Settling Federal Defendants pursuant to this Paragraph 46.b. shall be deposited by EPA in the Griggs and Walnut Ground Water Plume Superfund Site Special Account to be retained and used by EPA to conduct or finance response actions at or in connection with the Site, or be transferred by EPA to the EPA Hazardous Substance Superfund. Such payment shall be made in accordance with Paragraphs 49.a (Instructions for Past Response Costs Payments and Future Response Costs Prepayments).

c. Interest. In the event that any of the payments required of Settling Federal Defendants by Paragraphs 46.a or 46.b (Payments on Behalf of Settling Federal Defendants) is not made within 120 days after the Effective Date, the United States on behalf of Settling Federal Defendants shall pay Interest on the unpaid balance at the rate established pursuant to Section

107(a) of CERCLA, 42 U.S.C. § 9607(a), with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.

47. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Defendants under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

48. Warranty of No Double Recovery. Based upon the Settling Local Governmental Entities' knowledge and belief and subject to the penalties of the False Claims Act, 31 U.S.C. § 3729 et seq., and any other applicable law, the Settling Local Governmental Entities warrant that they have not received, directly or indirectly, any duplicative payment of the money being paid by the Settling Federal Defendants to the Settling Local Governmental Entities pursuant to this Consent Decree, whether through insurance, contract, third-party reimbursement, or any other claim, cause of action, suit, or demand of any kind whatsoever in law or in equity against any person, organization or entity. A duplicative payment for the purposes of this paragraph is money received in aggregate from any source other than the Settling Federal Defendants in an amount greater than \$3,924,459 in reimbursement for or to cover Settling Local Governmental Entities' Past Response Costs.

49. Payment Instructions for Settling Local Governmental Entities.

a. Instructions for Past Response Costs Payments and Future Response Costs Prepayments. All Settling Local Governmental Entities' payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 49.a shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Local Governmental Entities by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of New Mexico after the Effective Date. The payment instructions provided by the Financial Litigation Unit shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions in both electronic and hard copy to:

Jorge Garcia, Director
Adrienne Widmer, Deputy Director, Water
City of Las Cruces Utilities
680 N. Motel Blvd.
Las Cruces, NM 88007
Office: (575) 528-3512
Jorge.garcia@las-cruces.org
awidmer@las-cruces.org

on behalf of Settling Local Governmental Entities. Settling Local Governmental Entities may change the individual to receive payment instructions on their behalf by providing written notice of such change in accordance with Section XXIV (Notices and Submissions). When making

payments under this Paragraph 49.a, Settling Local Governmental Entities shall also comply with Paragraph 49.c.

b. Instructions for Future Response Costs Payments (other than Future Response Costs Prepayments) and Stipulated Penalties. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 49.b shall be made by Fedwire EFT to:

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

When making payments under this Paragraph 49.b, Settling Local Governmental Entities shall also comply with Paragraph 49.c.

c. Instructions for All Payments Under Paragraphs 49.a, and b. All payments made under Paragraphs 49.a. (Instructions for Past Response Costs Payments and Future Response Costs Prepayments) or 49.b. (Instructions for Future Response Costs Payments (other than Future Response Costs Prepayments) and Stipulated Penalties) shall reference the CDCS Number, Site/Spill ID Number 06HZ, and DOJ Case Number 90-11-3-09067/1. At the time of any payment required to be made in accordance with Paragraphs 49.a. or 49.b. , Settling Local Governmental Entities shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XXIV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number 06HZ, and DOJ Case Number.

50. Settling Local Governmental Entities may contest any Future Response Costs billed under Paragraph 43.c if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XXIV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Local Governmental Entities shall pay all uncontested Future Response Costs to the United States within 30 days after Settling Local Governmental Entities' receipt of the bill requiring payment. Simultaneously, Settling Local Governmental Entities shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Local Governmental Entities shall send to the United States, as provided in Section XXIV (Notices and Submissions), 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, Settling Local Governmental Entities shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution). If the United States prevails in the dispute, Settling Local Governmental Entities shall pay the sums due (with accrued interest) to the United States within five days after the resolution of the dispute. If Settling Local Governmental Entities prevail concerning any aspect of the contested costs, Settling Local Governmental Entities shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within five days after the resolution of the dispute. Settling Local Governmental Entities shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraph 49.b (Instructions for Future Response Costs Payments (Other than Future Response Costs Prepayments) and Stipulated Penalties). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Local Governmental Entities' obligation to reimburse the United States for its Future Response Costs.

51. Settling Local Governmental Entities may contest the final accounting of Future Response Costs issued under Paragraph 44 if they determine that the United States has made a mathematical error. Such objection shall be made in writing within 30 days after receipt of the final accounting and must be sent to EPA pursuant to Section XXIV (Notices and Submissions). Any such objection shall specifically identify the alleged final mathematical error and the basis for objection. EPA will review the alleged mathematical error and either affirm the initial accounting or issue a corrected final accounting within 120 days. If a corrected final accounting is issued, EPA will take such action as may be necessary to correct the final disposition of unused amounts paid in accordance with Paragraph 44. If Settling Local Governmental Entities disagree with EPA's decision, Settling Local Governmental Entities may, within seven days after receipt of the decision, appeal the decision to the Director of the Superfund and Emergency Management Division, EPA Region 6. The Director of the Superfund and Emergency Management Division will issue a final administrative decision resolving the dispute, which shall be binding upon Settling Local Governmental Entities and shall not be subject to challenge by Settling Local Governmental Entities pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

52. Interest. In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, Settling Local Governmental Entities shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs and initial prepaid Future Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on all subsequent Future Response Costs shall begin to accrue on the date of the bill or on the date of the prepayment shortfall notice pursuant to Paragraphs 43.b or 43.c. The Interest shall accrue through the date of Settling Local Governmental Entities' 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 Settling

Local Governmental Entities' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 65.

XV. INSURANCE

53. Insurance

a. Settling Local Governmental Entities hereby certify that, as of the date of execution of this Consent Decree, the descriptions in this Paragraph 53(b)(1) – (3) are complete and accurate descriptions of the extent and type of insurance held by each Settling Local Governmental Entity. If at any time after the Effective Date of this Consent Decree, whether through an act of the State legislature or by any other means, these descriptions are no longer complete and accurate descriptions of the extent and type of insurance held by each Settling Local Governmental Entity, the relevant Settling Local Governmental Entity shall so notify EPA within no more than 60 days of any change.

b. Settling Local Governmental Entities, who are governmental entities and local public bodies as defined in the New Mexico Tort Claims Act (the "Act"), NMSA 1978, Section 41-4-1, et seq., hold and shall maintain the following insurance subject to the Act, as it may be amended:

(1) The City of Las Cruces attests that, as a New Mexico home rule municipal corporation, the City is self-insured for all risks for which immunity has been waived under the Act. The City maintains a municipal public liability fund with an adequate level of funding to cover its liabilities under the Act. As of the date of execution of this Consent Decree, the liability limits under the Act are a combined \$1,050,000 arising out of a single occurrence as set forth in NMSA 1978, Section 41-4-19. As required by NMSA 1978, Section 41-4-20(B) of the Act, the New Mexico Department of Finance and Administration shall not approve the budget of any New Mexico governmental entity that has not budgeted an adequate amount of money to insure or otherwise cover every risk for which immunity has been waived under the provisions of the Act or liability imposed under NMSA 1978, Section 41-4-4. The City further states that its municipal public liability fund is and will continue to be adequately funded to provide insurance coverage for its liability exposure under the Act until the first anniversary after issuance of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 39.b of Section XII.

(2) The County of Doña Ana attests that it has secured insurance coverage through the New Mexico County Insurance Authority Multi-Line Pool for all risks for which immunity has been waived under the Act. As of the date of execution of this Consent Decree, the liability limits under the Act are a combined \$1,050,000 arising out of a single occurrence as set forth in NMSA 1978, Section 41-4-19, and the County of Doña Ana has insurance coverage in this amount through the New Mexico County Insurance Authority Multi-Line Pool. In addition, the current New Mexico County Insurance Authority Multi-Line Pool reinsurance coverage agreement provides for \$5 million per claim and an excess

policy of \$5 million per claim for total coverage of \$10 million towards claims waived under the Act. As required by NMSA 1978, Section 41-4-20(B), the New Mexico Department of Finance and Administration shall not approve the budget of any governmental entity that has not budgeted an adequate amount of money to insure or otherwise cover every risk for which immunity has been waived under the provisions of the Act or liability imposed under NMSA 1978, Section 41-4-4. The County will maintain sufficient insurance coverage through the New Mexico County Insurance Authority Multi-Line Pool or comparable insurance coverage for its liability exposure under the Act until the first anniversary after issuance of EPA's Certificate of Completion of the Remedial Action pursuant to Paragraph 39.b of Section XII.

(3) Settling Local Governmental Entities attest that insurance coverage, adequate to cover all risks for which immunity has been waived under the Act, has been in full force and effect for all Work that has been performed by or on behalf of Settling Local Governmental Entities prior to entry of this Consent Decree.

c. In addition, for the duration of this Consent Decree, Settling Local Governmental Entities shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing the Work on behalf of Settling Local Governmental Entities in furtherance of this Consent Decree. The City of Las Cruces provides workers' compensation coverage for its employees under a State approved plan and shall provide to EPA and the State a statement of compliance with the State approved plan. The County of Doña Ana provides workers' compensation coverage for its employees under a State-approved plan and shall provide to EPA and the State a statement of compliance with the State-approved plan. Settling Local Governmental Entities shall resubmit such proof of coverage or statements of compliance each year on the anniversary of the Effective Date. If Settling Local Governmental Entities demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Local Governmental Entities need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XVI. FORCE MAJEURE

54. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Local Governmental Entities including, without limitation, entities controlled by the Settling Local Governmental Entities and including, without limitation, the Settling Local Governmental Entities' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the best efforts of the Settling Local Governmental Entities to fulfill the obligation. The requirement that Settling Local Governmental Entities exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible.

“Force majeure” does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Local Governmental Entities intend or may intend to assert a claim of force majeure, Settling Local Governmental Entities shall notify EPA’s Remedial Project Manager orally or, in his or her absence, EPA’s Alternate Remedial Project Manager or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 6, within ten days of when either of the Settling Local Governmental Entities first knew that the event might cause a delay. Within ten days thereafter, Settling Local Governmental Entities shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Local Governmental Entities’ rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Local Governmental Entities, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Local Governmental Entities shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. The Settling Local Governmental Entities shall be deemed to know of any circumstance of which either of the Settling Local Governmental Entities, any entity controlled by either of the Settling Local Governmental Entities, or either of the Settling Local Governmental Entities’ contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude the Settling Local Governmental Entities from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 54 and whether the Settling Local Governmental Entities have exercised their best efforts under Paragraph 54, EPA may, in its unreviewable discretion, excuse in writing Settling Local Governmental Entities’ failure to submit timely notices under this Paragraph.

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

57. If Settling Local Governmental Entities elect to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA’s notice. In any such proceeding, Settling Local Governmental Entities shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were

exercised to avoid and mitigate the effects of the delay, and that Settling Local Governmental Entities complied with the requirements of Paragraphs 54 and 55. If Settling Local Governmental Entities carry this burden, the delay at issue shall be deemed not to be a violation by Settling Local Governmental Entities of the affected obligation of this Consent Decree identified to EPA and the Court.

XVII. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Local Governmental Entities that have not been disputed in accordance with this Section.

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

60. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within seven days after the conclusion of the informal negotiation period, Settling Local Governmental Entities invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Local Governmental Entities. The Statement of Position shall specify Settling Local Governmental Entities' position as to whether formal dispute resolution should proceed under Paragraph 61 (Record Review) or 62.

b. Within 60 days after receipt of Settling Local Governmental Entities' Statement of Position, EPA will serve on Settling Local Governmental Entities its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 61 (Record Review) or Paragraph 62. Within 60 days after receipt of EPA's Statement of Position, Settling Local Governmental Entities may submit a Reply.

c. If there is disagreement between EPA and Settling Local Governmental Entities as to whether dispute resolution should proceed under Paragraph 61 (Record Review) or 62, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Local Governmental Entities ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 61 and 62.

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

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund and Emergency Management Division, EPA Region 6, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 61.a. This decision shall be binding upon Settling Local Governmental Entities, subject only to the right to seek judicial review pursuant to Paragraphs 61.c and 61.d.

c. Any administrative decision made by EPA pursuant to Paragraph 61.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Local Governmental Entities with the Court and served on all Parties within ten days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Local Governmental Entities' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Local Governmental Entities shall have the burden of demonstrating that the decision of the Superfund and Emergency Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 61.a.

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

a. Following receipt of Settling Local Governmental Entities' Statement of Position submitted pursuant to Paragraph 60, the Director of the Superfund and Emergency Management Division, EPA Region 6, will issue a final decision resolving the dispute. The Superfund and Emergency Management Division Director's decision shall be binding on Settling Local Governmental Entities unless, within ten days after receipt of the decision, Settling Local Governmental Entities file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure

orderly implementation of the Consent Decree. The United States may file a response to Settling Local Governmental Entities' motion.

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

63. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Local Governmental Entities under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 71. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Local Governmental Entities do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

XVIII. STIPULATED PENALTIES

64. Settling Local Governmental Entities shall be liable for stipulated penalties in the amounts set forth in Paragraphs 65 and 66 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Settling Local Governmental Entities shall include completion of all payments and activities required under this Consent Decree, or required under any submission approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, including the SOW, and any submissions approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

65. Stipulated Penalty Amounts – Payments, Financial Assurance, Major Deliverables, and Other Milestones.

a. The Settling Local Governmental Entities shall pay the following stipulated penalties which shall accrue per violation per day for any noncompliance identified in Paragraph 65.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$3,000	1st through 14th day
\$5,000	15th through 30th day
\$7,000	31st day and beyond

b. Noncompliance:

(1) Failure to timely pay Past Response Costs as provided in Paragraph 42.a.;

(2) Failure to timely pay prepaid Future Response Costs as provided in Paragraph 43.a.;

(3) Failure to timely pay Future Response Costs as provided in Paragraph 43.b. or 43.c;

(4) Failure to establish and maintain financial assurance in accordance with Section XI (Financial Assurance);

(5) Failure to perform any requirement set forth in the SOW or in any Plan required by the SOW by the date specified therein, except failures to submit timely or adequate written reports or other written Deliverables as required by this CD.

66. Stipulated Penalty Amounts – Submissions and Other Deliverables. The Settling Local Governmental Entities shall pay the following stipulated penalties which shall accrue per violation per day for failure to submit timely or adequate written reports or other written Deliverables pursuant to this CD, other than those specified pursuant to Paragraph 65.b. :

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1st through 14th day
\$1,750	15th through 30th day
\$2,500	31st day and beyond

67. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 82 (Work Takeover), Settling Local Governmental Entities shall be liable for a stipulated penalty in the amount of \$250,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 36 (Funding for Work Takeover) and 82 (Work Takeover).

68. All of Settling Local Governmental Entities' 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: (a) with respect to a deficient submission under Section IX (EPA Approval of Plans, Reports, 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 Settling Local Governmental Entities of any deficiency; (b) with respect to a decision by the Director of the Superfund and Emergency Management Division, EPA Region 6, under Paragraph 61.b or 62.a of Section XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Local Governmental Entities' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XVII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

69. Following EPA's determination that Settling Local Governmental Entities have failed to comply with a requirement of this Consent Decree, EPA may give Settling Local Governmental Entities written notification of the same and describe the noncompliance. EPA may send Settling Local Governmental Entities 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 Settling Local Governmental Entities of a violation.

70. All penalties accruing under this Section shall be due and payable to the United States within 30 days after Settling Local Governmental Entities' receipt from EPA of a demand for payment of the penalties, unless Settling Local Governmental Entities invoke the Dispute Resolution procedures under Section XVII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 49.b (Instructions for Future Response Cost Payments).

71. Penalties shall continue to accrue as provided in Paragraph 68 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Local Governmental Entities shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 71.c;

c. If the District Court's decision is appealed by any Party, Settling Local Governmental Entities shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Local Governmental Entities to the extent that they prevail.

72. If Settling Local Governmental Entities fail to pay stipulated penalties when due, Settling Local Governmental Entities shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Local Governmental Entities have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 71 until the date of payment; and (b) if Settling Local Governmental Entities fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 70 until the date of payment. If Settling Local Governmental Entities fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

73. The payment of penalties and Interest, if any, shall not alter in any way Settling Local Governmental Entities' obligation to complete the performance of the Work required under this Consent Decree.

74. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Local Governmental Entities' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

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

XIX. COVENANTS BY THE UNITED STATES

76. Covenants for Settling Local Governmental Entities by United States. In consideration of the actions that will be performed and the payments that will be made by Settling Local Governmental Entities under this Consent Decree, and except as specifically provided in Paragraphs 78, 79 (United States' Pre- and Post-Certification Reservations), and 81 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against Settling Local Governmental Entities pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to Settling Local Governmental Entities' future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 39.b of Section XII (Completion of Remedial Action). These covenants are conditioned upon the satisfactory performance by Settling Local Governmental Entities of their obligations under this Consent Decree, except that the United States' covenants with respect to Past Response Costs are conditioned upon the satisfactory performance by the Settling Local Governmental Entities of their obligation to pay Past Response Costs as required by Paragraph 42. These covenants extend only to Settling Local Governmental Entities and do not extend to any other person.

77. Covenant for Settling Federal Defendants. In consideration of the payments that will be made to EPA and to the Settling Local Governmental Entities by the United States on behalf of Settling Federal Defendants under this Consent Decree, and except as specifically provided in Paragraphs 78, 79 (United States' Pre- and Post-Certification Reservations), and 81 (General Reservations of Rights), EPA covenants not to take administrative action against Settling Federal Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, EPA's covenant shall take effect upon the Effective Date. With respect to future liability, EPA's covenant shall take effect upon the Certification of Completion of Remedial Action by EPA pursuant to Paragraph 39.b of Section XII (Completion of Remedial Action). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Defendants of their obligations under this Consent Decree. EPA's covenant extends only to Settling Federal Defendants and does not extend to any other person.

78. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Local Governmental Entities, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Defendants, to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to Certification of Completion of the Remedial Action, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

79. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Local Governmental Entities, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Defendants, to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

80. For purposes of Paragraph 78 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date of EPA's Five-Year Review, which was issued on September 28, 2016. For purposes of Paragraph 79 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

81. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Local Governmental Entities, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Defendants, with respect to all matters not expressly included within the covenants set forth in Paragraphs 76 and 77. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Local Governmental Entities, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Defendants, with respect to:

a. liability for failure by Settling Local Governmental Entities or Settling Federal Defendants to meet a requirement of this Consent Decree, including but not limited to a Settling Local Governmental Entity's failure to make payments, to provide financial assurance,

or to perform Work, based on the provisions of Paragraph 45 or based on a Settling Local Governmental Entity's contention that its failure is based on the Bateman Act, the New Mexico Constitution, or any other provision of law or court order.

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

c. liability based on the ownership of the Site by Settling Local Governmental Entities or Settling Federal Defendants when such ownership commences after signature of this Consent Decree by Settling Local Governmental Entities or Settling Federal Defendants;

d. liability based on the operation of the Site by Settling Local Governmental Entities when such operation commences after signature of this Consent Decree by Settling Local Governmental Entities and does not arise solely from Settling Local Governmental Entities' performance of the Work and liability based on the operation of the Site by Settling Federal Defendants when such operation commences after signature of this Consent Decree by Settling Federal Defendants;

e. liability based on Settling Local Governmental Entities' or Settling Federal Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Local Governmental Entities or Settling Federal Defendants;

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

g. criminal liability;

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

i. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 12 (Modification of SOW or Related Work Plans).

82. Work Takeover.

a. In the event EPA determines that Settling Local Governmental Entities have (1) ceased implementation of any portion of the Work, or (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Local Governmental Entities. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will

provide Settling Local Governmental Entities a period of ten days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the ten-day notice period specified in Paragraph 82.a, Settling Local Governmental Entities have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Settling Local Governmental Entities in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 82.b. Funding of Work Takeover costs is addressed under Paragraph 36.

c. Settling Local Governmental Entities may invoke the procedures set forth in Paragraph 61 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 82.b. However, notwithstanding Settling Local Governmental Entities' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 82.b until the earlier of (1) the date that Settling Local Governmental Entities remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 61 (Record Review) requiring EPA to terminate such Work Takeover.

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

XX. COVENANTS BY SETTLING LOCAL GOVERNMENTAL ENTITIES AND SETTLING FEDERAL DEFENDANTS

84. Covenants by Settling Local Governmental Entities. Subject to the reservations in Paragraph 87 (Settling Local Governmental Entities' Reservation of Rights), Settling Local Governmental Entities covenant not to sue and agree not to assert any claims or causes of action against the United States (including without limitation the Settling Federal Defendants) with respect to the Site, and this Consent Decree, including, but not limited to:

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

b. any claims under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this Consent Decree; or

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

The Settling Local Governmental Entities' covenant with the Settling Federal Defendants takes effect upon the Effective Date. The Settling Local Governmental Entities covenant with the Settling Federal Defendants is conditioned upon the satisfactory performance by the Settling Federal Defendants of their obligation to pay the Settling Local Governmental Entities' Past Response Costs as required by Paragraph 46.

85. Covenant by Settling Federal Defendants. Settling Federal Defendants agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 or 9613, or any other provision of law with respect to the Site and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Defendants in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

86. The covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XIX (Covenants by the United States), other than in Paragraphs 81.a (claims for failure to meet a requirement of the Consent Decree), 81.g (criminal liability), and 81.h (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Local Governmental Entities' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

87. Settling Local Governmental Entities' Reservation of Rights. Settling Local Governmental Entities reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Local Governmental Entities' plans, reports, other submissions, and other Deliverables. Settling Local Governmental Entities also reserve, and this Consent Decree is without prejudice to, contribution claims against Settling Federal Defendants in the event any claim is asserted by the United States against Settling Local Governmental Entities pursuant to any of the reservations in Section XIX (Covenants by the United States) other than in Paragraphs 81.a (claims for failure to meet a requirement of the Consent Decree), 81.g (criminal liability), and 81.h (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Local Governmental Entities' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

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

90. The waiver in Paragraph 89 (Claims Against *De Micromis* Parties) shall not apply with respect to any defense, claim, or cause of action that a Settling Local Governmental Entity may have against any person meeting the criteria in Paragraph 89 if such person asserts a claim or cause of action relating to the Site against such Settling Local Governmental Entity. This waiver also shall not apply to any claim or cause of action against any person meeting the criteria in Paragraph 89 if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

91. Claims Against *De Minimis* Parties. Settling Local Governmental Entities agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Local Governmental Entity may have against any person if such person has asserted or asserts a claim or cause of action relating to the Site against such Settling Local Governmental Entity.

XXI. EFFECT OF SETTLEMENT; CONTRIBUTION

92. Except as provided in Paragraph 89 (Claims against *De Micromis* Parties) and Paragraph 91 (Claims Against *De Minimis* Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 91 (Claims Against *De Minimis* Parties), each

of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

93. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Local Governmental Entity and the Settling Federal Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the Settling Local Governmental Entities, or any other person; provided, however, that if the United States exercises rights against Settling Local Governmental Entities (or if EPA or the federal natural resource trustees assert rights against Settling Federal Defendants) under the reservations in Section XIX (Covenants by the United States), other than in Paragraphs 81.a (claims for failure to meet a requirement of the Consent Decree), 81.g (criminal liability), or 81.h (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

94. Each Settling Local Governmental Entity shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

95. Each Settling Local Governmental Entity shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten days after service of the complaint on such Settling Local Governmental Entity. In addition, each Settling Local Governmental Entity shall notify the United States within ten days after service or receipt of any Motion for Summary Judgment and within ten days after receipt of any order from a court setting a case for trial.

96. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Local Governmental Entities 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 brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants by the United States).

XXII. ACCESS TO INFORMATION

97. Settling Local Governmental Entities shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Settling Local Governmental Entities shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

98. Business Confidential and Privileged Documents.

a. Settling Local Governmental Entities may assert business confidentiality claims covering part or all of the Records submitted to the United States under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Local Governmental Entities that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Local Governmental Entities.

b. Settling Local Governmental Entities may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Local Governmental Entities assert such a privilege in lieu of providing Records, they shall provide the United States with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Local Governmental Entities. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Local Governmental Entities shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Local Governmental Entities’ favor.

c. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States on the grounds that they are privileged or confidential.

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

XXIII. RETENTION OF RECORDS

100. Until ten years after Settling Local Governmental Entities' receipt of EPA's notification pursuant to Paragraph 39.b (Completion of Remedial Action), each Settling Local Governmental Entity shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Local Governmental Entities who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Local Governmental Entity must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Local Governmental Entity (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

101. The United States acknowledges that the Settling Federal Defendants (a) are subject to all applicable Federal record retention laws, regulations, and policies; and (b) have certified that they have fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

102. At the conclusion of this record retention period, Settling Local Governmental Entities shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, Settling Local Governmental Entities shall deliver any such Records to EPA. Settling Local Governmental Entities may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Local Governmental Entities assert such a privilege, they shall provide the United States with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Local Governmental Entities. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Local Governmental Entities shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Local Governmental Entities' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

103. Each Settling Local Governmental Entity certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the

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

XXIV. NOTICES AND SUBMISSIONS

104. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Defendant, and Settling Local Governmental Entities, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-09067/1

and:

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-3-09067/1

As to EPA:

Director, Superfund and Emergency Management
Division
United States Environmental Protection Agency
Region 6
MC: SED
1201 Elm Street
Dallas, TX 75270

and:

EPA Remedial Project Manager for the Griggs &
Walnut Ground Water Plume Superfund Site
United States EPA Region 6
1201 Elm Street Dallas, TX 75270

As to the Regional Financial
Management Officer:

Financial Management Officer (6MD-CA)
United States Environmental Protection Agency
Region 6
1201 Elm Street
Dallas, TX 75270.

As to Settling Local Governmental
Entities:

Jorge Garcia, Director
Adrienne Widmer, Deputy Director, Water
City of Las Cruces Utilities
680 N. Motel Blvd.
Las Cruces, NM 88007
Office: (575) 528-3512
jorge.garcia@las-cruces.org
awidmer@las-cruces.org

XXV. RETENTION OF JURISDICTION

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

XXVI. APPENDICES

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

“Appendix A” is the ROD.

“Appendix B” is the SOW.

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

“Appendix D” is the Settling Local Governmental Entities’ resolutions providing financial assurance, which remain pending final authorization, as described in Paragraph 34.

XXVII. COMMUNITY INVOLVEMENT

107. If requested by EPA, Settling Local Governmental Entities shall participate in community involvement activities pursuant to the community involvement plan to be developed by EPA. EPA will determine the appropriate role for Settling Local Governmental Entities under the Plan. Settling Local Governmental Entities shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Local Governmental Entities shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Costs incurred by the United States under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that Settling Local Governmental Entities shall pay pursuant to Section XIV (Payments for Response Costs).

XXVIII. MODIFICATION

108. Except as provided in Paragraph 12 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and Settling Local Governmental Entities, and shall be effective upon approval by the Court. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Except as provided in Paragraph 12, non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Settling Local Governmental Entities.

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

XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXX. SIGNATORIES/SERVICE

112. Each undersigned representative of the City, the County, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of

Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

113. Each Settling Local Governmental Entity agrees not to oppose entry of this Consent Decree by this Court, or to challenge any provision of this Consent Decree, unless the United States has notified Settling Local Governmental Entities in writing that it no longer supports entry of the Consent Decree.

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

XXXI. FINAL JUDGMENT

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

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

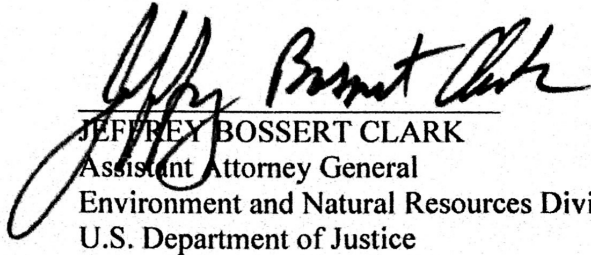
SO ORDERED THIS __ DAY OF _____, 20__.

HONORABLE JUDITH C. HERRERA
U.S. DISTRICT JUDGE

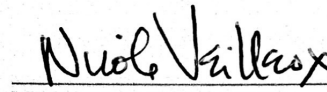
Signature Page for Consent Decree regarding the Griggs & Walnut Superfund Site

FOR THE UNITED STATES OF AMERICA:

3/15/20
Date


JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

4/16/20
Date


NICOLE VEILLEUX
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 616-8746 (phone)
nicole.veilleux@usdoj.gov

Signature Page for Consent Decree regarding the Griggs & Walnut Superfund Site

FOR THE UNITED STATES OF AMERICA, CONTINUED:

April 16, 2020
Date

David Mitchell
DAVID MITCHELL
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-0165
david.mitchell@usdoj.gov

JOHN C. ANDERSON
United States Attorney

/s/ Michael Hoses¹

Michael H. Hoses
Assistant United States Attorney
District of New Mexico
P.O. Box 607
Albuquerque, NM 87103
Phone: (505) 224-1455
Fax: (505) 346-7205
Michael.hoses@usdoj.gov

¹Permission to sign granted by email from Michael Hoses to Nicole Veilleux on March 31, 2020.

Signature Page for Consent Decree regarding the Griggs & Walnut Superfund Site

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date

**WREN
STENGER**

Digitally signed by WREN STENGER
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
cs=WREN STENGER,
0.9.2342.19200300.100.1.1=68001003651787
Date: 2020.03.26 08:58:52 -0500

Wren Stenger
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

Date

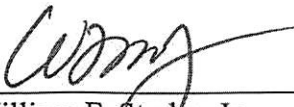
**JAMES
COSTELLO**

Digitally signed by JAMES COSTELLO
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=JAMES COSTELLO,
0.9.2342.19200300.100.1.1=680010036527
02
Date: 2020.03.24 11:58:15 -0500

James E. Costello
Practice Group Leader
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270


FOR THE CITY OF LAS CRUCES, NEW MEXICO:

2-10-20
Date



William F. Studer, Jr.
Interim City Manager
City of Las Cruces
700 N. Main
Las Cruces, NM 88001

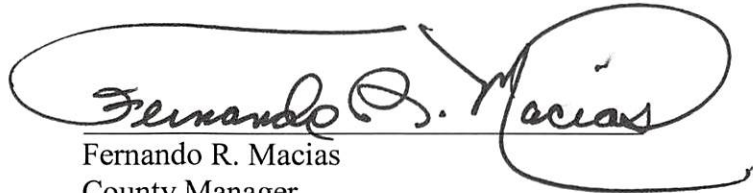
2/10/20
Date



Jessica K. Ferrell
Attorney for City of Las Cruces
Marten Law LLP
1191 Second Ave, Suite 2200
Seattle, WA 98101

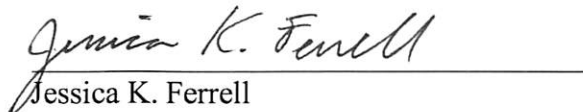
FOR DOÑA ANA COUNTY, NEW MEXICO:

2/11/20
Date

A handwritten signature in black ink, reading "Fernando R. Macias". The signature is written over a horizontal line and is enclosed within a large, loopy oval shape.

Fernando R. Macias
County Manager
Doña Ana County
845 N. Motel Blvd.
Las Cruces, NM 88007

2/11/20
Date

A handwritten signature in black ink, reading "Jessica K. Ferrell". The signature is written over a horizontal line.

Jessica K. Ferrell
Attorney for Doña Ana County
Marten Law LLP
1191 Second Ave, Suite 2200
Seattle, WA 98101