UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Asarco Hayden Plant Site;
Hayden, Gila County, Arizona

ASARCO LLC

Respondent.

Docket No.: CERCLA-2008-13

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

Proceeding Under Sections 104, 106(a), 107 And 122 of The Comprehensive Environmental Response, Compensation, And Liability Act, As Amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622; and A.R.S. § 49-287.

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"), the Arizona Department of Environmental Quality ("ADEQ") and ASARCO LLC ("Respondent"). Pursuant to this Settlement Agreement Respondent agrees to conduct removal actions at residential areas in portions of Hayden and Winkelman and at areas on the Asarco Hayden Plant Site in Hayden, Arizona and to conduct a Remedial Investigation/Feasibility Study ("RI/FS"),consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300; applicable EPA guidance; A.R.S. § 49-282.06 and the rules promulgated thereunder. The scope and substance of the Work to be performed by Respondent are set forth in Section VIII of this Settlement Agreement and the Statement of Work ("SOW") incorporated herein as Appendix A to this Settlement Agreement.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). These authorities have been delegated to the EPA Region IX Branch Chiefs via Delegation 14-14-C and Region IX Order R9 1290.15, dated September 29, 1997. Additionally, this Settlement Agreement is entered into by ADEQ under the authority of A.R.S. § 49-287. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General for Environment and Natural Resources.

3. EPA, ADEQ and Respondent acknowledge that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement and the SOW. The fact that Respondent has agreed to undertake the activities required by this shall not be considered an admission by Respondent regarding the source of any contamination at any portion of the Site or Respondent's liability for such contamination. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

4. The parties agree and acknowledge that the effectiveness of this Settlement Agreement is subject to the approval of the United States Bankruptcy Court for the Southern District of Texas in Respondent's bankruptcy case, Case No. 05-21207. The parties agree to cooperate to seek such approval promptly after the agreement is signed by all parties.

II. PARTIES BOUND

5. This agreement is binding on Respondent, the bankruptcy estate of Respondent, and any person appointed to discharge the duties of the debtor- in- possession in the bankruptcy case of Respondent, including an Examiner with expanded powers or a Chapter 11 Trustee.

6. Respondent is in the process of reorganizing pursuant to Chapter 11 of the bankruptcy code. Respondent will include, and will use best efforts to seek necessary approvals for, language in its plan of reorganization that ensures that regardless of the form of the Chapter 11 plan ultimately confirmed by the Court, the obligations assumed by Respondent hereunder survive the bankruptcy case. To the extent that Respondent selects a plan sponsor, Respondent will include provisions in the plan ensuring that the plan sponsor assumes the obligations of Respondent thereunder. If Respondent proposes a stand-alone plan of reorganization, Respondent will include provisions in its plan of reorganization ensuring that the reorganized Respondent will assume the obligations of Respondent hereunder.

7. ADEQ, EPA, and Respondent recognize that there are a number of different ways in which Respondent could potentially reorganize and emerge from the Chapter 11 case. In any reorganization scenario, Respondent will include, and use best efforts to seek necessary approvals for, plan language addressing the Site that ensures the assumption, post-plan effective date, of ASARCO's obligations and benefits under this Settlement Agreement, by a party with appropriate financial assurance.

8. If a selected plan sponsor or other form of asset purchaser acquires the Hayden Complex during or at the conclusion of the bankruptcy case, Respondent will use best efforts to obtain from such purchaser a contractual agreement to assume any environmental liability to a governmental unit that an owner at the time of disposal or a release or threatened release of a hazardous substance would be subject to under applicable law and to waive the benefit of any protections_for subsequent owners provided under A.R.S. 49-285.01 and Sections 101(40) and 107(r) of CERCLA, 42 U.S.C. §§ 9601(40) and 9607(r). Respondent will use best efforts to have language inserted in any bankruptcy court order approving the disposition of the Hayden Complex that ensures that the plan sponsor or asset purchaser is liable for such obligations.

9. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

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

a. "ADEQ" shall mean the Arizona Department of Environmental Quality and any successor departments or agencies of the State.

b. "Agencies" shall mean EPA and ADEQ.

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

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

e. "Direct Costs" shall mean contractor costs for the Work, and shall not include the costs of any Asarco employees, legal fees, or other indirect or overhead costs.

f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXV.

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

h. "Hayden Complex" shall mean the property owned by Respondent or its subsidiaries on which the Hayden Smelter and Concentrator and associated operations are located including associated tailings piles and those areas formerly part of the Kennecott Smelter.

i. "Interest," as to EPA, shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As to ADEQ, "Interest" shall mean the rate set forth in A.R.S. § 44-1201.

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

k. "Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States or ADEQ incur in reviewing or developing plans, reports and other items related to the Work, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 38 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Section XIV (Emergency Response) and Paragraph 81 (Work Takeover).

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

m. "Parties" shall mean EPA, ADEQ and Respondent.

n. "Past Response Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States incurred at or in connection with the Site through the Effective Date, plus Interest on all such costs through such date.

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

p. "Residential Site" shall mean all areas within the Site that are not owned by Respondent, including, but not limited to, residences, public areas, and vacant lots in Hayden and Winkelman.

q. "Respondent" shall mean ASARCO LLC.

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

s. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

t. "Site" shall mean the Asarco Hayden Plant Site, which includes the Asarco Hayden Smelter and associated facilities owned or operated by Respondent in Hayden, Arizona, and any areas where hazardous substances from those facilities have come to be located.

u. "State" shall mean the State of Arizona.

v. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the activities necessary to complete the Work.

w. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

x. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); 4) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); and 5) any "hazardous material" or "hazardous substance" under Arizona law.

y. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

11. The Site is located in Hayden, Arizona near the intersection of Highway 177 and Route 77 along the Pinal County and Gila County border, and includes portions of the town of Winkelman, which is located approximately ¼ mile southeast of Hayden.

12. Respondent has operated in the vicinity of the Site since 1911, when it constructed a smelter 2,000 feet east-northeast of Hayden. Respondent began operation of the smelter in 1912 to process ore from the Ray Mine. In 1933, Kennecott Copper Corporation ("KCC") bought the Ray Mine from Nevada Consolidated Copper Company. The ASARCO Hayden smelter stopped receiving ore from the Ray Mine in 1958, when KCC began operations of its Kennecott Smelter in Hayden.

13. In 1983, Respondent completed the modernization of its Hayden smelter. The modernization included the installation of an oxygen flash smelting furnace (to replace obsolete roasters and reverberatory furnaces); the construction of an oxygen plant for the furnace; the construction of a second sulfuric acid plant to capture and reuse sulfur dioxide emissions; and the construction of a wastewater treatment plant to recover and reuse process water from the sulfuric acid plant. During the same year, ASARCO's smelter once again received ore from the Ray Mine. The KCC smelter was shut down in 1982. Respondent bought KCC's Ray Mines Division in 1986 and assumed control of the Ray Mine operations, creating the ASARCO Ray Complex, consisting of the Ray Operations and the Hayden Operations.

14. Sulfide ore transported from the Ray Mine is crushed in the crusher building. An overland conveyor belt transports the crushed ore to the concentrator where it is further reduced in size in rod and ball mills. The ore is then mixed with water and conditioning reagents, and the resulting slurry is aerated in flotation cells creating a froth that carries the copper minerals to the surface while the waste (tailing) settles to the bottom of the cells. The copper-containing froth is skimmed, de-watered, and transported to the smelter operations for further processing. Tailing from the concentrator operations is transported as a slurry to impoundment areas located south and west of Hayden. Tailing Pond AB/BC is located south of Highway 177 and north of the Gila River, and is approximately two and a half miles long, one mile wide at its widest point and 200 feet high. Tailing Pond D is located south of the Gila River, parallel to AB/BC. This structure is approximately two miles long, 1,500 feet wide and 150 feet high.

15. The Site was identified as a potential hazardous waste site and entered into the Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS") on December 1, 1979 and was given EPA ID No. AZD008397127. In 1983, EPA completed a preliminary assessment ("PA") at the site. In 1988, Ecology & Environment, Inc. ("E&E") was contracted by EPA Region IX to conduct a PA-reassessment of the Site. This PA included a preliminary screening of the Site using the pre-1991 Hazard Ranking System ("HRS") scoring. E&E concluded that there was potential for the Site to qualify for additional investigation under CERCLA and recommended a high-priority Screening Site Inspection. A Site Inspection ("SI") was completed by ADEQ on September 23, 1991. The purpose of the SI was to assess the threat(s), if any, posed to public health, welfare, or the environment by the Site, and to determine if further investigation under CERCLA was warranted.

16. In 2002 and 2003, ADEQ undertook an Expanded Site Inspection ("ESI") for EPA. The ESI included sampling of soil, sediment, surface water and groundwater at the Site. As discussed in the Expanded Site Investigation Report dated April 25, 2003, the sampling and subsequent analysis showed the presence of several metals in surface soils above background concentrations, including arsenic, cadmium, copper, lead, mercury, and zinc. The Report concluded that sediment samples from the containment pond, stormwater pond and tailings piles showed the presence of arsenic, cadmium, chromium, copper, lead, mercury and zinc, while sediment samples from the Gila River and its tributaries showed the presence of the same metals.

17. In 2002, the Office of Environmental Health of the Arizona Department of Health Services, under a cooperative agreement with the Agency for Toxic Substances and Disease Registry, prepared a Public Health Assessment for the Site, which concluded that exposure to sulfur dioxide levels measured in air at the Site occasionally poses a short-term public health

hazard to sensitive asthmatics but other exposures to contaminants do not appear to pose a public health hazard.

18. In 2004, E&E performed a removal assessment for EPA that included additional soil sampling. The Removal Assessment Final Report, dated December 2004, concluded that the additional sampling showed concentrations of copper, lead and arsenic in Hayden and Winkelman above Arizona residential Soil Remediation Levels ("SRLs").

19. As part of the RI, residential soil sampling activities were conducted and included the collection of soil samples from the yards of 130 habitable homes within Hayden and Winkelman. This total consisted of 99 yards in Hayden and 31 yards in Winkelman. The residential soil sampling activities were conducted between January 30, 2006 and February 17, 2006.

20. Data collected from the surficial soil sampling at Hayden and Winkelman residential properties conducted as part of the RI indicates that the primary metals of concern are arsenic, copper, and lead. At least one sample from each sampled residential property was submitted for laboratory analysis. Based on the laboratory results of the 99 yards sampled in Hayden, and with respect to the SRLs in effect at the time of the investigation, 67 yards had arsenic concentrations that exceeded the SRL of 10 mg/kg, 77 yards had copper concentrations that exceeded the Arizona SRL of 2,800 mg/kg, and 16 yards had lead concentrations that exceeded the SRL of 400 mg/kg. Of the 32 yards sampled in Winkelman, two yards had arsenic concentrations that exceeded the SRL. A small number of residential properties showed exceedances of SRLs for other metals, but none of these metals are widespread at elevated concentrations. In general, the highest concentrations of metals in soils were found in residential properties located closest to the active concentrator facility and the former Kennecott smelter. The RI indicated that 15 such properties had particularly high concentrations of arsenic, copper, and lead. These 15 properties are being addressed under a separate settlement agreement.

21. EPA is currently conducting a Phase I Remedial Investigation and Human Health Risk Assessment focusing on the residential areas of the site. This investigation has found arsenic, lead and copper at elevated concentrations in residential yards. Air sampling has found levels of arsenic, chromium and other metals in the ambient air of the towns of Hayden and Winkelman that indicate potentially elevated risk levels.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

22. Based on the Findings of Fact set forth above, and the Administrative Record supporting this response action, EPA and ADEQ have determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and A.R.S. § 49-281.

b. Lead, arsenic and copper have been found at the Site and each is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and A.R.S. § 49-281.

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and A.R.S. § 49-281.

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response action and for response costs incurred and to be incurred at the Site. Specifically, Respondent is the current owner and operator of the facility, and as an owner or operator during the time of disposal of hazardous substances, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1), (2). Respondent is a responsible party and liable under A.R.S. § 49-283 and 49-285.

e. The presence of hazardous substances at the Site or the past, present, or potential migration of hazardous substances currently located at, or emanating from, the Site constitute an actual or threatened "release" of hazardous substances from a facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22), and A.R.S. § 49—281, and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

f. The response activities required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

g. EPA has determined that Respondent is qualified to conduct the RI/FS within the meaning of Section 104 of CERCLA, 42 U.S.C.§ 9604, 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 Respondent complies with the terms of this Settlement Agreement.

VI. SETTLEMENT AGREEMENT AND ORDER

23. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for the Asarco Hayden Plant Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR AND PROJECT COORDINATORS/ PROJECT MANAGER

24. Respondent shall retain one or more contractors to perform the Work and shall notify EPA and ADEQ of the name(s) and qualifications of such contractor(s) within forty-five (45) days of the Effective Date. Respondent shall also notify EPA and ADEQ of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least ten (10) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. EPA shall consult with ADEQ and shall provide written notice to the Respondent of any such disapproval along with a statement of its reasons for disapproval. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA and ADEQ of that contractor's name and qualifications within thirty (30) days of receipt of notice of EPA's

disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

25. Within forty-five (45) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA and ADEQ the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present at, or readily available by telephone during field Work. EPA retains the right to disapprove of the designated Project Coordinator. EPA shall consult with ADEQ and shall provide written notice to the Respondent of any such disapproval along with a statement of its reasons for disapproval. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA and ADEQ of that person's name, address, telephone number, and qualifications within fifteen (15) days following receipt of the notice of disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

26. EPA has designated John Hillenbrand, SFD-8-2, USEPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, as its Project Coordinator and ADEQ has designated Harry Hendler, ADEQ, 1110 West Washington Street, Phoenix, AZ, 85007, as its Project Coordinator. Documents submitted pursuant to this Settlement Agreement shall be sent to both the EPA Project Coordinator and ADEQ Project Coordinator.

27. EPA, ADEQ and Respondent shall have the right, subject to Paragraphs 24 and 25, to change their respective designated Project Coordinators and contractors. Verbal notice of such change shall be provided to the other party within twenty-four (24) hours of such change and written notice shall follow within five (5) days of such change. Such change by Respondent is subject to EPA approval as set forth in Paragraphs 24 and 25 above.

28. EPA's Project Coordinator is designated as Remedial Project Manager ("RPM") and as On-Scene Coordinator ("OSC"), unless EPA designates another OSC, under this Settlement Agreement. The RPM will coordinate the comments of ADEQ and EPA on all documents and will transmit to the Respondent all comments, approvals or disapprovals and other communications on primary documents, as well as comments and other communications on other documents required by this Settlement Agreement, on behalf of the ADEQ and EPA as parties to this Settlement Agreement. The RPM will also serve as a point of contact for the Respondent's Project Coordinator as Work proceeds under this Settlement Agreement.

VIII. WORK TO BE PERFORMED

29. Respondent shall perform all actions necessary to implement the removals and associated sampling for the Residential Site, to perform a Remedial Investigation/Feasibility Study ("RI/FS") for the Site and to design and to implement additional removal actions for the

Site in accordance with this Settlement Agreement and the attached SOW (Appendix A). Respondent shall document its Direct Costs in a manner acceptable to EPA, which shall include a full description of all Work performed, itemized contractor invoices, other supporting documentation, and receipts or other proof showing that its contractors have been paid either directly by Respondent or from the trust described in Paragraph 97 for such Work. The actions to be implemented include the following:

a. Removal actions, including further soil sampling, to address hazardous substances in the Residential Site where levels of metals exceed soil concentrations of 24.3 ppm arsenic, 400 ppm lead, or 9,300 ppm copper, as described in the SOW;

b. Completion of a RI/FS, including investigative work on property owned by Respondent, designed to identify releases of hazardous substances at the Site;

c. Additional removal actions to address hazardous substance sources and releases identified in the RI/FS in areas of the Hayden Complex that are not otherwise addressed through other regulatory programs; and

d. Additional removal actions to address hazardous substances sources and releases identified in the RI/FS in the Residential Site.

e. Respondent shall be deemed to have satisfactorily completed its activities under subparagraphs (a) and (d) of this Paragraph if either EPA issues a Notice of Completion of Work for these activities pursuant to Section XXXI (Notice of Completion of Work) or Respondent has spent $13,500,000 for the Direct Costs of such Work. Funds expended by the ASARCO Environmental Trust shall not be counted as funds spent by Respondent for purposes of this monetary limitation.

30. Work Plan and Implementation.

a. Within thirty (30) days after the Effective Date, Respondent shall submit to EPA and ADEQ for approval a draft Removal Work Plan for performing the removal actions generally described in Paragraph 29(a) and the attached SOW. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. The parties will meet to discuss EPA's preliminary findings and results of the Phase I Remedial Investigation and Human Health Risk Assessment ("Phase I RI"), at least thirty (30) days prior to the completion of the draft Phase I RI. Within ninety (90) days after the release of the draft Phase I RI, Respondent shall submit to EPA and ADEQ for approval a draft RI/FS Work Plan for performing the RI/FS generally described in Paragraph 30(c) and the attached SOW. The draft RI/FS Work Plan shall provide a description of, and an expeditious schedule for, the RI/FS required by this Settlement Agreement.

c. The RI/FS Work Plan shall provide that Respondent shall conduct the RI/FS in accordance with the provisions of this Settlement Agreement, the 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" (OSWER

Directive #9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. The Phase II Remedial Investigation ("RI") shall consist of collecting data to characterize Site conditions, determining the nature and extent of the contamination 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 response action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, and shall include response actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). Upon request by ADEQ or EPA, Respondent shall submit in electronic form all portions of any plan, report or other deliverable Respondent is required to submit pursuant to provisions of this Settlement Agreement.

d. Upon completion of the RI/FS and within one-hundred and twenty (120) days after the issuance of any decision document addressing any additional Work required at the Site, Respondent shall prepare and submit to EPA and ADEQ additional removal action Work Plans required by EPA for performance of Work generally described in subparagraphs (c) and (d) of the preceding Paragraph, and begin implementation of these Work Plans within thirty (30) days of their approval by EPA.

e. EPA, in consultation with ADEQ, may approve, disapprove, require revisions to, or modify a draft Work Plan in whole or in part provided that any revisions or modifications shall be required to achieve the objectives set forth in this Settlement Agreement and the SOW. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within twenty (20) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

f. Prior to the approval of the Work Plan for initial response actions, Respondent may as appropriate undertake removal actions at the 15 high-priority yards in accordance with the Administrative Settlement Agreement and Order on Consent for Removal Actions for the ASARCO Hayden Plant Site Residential Yard Removal Site, EPA Region IX CERCLA Docket No. 2008-09.

g. Respondent shall not commence any other activities to implement the Work Plan developed hereunder until receiving written approval from EPA.

h. Respondent shall notify EPA and ADEQ at least ten (10) working days prior to performing any field Work.

31. Health and Safety Plan. Within thirty (30) days after the Effective Date, Respondent shall submit to EPA and ADEQ a plan that ensures the protection of the public health and safety during performance of field Work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA, in consultation with ADEQ, determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA after consultation with ADEQ and shall implement the plan during the pendency of the removal action.

32. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction and approval received from EPA, in consultation with ADEQ, and EPA guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA in consultation with ADEQ may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. EPA and ADEQ reserve the right to conduct a system and performance audit. Identified system or performance findings shall be addressed by the Respondent.

b. Upon request by EPA, Respondent shall have the laboratory that it selects analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA and ADEQ the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request, Respondent shall allow EPA, ADEQ or their authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA and ADEQ not less than ten (10) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA after consultation with ADEQ. EPA and ADEQ shall have the right to take any additional samples that EPA or ADEQ deem necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

d. Respondent shall submit to EPA and ADEQ, within twenty (20) days of receipt by Respondent of final validated sampling results from the laboratory, all analytical data collected in connection with this Settlement Agreement.

33. Review and Approval.

a. The following procedure will apply to all documents submitted to EPA and ADEQ for review and approval pursuant to the requirements of this Settlement Agreement. After reviewing such a document, EPA, in consultation with ADEQ, will notify Respondent in writing whether it approves or disapproves (in whole or in part) of the document that is subject to review and approval and it will provide comments regarding the basis for any disapproval. Within twenty (20) days of receipt of written notice of disapproval from EPA, or such other time period as agreed to by Respondent and EPA, Respondent shall make the necessary revisions and resubmit the document to EPA and ADEQ. Subject to dispute resolution, EPA, in consultation with ADEQ, will make the final determination as to whether the document submitted by Respondent is in compliance with the requirements of this Settlement Agreement.

b. Failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period(s) or the absence of comments shall not constitute approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

c. If a document that is resubmitted after written disapproval by EPA continues to have a material defect, it shall be considered a violation of the Settlement Agreement unless EPA, in consultation with ADEQ, otherwise agrees that another submission may be made. EPA and ADEQ retain the right to seek stipulated or statutory penalties, perform their own studies, complete the Work (or any portion of the Work) under CERCLA and the NCP, and to seek reimbursement from the Respondent for its costs and/or seek any other appropriate relief.

d. Approved documents shall be deemed incorporated into and made part of this Settlement Agreement. Prior to written approval, no work plan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA or ADEQ representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

34. Reporting.

a. Respondent shall submit a monthly written progress report to EPA and ADEQ concerning actions undertaken pursuant to this Settlement Agreement. The first report shall be due thirty (30) days after the Effective Date and subsequent reports shall be due monthly until termination of this Settlement Agreement, unless otherwise directed in writing by EPA after consultation with ADEQ. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered; analytical data received during the reporting period; and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Final Reports. Within thirty (30) days after completion of all Work required under this Settlement Agreement, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with the Settlement Agreement. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the National Contingency Plan ("NCP") entitled "OSC Reports." The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s)of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of the fine and imprisonments for knowing violations."

c. Respondent shall submit two copies of all plans, reports or other submissions required by EPA or this Settlement Agreement, the attached SOW, or any approved Work Plan. Upon request by EPA or ADEQ, Respondent shall submit such documents in electronic form.

d. Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and ADEQ of the proposed conveyance, including the name and address of the transferee.

35. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of ADEQ or EPA during the planning for, and conduct of, the Work, as is necessary in order to provide the community with information and opportunity for input.

IX. COMMUNITY RELATIONS PLAN AND TECHNICAL ASSISTANCE PLAN

36. EPA, in consultation with ADEQ, will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondent shall provide information supporting EPA's community relations programs. When requested by EPA, Respondent also shall provide EPA with the following deliverable: Technical Assistance Plan. Within 30 days of a request by EPA, Respondent shall provide EPA with a Technical Assistance Plan ("TAP") for providing and administering up to $50,000 of Respondent's funds to be used by a qualified community group to hire independent technical advisors during the Work conducted pursuant to this Settlement Agreement. The TAP shall state that Respondent will provide and administer any additional amounts needed if EPA, in its discretion, determines that the selected community group has demonstrated such a need prior to EPA's issuance of the decision document contemplated by this Settlement Agreement. If EPA disapproves of or requires revisions to the

TAP, in whole or in part, Respondent shall amend and submit to EPA a revised TAP that is responsive to EPA's comments, within 15 days of receiving EPA's comments.

X. SITE ACCESS

37. If any property within the Site where access is needed to implement this Settlement Agreement is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide EPA and ADEQ and their representatives, including contractors, with access at all reasonable times to the property for the purpose of conducting any activity related to this Settlement Agreement.

38. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain any access agreements for activities required under this Settlement Agreement. "Best efforts" means Respondent shall send a letter, which has been reviewed and approved by EPA, to the owner of the property to which access is sought that describes the process and purpose of the Work, the reasons access is needed, and includes a telephone contact number; and it means Respondent shall make an initial visit to each property to which access is sought and conduct at least two follow-up visits if necessary in order to secure access. The follow-up visits shall be conducted during weekday evening hours between 6:00 p.m. and 8:00 p.m. Respondent shall maintain a log in which it records its efforts to obtain access, including the date the letter was mailed, the time and dates of the initial and follow-up visits, and either the date of the response by the landowner or the date EPA and ADEQ were notified of the failure of Respondent to obtain a response from the property owner. Respondent shall immediately notify EPA and ADEQ if, after using its best efforts, it is unable to obtain an access agreement. If Respondent fails to secure necessary access agreements, EPA and ADEQ may assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as the Agencies deem appropriate, including exercising authority pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Each access agreement shall permit Respondent, EPA and ADEQ, including their authorized representatives, access to the property to conduct the activities required under this Settlement Agreement. These individuals shall be permitted to enter and move freely at the property in order to conduct actions that EPA, in consultation with ADEQ, determines to be necessary. Such unrestricted access shall continue until such time as EPA has granted notice of completion as set forth in Section XXXI (Notice of Completion of Work) of this Settlement Agreement. Nothing herein shall be interpreted as limiting or affecting EPA's or ADEQ's statutory right of entry or inspection authority under federal or state law. All costs and attorney's fees incurred by the United States or the State in obtaining access shall be considered Oversight Costs.

39. Notwithstanding any provision of this Settlement Agreement, EPA and ADEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. ACCESS TO INFORMATION

40. Respondent shall provide to EPA and ADEQ, upon request, copies of all documents and information within its possession or control or in possession or control of its

contractors or agents that relate to response actions 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 related to the Work. Respondent shall also make its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work available to EPA and ADEQ, for purposes of investigation, information gathering, or testimony.

41. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and ADEQ under this Settlement Agreement 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) and A.R.S. § 49-205. Documents or information determined to be confidential by EPA, in consultation with ADEQ, will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and ADEQ, or if EPA has notified Respondent that the documents or information 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 documents or information without further notice to Respondent.

42. Respondent may assert that certain documents, records and other information provided under this Section are privileged under the attorney-client privilege or any other privilege recognized by federal law or state law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA and ADEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

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

XII. RECORD RETENTION

44. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary, except that this record retention requirement shall not apply to those documents not related to the Work now stored at Respondent's document repository in Sacaton, Arizona. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XXXI (Notice of Completion of

Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to performance of the Work.

45. At the conclusion of this document retention period, Respondent shall notify EPA and ADEQ at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or ADEQ, Respondent shall deliver any such records or documents to the requesting agency. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent assert such a privilege, it shall provide EPA and ADEQ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

46. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, Respondent 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 December 15, 2005 and that since that time it has fully complied with any and all 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.

XIII. COMPLIANCE WITH OTHER LAWS

47. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, in consultation with ADEQ, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to the approval of EPA in consultation with ADEQ. The Work Plan shall also describe for each identified ARAR the measures to be taken to ensure compliance with the ARAR. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. 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

48. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment,

Respondent shall immediately take all appropriate action. 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, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the ADEQ Project Coordinator and EPA's RPM or, in the event of their unavailability, the Regional Duty Officer, Emergency Response and Removal Branch, EPA Region IX, (415) 947-8000, of the incident or on-Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and ADEQ or EPA takes such action instead, Respondent shall reimburse ADEQ or EPA, as appropriate, all costs of the response action not inconsistent with the NCP.

49. In addition, in the event of any release of a hazardous substance in connection with performance of the Work, Respondent shall immediately notify ADEQ's Project Coordinator (602-771-4609) and EPA's RPM at (415) 947-8000 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA and ADEQ within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

XV. AUTHORITY OF EPA'S REMEDIAL PROJECT MANAGER

50. EPA's RPM shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. EPA's RPM shall have the authority vested in a remedial project manager and an on-scene coordinator ("OSC") by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement. Absence of EPA's RPM from the Site shall not be cause for stoppage of work unless specifically directed by EPA's RPM.

XVI. PAYMENT OF OVERSIGHT COSTS

51. Payments for Oversight Costs.

a. Respondent shall pay EPA and ADEQ all Oversight Costs not inconsistent with the NCP incurred for the oversight of these response actions. On a quarterly basis beginning after the effective date of this Settlement Agreement, EPA and ADEQ, respectively, will send Respondent a bill requiring payment that includes, in the case of EPA, a cost accounting report and, in the case of ADEQ, a cost accounting summary consisting of invoices and summaries of ADEQ costs incurred, which includes direct and indirect costs incurred by EPA and ADEQ and their contractors for oversight of these response actions. Respondent shall make all payments within sixty (60) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 52 of this Settlement Agreement.

b. Respondent shall make all payments to EPA required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and EPA Site/Spill ID number 09JS. Respondent shall send the check(s) to:

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

c. Respondent shall make all payments to ADEQ required by this Paragraph by a certified or cashier's check or checks made payable to the Arizona Department of Environmental Quality. Respondent shall send the check(s) to:

Michael D. Clark
Chief Financial Officer
Arizona Department of Environmental Quality
1111 West Washington Street
Phoenix, AZ 85007

d. Instead of sending a check to either EPA or ADEQ, Respondent may choose to make payments by Electronic Funds Transfer ("EFT") in accordance with EFT procedures to be provided to Respondent by EPA or ADEQ. EFT payments shall be accompanied by a statement identifying the name and address of Respondent and referencing the Asarco Hayden Plant Site.

e. At the time of payment, Respondent shall send notice that payment has been made to Sharon Johnson, Case Development, Cost Recovery Specialist, SFD-7-2, USEPA, Region IX, 75 Hawthorne Street, San Francisco, CA~~,~~ 94105. Notice, including a copy of any check or EFT receipt shall also be sent to the ADEQ Project Manager.

f. The total amount to be paid by Respondent pursuant to Paragraph 51(a) shall be deposited in either the Asarco Hayden Plant Special Account, which is within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

XVII. LATE PAYMENT OR DISPUTE OF PAYMENT

52. In the event that the payments for Oversight Costs are not made within sixty (60) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Oversight Costs shall begin to accrue on the 61st day after Respondent's receipt 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 or State by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XX (Stipulated Penalties).

53. Respondent may dispute all or part of a bill for Oversight Costs submitted under this Settlement Agreement, if Respondent alleges that EPA or ADEQ has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP or otherwise not an Oversight Cost. Any such objection shall specifically identify the disputed cost(s) and the basis

for the objection. The Parties shall first conduct informal negotiations to resolve the dispute. The period of informal negotiations shall not exceed sixty (60) days unless extended by agreement of the Parties to the dispute. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA or ADEQ as specified in Paragraph 51 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 51(b) and (c) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest earned from the escrow (as opposed to Interest as defined in this Settlement Agreement) within ten (10) days after the dispute is resolved.

XVIII. DISPUTE RESOLUTION

54. The parties to this Settlement Agreement shall attempt to resolve, expeditiously and informally, any disagreements concerning this Settlement Agreement.

55. If the Respondent objects to any bills from ADEQ or EPA taken pursuant to this Settlement Agreement the Respondent shall notify EPA or ADEQ in writing of its objection(s) within twenty (20) days of receipt of the bill, unless the objection(s) has/have been informally resolved.

56. If the Respondent objects to any other action taken by EPA pursuant to this Settlement Agreement, the Respondent shall notify EPA in writing of its objection(s) within twenty (20) days of EPA's written notice of such action, unless the objection(s) has/have been informally resolved.

57. Such notice shall set forth the specific points of the dispute, the position Respondent maintains should be adopted as consistent with the requirements of this Settlement Agreement, the factual and legal basis for Respondent's position, and all matters Respondent considers necessary for the determination of EPA or ADEQ. Respondent and EPA or ADEQ shall then have fourteen (14) working days from the receipt of Respondent's objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by the Respondent and the appropriate Agency, and incorporated into this Settlement Agreement.

58. If Respondent and ADEQ are unable to reach agreement within this fourteen (14) working day period regarding an objection to an ADEQ bill, the matter shall be referred to the Director of the ADEQ Waste Programs Division. ADEQ, in consultation with EPA, shall provide notice in writing of its position, including the position ADEQ maintains should be adopted as consistent with the requirements of this Settlement Agreement, the factual and legal basis for ADEQ's position, and all matters ADEQ considers necessary for the Division Director's determination. Respondent may reply to ADEQ's notice of its position. ADEQ may, but shall not be required to, give notice, as described above, if it has already provided written notice, if it has already provided written reasons, or already provided a written explanation pursuant to a notice of disapproval of a plan, report or other item.

59. If Respondent and EPA are unable to reach agreement within this fourteen (14) working day period regarding an objection to an EPA bill or other action taken by EPA pursuant to this Settlement Agreement, the matter shall be referred to the Director of the Superfund Division, Region IX. EPA, in consultation with ADEQ, shall provide notice in writing of its position, including the position EPA maintains should be adopted as consistent with the requirements of this Settlement Agreement, the factual and legal basis for EPA's position, and all matters EPA considers necessary for the Division Director's determination. Respondent may reply to EPA's notice of its position. EPA may, but shall not be required to, give notice, as described above, if it has already provided written notice, if it has already provided written reasons, or already provided a written explanation pursuant to a notice of disapproval of a plan, report or other item.

60. Following the process described in Paragraph 53 (a) or (b), the Director of the ADEQ Waste Programs Division or the Director of the Superfund Division, Region IX shall then decide the matter, consistent with the NCP and the terms of this Settlement Agreement, on the basis of those written materials described in this Section, and any meeting held with Respondent and EPA and/or ADEQ. The appropriate Division Director will then provide a written statement of his/her decision to both parties to the dispute, which shall be incorporated into this Settlement Agreement, provided that incorporation of the Division Director's decision into the Settlement Agreement shall not deprive Respondent of the right to contest the validity of the Division Director's decision in any judicial action taken by EPA or ADEQ to enforce this Settlement Agreement, or the terms thereof, as provided by Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

61. All materials submitted pursuant to this Section, shall be kept as part of any Administrative Record made pursuant to 40 C.F.R. §§ 300.415 and 300.820 for any response action resulting for this Site.

62. Notwithstanding any other provisions of this Settlement Agreement, no action or decision by EPA or ADEQ, including without limitation, decisions of a Division Director pursuant to this Settlement Agreement, shall constitute final action giving rise to any rights to judicial review prior to the initiation of judicial action by EPA or ADEQ to compel Respondent's compliance with the requirements of this Settlement Agreement.

XIX. FORCE MAJEURE

63. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. For purposes of this Settlement Agreement, a force majeure is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, 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. Force majeure does not include financial inability to complete the Work or increased cost of performance.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event,

Respondent shall immediately notify EPA orally when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA and ADEQ 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 they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondent will use commercially reasonable efforts to avoid or to minimize any delay and any effects of a delay caused by a force majeure event. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

65. If EPA, after consultation with ADEQ, 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 for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with ADEQ, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision within fourteen (14) days of Respondent's notification pursuant to Paragraph 59. If EPA and ADEQ agree that the delay is attributable to a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XX. STIPULATED PENALTIES

66. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XIX (Force Majeure) or by agreement of the Parties. "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any Work Plan or other plan approved under this Settlement Agreement identified below in a manner acceptable to EPA, and in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA or ADEQ pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement provided, however, that a failure of compliance caused by the refusal of a landowner other than Respondent to provide needed access despite Respondent's use of best efforts to secure such access shall not cause the accrual of penalties for any such uncompleted Work.

67. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 67.b.:

Penalty Per Violation Per Day	Period of Noncompliance

$ 1,000	1st through 14th day
$ 2,000	15th through 30th day
$ 3,000	31st day and beyond

b. Compliance Milestones:

(1) Failure to submit a required Work Plan in a timely or adequate manner.
(2) Failure to submit a Health and Safety Plan in a timely or adequate manner.
(3) Failure to follow quality assurance and sampling guidance and procedures as set forth in Paragraph 32.
(4) Failure to submit a QAPP in a timely or adequate manner.

68. Stipulated Penalty Amounts - Other Deliverables or Violations.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 68.b.:

Penalty Per Violation Per Day	Period of Noncompliance
$ 500	1st through 14th day
$ 1,000	15th through 30th day
$ 2,000	31st day and beyond

b. Compliance Milestones:

(5) Failure to submit the Final Report in a timely or adequate manner.
(6) Failure to submit a Monthly Progress Reports in a timely or adequate manner.
(7) Any other violation of this Settlement Agreement, other than those milestones identified in Paragraph-67.b. and 68.b
(8) Failure to submit a Remedial Investigation/Feasibility Study in a timely or adequate manner.

69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 81 of Section XXII (Work Takeover), Respondent shall be liable for a stipulated penalty in an amount up to three times the cost of the Work performed by EPA.

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue with respect to a deficient submission under Section VIII (Work to be Performed) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency. Nothing herein shall

prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

71. EPA, in consultation with ADEQ, will consider any good faith efforts by Respondent to comply with the requirements of this Settlement Agreement in making any demand for stipulated penalties.

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

73. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVIII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check made payable to "EPA Hazardous Substances Superfund," shall be mailed to the address specified in Paragraph 51(b) or in accordance with EFT procedures to be provided to Respondent by EPA, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region, the EPA Docket Number which appears on the face of this Settlement Agreement, and the name and address of the party making payment. Copies of the check paid pursuant to this Section, and any accompanying transmittal letter, shall be sent to EPA's RPM and ADEQ's Project Coordinator.

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

75. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of a decision by the Division Director. The Superfund Division Director shall have the discretion to reduce any amount of stipulated penalties, initially demanded by EPA after consultation with ADEQ, as indicated in his/her decision.

76. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 70. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA or ADEQ to seek any other remedies or sanctions available by virtue of 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 Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that ADEQ and EPA shall not seek civil penalties pursuant to Section 106(b) or 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 a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXII,

Paragraph 81 (Work Takeover). Notwithstanding any other provision of this Section, EPA, may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XXI. COVENANT NOT TO SUE BY EPA AND ADEQ

77. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA and ADEQ covenant not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) or A.R.S. § 49-285 for performance of the Work and for recovery of Oversight Costs, and with respect to the Residential Site except for Past Response Costs.. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Oversight Costs pursuant to Section XVI (Payment of Oversight Costs). This covenant not to sue extends only to Respondent and does not extend to any other person except to the extent that a person to whom Respondent transfers its ownership interests in the site assumes Respondent's obligations under the Settlement Agreement.

78. Subject to the monetary limitations of Paragraph 29(e), ADEQ reserves the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Respondent to perform further response actions related to the Work, or to reimburse ADEQ for additional costs of response if:

a. conditions at the Site, previously unknown to the State, are discovered; or

b. information, previously unknown to the State, is received, in whole or in part, and ADEQ determines that these previously unknown conditions or information together with any other relevant information indicates that the Work is not protective of public health, welfare or the environment. The State acknowledges that all information in the administrative record is known to the State. For purposes of this Section, the information and conditions known to the State shall also include all information and conditions identified in the RI/FS to be conducted by the Respondent pursuant to this Settlement Agreement. Respondent reserves all rights and defenses for any actions taken under this Paragraph.

XXII. RESERVATIONS OF RIGHTS BY EPA AND ADEQ

79. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA, the United States or ADEQ to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or ADEQ 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 Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

80. The covenant not to sue set forth in Section XXI above does not pertain to any matters other than those expressly identified therein. EPA and ADEQ reserve, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. for Past Response Costs at the Site;

c. for future costs with respect to areas of the Site other than the Residential Site;

d. liability for performance of response actions at areas of the Site other than the Residential Site;

e. criminal liability;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments except as provided in any separate settlement among the parties;

g. liability under CERCLA, or any other federal or state law arising from the acts or omissions of Respondent that are taken after the Effective Date. Respondent's future acts creating liability under CERCLA do not include continuing releases from the Residential Site related to Respondent's pre-petition conduct, but would include continuing or new releases from areas of the Site other than the Residential Site;

h. liability for Past Response Costs incurred by the Agency for Toxic Substances and Disease Registry at the Site and for future costs incurred at areas of the Site other than the Residential Site; or

i. liability of the Copper Basin Railway, Inc.

81. Work Takeover. In the event EPA, in consultation with ADEQ, determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as it determines necessary. Respondent may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Oversight Costs for which Respondent will reimburse EPA. Notwithstanding any other provision of this Settlement Agreement, EPA and ADEQ retain all authority and reserve all rights to take any and all response actions authorized by law.

XXIII. COVENANT NOT TO SUE BY RESPONDENT

82. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Work, Oversight Costs, the Residential Site, 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. §§ 606(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 Arizona 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 or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

83. These covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 80(b)-(e), but only to the extent that Respondent's claim arises from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

84. 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).

85. Respondent waives its right to move to quash or modify this Settlement Agreement under A.R.S § 49-287.

86. Respondent waives any and all rights to recover its costs from the State Water Quality Assurance Revolving Fund ("WQARF") under A.R.S. § 49-287 for complying with this Settlement Agreement.

87. If Respondent is not in "Compliance" as that term is defined in Section XX (Stipulated Penalties) or if Respondent's documented costs of the Work performed under subparagraphs (a) and (d) of Paragraph 29 exceed $13,500,000, then Respondent agrees not to seek judicial review of the final rule listing the Site on the National Priorities List based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXIV. OTHER CLAIMS

88. By issuance of this Settlement Agreement, the United States, EPA, the State and ADEQ assume no liability for injuries or damages to persons or property resulting from any acts

or omissions of Respondent. The United States, EPA the State and ADEQ shall not be deemed parties to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

89. Except as expressly provided in Section XXI (Covenant Not to Sue by EPA and ADEQ), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent 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 or the State for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

90. No action or decision by EPA or ADEQ 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).

XXV. CONTRIBUTION PROTECTION

91. The Parties agree that this Settlement Agreement constitutes an administrative settlement for the purposes of Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 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 all Work performed and Oversight Costs paid pursuant to this Settlement Agreement, and all liability under §§ 106 and 107(a) of CERCLA, 42 U.S.C §§ 9606 and 9607(a), for the Residential Site except for Past Response Costs. Nothing in this Settlement Agreement precludes the United States, the State or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XXVI. INDEMNIFICATION

92. Respondent shall indemnify, save and hold harmless the United States and the State, their 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 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States or the State, as appropriate, all costs incurred by the United States or the State, 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 or the State based on negligent or other wrongful acts or omissions of 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 and the State shall not be held out as parties to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States or the State.

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

94. Respondent waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

XXVII. INSURANCE

95. At least seven (7) days prior to commencing any field Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, Respondent shall provide EPA and ADEQ with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA and ADEQ that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVIII. FINANCIAL ASSURANCE

96. In order to ensure the full and final completion of the Work, Respondent shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $15,000,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

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

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

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

97. Respondent has selected, and EPA has approved, as an initial Performance Guarantee, a trust fund pursuant to Paragraph 96(c). Respondent may use the funds in the trust fund to pay for the Work. Within ten (10) days after execution of this Settlement Agreement, Respondent shall submit an example of the trust agreement proposed to be used. Within thirty (30) days of the Effective Date of this Settlement Agreement, Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to David Wood, EPA Regional IX Financial Management Officer, ("Regional Financial Management Officer") MTS-42 USEPA, 75 Hawthorne Street, San Francisco, CA 94105 and the EPA RPM.

98. If a party other than Respondent assumes Respondent's liabilities under this Settlement Agreement, that party shall establish a Performance Guarantee in one or more of the following forms, which must be satisfactory in form and substance to EPA:

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

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

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

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

e. A demonstration that the party meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of the party or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the party; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

99. If the party assuming Respondent's obligations under Paragraph 98 provides a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 98(e) or (f) above, such party shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1)

relating to these methods, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XXVIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Settlement Agreement, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

100. In the event that EPA determines at any time that a Performance Guarantee provided by a party assuming Respondent's obligations under Paragraph 98 is inadequate or otherwise no longer satisfies the requirements set forth in this Section for any reason, including due to an increase in the estimated cost of completing the Work (other than Work under Paragraphs 29(a) and (d), for which the maximum financial assurance required will be $13,500,000), or in the event that Respondent becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, for any reason, including due to an increase in the estimated cost of completing the Work (other than Work under Paragraphs 29(a) and (d)), Respondent, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of Respondent becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 98 of this Settlement Agreement that satisfies all requirements set forth in this Section. In seeking approval for a revised or alternative form of Performance Guarantee, Respondent shall follow the procedures set forth in Paragraph 102(b)(ii) of this Settlement Agreement. Respondent's inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Settlement Agreement, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with the terms hereof.

101. The commencement of any Work Takeover pursuant to Paragraph 81 of this Settlement Agreement shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 96 or 98, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 98(e), Respondent shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

102. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 96 above, Respondent may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Respondent shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Respondent shall follow the procedures set forth in Paragraph 102(b)(ii) of this Settlement Agreement. If EPA decides to accept such a proposal, EPA shall notify the petitioning Respondent of such decision in writing. After receiving EPA's written acceptance, Respondent may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondent may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 100 or 102(b) of this Settlement Agreement.

b. Change of Form of Performance Guarantee.

(i) If, after court approval of this Settlement Agreement, Respondent desires to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Respondent may petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 102(b)(ii) of this Settlement Agreement. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.

(ii) Respondent shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Respondent shall submit such proposed revised or alternative form of Performance Guarantee to the Regional Financial Management Officer, EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make

the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee Settlement Agreement, and to EPA RPM.

c. Release of Performance Guarantee. If Respondent receives written notice from EPA in accordance with Paragraph 107 hereof that the Work has been fully performed in accordance with the terms of this Settlement Agreement, or if EPA otherwise so notifies Respondent in writing, Respondent may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Respondent shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Respondent may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative decision resolving such dispute.

XXIX. MODIFICATIONS

103. The RPM may make modifications to any plan, or schedule in writing or by oral direction after consultation with ADEQ provided that the Respondent's Project Coordinator concurs with the modification. Any oral modification will be memorialized in writing by the RPM promptly, but shall have as its effective date the date of the RPM's oral direction. Any requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

104. If Respondent seeks permission to deviate from any approved work plan, schedule, or the SOW, Respondent's Project Coordinator shall submit a written request to EPA and ADEQ for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the On-Scene Coordinator pursuant to Paragraph 103.

105. No informal advice, guidance, suggestion, or comment by the RPM or other representatives of EPA or ADEQ regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve 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.

XXX. ADDITIONAL WORK

106. If EPA, in consultation with ADEQ, determines that additional work related to the development of the Work for the Site not included in an approved plan is necessary to satisfy the scope and substance of this Settlement Agreement, EPA will notify Respondent of that determination. The scope and substance of the Work to be performed by Respondent is set forth in Section VIII of this Settlement Agreement and the SOW incorporated herein as Appendix A to this Settlement Agreement. Any such notification shall be accompanied by a written explanation of the basis for the determination that additional work is required. No later than fifteen (15) calendar days after EPA's notification, Respondent shall notify EPA and ADEQ in writing of its agreement or refusal to conduct the additional work. In the event that Respondent agrees to conduct the additional work, Respondent shall submit for approval by EPA and ADEQ a work plan for the additional work. This work plan shall conform to the applicable requirements of

Section VIII (Work to be Performed) of this Settlement Agreement. Upon approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional work in accordance with the provisions and schedules contained therein.

XXXI. NOTICE OF COMPLETION OF WORK

107. When EPA determines, after review of the Final Report and consultation with ADEQ, 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 (e.g., record retention, etc.), EPA will provide written notice to Respondent. Such notice shall terminate the Respondent's obligations to undertake any of the activities set forth in the Statement of Work, except for continuing obligations required by this Settlement Agreement pursuant to Section XI (Access to Information), Section XII (Record Retention), Section XXIII (Covenant Not to Sue By Respondent), and Section XXVI (Indemnification). If EPA determines, after consultation with ADEQ, that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXXII. ADMINISTRATIVE RECORD

108. EPA, in consultation with ADEQ, will determine the contents of the administrative record file for selection of response actions. Respondent shall submit to EPA and ADEQ documents developed during the court of the RI/FS upon which selection of the response action may be based. Upon request of EPA or ADEQ, 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 EPA or ADEQ, 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 Respondent and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXXIII. SEVERABILITY/INTEGRATION/APPENDICES

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

110. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no

representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XXXIV. PUBLIC COMMENT

111. This Settlement Agreement will be subject to a public comment period following notice published in the Federal Register, which may take place concurrent with the judicial approval process under Paragraph 4 of this Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Settlement Agreement disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the United States will provide the Court with copies of any public comments and its response thereto.

XXXV. EFFECTIVE DATE

112. This Settlement Agreement shall become effective upon its approval by the United States Bankruptcy Court for the Southern District of Texas in Respondent's bankruptcy case, Case No. 05-21207, subject to the public comment process described in Section XXXIV.

In the Matter of the Asarco Hayden Plant Site

IT IS SO ORDERED AND AGREED THIS 15th DAY OF APRIL, 2008.

DATE: April 15, 2008

Michael M. Montgomery
Branch Chief
Superfund Division
U.S. Environmental Protection Agency, Region IX

U.S. Department of Justice

By: _____ DATE: 12 April 2008
Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

By: _____ DATE: 4.14.08
Amy R. Gillespie
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Arizona Department of Environmental Quality

_____ Date: 4/15/08

Amanda E. Stone
Director of Waste Programs Divison

ASARCO LLC

By:_____ Date: April 7, 2008

Name: Douglas E. McAllister

Title: Executive Vice President, General Counsel

ASARCO LLC

By:_____ Date: April 7, 2008

Name: Thomas L. Aldrich

Title: Vice President Environmental Affairs

In the Matter of the Asarco Hayden Plant Site

The representatives of Respondent who have signed the signature page certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

APPENDIX A
ASARCO HAYDEN PLANT SITE
STATEMENT OF WORK

This statement of work (SOW) outlines the tasks to be performed by Respondent at the Site[1]. Considerable investigation has already been performed by EPA at the Site and the available data are the basis for expediting certain portions of the work relating to residential yard clean-up. However, future investigative work will be scoped to characterize contributions of hazardous substances to soils, air, surface water and groundwater from both historical and active smelter operations.

Task 1: Sampling and Removal at Residential Site

Respondent will complete the sampling of the Residential Site Respondent will prepare a Work Plan for the sampling and removal at the Residential Site that will be applicable for properties already identified by EPA and those identified through the additional sampling. Sampling in this Task may include interior dust sampling as appropriate. Based on any such interior sampling, or if the Respondent chooses not to conduct sampling, the Respondent may at the time of yard removal as appropriate perform interior cleaning. The Work Plan will be submitted within thirty (30) days of the Settlement Agreement Effective Date. Sampling and removal Work will be initiated within thirty (30) days of EPA's approval of the Work Plan.

Task 2: Remedial Investigation

Respondent will implement the Remedial Investigation (RI) to investigate the Site. The scope of the RI will be defined in the RI Work Plan, to be submitted within (ninety) 90 days after release of EPA's draft Phase I RI. The RI Work Plan will include

[1] For purposes of this SOW, each defined term in the AOC shall have the same defined meaning herein.

presentation and interpretation of all available Site data (including information collected for or by governmental agencies or entities as well as any relevant accessible information Respondent may possess) and identification of additional data to be collected to fill gaps needed for site characterization and risk assessment. The RI will be implemented in accordance with the scope and schedule set out in the approved RI Work Plan.

Likely elements of the RI are described in the following paragraphs.

Soil

Evaluate and sample the nature, extent, and degree of contamination as needed of potential sources of contamination identified in EPA's draft Phase I RI including, but not limited to, currently active smelter and concentrator areas, tailings, material handling and transport areas, historically contaminated areas and other areas where hazardous substances have come to be located. The specific locations and distribution of sample points must be adequate enough to define and delineate fully such source areas and the fate and transport of hazardous substance from them.

Also sample soils in the Residential Site including those with potential high accessibility to sensitive populations (such as single and multiple family dwellings, apartment complexes, vacant lots in residential areas, schools, day care centers, playgrounds, parks, greenways, and any other areas where children may become exposed to site related contamination), as appropriate in Hayden and Winkelman that have not been sampled either as part of EPA's current RI or under Task 1 activities described above. This includes but is not limited to city parks and facilities, transport areas, and open areas between homes where exposure may occur. This includes all areas not owned

by Respondent where hazardous substances related to current or past mining, concentrating and smelting operations have come to be located.

Residential interiors may also be sampled, if needed to support the Baseline Human Health Risk Assessment.

Air

Continue existing EPA air monitoring and conduct source characterization work and air quality monitoring to pinpoint the sources of air contamination from but not limited to the smelter, concentrator, tailings facilities, conveyor belts, stack discharges and other potential sources. In addition, air monitoring will be conducted at appropriate locations where exposure to sensitive populations is likely, along with the collection of meteorological information from these locations, and monitoring data for PM_{10}, arsenic, lead, chromium, copper and other metals. Data analysis includes evaluation of concentration and mass determinations and speciation of chromium and arsenic.

Groundwater/Surface Water

Collect additional groundwater and surface water samples at appropriate locations based upon available data including EPA's draft Phase I RI and characterize groundwater and surface water impacts on the downgradient boundary of the current and historical smelter facilities. Collect surface water runoff samples at appropriate locations within and near the towns of Hayden and Winkelman.

Task 3: Human Health Risk Assessment (HHRA)

A comprehensive Draft HHRA Report addressing all community exposure concerns will be prepared as a follow on to EPA's draft Phase I RI by Respondent for Agency review. Particular emphasis will be given to risks due to metals in the

community areas in soils, air and interior dust. The report will be finalized based on Agency comments.

Task 4: Ecological Risk Assessment

Previous Site characterization work documented federally listed endangered/threatened species of birds inhabiting the area of the Site and "most likely" drinking from the Gila and San Pedro Rivers. To the extent that EPA's Screening Level risk analysis indicates that additional characterization of ecological risk is warranted Respondent will complete the analysis, including collection of additional data if needed. The findings will be documented in the draft Supplemental Baseline Ecological Risk Assessment report and submitted for Agency review. The assessment will be finalized based on Agency comments on the draft report

Task 5: Prepare Remedial Investigation Report

Respondent will prepare a draft RI Report describing the implementation and findings of the RI, including integration of existing EPA data, analysis and conclusions. After Agency input, a Final RI Report will be submitted.

Task 6: Feasibility Study

Respondent will conduct a Feasibility Study (FS) to develop and evaluate a range of response alternatives to complement any early actions conducted at the Site. The FS will use guidance, risk information, and cleanup levels determined in the Human Health and Ecological Risk Assessments and the RI findings and with consideration of community input will evaluate a range of response alternatives. The FS will include an analysis of Applicable or Relevant and Appropriate Requirements (ARARs), in particular with respect to aspects of the ongoing smelter operation that are regulated under other

programs (for example, the Clean Air Act, the Arizona Aquifer Protection Permit program, and mining closure requirements). Respondent will submit a draft FS report and will finalize the report based on Agency input.

Soil

The FS will evaluate response alternatives for all areas identified in the RI that contribute to current or potential future unacceptable human health or environmental risk in Hayden, Winkelman or surrounding areas.

The FS will evaluate response alternatives for residential areas (as described above) and other areas accessible to sensitive populations exceeding all risk based cleanup levels for lead, copper and arsenic or other constituents that may be identified during the RI. Cleanup levels will be determined through EPA's and this RI's risk assessments, along with community input. The FS will also evaluate response alternatives for residential interiors if determined to be appropriate.

Air

The FS will identify response alternatives for controlling sources of airborne contamination that result in unacceptable impacts in the community as identified during the RI and risk assessments.

Groundwater/Surface Water

The FS will identify response alternatives for unacceptable groundwater/surface water risks identified during the RI.

Task 7: Follow On Removal Action

Respondent will conduct as needed additional removal actions to address hazardous substance sources and releases identified in the RI/FS in areas of the Hayden

Complex that are not otherwise addressed through other regulatory programs; and additional removal actions to address hazardous substances sources and releases identified in the RI/FS in the Residential Site (subject to the limitations set forth in the Settlement Agreement).

Task 8: Community Involvement

Pursuant to Section IX of the Settlement Agreement EPA in consultation with ADEQ will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondent shall provide information supporting EPA's community relations programs. When requested by EPA, Respondent also shall provide EPA with the following deliverable: Technical Assistance Plan. Within 30 days of a request by EPA, Respondent shall provide EPA with a Technical Assistance Plan ("TAP") for providing and administering up to $50,000 of Respondent's funds to be used by a qualified community group to hire independent technical advisors during the Work conducted pursuant to this Consent Order. The TAP shall state that Respondent will provide and administer any additional amounts needed if EPA, in its discretion, determines that the selected community group has demonstrated such a need prior to EPA's issuance of the decision document contemplated by this Settlement Agreement. If EPA disapproves of or requires revisions to the TAP, in whole or in part, Respondent shall amend and submit to EPA a revised TAP that is responsive to EPA's comments, within 15 days of receiving EPA's comments.