

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF: )  
)  
IOWA-NEBRASKA LIGHT & POWER )  
FORMER MANUFACTURED GAS PLANT )  
SITE )  
Norfolk, Madison County, Nebraska )  
)  
)  
CENTEL CORPORATION, )  
)  
BLACK HILLS/NEBRASKA GAS UTILITY )  
COMPANY, LLC )  
)  
AND )  
)  
NEBRASKA PUBLIC POWER DISTRICT )  
)  
Respondents. )  
)  
)  
Proceeding Under the Comprehensive )  
Environmental Response, Compensation )  
and Liability Act, as amended, 42 U.S.C. )  
§§ 9604, 9607 and 9622. )  
)

Docket No.  
CERCLA-07-2017-0005

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

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), and Centel Corporation (Work Respondent), Black Hills/Nebraska Gas Utility Company, LLC (d/b/a Black Hills Energy) (Owner Respondent), and Nebraska Public Power District (Owner Respondent) (collectively, Respondents). This Settlement Agreement concerns the performance of a remedial investigation and feasibility study (RI/FS) as more specifically set forth in the Statement of Work (SOW) attached as Appendix A to this Settlement Agreement and the reimbursement of certain future response costs incurred by the United States at, or in connection with, the Iowa-Nebraska Light & Power Former Manufactured Gas Plant Site located west of 7th Street between Norfolk and Madison Avenues in Norfolk, Madison County, Nebraska (Site).

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 7 to the Director of the Superfund Division by EPA Region 7 Delegation Nos. R7-14-14-C and R7-14-14-D (Jan. 1, 1995).

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), the EPA notified the Department of Interior and the Nebraska Department of Environmental Quality of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal and/or State trusteeship.

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



## II. PARTIES BOUND

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

6. Each undersigned representative of the Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Party he or she represents to this Settlement Agreement.

7. Work Respondent is liable for the performance of the Work required by this Settlement Agreement. Work Respondent shall provide a copy of this Settlement Agreement to each contractor hired to perform the Work required by this Settlement Agreement and to each person representing Work Respondent with respect to the Site or the Work, and shall condition all contracts entered into under this Settlement Agreement upon performance of the Work in conformity with the terms of this Settlement Agreement. Work Respondent or its contractors shall provide written notice of the Settlement Agreement to all subcontractors hired to perform any portion of the Work required by this Settlement Agreement. Work Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement Agreement.

## III. DEFINITIONS

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

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

b. "Day" shall mean a working day (Monday through Friday). In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

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

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

e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise

implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry (ATSDR) costs, the costs incurred pursuant to Paragraph 61 (costs and attorneys' fees and any monies paid to secure access, including the amount of just compensation Section XIV (Emergency Response and Notification of Releases), and Paragraph 93 (Work Takeover).

f. "Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (iii) provide information intended to modify or guide human behavior at or in connection with the Site.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, 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.

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

i. "NDEQ" shall mean the Nebraska Department of Environmental Quality and any successor departments or agencies of the State.

j. "Owner Respondents" shall mean Black Hills/Nebraska Gas Utility Company, LLC (d/b/a Black Hills Energy) and Nebraska Public Power District.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. "Parties" shall mean the EPA, Centel Corporation, Black Hills/Nebraska Gas Utility Company, LLC (d/b/a Black Hills Energy) and Nebraska Public Power District.

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

n. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq.

- o. "Respondents" shall mean Centel Corporation, Black Hills/Nebraska Gas Utility Company, LLC (d/b/a Black Hills Energy), and Nebraska Public Power District.
- p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, the SOW, all appendices attached hereto (listed in Section XXVIII (Integration/Appendices)). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.
- r. "Site" shall mean the Iowa-Nebraska Light & Power Former Manufactured Gas Plant Superfund Site, located west of 7th Street between Norfolk and Madison Avenues, Norfolk, Madison County, Nebraska. The Site location, layout, boundaries and historic manufactured gas plant structures are depicted in figures included in Appendix B.
- s. "State" shall mean the State of Nebraska.
- t. "Statement of Work" or "SOW" shall mean the Statement of Work for development of a RI/FS for the Site, set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.
- u. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including the EPA.
- v. "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); and (4) any "hazardous material" under Neb. Rev. St. § 81-1567(2).
- w. "Work" shall mean all activities Work Respondent is required to perform under this Settlement Agreement, except those required by Section XV (Retention of Records).
- x. "Work Respondent" shall mean Centel Corporation.

#### IV. FINDINGS OF FACT

9. The Site is located in downtown Norfolk, Madison County, Nebraska, west of 7<sup>th</sup> Street between Norfolk and Madison Avenues and is bisected by an alley running east/west between 7<sup>th</sup> and 8<sup>th</sup> Streets. The east portion of the Site north of the alley, as well as the northeast portion of the area south of the alley, is currently owned by Black Hills Energy (Black Hills Parcel). The remainder of the Site is owned by the Nebraska Public Power District (NPPD Parcel).

10. The Black Hills Parcel formerly contained two historic manufactured gas plant buildings. The buildings have been removed and the Black Hills parcel is a concrete parking lot.

11. The NPPD Parcel contains a two-story building in the southwest corner formerly used for administration offices and equipment maintenance and storage which has been unoccupied since September 2010. The NPPD Parcel also contains an electrical substation and a storage building in the northwest corner. A concrete slab in the north-central portion of the NPPD parcel was formerly used for equipment storage (including transformers). The eastern portion of the NPPD parcel is rock-covered and used for parking and equipment storage. Since 2010, the facility has not been used by NPPD for principal work activities, except for temporary parking and other temporary activities.

12. The Site is located in an area zoned for multiple uses including downtown and mixed use, public facilities, retail and single-family residential. The commercial properties near the Site include a custom cabinet shop, a restaurant, a bridal store, a tile store, a tattoo parlor, an insurance agency office, a musical instrument repair shop, an antique store, a tire repair shop, and the Norfolk Chamber of Commerce. The closest residences are located approximately 250 feet west of the Site along the west side of 8<sup>th</sup> Street. The Site is located one-half mile cross-gradient of the east municipal well field which supplies drinking water to the City of Norfolk.

13. Manufactured gas plant (MGP) operations were conducted on the Site by a series of owners from about 1903 until 1948. The Site was acquired by Iowa Nebraska Light & Power (INLP) in 1931. Central Electric & Gas Company acquired INLP in 1945 and operated the gas plant until 1948. During this time wastes resulting from the operations of the gas plant, including coal tar, were released into the environment. Coal tars are primarily composed of polynuclear aromatic hydrocarbons (PAHs) such as benzo(a)pyrene, naphthalene, anthracene, acenaphthalene and phenanthrene, some light aromatic compounds such as benzene, toluene, ethylbenzene and xylenes (BTEX); and various organics such as dibenzofuran. Central Electric & Gas Company changed its name to Western Power & Gas Company, which later changed its name to Central Telephone & Utilities Corporation, which in turn later changed its name to Centel Corporation.

14. In 1941, Consumers Public Power District, now known as Nebraska Public Power District (NPPD), acquired all properties and assets of INLP in the State of Nebraska used or useful in the production, transmission, distribution, and sale of electric energy, including the NPPD Parcel. According to the Bill of Sale between INLP and Consumers Public Power District, dated April 4, 1941, this purchase specifically excluded the sale of any property or assets of INLP situated in Nebraska which were used or useful primarily in the production, manufacture, storage, transmission, distribution or sale of natural or manufactured gas.

15. The Black Hills Parcel was acquired by the Minnesota Gas Company (subsequently known as Minnegasco, Inc.) in 1976. Peoples Natural Gas, a division of Utilicorp United, Inc. purchased the Black Hills parcel from Minnegasco in 1992. Utilicorp United, Inc. changed its name to Aquila in 2002. Black Hills acquired certain assets of Aquila, including the Black Hills Parcel, in 2008.

16. Subsurface soil and groundwater samples collected by the EPA during investigations of the Site in 1990, 1991 and 1992 were found to be contaminated with MGP-related compounds including PAHs (pyrene, naphthalene, benzo(a)pyrene, benzo(a)anthracene, benzo(b)fluoranthene, phenanthrene, chrysene and indeno(1,2,3-c,d)pyrene), BTEX and metals.

17. In April 2007, the EPA entered into an Administrative Settlement Agreement and Order on Consent for Engineering Evaluation/Cost Analysis (EE/CA) with Respondents. The primary goals of the EE/CA were to develop removal action goals for impacted media, to identify potential removal action technologies and approaches, and to develop and evaluate removal alternatives to address the coal-tar contamination. The EE/CA site characterization field investigation activities were conducted between November and December 2007, June and July 2009, and January 2010. The field investigation activities were designed to gather data to better define and characterize the subsurface geology and site hydrogeology, the extent of soil, dense non-aqueous phase liquid (DNAPL), and dissolved-phase groundwater contamination, and to support an assessment of the human health and ecological risks posed by the release of hazardous substances at the Site. Based on reports obtained from the Nebraska Department of Environmental Quality (NDEQ), the EE/CA Site Characterization Report (June 2012) identified 30 leaking underground storage tank sites within 0.25 mile of the Site. The recommended removal action alternative included building demolition, excavation and disposal of contaminated soils, site restoration and groundwater monitoring for at least ten years as a post-removal site control.

18. In August 2013, the EPA issued an Enforcement Action Memorandum and entered into an Administrative Settlement Agreement Order on Consent For Removal Action with Centel, Black Hills and NPPD. In 2014, on-site buildings were demolished and approximately 10,425 tons of contaminated soil was excavated and transported off-site for disposal. The Site was restored with a concrete parking lot on the Black Hills parcel and a fenced gravel lot on the NPPD Parcel. The on-site construction and restoration activities were completed in June 2014.

19. Beginning in August 2014, quarterly groundwater sampling was conducted by the Work Respondent to document contaminant concentrations following completion of the source area removal action. According to the 2014/2015 Groundwater Monitoring Report dated February 2016, the BTEX and PAH analytical data indicate that the highest concentrations are on-site and have not migrated far laterally. However, concentrations of benzene exceeding the maximum contaminant (MCL) extend downgradient of the Site sentinel wells MW-07B, MW-08A, and MW-08B.

20. Groundwater contamination has been found in the alluvial aquifer system underlying the Site. Eleven active municipal drinking water wells and eight other public drinking water supply wells withdraw water from these aquifer systems.

21. PAHs may be toxic to humans and animals via oral, dermal, or respiratory routes of exposure. PAHs are slightly, to moderately soluble in water and are soluble in other organic compounds such as benzene. Some PAHs are animal carcinogens. Some PAHs are probable human carcinogens.

22. Benzene, toluene, ethyl benzene, and xylene are light aromatic compounds that have been detected at the Site. Benzene is a human carcinogen. These compounds are toxic to humans and animals via oral, respiratory or dermal routes of exposure. They are slightly soluble in water and volatile in the environment.

23. The Iowa-Nebraska Power & Light Former Manufactured Gas Plant Site was listed on the National Priorities List (NPL) pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on April 7, 2016.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, the EPA has determined that:

24. The Iowa-Nebraska Former Manufactured Gas Plant Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

26. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. Each Respondent is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28. Each Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

a. Centel Corporation, formerly Central Electric & Gas Company, owned or operated a manufactured gas plant at the facility at the time of disposal of any hazardous substances at the facility. Respondent Centel Corporation therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

b. Black Hills Energy and NPPD, are the current owners of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

29. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

30. The EPA has determined that Work Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42



U.S.C. §§ 9604(a) and 9622(a), if the Work Respondent complies with the terms of this Settlement Agreement.

## VI. SETTLEMENT AGREEMENT

31. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that each Respondent shall comply with the provisions of this Settlement Agreement applicable to it, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

32. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Work Respondent shall notify the EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories, to be used in carrying out such Work. If, after the commencement of Work, Work Respondent retains additional contractors or subcontractors, Work Respondent shall notify the EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 10 days prior to commencement of Work by such additional contractors or subcontractors. The EPA retains the right, at any time, to disapprove of any and all of the contractors and/or subcontractors retained by Work Respondent. If the EPA disapproves of a selected contractor or subcontractor, Work Respondent shall retain a different contractor or subcontractor and shall notify the EPA of that contractor's or subcontractor's name, title, contact information and qualifications within 10 days after EPA disapproval. With respect to any proposed contractor, Work Respondent shall demonstrate that the proposed contractor demonstrates compliance with AQS/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance For Use" (American Society for Quality, February 2014) by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B01/002 (Reissued May 2006) or equivalent documentation as determined by the EPA. The qualifications of the persons undertaking the Work for Work Respondent shall be subject to the EPA's review, for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

33. Within 30 days after the Effective Date, Work Respondent shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement Agreement and shall submit to the EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. The EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 32 (Selection of Contractors). If the EPA disapproves of the designated Project Coordinator, Work Respondent shall retain a different Project Coordinator and shall notify the EPA of that person's name, address, telephone number and qualifications within 14 days

following the EPA's disapproval. Receipt by Work Respondent's Project Coordinator of any notice or communication from the EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

34. The EPA has designated Owens Hull as its Remedial Project Manager (RPM). The EPA will notify Work Respondent of a change of its designated RPM. Communications between Work Respondent and the EPA, and all documents concerning the activities performed pursuant to this Settlement Agreement shall be directed to the EPA RPM in accordance with Section IX (EPA Approval of Deliverables).

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

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

## VIII. WORK TO BE PERFORMED

37. Activities and Deliverables. Work Respondent shall conduct activities and submit deliverables as provided by the SOW, for the development of the RI/FS. All such Work shall be conducted in accordance with the provisions of this Settlement Agreement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (RI/FS Guidance) (OSWER Directive # 9355.3-01, October 1988), available at <http://semspub.epa.gov/src/document/11/128301>, "Guidance for Data Usability in Risk Assessment (Part A), Final" (OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at <http://semspub.epa.gov/src/document/11/156756>, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the release of hazardous substances at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, at or from the Site as set out in the SOW attached as Appendix A. The general activities that Work Respondent is required to perform are identified below, followed by a list of deliverables. The tasks that Work Respondent must perform are described more fully in the SOW and guidance. The activities and deliverables identified below shall be developed as provided in the RI/FS Work Plan and Sampling and Analysis Plan, and shall be submitted to the



EPA as provided therein. All Work performed under this Settlement Agreement shall be in accordance with the schedules in this Settlement Agreement or established in the SOW, and in full accordance with the standards, specifications, and other requirements of the RI/FS Work Plan and Sampling and Analysis Plan, as initially approved or modified by the EPA, and as may be amended or modified by the EPA from time to time. All written documents prepared by Work Respondent pursuant to this Settlement Agreement shall be submitted by Work Respondent in accordance with Section IX (EPA Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by the EPA in accordance with Section IX (EPA Approval of Deliverables). Work Respondent shall implement all the EPA approved, conditionally-approved, or modified deliverables.

a. Scoping. The EPA will approve, upon consideration and comment on the proposal of Work Respondent, the Site-specific objectives of the RI/FS and the general management approach for the Site, as stated in the SOW. Work Respondent shall conduct the remainder of scoping activities as described in the SOW and referenced guidance. At the conclusion of the project planning phase, as referenced in Chapter 2.2 of the RI/FS Guidance, Work Respondent shall provide the EPA with the following deliverables:

- i. RI/FS Work Plan. Within 60 days after the Effective Date, Work Respondent shall submit a draft RI/FS Work Plan to the EPA for review and approval. Upon its approval by the EPA pursuant to Section IX (EPA Approval of Deliverables), the RI/FS Work Plan shall be incorporated into and become enforceable under this Settlement Agreement. The items to be included in the RI/FS Work Plan are specified in Section IV (Tasks) of the SOW.
- ii. Sampling and Analysis Plan. Within 60 days after the Effective Date, Work Respondent shall submit a Sampling and Analysis Plan to the EPA for review and approval pursuant to Section IX (EPA Approval of Deliverables). This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), as described in the SOW, that is consistent with the NCP, "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA/240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by the EPA pursuant to Section IX (EPA Approval of Deliverables), the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement Agreement.
- iii. Health and Safety Plan. Within 60 days after the Effective Date, Work Respondent shall submit for the EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Settlement Agreement.

This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-O1C (November 2002), available on the NSCEP database at <https://www.epa.gov/nscep/index.html>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at [https://www.epaosc.org/\\_HealthSafetyManual/manual-index.htm](https://www.epaosc.org/_HealthSafetyManual/manual-index.htm). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If the EPA determines that it is appropriate, the plan shall also include contingency planning. Work Respondent shall incorporate all changes to the plan provided by the EPA and shall implement the plan during the pendency of the RI/FS.

b. Site Characterization. Following the EPA approval or modification of the RI/FS Work Plan and Sampling and Analysis Plan, Work Respondent shall implement the provisions of these plans to characterize the Site. Work Respondent shall complete Site characterization and submit all deliverables in accordance with the schedules and deadlines established in this Settlement Agreement, the attached SOW, and/or the EPA-approved RI/FS Work Plan and Sampling and Analysis Plan.

c. Baseline Human Health Risk Assessment and Ecological Risk Assessment. Within 60 days after the collection of the last field sample required by the approved Sampling and Analysis Plan, Work Respondent shall amend the EE/CA Risk Evaluation Report (Rev. 2) dated October 2011 in accordance with the SOW, RI/FS Work Plan, and applicable EPA guidance, including but not limited to: “Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A),” RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A (December 1989); “Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments),” RAGS, EPA-540-R-97-033, OSWER Directive 9285.7-01D (January 1998); and “Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments,” ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25 (June 1997).

d. Draft RI Report. Within 60 days after the collection of the last field sample required by the approved Sampling and Analysis Plan, Work Respondent shall submit to the EPA for review and approval pursuant to Section IX (EPA Approval of Deliverables), a draft Remedial Investigation Report (RI Report) consistent with the SOW, RI/FS Work Plan, and Sampling and Analysis Plan.

e. Treatability Studies. Work Respondent shall conduct treatability studies, except where Work Respondent can demonstrate to EPA’s satisfaction that they are not needed. The major components of the treatability studies are described in the SOW. In accordance with the schedules or deadlines established in this Settlement Agreement, the attached SOW, and/or the EPA-approved RI/FS Work Plan, Work Respondent shall provide the EPA with the following deliverables for review and approval pursuant to Section IX (EPA Approval of Deliverables):

- i. Identification of Candidate Technologies Memorandum. This memorandum shall be submitted within 45 days after collection of the last field sample required by the approved RI/FS Work Plan.
  - ii. Treatability Test Work Plan. If the EPA determines that treatability testing is required, within 30 days thereafter or as specified by the EPA, Work Respondent shall submit a Treatability Test Work Plan, including a schedule.
  - iii. Treatability Study Sampling and Analysis Plan. Within 30 days after identification of the need for a separate or revised QAPP or FSP, Work Respondent shall submit a Treatability Study Sampling and Analysis Plan.
  - iv. Treatability Study Evaluation Report. Within 30 days after completion of any treatability testing, Work Respondent shall submit a treatability study evaluation report as provided in the SOW and RI/FS Work Plan.
- f. Treatability Study Health and Safety Plan. Within 30 days after the identification of the need for a revised Health and Safety Plan, Work Respondent shall submit a Treatability Study Health and Safety Plan.
- g. Development and Screening of Alternatives. Work Respondent shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. In accordance with the schedules or deadlines established in this Settlement Agreement, the SOW, and/or the EPA-approved RI/FS Work Plan, Work Respondent shall provide the EPA with the following deliverables for review and approval pursuant to Section IX (EPA Approval of Deliverables):
  - i. Memorandum on Remedial Action Objectives. The Memorandum on Remedial Action Objectives shall include remedial action objectives for Engineering Controls as well as for Institutional Controls.
  - ii. Memorandum on Development and Screening of Alternatives. The Memorandum on Development and Screening of Alternatives shall summarize the development and screening of remedial alternatives.
- h. Detailed Analysis of Alternatives. Work Respondent shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FS Work Plan. In accordance with the deadlines or schedules established in this Settlement Agreement, the attached SOW, and/or the EPA-approved RI/FS Work Plan, Work Respondent shall provide the EPA with the following deliverables for review and approval pursuant to Section IX (EPA Approval of Deliverables):
  - i. Individual Analysis of Alternatives. Within 30 days after the EPA's comments on the Alternative Screening Technical Memorandum, Work Respondent shall conduct an assessment of individual alternatives against

each of the nine evaluation criteria, as described in the SOW, and prepare a summary report.

- ii. Comparative Analysis of Alternatives. Within 30 days after the EPA's comments on the Alternative Screening Technical Memorandum, Work Respondent shall conduct a comparative analysis of alternatives to evaluate the relative performance of each alternative in relation to the nine evaluation criteria, as described in the SOW, and prepare a summary report.
- iii. Alternatives Analysis for ICs and Screening. Work Respondent shall submit as an appendix to the draft FS report, a memorandum on the ICs identified in the Memorandum on Development and Screening of Alternatives as potential remedial actions. The Alternatives Analysis for ICs and Screening shall (i) describe the restrictions needed on land, water, or other resources and their relationship to the remedial action objectives; (ii) determine the specific types of ICs that can be used to address and implement the land, water, or other resource use restrictions; (iii) investigate when the ICs need to be implemented and how long they must remain in place; (iv) research, discuss, and document any agreement or other arrangements with the proper entities (e.g., state, local government, local landowners, conservation organizations, Owner Respondents) on exactly who will be responsible for implementing, maintaining, and enforcing the ICs. The Alternatives Analysis for ICs and Screening shall also evaluate the ICs identified in the Memorandum on Development and Screening of Alternatives against the nine evaluation criteria outlined in the NCP (40 C.F.R § 300.430(e)(9)(iii)) for CERCLA cleanups, including but not limited to costs to implement, maintain, and/or enforce the ICs. The Alternatives Analysis for ICs and Screening shall be submitted as an appendix to the draft Feasibility Study Report (FS Report).
- i. Draft FS Report. Within 30 days after receipt of the EPA's comments on the Individual and Comparative Analysis of Alternatives Technical Memorandum, Work Respondent shall submit to the EPA a draft FS Report for review and approval pursuant to Section IX (EPA Approval of Deliverables). Work Respondent shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The draft FS Report as amended, and the administrative record, shall provide the basis for the proposed plan under Sections 113(k) and 117(a) of CERCLA, 42 U.S.C. §§ 9613(k) and 9617(a), by the EPA, and shall document the development and analysis of remedial alternatives.

38. Upon receipt of the draft Feasibility Study Report (FS Report), the EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the cost, implementability, and long-term effectiveness of any proposed ICs for that alternative.

39. Modification of the RI/FS Work Plan.

a. If at any time during the RI/FS process, Work Respondent identifies a need for additional data, Work Respondent shall submit a memorandum documenting the need for additional data to the RPM within 10 days of identification. The EPA in its discretion will determine whether the additional data will be collected by Work Respondent and whether it will be incorporated into plans, reports and other deliverables.

b. In the event of an immediate threat or unanticipated or changed circumstances at the Site, Work Respondent shall notify the RPM by telephone at (913) 551-7226 within 24 hours of discovery of the immediate threat or unanticipated or changed circumstances. In the event that the EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, the EPA shall modify or amend the RI/FS Work Plan in writing accordingly. Work Respondent shall perform the RI/FS Work Plan as modified or amended.

c. The EPA may determine that in addition to tasks defined in the initially approved RI/FS Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FS. Work Respondent agrees to perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if the EPA determines that such actions are necessary for a complete RI/FS.

d. Work Respondent shall confirm its willingness to perform the additional Work in writing to the EPA within 7 days of receipt of the EPA request. If Work Respondent objects to any modification determined by the EPA to be necessary pursuant to this Paragraph, Work Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Work Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by the EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. The EPA reserves the right to conduct the Work itself pursuant to Paragraph 93 (Work Takeover).

f. Nothing in this Paragraph shall be construed to limit the EPA's authority to require performance of further response actions at the Site.

40. Off-Site Shipment of Waste Material.

a. Work Respondent shall ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Work Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Work Respondent obtains a prior determination from the EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).



b. Work Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA's RPM. 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 must include the following information, if available: (i) the name and location of the receiving facility; (ii) the type and quantity of Waste Material to be shipped; (iii) the schedule for the shipment; and (iv) the method of transportation. Work Respondent shall also notify the state environmental official referenced above and the EPA's RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Work Respondent shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Work Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

41. Progress Reports. In addition to the plans, reports and other deliverables forth in the SOW, Work Respondent shall provide to the EPA monthly reports by the 15<sup>th</sup> day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (a) describe the actions which have been taken to comply with this Settlement Agreement during that month, (b) include all results of sampling and tests received by Work Respondent, (c) describe work planned for the next two months with schedules related to such Work to the overall project schedule for RI/FS completion, and (d) describe all problems and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## **IX. EPA APPROVAL OF DELIVERABLES**

42. Submission of Deliverables.

a. General Requirements for Deliverables.

i. Except as otherwise provided in this Settlement Agreement, Work Respondent shall direct all submissions required by this Settlement Agreement to the EPA's RPM at 11201 Renner Boulevard, Lenexa, Kansas 66219 by First Class Mail or by email to [hull.owens@epa.gov](mailto:hull.owens@epa.gov), with copies to: Sarah Jeffrey, Nebraska Department of Environmental Quality, 1200 'N' Street, The Atrium, Suite 400, Lincoln, Nebraska 68509-8922, [sarah.jeffrey@nebraska.gov](mailto:sarah.jeffrey@nebraska.gov); Michael Pogany, Black Hills Energy, PO Box 1400, Rapid City, South Dakota 57709; [mike.pogany@blackhillscorp.com](mailto:mike.pogany@blackhillscorp.com); Bonnie Hostetler, Nebraska Public Power District, 1414 15<sup>th</sup> Street, Columbus, Nebraska 68602,

bjhoste@nppd.com; Larry Linder, Nebraska Public Power District, 1414 15<sup>th</sup> Street, Columbus, Nebraska 68602, Llinde@nppd.com; and Brian Brislen c/o Lamson, Dugan & Murray LLP, 10306 Regency Parkway Drive, Omaha, Nebraska 68114, bbrislen@ldmlaw.com. The Parties may amend their respective contact information under this paragraph by providing written notice to Work Respondent. Work Respondent shall submit all deliverables required by this Settlement Agreement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

- ii. Work Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 42.b. All other deliverables shall be submitted in the electronic form specified by the EPA's RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Work Respondent shall also provide paper copies of such exhibits.

b. Technical Specifications for Deliverables.

- i. Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- ii. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and the EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- iii. Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- iv. Spatial data submitted by Work Respondent does not, and is not intended to, define the boundaries of the Site.

43. Initial Submissions. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement or the attached SOW, in a notice to Work Respondent the EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission or (d) any combination of the foregoing. The EPA may also modify the initial submission to cure deficiencies in the submission if the EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or 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 deliverable.

44. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 43 (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 43 (Initial Submissions), Work Respondent shall, within 30 days or such longer time as specified by the EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted deliverable, the EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Work Respondent to correct the deficiencies; or (e) any combination of the foregoing.

45. Implementation. Upon approval, approval upon conditions, or modification by the EPA, pursuant to Paragraph 43 (Initial Submission) or Paragraph 44 (Resubmission), of any deliverable, or any part thereof: (a) such deliverable, or portion thereof, will be incorporated into and enforceable under this Settlement Agreement; and (b) Work Respondent shall take any action required by such deliverable or portion thereof. Implementation of a non-deficient portion of a submission shall not relieve Work Respondent of any liability for penalties under Section XVII (Stipulated Penalties) for violation of this Settlement Agreement.

46. Notwithstanding the receipt of a notice of disapproval, Work Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by the EPA. Implementation of any non-deficient portion of a submission shall not relieve Work Respondent of any liability for stipulated penalties under Section XVII (Stipulated Penalties).

47. In the event that the EPA takes over some of the tasks, but not the preparation of the RI Report or the Feasibility Study Report FS Report, Work Respondent shall incorporate and integrate information supplied by the EPA into those reports.

48. Work Respondent shall not proceed with any subsequent activities or tasks until receiving the EPA approval, approval on condition or modification of the following deliverables: RI/FS Work Plan and Sampling and Analysis Plan, Draft RI Report and Treatability Testing Work Plan, Sampling and Analysis Plan, and Draft FS Report. While awaiting the EPA's approval, approval on condition or modification of these deliverables, Work Respondent shall proceed with all other tasks and activities, which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.



49. For all remaining deliverables not listed Paragraph 48, Work Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting the EPA approval on the submitted deliverable. The EPA reserves the right to stop Work Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

50. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by the EPA under Paragraph 43 (Initial Submissions) or 44 (Resubmissions) due to such material defect, Work Respondent shall be deemed in violation of this Settlement Agreement for failure to submit such plan, report, or other deliverable timely and adequately. Work Respondent may be subject to penalties for such violation as provided in Section XVII (Stipulated Penalties).

51. Neither failure of the EPA to expressly approve or disapprove of Work Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by the EPA.

52. All plans, reports, and other deliverables submitted to the EPA under this Settlement Agreement shall, upon approval or modification by the EPA, be incorporated into and enforceable under this Settlement Agreement. In the event the EPA approves or modifies a portion of a plan, report, or other deliverable submitted to the EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

## **X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

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

### **54. Laboratories**

a. Work Respondent shall use all reasonable efforts to ensure that the EPA and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Work Respondent pursuant to this Settlement Agreement. In addition, Work Respondent shall ensure that such laboratories shall analyze all samples submitted by the EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the EPA's "Field Operations Group Operational Guidelines for Field Activities" (<http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf>) and "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Work Respondent shall ensure

that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement Agreement meet the competency requirements set forth in the EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/superfund/programs/clp/>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www.epa.gov/ttnamti1/airtox.html>).

b. Upon approval by the EPA, Work Respondent may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Work Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by the EPA. The EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Work Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the approved QAPP.

## 55. Sampling

a. Upon request, Work Respondent shall provide split or duplicate samples to the EPA or its authorized representatives. Work Respondent shall notify the EPA not less than 10 days in advance of any sample collection activity unless shorter notice is agreed to by the EPA. In addition, the EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, the EPA shall provide to Work Respondent split or duplicate samples of any samples it takes as part of the EPA's oversight of Work Respondent's implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. All results of sampling, tests, modeling or other data (including raw data) generated by Work Respondent, or on Work Respondent's behalf, during the period that this

Settlement Agreement is effective, shall be submitted to the EPA in the next monthly progress report as described in Paragraph 41 (Progress Reports) of this Settlement Agreement.

c. Work Respondent waives any objections to the validity of any objective sampling and/or analytical data gathered, generated, or evaluated by the EPA, or Work Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement Agreement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. For the avoidance of doubt, the term “data” as used herein refers to the raw data and numerical results of sampling, testing, monitoring, measuring, modeling or other objective outcome of the Work and does not include any subjective analysis, interpretation, observation, thought, impression, notes, memoranda, communication, draft submission, work plan or other document, including but not limited to any privileged, protected or confidential work product. If Work Respondent objects to any other data relating to the RI/FS, Work Respondent shall submit to the EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to the EPA within 15 days after the monthly progress report containing the data.

## **XI. ACCESS TO INFORMATION**

56. Work Respondent shall provide the EPA, upon request, copies of all non-privileged or non-protected records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, 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. Work Respondent shall also make available to the EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Work Respondent’s employees, agents or representatives shall have the right, but not the obligation, to be represented by legal counsel when providing information or testimony pursuant to this Paragraph.

### **57. Privileged and Protected Claims.**

a. Work Respondent may assert that all or part of a Record requested by the EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Work Respondent complies with Paragraph 57.b, and except as provided in Paragraph 58.

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

has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Work Respondent may make no claim of privilege or protection regarding valid, objective sampling and/or analytical data (as that term is used in Paragraph 55.c.) regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data; chain of custody records, manifests, trucking logs, receipts; and sample traffic routing.

58. Business Confidential Claims. Work Respondent may assert that all or part of a Record provided to the EPA under this Section or Section XV (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Work Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the EPA, or if the EPA has notified Work Respondent 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 Respondents.

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

## **XII. SITE ACCESS**

60. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by either of the Owner Respondents, such Owner Respondent shall, commencing on the Effective Date, provide Work Respondent, the EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement. The Parties acknowledge that Owner Respondents have executed Easement Agreements granting Work Respondent, its contractors, agents, employees, and invitees (including the EPA and the State) access to the Site in satisfaction of this requirement.

61. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Owner Respondents, Work Respondent shall use its best efforts to obtain all necessary access agreements within 45 days after the Effective Date, or as otherwise specified in writing by the RPM. Work Respondent shall immediately notify the RPM if, after using its best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" means the efforts that a reasonable person in the position of the Work Respondent would use so as to achieve the goal in a timely manner, including the reasonable cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restrictions agreements determined to be necessary. If Work Respondent is unable to accomplish what is required through "best efforts"

in a timely manner, it shall notify the EPA and include a description of the steps taken to comply with this requirement. If the EPA deems it appropriate, it may assist Work Respondent, or take independent action, in obtaining access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIX (Payment of Response Costs). In the event the EPA chooses not to obtain access, no stipulated penalties will accrue pursuant Section XVII (Stipulated Penalties) for failure to conduct Work on such property. Work Respondent shall perform all other tasks or activities not requiring access to that property. If the EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Work Respondent shall cooperate with the EPA's efforts to secure an ensure compliance with such Institutional Controls.

62. Notwithstanding any provision of this Settlement Agreement, the EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

### **XIII. COMPLIANCE WITH OTHER LAWS**

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

### **XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

64. Emergency Response. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material on, at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Work Respondent shall take all appropriate action to prevent, abate or minimize such release or threat of release. Work Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to the Health and Safety Plan. Work Respondent shall also immediately notify the RPM, or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region 7, at (913) 281-0991 of the incident or Site conditions. In



the event that Work Respondent fails to take appropriate response action as required by this Paragraph, and the EPA takes such action instead, Work Respondent shall reimburse the EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIX (Payment of Response Costs).

65. Release Reporting. Upon the occurrence of any event during performance of the Work that Work Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Work Respondent shall immediately orally notify the EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (913) 281-0991, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

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

## **XV. RETENTION OF RECORDS**

67. During the pendency of this Settlement Agreement and for a minimum of 10 years after the EPA provides Work Respondent with notice, pursuant to Section XXX (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement Agreement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that related to the liability of any other person under CERCLA with respect to the Site. Work Respondent must 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 Work Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

68. Within 90 days of the conclusion of this document retention period, the EPA shall notify Work Respondent whether it wishes to preserve any such Records and, upon request by the EPA, and except as provided in Paragraph 57 (Privileged and Protected Claims), Work Respondent shall deliver such Records to the EPA.

69. Each Respondent hereby certifies that to the best of its knowledge and belief, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records,

documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all the EPA requests for information 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.

## **XVI. DISPUTE RESOLUTION**

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

71. Informal Dispute Resolution. If any Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall send a written Notice of Dispute describing the objection(s) within 15 days of such action. The Parties shall have 15 days from the EPA's receipt of a Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement.

72. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the EPA's RPM. The EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Respondents. The EPA's decision will be incorporated into and become an enforceable part of this Settlement Agreement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the EPA's decision, whichever occurs. Except as provided in Paragraph 89 (Contesting Future Response Costs) or as agreed by the EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Work Respondent under this Settlement Agreement, other than the obligation that was the subject of the dispute. Except as provided in Paragraph 77, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid by Work Respondent as provided in Section XVII (Stipulated Penalties).

## **XVII. STIPULATED PENALTIES**

73. Work Respondent shall be liable to the EPA for stipulated penalties in the amounts set forth in Paragraphs 74.a and 75 for failure to comply with the obligations specified in Paragraphs 74.b and 75, unless excused under Section XVIII (Force Majeure). "Comply" as

used in the previous sentence includes compliance by Work Respondent with all applicable requirements of this Settlement Agreement, within the deadlines established under this Settlement Agreement.

74. Stipulated Penalty Amounts: Payments, Financial Assurance, and Major Deliverables.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligations identified in Paragraph 74.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1,000	31st day and beyond

b. Obligations

(1) Payment of any amount due under Section XIX (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXVII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 89 (Contesting Future Response Costs).

(4) Submission of a final RI/FS work plan and sampling and analysis plan.

(5) Submission of a final RI Report.

(6) Submission of a final FS Report.

75. Stipulated Penalty Amounts: Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement Agreement, other than those specified in Paragraph 74.a:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 150	1st through 14th day
\$ 300	15th through 30th day
\$ 500	31st day and beyond



76. In the event that the EPA assumes performance of a portion or all of the Work pursuant to Paragraph 93 (Work Takeover), Work Respondent shall be liable for a stipulated penalty in the amount of \$5,000. Stipulated penalties under this Paragraph are in addition to the remedies available to the EPA under Paragraphs 93 (Work Takeover) and 110 (Access to Financial Assurance).

77. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of the EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section IX (EPA Approval of Deliverables), during the period, if any, beginning on the 31<sup>st</sup> day after the EPA's receipt of such submission until the date that EPA notifies Work Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 72 (Formal Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the Negotiation Period begins until the date the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

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

79. All penalties accruing under this Section shall be due and payable to the EPA within 30 days after Work Respondent's receipt from the EPA of a demand for payment of the penalties, unless Work Respondent invokes the Dispute Resolution procedures in accordance with Section XVI (Dispute Resolution) within the 30-day period. All payments to the EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 87 (Payment of Future Response Costs).

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

81. If Work Respondent fails to pay stipulated penalties when due, Work Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Work Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 77 until the date of payment; and (b) if Work Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 79 until the date of payment. If Work Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

82. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Work Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that the EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that the EPA assumes performance of a portion or all of the Work pursuant to Paragraph 93 (Work Takeover).

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

### XVIII. FORCE MAJEURE

84. Each Respondent agrees to perform all requirements of this Settlement Agreement applicable to it within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of the Respondent(s) liable for the affected obligation(s) or of any entity controlled by such Respondent(s), including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent(s) best efforts to fulfill the obligation. The requirement that Respondent(s) 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 increased cost of performance.

85. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent(s) shall notify the EPA orally within five days of when Respondent(s) first knew that the event might cause a delay. Within 10 days thereafter, Respondent(s) shall provide to the EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent(s), such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent(s) shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent(s) shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent(s) from asserting any claim of *force*

*majeure* regarding that event, provided, however, that if the EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a *force majeure* under Paragraph 84 and whether Respondent(s) have exercised their best efforts under Paragraph 84, the EPA may, in its unreviewable discretion, excuse in writing a Respondent's failure to submit timely or complete notices under this Paragraph.

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

## **XIX. PAYMENT OF RESPONSE COSTS**

### **87. Payments of Future Response Costs.**

a. Work Respondent shall pay the EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, the EPA will send Work Respondent a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by the EPA, its contractors, and the United States Department of Justice. Work Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 89 (Contesting Future Response Costs) of this Settlement Agreement. Work Respondent shall make all payments required by this Paragraph by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, the Site/Spill ID number A778, and the EPA docket number of this action, and shall be sent to:

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

At the time of payment, Work Respondent shall send notice that payment has been made to the EPA's RPM, and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or by mail to:

EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A778 and the EPA docket number for this action.

a. The total amount to be paid by Work Respondent pursuant to Subparagraph 87.a. shall be deposited in the Iowa-Nebraska Former Manufactured Gas Plant Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by the EPA to the EPA Hazardous Substance Superfund.

88. If Work Respondent does not pay Future Response Costs within 30 days of Work Respondent's receipt of a bill, Work Respondent shall pay Interest on the unpaid balance of Future Response Costs, respectively. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Work Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

89. Contesting Future Response Costs. Work Respondent may initiate the procedures of Section XVI (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 87 (Payments for Future Response Costs) if it determines that the EPA has made an accounting error or if it believes the EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. To initiate such a dispute, Work Respondent shall submit a Notice of Dispute in writing to the EPA's RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Work Respondent submits a Notice of Dispute, Work Respondent shall within the 30-day period (a) pay all uncontested Future Response Costs to the EPA in the manner described in Paragraph 87, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Work Respondent shall send to the EPA's RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the EPA prevails in the dispute, within 5 days after the resolution of the dispute, Work Respondent shall pay the sums due (with accrued interest) to the EPA in the manner described in Paragraph 87. If Work Respondent prevails concerning any aspect of the contested costs, Work Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the EPA in the manner described in Paragraph 87. Work Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse the EPA for its Future Response Costs.

## **XX. COVENANT NOT TO SUE BY EPA**

90. Except as otherwise specifically provided in Section XXI (Reservations of Rights by the EPA) of this Settlement Agreement, the EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Settlement Agreement and for Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement. This covenant not to sue extends only to Respondents and does not extend to any other person.

## **XXI. RESERVATIONS OF RIGHTS BY EPA**

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

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

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and



h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

93. Work Takeover. In the event the EPA determines that Work Respondent (a) has ceased implementation of any portion of the Work; (b) is seriously or repeatedly deficient or late in the performance of the Work; or (c) is implementing the Work in a manner which may cause an endangerment to human health or the environment, the EPA may issue written notice (Work Takeover Notice) to Work Respondent. Any Work Takeover Notice issued by the EPA (writing may be electronic) will specify the grounds upon which such notice was issued and will provide Work Respondent a period of 10 days within which to remedy the circumstances giving rise to the EPA's issuance of such notice. If, after expiration of the 10-day notice, Work Respondent has not remedied to the EPA's satisfaction the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice, the EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as the EPA deems necessary (Work Takeover). The EPA will notify Respondents in writing (which writing may be electronic) if the EPA determines that implementation of a Work Takeover is warranted under this Paragraph. Funding of Work Takeover costs is addressed under Paragraph 110 (Access to Financial Assurance). Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute the EPA's implementation of a Work Takeover under this Paragraph. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, the EPA may in its sole discretion commence and continue a Work Takeover under this Paragraph until the earlier of (a) the date that Work Respondent remedies, to the EPA's satisfaction, the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice, or (b) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 72 (Formal Dispute Resolution). If the EPA commences or continues a Work Takeover while Formal Dispute Resolution initiated by Work Respondent is pending, and Work Respondent succeeds in disputing EPA's implementation of a Work Takeover through Dispute Resolution, Work Respondent shall not be subject to stipulated penalties, payment of Future Response Costs or funding of the EPA's performance of the Work conducted during the Work Takeover through Financial Assurance as set forth in Paragraph 110. Notwithstanding any other provision of this Settlement Agreement, the EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXII. COVENANT NOT TO SUE BY RESPONDENTS**

94. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

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

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

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work or payment of Future Response Costs and this Settlement Agreement.

95. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XXI (Reservations of Rights By EPA), other than in Paragraph 92.a (liability for failure to meet a requirement of the Settlement Agreement), 92.d (criminal liability), or 92.e (liability for violations of federal or state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

96. Respondents reserve, and this Settlement Agreement 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 the EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

### **XXIII. OTHER CLAIMS**

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

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

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

#### **XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION**

100. Except as provided in Section XXII (Covenants Not To Sue By Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement 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).

101. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Future Response Costs.

#### **XV. INDEMNIFICATION**

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

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



104. Work Respondent covenants not to sue and agrees not to assert any claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Work Respondent and any person for performance of Work on or relating to the Site. In addition, Work Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Work Respondent and any person for performance of Work on or relating to the Site.

## **XXVI. INSURANCE**

105. At least 14 days prior to commencing any on-Site Work under this Settlement Agreement, Work Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXXI (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Work Respondent pursuant to this Settlement Agreement. In addition, for the duration of the Settlement Agreement, Work Respondent shall provide the EPA with certificates of such insurance and a copy of each insurance policy. Work Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Work Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Work Respondent in furtherance of this Settlement Agreement. If Work Respondent demonstrates by evidence satisfactory to the EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, Work Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Work Respondent shall ensure that all submittals to the EPA under this Paragraph identify the Iowa-Nebraska Former Manufactured Gas Plant Site, Norfolk, Nebraska, and the EPA docket number for this action.

## **XXVII. FINANCIAL ASSURANCE**

106. Work Respondent has selected, and the EPA has found satisfactory, as an initial financial assurance a performance bond in the form attached as Appendix C. Within 30 days after the Effective Date, Work Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the form of financial assurance attached as Appendix C and shall submit such mechanisms and documents to the EPA, Region 7, Financial Management Officer at 11201 Renner Blvd., Lenexa, Kansas 66219.

107. Work Respondent shall diligently monitor the adequacy of the financial assurance. If Work Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the

requirements of this Section, Work Respondent shall notify the EPA of such information within 7 days. If the EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the EPA will notify the Work Respondent of such determination. Work Respondent shall, within 30 days after notifying the EPA or receiving notice from the EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. The EPA may extend this deadline for such time as is reasonably necessary for the Work Respondent, in the exercise of due diligence, to secure and submit to the EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Work Respondent shall follow the procedures of Paragraph 109 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Work Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement Agreement.

108. Access to Financial Assurance.

a. If the EPA issues a notice of implementation of a Work Takeover under Paragraph 93, then, in accordance with any applicable financial assurance mechanism, the EPA is entitled to: (i) the performance of the Work; and/or (ii) require that any funds guaranteed be paid in accordance with Paragraph 108.d.

b. If the EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the Work Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 108.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 93, the EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism to continue and complete the Work, then the EPA is entitled to demand an amount, as determined by the EPA, sufficient to cover the cost of the remaining Work to be performed. Work Respondent shall, within 30 days of such demand, pay the amount demanded as directed by the EPA.

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

e. All EPA Work Takeover costs not paid under Paragraph 108 must be reimbursed as Future Response Costs under Section XIX (Payment of Response Costs), subject to the provisions of Paragraph 93 (Work Takeover).

109. Modification of Amount, Form, or Terms of Performance Bond. Work Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the EPA, a request to reduce the amount, or change the form or terms, of the performance bond. Any such request must be submitted to the EPA in accordance with Paragraph 106, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. The EPA will notify Work Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Work Respondent may reduce the amount of the performance bond only in accordance with: (a) the EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVI (Dispute Resolution). Work Respondent may change the form or terms of the performance bond only in accordance with the EPA's approval. Within 30 days after receipt of the EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Work Respondent shall submit to the EPA documentation of the reduced, revised, or modified performance bond in accordance with Paragraph 106.

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

## **XXVIII. INTEGRATION/APPENDICES**

111. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, and reports (other than progress reports), that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” is the SOW.

“Appendix B” includes the following Figures: (1) Figure 1: Site Location Map; (2) Figure 2: Property Layout and Sampling Locations; (3) Figure 2-1: Site Map, EE/CA Removal Alternatives Evaluation Report; and (4) Norfolk MFG Aerial.

“Appendix C” is the Performance Bond.

## **XXIX. ADMINISTRATIVE RECORD**

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

## **XXX. MODIFICATION**

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

113. If Work Respondent seeks permission to deviate from any approved work plan or schedule or the SOW, Work Respondent’s Project Coordinator shall submit a written request to the EPA for approval outlining the proposed modification and its basis. Work Respondent may not proceed with the requested deviation until receiving oral or written approval from the EPA’s RPM pursuant to Paragraph 113.

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

## **XXXI. NOTICE OF COMPLETION OF WORK**

115. When the EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs and record retention, the EPA will provide written notice to the Respondents. Such written notice from the EPA shall serve as the EPA’s determination that the obligations of the Respondents

under this Settlement Agreement have been satisfied, with the exception of any continuing obligations, and that this Settlement Agreement is terminated.

**XXXI. EFFECTIVE DATE**

116. This Settlement Agreement shall be effective 7 days after the Settlement Agreement is signed by the Director of the Superfund Division, EPA, Region 7.

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SIGNATURE PAGES FOLLOW.



ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
IOWA-NEBRASKA FORMER MANUFACTURED GAS PLANT SITE  
Norfolk, Madison County Nebraska  
Docket No. CERCLA-07-2017-0005

Agreed this 14 day of MARCH, 2017.

Centel Corporation

By: SEAN C. LINDSAY  
[Print]

[Signature]

Title: SR Counsel

Address: 931 14th St. #900  
Denver, CO 80202

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
IOWA-NEBRASKA FORMER MANUFACTURED GAS PLANT SITE  
Norfolk, Madison County Nebraska  
Docket No. CERCLA-07-2017-0005

Agreed this 13 day of APRIL, 2017.

Black Hills/Nebraska Gas Utility Company, LLC

By: JEFF SYLVESTER  
[Print]

[Signature] 

Title: VP

Address: 1600 WINDHOEK DR  
LINCOLN NE 68501

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
IOWA-NEBRASKA FORMER MANUFACTURED GAS PLANT SITE  
Norfolk, Madison County Nebraska  
Docket No. CERCLA-07-2017-0005

Agreed this 8th day of March 2017.

Nebraska Public Power District

By: John C. McClure

[Print]

[Signature]

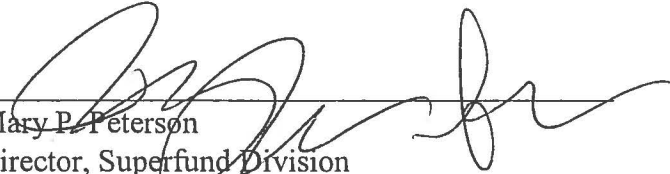
Title: Vice President & General Counsel

Address: 1414 15th Street, P.O. Box 499

Columbus, NE 68602-0499

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
IOWA-NEBRASKA FORMER MANUFACTURED GAS PLANT SITE  
Norfolk, Madison County Nebraska  
Docket No. CERCLA-07-2017-0005

IT IS SO ORDERED AND AGREED THIS 2 day of May, 2017.

BY:   
Mary P. Peterson  
Director, Superfund Division  
U.S. Environmental Protection Agency, Region 7

EFFECTIVE DATE: MAY 11 2017

## APPENDIX A



**STATEMENT OF WORK  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY (RI/FS)**

**Iowa-Nebraska Light & Power Co. Former Manufactured Gas Plant Site  
Norfolk, Madison County, Nebraska**

**INTRODUCTION**

This Statement of Work (SOW) sets forth the requirements for completing the Remedial Investigation and Feasibility Study (RI/FS) for the Iowa-Nebraska Light & Power Co. Former Manufactured Gas Plant Site (Site). Pursuant to the attached Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study (Settlement Agreement), EPA Docket No. CERCLA 07-2017-0005, the Work Respondent will conduct a RI/FS to investigate the nature and extent of off-site migration of hazardous substances, pollutants, or contaminants from the Site, assess the potential risk to the human health and the environment caused by such migration, and develop and evaluate remedial alternatives.

The Work Respondent will conduct the RI/FS and produce a draft and final RI/FS Report that is in accordance with this SOW, the Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA (OSWER Directive # 9355.3-01, EPA/540/G-89/004, October 1988) (RI/FS Guidance) and any other guidance documents that the EPA uses in conducting or submitting deliverables for a RI/FS, as well as any additional requirements in the Settlement Agreement. The Work Respondent will furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS, except as otherwise specified in the Settlement Agreement. As specified in CERCLA Section 104(a)(1) as amended, the EPA will provide oversight of Work Respondent's activities throughout the RI/FS.

At the completion of the RI/FS, the EPA will be responsible for the selection of the appropriate site remedy and will document this selection in a Record of Decision (ROD). The remedial action alternative selected by the EPA will meet the cleanup standards specified in CERCLA Section 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of state and federal laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The Final RI/FS Report and the administrative record file will form the basis for the EPA's selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

**TASK 1 PROJECT PLANNING AND SUPPORT**

The Work Respondent will compile existing site information (e.g., topographic maps, aerial photographs, the June 2012 Engineering Evaluation/Cost Analysis (EE/CA) report and the October 2011 Risk Evaluation Report, Rev. 2, data collected as part of the NPL listing process and data collected as part of the 2014 removal action). Based on this information (and any other available data), the Work Respondent will prepare a site background summary of the information below and include it in the RI/FS Work Plan.

- 1.) *Local Regional Summary* – A summary of the site location, pertinent area boundary features and general site physiography, hydrogeology, geology and the location(s) of any nearby drinking supply wells.
- 2.) *Nature and Extent of Problem* – A summary of the actual and potential on-site and off-site health and environmental effects posed by any contamination at the site. Emphasis should be on providing a conceptual understanding of the sources of contamination, potential release mechanisms, potential routes of migration, and potential human and environmental receptors.
- 3.) *History of Regulatory and Response Actions* – A summary of any previous response actions conducted by local, State, Federal or private parties.
- 4.) *Preliminary Site Boundary* – A preliminary site boundary to define the initial area(s) of the remedial investigation. This preliminary boundary may also be used to define an area of access control and site security.
- 5.) *Conceptual Site Model (CSM)* – A conceptual site model shall be developed based on available historical information. The CSM shall include figures such as plume maps, cross sections, and GIS overlays that depict the levels of contamination in each media. The CSM shall be submitted with the Sampling and Analysis Plan and be updated and re-submitted with each data submittal, as applicable.

The Work Respondent will meet with the EPA to discuss the following:

- 1.) The proposed scope of the project and the specific investigative and analytical activities that will be required.
- 2.) Preliminary remedial action objectives and general response actions.
- 3.) Potential remedial technologies and the need for treatability studies.
- 4.) Potential Applicable or Relevant and Appropriate Requirements (ARARs) associated with the location and contaminants of the site and the potential response actions being contemplated.

In accordance with the Schedule for Deliverables/Milestones set forth in this SOW, the Work Respondent shall submit draft RI/ FS planning documents listed below. Work Respondent shall prepare the RI/FS planning documents as described in the RI/FS Guidance.

*RI/FS Work Plan* – Once the scope has been agreed upon with the EPA, the Work Respondent will develop (1) the specific work plan to meet the objectives of the RI/FS and (2) initiate subcontractor procurement and coordination with analytical laboratories. The RI/FS Work Plan provides a project description and outlines technical approach, complete with corresponding personnel requirements, activity schedules, and deliverable due dates for each of the specified tasks and includes a sampling and analysis plan (SAP) [composed of the field sampling plan (FSP) and the quality assurance project plan (QAPP)] and a health and safety plan (HSP). The RI/FS Work Plan shall present the initial evaluation of existing data and background information performed during the scoping process, including (1) an

analysis and summary of the site background and the physical setting; (2) an analysis and summary of previous response actions; (3) presentation of the conceptual site model which includes an analysis and summary of the nature and extent of contamination and a preliminary assessment of the human health and environmental impacts; and (4) the preliminary identification of general response actions and alternatives and the data needed for the evaluation of the alternatives.

*Sampling and Analysis Plan (SAP)* – The Work Respondent will prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet data quality objectives (DQOs). The SAP which will consist of the following:

*Field Sampling Plan (FSP)* – The FSP should specify and outline all necessary activities to obtain additional site data. It should contain an evaluation explaining what additional data are required to adequately characterize the site, conduct a baseline risk assessment (human health and ecological), and support the evaluation of remedial technologies in the FS. The FSP should clearly state sampling objectives, sampling equipment and procedures, sample types, locations, and frequency, sample handling and analysis analyses of interest; and a schedule stating when events will take place and when deliverables will be submitted. All sampling and analysis performed shall conform to the EPA’s direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation and chain of custody procedures.

*Quality Assurance Project Plan (QAPP)* – The QAPP should address all types of investigations and shall be conducted in accordance with “Guidance for Quality Assurance Project Plans (QA/G-5), U.S. EPA, December 2002.” The QAPP shall include the following discussions:

1. A project description (should be duplicated from the work plan).
2. A project organization chart illustrating the lines of responsibility of the personnel involved in the sampling phase of the project.
3. Data Quality Objectives (DQOs) for data such as the required precision and accuracy, completeness of data, representativeness of data, comparability of data, and the intended use of collected data.
4. Sample custody procedures during sample collection, in the laboratory, and as part of the final evidence files.
5. The type and frequency of calibration procedures for field and laboratory instruments, internal quality control checks, and quality assurance performance audits and system audits.
6. Preventative maintenance procedures, and schedule and corrective action procedures for field and laboratory instruments.
7. Specific procedures to assess data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters.
8. Data documentation and tracking procedures.

*Health and Safety Plan (HSP)* – The Work Respondent will develop an HSP on the basis of site conditions to protect personnel involved in site activities and the surrounding community. The plan should address all applicable regulatory requirements contained in 20 CFR 1910.120(i)(2) – Occupational Health and Safety Administration, Hazardous Waste Operations and Emergency Response, Interim Rule, December 19, 1986; U.S. EPA Order 1440.2 – Health and Safety Requirements for Employees Engaged in Field Activities; U.S. EPA Order 1440.3 – Respiratory Protection; U.S. EPA Occupational Health and Safety Manual; and U.S. EPA Interim Standard Operating Procedures (September, 1982). The plan should provide a site background discussion and describe personnel responsibilities, protective equipment, health and safety procedures and protocols, decontamination procedures, personnel training, and type and extent of medical surveillance. The plan should identify problems or hazards that may be encountered and how these are to be addressed. Procedures for protecting third parties, such as visitors or the surrounding community, should also be provided. The EPA reviews but does not “approve” the HSP, but rather the EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

## **TASK 2 FIELD INVESTIGATION**

The Work Respondent will implement the RI/FS Work Plan to further characterize the Site and to evaluate the actual or potential risk to human health and the environment posed by the Site. Investigation activities will focus on problem definition and result in data of adequate technical content to evaluate potential risks and to support the development and evaluation of remedial alternatives during the FS. The aerial extent of investigation will be finalized during the RI. Site investigation activities will follow the RI/FS Work Plan developed in Task 1. Strict chain-of-custody procedures will be followed and all sample locations will be identified on a site map. The Work Respondent will provide management and quality control review of all activities conducted under this task. Activities anticipated for this Site are as follows:

- 1.) *Surveying and Mapping of the Site* – Develop a map of the Site that includes topographic information and physical features on and near the Site. If no detailed topographic map for the Site and surrounding area exists, a survey of the Site will be conducted. Aerial photographs should be used, when available, along with available information regarding the Site, to identify physical features of the area.
- 2.) *Contaminant Characterization* – Determine the location, type and quantities as well as the physical or chemical characteristics of any hazardous substance, pollutants, or contaminants at the Site. If hazardous substances are held in containment vessels, the integrity of the containment structure and the characteristics of the contents will be determined.
- 3.) *Hydrogeologic Investigation* – Further evaluate the extent of groundwater contamination. Efforts should begin with a survey of previous hydrogeologic studies and other existing data. The survey should address the soils retention capacity/mechanisms, discharge/recharge areas, and regional flow directions and quality and the likely effects of any alternatives that are developed involving the pumping and disruption of groundwater flow. Results from the sampling program should estimate the horizontal and vertical distribution of contaminants, the contaminants mobility, and predict the long-term disposition of contaminants.

- 4.) *Soils and Sediments Investigation* – If necessary, determine the vertical and horizontal extent of contamination of surface and subsurface soils and sediments, and identify any uncertainties with this analysis. Information on local background levels, degree of hazard, location of samples, techniques used, and methods of analysis should be included. If initial efforts indicate that buried waste may be present, the probable locations and quantities of these subsurface wastes should be identified through the use of appropriate geophysical methods.
- 5.) *Surface Water Investigation* – If necessary, estimate the extent and fate of any contamination in the nearby surface waters. This effort should include an evaluation of possible future discharges and the degree of contaminant dilution expected.
- 6.) *Vapor Intrusion Investigation* – If additional sampling is required, investigate the extent of contaminant vapors emanating from those contaminants found to be present at the Site. This effort should assess the potential of the contaminants to enter on-site and off-site buildings, including office spaces, and residential and commercial locations. The vapor intrusion evaluation shall be conducted by following the “OSWER Technical Guidance for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air” (June 2015).

The Work Respondent will incorporate information from this task into the RI/FS report.

### **TASK 3 SAMPLE ANALYSIS**

The Work Respondent will develop a data management system including field logs, sample management and tracking procedures, and document control and inventory procedures for both laboratory data and field measurements to ensure that the data collected during the investigation are of adequate quality and quantity to support the risk assessment and the FS. Collected data should be validated at the appropriate field or laboratory quality control level to determine whether it is appropriate for its intended use. Task management and quality controls will be provided by the Work Respondent. The Work Respondent will incorporate information from this task into the RI/FS report appendices.

### **TASK 4 DATA EVALUATION**

The Work Respondent will analyze all site investigation data and present the results of the analyses in an organized and logical manner so that the relationships between site investigation results for each medium are apparent. The Work Respondent will prepare a summary that describes (1) the quantities and concentrations of specific chemicals at the Site and the ambient levels surrounding the Site; (2) the number, locations, and types of nearby populations and activities; and (3) the potential transport mechanism and the expected fate of the contaminant in the environment.

### **TASK 5 RISK ASSESSMENT**

The Work Respondent shall amend the EE/CA Risk Evaluation Report, Rev. 2 dated October 2011 to assess the potential human health and environmental risks posed by the Site in the absence of any



remedial action. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment and risk characterization.

- 1.) *Contaminant Identification* – The Work Respondent will review available information on the hazardous substances present at the Site and identify the major contaminants of concern.
- 2.) *Dose Response Assessment* – Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).
- 3.) *Exposure Assessment* – The Work Respondent will identify the magnitude of actual or environmental exposures, the frequency and duration of these exposures, and the routes by which receptors are exposed. The exposure assessment shall include an evaluation of the likelihood of such exposures occurring and shall provide the basis for the development of acceptable exposure levels. In developing the exposure assessment, the Work Respondent shall develop reasonable maximum estimates of exposure for both current land and groundwater use conditions, and potential land and groundwater use conditions at the Site.
- 4.) *Toxicity Assessment* – The Work Respondent will provide a toxicity assessment of those chemicals found to be of concern during site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationships between magnitude of exposures and adverse effects and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical’s carcinogenicity).
- 5.) *Risk Characterization* – The Work Respondent will integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies) and/or exposure assumptions.

The Risk Assessment must be done in accordance with the EPA risk assessment guidance, procedures, assumptions, methods, and formats.

The Amended Human Health Risk Assessment shall address the following:

- Hazard identification
- Dose-response assessment
- Exposure assessment
- Toxicity Assessment
- Risk characterization
- Limitations/uncertainties

The risk assessment shall be submitted to the EPA with the RI Report as a separate deliverable.

## **TASK 6 RI REPORT(S)**

The RI Report shall provide information to assess risks to human health and the environment and to support the development, evaluation, and selection of appropriate response alternatives. The task includes all draft and final reports. The RI report shall be written in accordance with the RI/FS Guidance and "Guidance for Data Usability in Risk Assessment (Part A), Final" (OSWER Directive #9285.7-09A, PB 92-963356 (April 1992)). The typical components of the RI report include, but are not limited to, the following:

- Site Background
- Investigation
  - Field investigation and technical approach
  - Chemical analyses and analytical methods
  - Field methodologies (biological, surface water, sediment, soil boring, soil sampling, monitoring well installation, groundwater sampling, and hydrogeological assessment)
- Site Characteristics
  - Geology
  - Hydrogeology
  - Meteorology
  - Demographics and land use
  - Reuse assessment
  - Ecological assessment
- Nature and Extent of Contamination
  - Contaminant sources
  - Contaminant distribution and trends
- Fate and Transport
  - Contaminant characteristics
  - Transport processes
  - Contaminant migration trends
- Risk Assessment (Human Health and Ecological)
- Summary and Conclusions

## **TASK 7 TREATABILITY STUDY/PILOT TESTING**

If the EPA or Work Respondent determines that treatability testing is necessary, Work Respondent shall conduct treatability studies as described in this section of the SOW. In addition, if applicable, Work Respondent shall use the testing results and operating conditions in the detailed design of the selected remedial technology.

### **Identification of Candidate Technologies Memorandum**

Work Respondent shall submit an Identification of Candidate Technologies Memorandum which identifies candidate technologies for a treatability studies program no later than at the time of submittal of the draft RI Report. The list of candidate technologies shall cover the range of technologies required for alternatives analysis. Work Respondent shall determine and refine the specific data requirements for

the testing program during site characterization and the development and screening of remedial alternatives.

Within the Identification of Candidate Technologies Memorandum, Work Respondent shall conduct a literature survey to gather information on the performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. Work Respondent shall conduct treatability studies except where Work Respondent can demonstrate to the EPA's satisfaction that they are not needed.

### **Treatability Testing and Deliverables**

- **Treatability Testing Work Plan and Sampling and Analysis Plan (SAP)**

If the EPA or Work Respondent determines that treatability testing is necessary, the EPA will decide on the type of treatability testing to use (e.g., bench versus pilot). The Treatability Testing Work Plan and a SAP describes the site background, the remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, residual waste management, and a schedule. Work Respondent shall document the DQOs for treatability testing as well. If pilot scale treatability testing is to be performed, the Treatability Study Work Plan shall describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, the plans shall address all permitting requirements.

- **Treatability Study Health and Safety Plan**

If the HSP is not adequate for defining the activities to be performed during the treatability tests, Work Respondent shall submit a separate or second amended HSP consistent with Paragraph 37a.iii. of the Settlement Agreement. EPA reviews, but does not "approve" the Treatability Study Health and Safety Plan.

- **Treatability Study Evaluation Report**

Following the completion of the treatability testing, Work Respondent shall analyze and interpret the testing results in a technical report. Work Respondent shall submit the treatability study report according to the schedule in the Treatability Study Work Plan. This report may be part of the RI Report or submitted as a separate deliverable. The Treatability Study Evaluation Report shall evaluate each technologies effectiveness, implementability, cost and actual results as compared with predicted results. The report shall also evaluate full-scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

## **TASK 8 REMEDIAL ALTERNATIVE DEVELOPMENT AND SCREENING**

This task includes work efforts to develop appropriate remedial alternatives to undergo full evaluation (Task 7). The alternatives are to encompass a range of appropriate waste management options, including innovative treatment technologies consistent with the regulations outlined in the National Contingency Plan (NCP), 40 CFR Part 300, and applicable Agency guidance, procedures and directives, including "Considerations in Ground Water Remediation at Superfund Sites", OSWER Directive #9355.4-03, October 18, 1989 and "Considerations in Ground Water Remediation at Superfund Sites – Update", OSWER Directive #9283.1-06, May 27, 1992). The analysis will include institutional controls (ICs) to the extent appropriate. Respondent shall prepare and submit three technical memoranda for this task including the Remedial Action Objectives Technical Memorandum, Alternatives Screening Technical Memorandum and the Individual and Comparative Analysis of Alternatives Technical Memorandum. These memos may be combined into a single memo as appropriate. Activities required under this task include, but are not limited to the following:

### **Remedial Action Objectives Technical Memorandum**

The Remedial Action Objectives Technical Memorandum shall be submitted with the Draft RI Report. Based on existing information in the baseline human health risk assessment, Work Respondent shall provide site-specific remedial action objectives for each chemical in each medium in a Remedial Action Objectives Technical Memorandum. The remedial action objectives shall specify the contaminant(s) and media of concern, the exposure route(s) and receptor(s), and an acceptable contaminant level or range of levels for each exposure route (i.e., preliminary remediation goals). Preliminary remediation goals should be established based on readily available information (e.g., RfDs) or chemical-specific ARARs (e.g., MCLs). The remedial action objectives shall be developed by considering the factors set forth in 40 C.F.R. § 300.430(e)(2)(i). Work Respondent shall incorporate the EPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum.

### **Alternatives Screening Technical Memorandum**

The Alternatives Screening Technical Memorandum shall summarize the work performed and the results of each of the above tasks, and shall include an alternatives array summary. If required by the EPA, Work Respondent shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed analysis. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process.

Work Respondent shall incorporate the EPA's comments on the Alternatives Screening Technical Memorandum in the Individual and Comparative Analysis of Alternatives Technical Memorandum. Work Respondent shall submit the Alternatives Screening Technical Memorandum within 30 days after receipt of the EPA's comments on the Remedial Action Objectives Technical Memorandum.

### **Develop General Response Actions**

In the Alternatives Screening Technical Memorandum, Work Respondent shall develop general response actions including containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the EPA-approved remedial action objectives.

### **Identify Areas or Volumes of Media**

In the Alternatives Screening Technical Memorandum, Work Respondent shall identify areas or volumes of media to which the general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. Work Respondent shall also take into account the chemical and physical characterization of the site.

### **Identify, Screen and Document Remedial Technologies**

In the Alternatives Screening Technical Memorandum, Work Respondent shall identify and evaluate technologies applicable to each response action to eliminate those that cannot be implemented. Work Respondent shall refine applicable general response actions to specify remedial technology types. Work Respondent shall identify technology process options for each of the technology types concurrently with the identification of such technology types or following the screening of considered technology types. Work Respondent shall evaluate process options on the basis of effectiveness, implementability, and cost factors to select and retain one or, if necessary, more representative processes for each technology type. Respondent shall summarize and include the technology types and process options in the Alternatives Screening Technical Memorandum. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

In the Alternatives Screening Technical Memorandum, Respondent shall provide a preliminary list of alternatives to address the contamination that shall include those listed in 40 C.F.R. § 300.430(e)(1-7). Respondent shall specify the reasons for eliminating any alternatives. Respondent shall prepare a summary of the assembled alternatives and their related ARARs within the Alternatives Screening Technical Memorandum.

### **Conduct and Document Screening Evaluation of Each Alternative**

Work Respondent may perform a final screening process based on short and long-term aspects of effectiveness, implementability and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for a detailed analysis. If necessary, Work Respondent shall conduct the screening of alternatives to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening shall preserve the range of treatment and containment alternatives that were initially developed. The range of remaining alternatives shall include



options that use treatment technologies and permanent solutions to the maximum extent practicable. Work Respondent shall prepare an Alternatives Screening Technical Memorandum that summarizes the results and reasoning employed in screening, arrays the alternatives that remain after screening, and identifies the action-specific ARARs for the alternatives that remain after screening.

## **TASK 9 FEASIBILITY STUDY**

This task includes efforts associated with the assessment of individual alternatives against each of the nine evaluation criteria and a comparative analysis of all options against the evaluation criteria. The analysis is to be consistent with the National Contingency Plan (NCP), 40 CFR Part 300 and is to consider the RI/FS Guidance, Guide to Developing and Documenting Cost Estimates During the Feasibility Study (OSWER Directive 9355.0-75), and other pertinent OSWER guidance. The analysis will include ICs to the extent appropriate. The EPA will make the determination regarding final selection of the remedial alternative.

### **Apply Nine Criteria and Document Analysis**

Work Respondent shall apply the nine evaluation criteria to each of the assembled remedial alternatives to ensure that the selected remedial alternative will protect human health and the environment and meet remedial action objectives; will comply with or include a waiver of ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria shall include:

- Overall protection of human health and the environment
- Compliance with applicable or relevant and appropriate requirements (ARARs)
- Long-term effectiveness and permanence
- Reduction in toxicity, mobility, or volume through treatment
- Short-term effectiveness
- Implementability - technical and administrative
- Cost
- State acceptance
- Community acceptance

### **Individual and Comparative Analysis of Alternatives Technical Memorandum**

Work Respondent shall perform a comparative analysis between the remedial alternatives. That is, Respondent shall compare each alternative against the other alternatives using the evaluation criteria as a basis of comparison. The EPA will identify and select the preferred alternative. Work Respondent shall prepare an Individual and Comparative Analysis of Alternatives Technical Memorandum which summarizes the results of the analyses, and fully and satisfactorily addresses and incorporates the EPA's comments on the Alternatives Screening Technical Memorandum. Work Respondent shall incorporate the EPA's comments on the Individual and Comparative Analysis of Alternatives Technical

Memorandum in the draft FS Report. Work Respondent shall submit the Individual and Comparative Analysis of Alternatives Technical Memorandum within 30 days after receipt of the EPA's comments on the Alternatives Screening Technical Memorandum.

### **Alternative Analysis for Institutional Controls and Screening**

For any alternative that relies on ICs, Work Respondent shall include in the Alternatives Screening Technical Memorandum, Individual and Comparative Analysis of Alternatives Technical Memorandum and Feasibility Study an evaluation of the following: (1) the restrictions needed on land, water, or other resources and their relationship to the remedial action objectives; (2) determine the specific types of ICs that can be used to address and implement the land, water, or other resource use restrictions; (3) investigate when the ICs need to be implemented and how long they must remain in place; (4) research, discuss, and document any agreement or other arrangements with the proper entities (e.g., state, local government, local landowners, conservation organizations) on exactly who will be responsible for implementing, maintaining, and enforcing the ICs. The Alternative Analysis for ICs and Screening shall also evaluate the ICs identified in the Alternatives Screening Technical Memorandum against the nine criteria outlined in the NCP [(40 C.F.R. § 300.430(e)(9)(iii)] for CERCLA cleanups, including but not limited to costs to implement, maintain, and/or enforce the ICs. The Alternatives Analysis for ICs and Screening shall be submitted as an appendix to the Draft Feasibility Study.

### **TASK 10 FS REPORT(S)**

This task includes work efforts related to the preparation of findings once remedial alternatives have been screened and evaluated. The task includes preparation of all draft and final reports. The FS Report shall summarize the development and screening of the remedial alternatives and present the detailed analysis of remedial alternatives, the EPA will review the draft FS Report in accordance with Section IX of the Settlement Agreement. The Feasibility Study Report shall include, but are not limited to, a discussion of the following:

- Feasibility Study Objectives
- Remedial Objectives
- General Response Actions
- Identification and Screening of Remedial Technologies
- Remedial Alternatives Description
- Detailed Analysis of Remedial Alternatives (individual and comparative)
- Summary and Conclusions

### **TASK 11 PROGRESS REPORTS**

Work Respondent shall submit monthly written progress reports concerning actions undertaken pursuant to the Settlement Agreement and this SOW, by the 15<sup>th</sup> day of the month, unless otherwise directed in writing by the RPM. These reports shall include, but not be limited to, a description of all significant developments during the preceding period, including the specific work that was performed and any problems that were encountered; a summary of the data that was received during the reporting period;

and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and actual or planned resolutions of past or anticipated problems. The monthly progress reports will summarize the field activities conducted each month including, but not limited to drilling and sampling locations, depths and descriptions; boring logs; sample collection logs; field notes; problems encountered; solutions to problems; a description of any modifications to the procedures outlined in any part of the RI/FS Work Plan, including the FSP, QAPP or Health and Safety Plan, with justifications for the modifications; and a summary of all data received during the reporting period, and the analytical results and upcoming field activities. In addition, Work Respondent shall provide the RPM with all laboratory data within the monthly progress reports.

## **TASK 12 COMMUNITY RELATIONS**

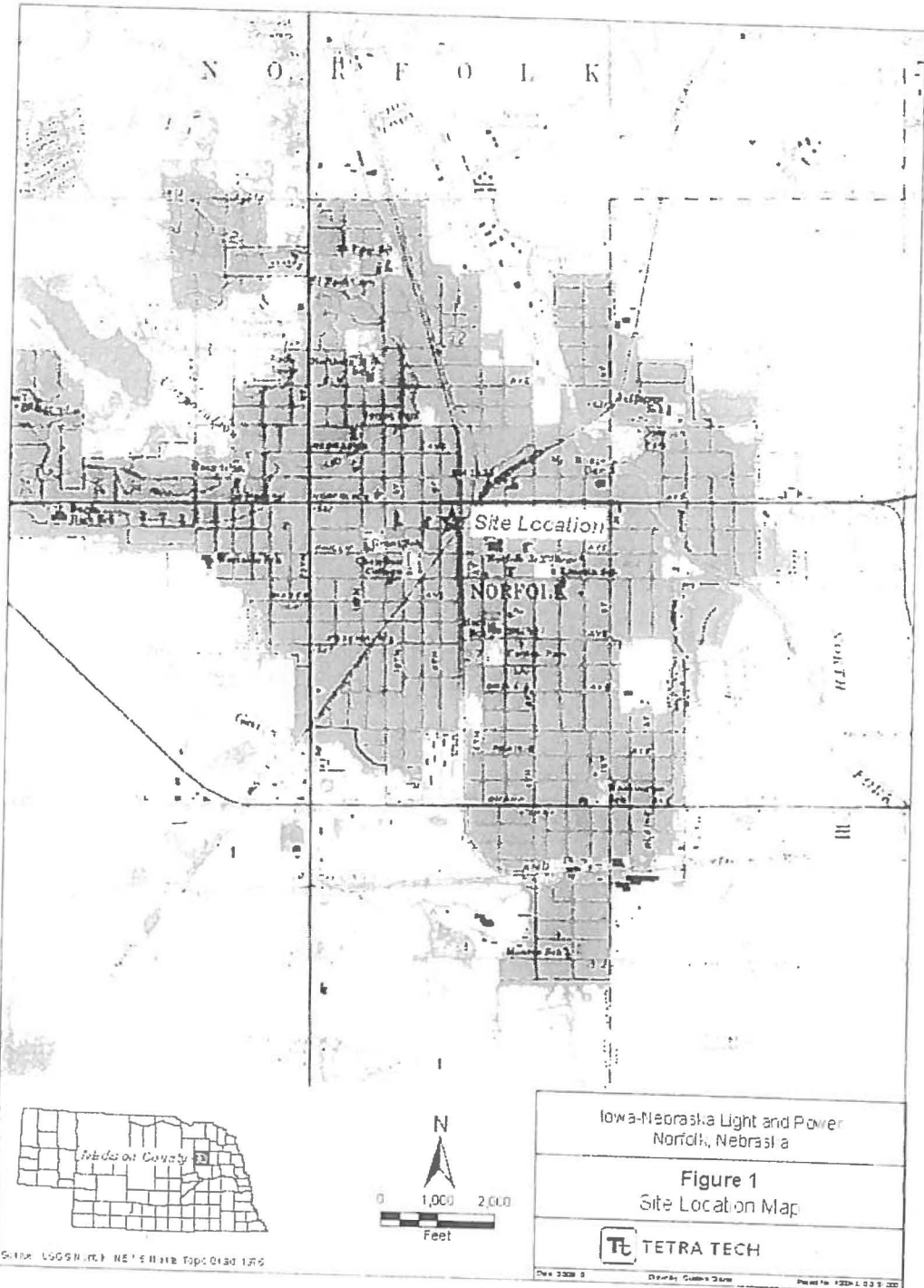
The development and implementation of community relations activities are the responsibility of the EPA. The critical community relations planning steps performed by the EPA include conducting community interviews and developing a community relations plan. Although the implementation of the community relations plan is the responsibility of the EPA, the Work Respondent may assist by providing information regarding the site's history, participating in public meetings, or by preparing fact sheets for distribution to the general public. In addition, the Work Respondent may establish a community information repository, at or near the site, to house one copy of the administrative record. The extent of potentially responsible party (PRP) involvement in community relations activities is left to the discretion of the EPA. All PRP-conducted community relations activities will be subject of oversight by the EPA.

## **SCHEDULE OF DELIVERABLES/MILESTONES**

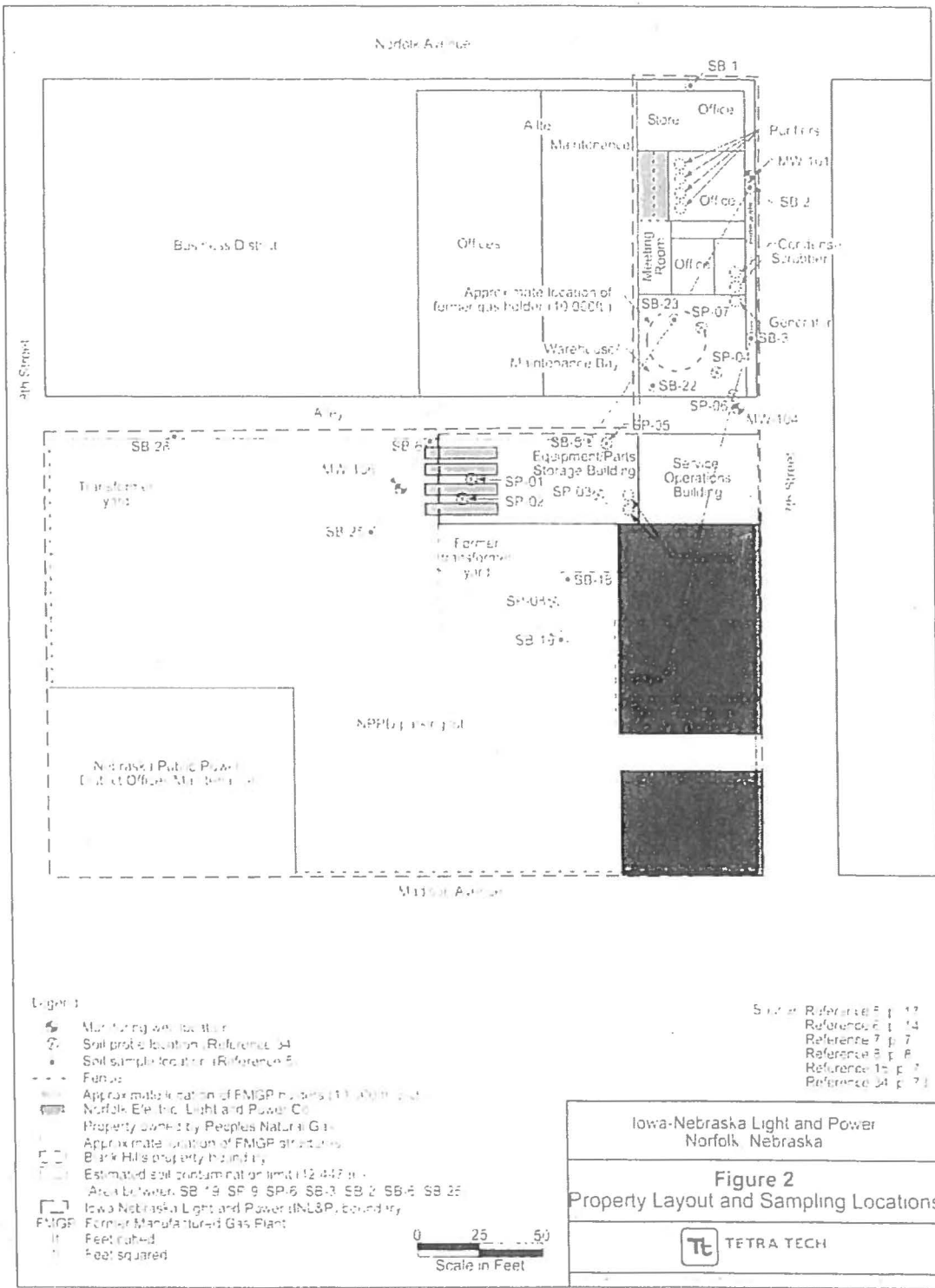
<b>DELIVERABLE</b>	<b>DUE DATE</b>
Draft RI/FS Work Plan and Sampling and Analysis Plan (FSP/QAPP/HASP)	Within 60 days after the Effective Date of the Settlement Agreement
Final RI/FS Work Plan and Sampling and Analysis Plan (FSP/QAPP/HASP)	Within 30 days of receiving EPA's comments or other time as specified by the EPA
Draft Baseline Human Health Risk Assessment	Within 60 days after collection of last field sample required by the approved Sampling and Analysis Plan
Draft RI Report	Within 60 days after collection of last field sample required by the approved Sampling and Analysis Plan
Final Baseline Human Health Risk Assessment	Within 30 days of receiving EPA's comments or other time as specified by the EPA
Final RI Report	Within 30 days of receiving EPA's comments or other time as specified by the EPA
Identification of Candidate Technologies Memorandum	Within 45 days after collection of the last field sample required by the EPA-approved Work Plan

Draft Treatability Testing Work Plan and SAP	Within 30 days of request of the EPA and no sooner than collection of the first field sample required by the EPA-approved Work Plan
Final Treatability Testing Work Plan and SAP or Amendment to the Original RI/FS Work Plan, FSP and/or QAPP	Within 30 days after receipt of the EPA's notification of direction to modify pursuant to Section IX of the Settlement Agreement
Draft Treatability Testing Health and Safety Plan or Amendment to the Original Health and Safety Plan	Within 30 days of request of the EPA and no sooner than collection of the first field sample required by the EPA-approved Work Plan
Final Treatability Testing Health and Safety Plan or Amendment to the Original Health and Safety Plan	Within 30 days after receipt of the EPA's notification of direction to modify pursuant to Section IX of the Settlement Agreement
Draft Treatability Study Evaluation Report	Within 30 days after completion of any treatability testing
Final Treatability Study Evaluation Report	Within 30 days after receipt of the EPA's notification of direction to modify pursuant to Section IX of the Settlement Agreement
Remedial Action Objectives Technical Memorandum	With the draft RI Report
Alternatives Screening Technical Memorandum	Within 30 days of receipt of the EPA's comments on the Remedial Action Objectives Technical Memorandum
Individual and Comparative Analysis of Alternatives Technical Memorandum	Within 30 days of receipt of the EPA's comments on the Alternatives Screening Technical Memorandum
Alternative Analysis for Institutional Controls and Screening	As an appendix to the Draft FS Report
Draft FS Report	Within 30 days of receipt of EPA's comments on the Individual and Comparative Analysis of Alternatives Technical Memorandum
Final FS Report	Within 30 days of receipt of EPA's comments or such other time as specified by the EPA
Progress Reports	On the 15 <sup>th</sup> day of each month after the Effective Date of the Settlement Agreement
Written notice to the EPA that payment of bill for Future Response Costs has been made	At the time of payment
Certificates of insurance and copy of insurance policies	Within 14 days of start of field work
Written Evidence of Financial Assurance	Within 30 days of the Effective Date of the Settlement Agreement

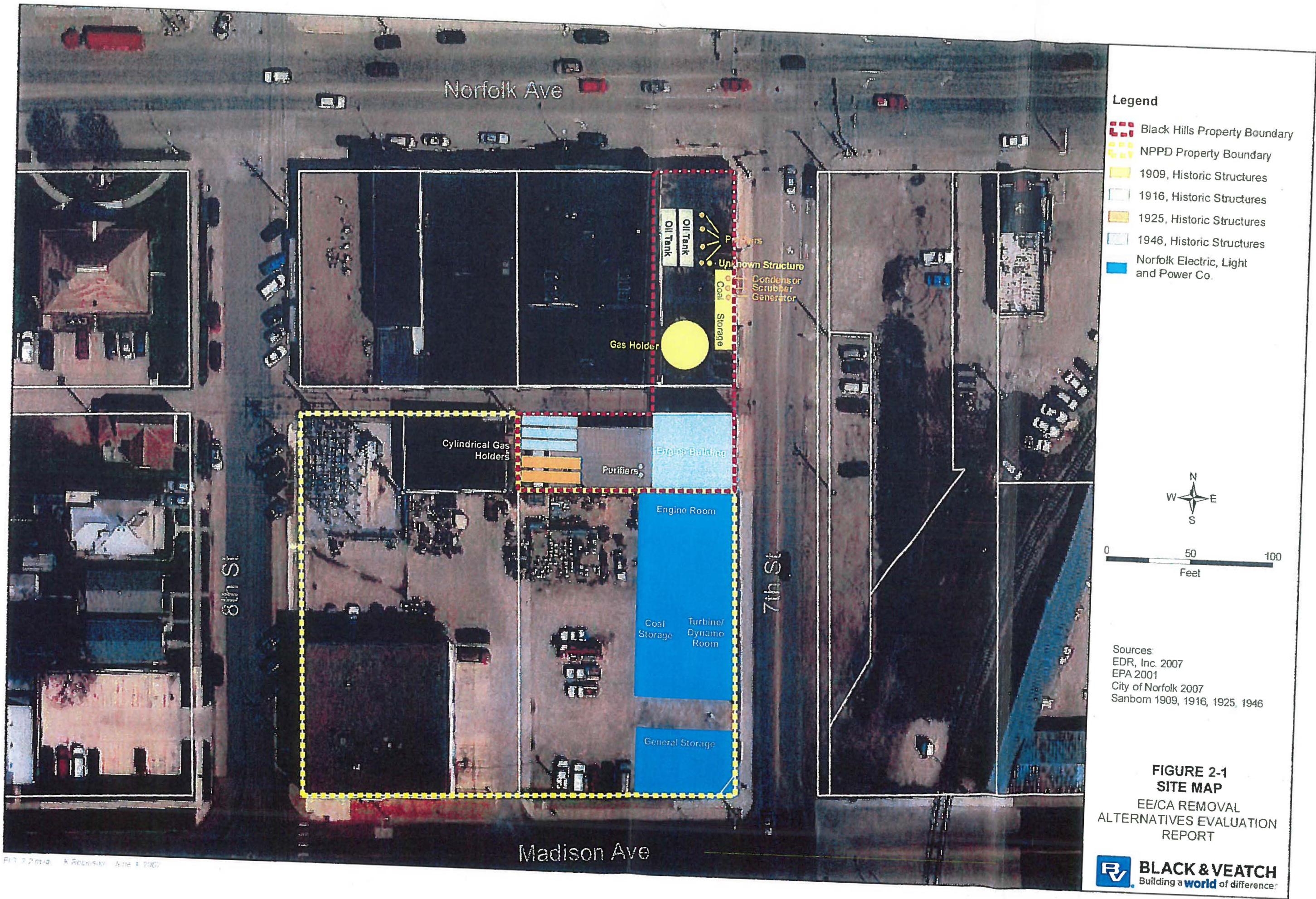
## APPENDIX B











**Legend**

- Black Hills Property Boundary
- NPPD Property Boundary
- 1909, Historic Structures
- 1916, Historic Structures
- 1925, Historic Structures
- 1946, Historic Structures
- Norfolk Electric, Light and Power Co.



Sources  
 EDR, Inc. 2007  
 EPA 2001  
 City of Norfolk 2007  
 Sanborn 1909, 1916, 1925, 1946

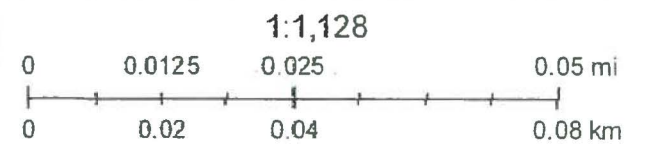
**FIGURE 2-1**  
**SITE MAP**  
 EE/CA REMOVAL  
 ALTERNATIVES EVALUATION  
 REPORT



# Norfolk MFG Aerial



August 3, 2016



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## APPENDIX C



[Letterhead of Bond Issuer]

**PAYMENT BOND**

Surety's Payment Bond Number: [insert number]  
Date of Execution of Payment Bond: [insert date]  
Effective Date of Payment Bond: [insert date]  
Total Dollar Amount of Payment Bond: \${insert dollar amount}

**PRINCIPAL:**

Legal Name: [insert name of PRP/Settling Defendant]  
Address: [insert address]  
Contact Person(s)/Information: [insert name and contact information (phone, email)]

**SURETY:**

Legal Name: [insert name of surety providing the bond]  
Address: [insert address]  
Contact Person(s)/Information: [insert name and contact information (phone, email)]

**BENEFICIARY:**

Legal Name: U.S. Environmental Protection Agency Region [insert #]  
c/o [insert appropriate Regional official such as  
"Superfund Division Director"]  
Address/Contact Information: [insert address and contact information (phone, email)]

**SITE INFORMATION:**

Name and Location of Site: [insert site name [operable unit] and location] ("Site")  
EPA Identification Number: [insert Site/Spill Identification Number]  
Agreement Governing Site Work: [That certain [insert as appropriate: "Consent Decree,"  
"Administrative Settlement Agreement and Order on  
Consent," or "Settlement Agreement"] dated [insert date],  
[insert as appropriate: civil action number for consent  
decrees or EPA docket number for administrative  
agreements], between the United States of America and  
[insert settling parties] (the "Agreement")]

**KNOW ALL PERSONS BY THESE PRESENTS, THAT:**

**WHEREAS**, said Principal is required, under the Agreement entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),



42 U.S.C. §§ 9601-9675, to perform the "Work" as defined in such Agreement (hereinafter, the "Work") and to fulfill its other obligations as set forth therein; and

**WHEREAS**, said Principal is required by the Agreement to provide financial assurance to ensure completion of the Work.

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Principal and Surety hereto are firmly bound to the United States Environmental Protection Agency (EPA or Beneficiary), in the above Total Dollar Amount of this Payment Bond, for the payment of which we, the Principal and Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, subject to and in accordance with the terms and conditions hereof.
2. The conditions of the Surety's obligation hereunder are such that if the Principal shall promptly, faithfully, fully, and finally complete the Work in accordance with the terms of the Agreement, the Surety's obligation hereunder shall be null and void; otherwise it is to remain in full force and effect.
3. Pursuant to and in accordance with the terms of the Agreement, and except as specifically provided in Paragraph 5 below, the Surety shall become liable on the obligation evidenced hereby only upon the Principal's failure to perform all or any portion(s) of the Work, EPA's subsequent notice of a Work Takeover, and the Principal's failure to remedy to EPA's satisfaction the circumstances giving rise to EPA's issuance of such notice. At any time and from time to time upon notification by EPA (as specified in the Agreement) that a Work Takeover has commenced, the Surety shall promptly (and in any event within 15 days after receiving such notification) pay to EPA funds up to the Total Dollar Amount of this Payment Bond in such amounts and to such person(s), account(s), or otherwise as EPA may direct. If the Surety does not render such payment within the specified 15-day period, the Surety shall be deemed to be in default of this Payment Bond and EPA shall be entitled to enforce any remedy available to it at law, in equity, or otherwise.
4. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the Total Dollar Amount of this Payment Bond, but in no event shall the aggregate obligation of the Surety hereunder exceed the amount of said sum.
5. The Surety may cancel this Payment Bond only by sending notice of cancellation to the Principal and to the Beneficiary, provided, however, that no such cancellation shall be effective during the 120-day period beginning on the date of receipt of the notice of cancellation by both the Principal and the Beneficiary, as evidenced by return receipts. If after 90 days of such 120-day period, the Principal has failed to provide alternative financial assurance to EPA in

accordance with the terms of the Agreement, EPA shall have the right to draw upon the Total Dollar Amount of this Payment Bond.

6. The Principal may terminate this Payment Bond only by sending written notice of termination to the Surety and to the Beneficiary, provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Payment Bond by the Beneficiary.

7. Any modification, revision, or amendment that may be made to the terms of the Agreement or to the Work to be done thereunder, or any extension of the Agreement, or other forbearance on the part of either the Principal or Beneficiary to the other, shall not in any way release the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors, or assigns from liability hereunder. The Surety hereby expressly waives notice of any change, revision, or amendment to the Agreement or to any related obligations between the Principal and the Beneficiary.

8. The Surety will immediately notify the Beneficiary of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; (d) the Surety's making a general assignment for the benefit of creditors; or (e) the Surety's taking any corporate action for the purpose of effecting any of the foregoing.

9. Any provision in this Payment Bond that conflicts with CERCLA or any other applicable statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein.

10. All notices, elections, consents, approvals, demands, and requests required or permitted hereunder shall be given in writing to (unless updated from time to time) the addressees shown on the first page of this Payment Bond, identify the Site, and provide a contact person (and contact information). All such correspondence shall be: (a) effective for all purposes if hand delivered or sent by (i) certified or registered United States mail, postage prepaid, return receipt requested or (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the relevant address shown on the first page of this Payment Bond; and (b) effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one business day after being deposited with a nationally recognized overnight courier service as required above, or (iii) three business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as

herein required shall be deemed to be receipt of the notice, election, consent, approval, demand, or request sent.

11. The Surety hereby agrees that the obligations of the Surety under this Payment Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy, or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

12. No right of action shall accrue on this Payment Bond to or for the use of any person other than the Beneficiary or the executors, administrators, successors or assigns of the Beneficiary.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Principal and Surety have executed this Payment Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby represent, warrant, and certify that they are authorized to execute this Payment Bond on behalf of the Principal and Surety, respectively.

**FOR THE PRINCIPAL:**

Date: \_\_\_\_\_

By [signature]: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

State of [insert state]

County of [insert county]

On this [insert date], before me personally came [insert name of PRP/Settling Defendant's signatory] to me known, who, being by me duly sworn, did depose and say that she/he is [insert title] of [insert name of PRP/Settling Defendant], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

\_\_\_\_\_  
[Signature of Notary Public]

**FOR THE SURETY:**

Date: \_\_\_\_\_

By [signature]: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

State of [insert state]

County of [insert county]

On this [insert date], before me personally came [insert name of Surety's signatory] to me known, who, being by me duly sworn, did depose and say that she/he is [insert title] of [insert name of Surety], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

\_\_\_\_\_  
[Signature of Notary Public]

