

1 IGNACIA S. MORENO
2 Assistant Attorney General
3 Environment and Natural Resources Division
4 United States Department of Justice

4 DEBORAH A. GITIN (Mass. Bar # 645126)
5 MICHAEL C. AUGUSTINI (DC Bar #452526)
6 MARK A. RIGAU (CA Bar #223610)
7 Environment and Natural Resources Division
8 United States Department of Justice
9 301 Howard Street, Suite 1050
10 San Francisco, California 94105
11 Telephone: (415) 744-6488
12 Facsimile: (415) 744-6476
13 deborah.gitin@usdoj.gov

14 Attorneys for UNITED STATES OF AMERICA

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

17 CITY OF COLTON, a California
18 municipal corporation,

19 Plaintiff,

20 v.

21 AMERICAN PROMOTIONAL
22 EVENTS, INC., et al.

23 Defendants.

CASE NO. ED CV 09-01864 PSG (SSx)

[Consolidated with Case Nos. CV 09-6630 PSG (SSx), CV 09-06632 PSG (SSx), CV 09-07501 PSG (SSx), CV 09-07508 PSG (SSx), CV 10-824 PSG (SSx) and CV 05-01479 PSG (SSx)]

CONSENT DECREE

24 AND CONSOLIDATED ACTIONS

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.	BACKGROUND.....	1
II.	JURISDICTION.....	9
III.	PARTIES BOUND	9
IV.	DEFINITIONS	10
V.	GENERAL PROVISIONS.....	25
VI.	PERFORMANCE OF THE WORK BY SETTLING WORK DEFENDANT.....	40
VII.	REMEDY REVIEW.....	51
VIII.	QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS	52
IX.	ACCESS.....	55
X.	REPORTING REQUIREMENTS	62
XI.	EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES.....	65
XII.	PROJECT COORDINATORS.....	67
XIII.	PERFORMANCE GUARANTEE.....	68
XIV.	CERTIFICATIONS OF COMPLETION	81
XV.	EMERGENCY RESPONSE.....	88
XVI.	ESTABLISHMENT OF ESCROW AND TRUST ACCOUNTS, AND PAYMENTS.....	90

1	XVII.	INDEMNIFICATION AND INSURANCE	117
2	XVIII.	FORCE MAJEURE.....	120
3			
4	XIX.	DISPUTE RESOLUTION	123
5	XX.	STIPULATED PENALTIES	130
6			
7	XXI.	COVENANTS, RELEASES, AND RESERVATIONS OF RIGHTS .	140
8	XXII.	EFFECT OF SETTLEMENT CONTRIBUTION	174
9			
10	XXIII.	RETENTION OF RECORDS.....	179
11	XXIV.	ACCESS TO INFORMATION	182
12			
13	XXV.	NOTICES AND SUBMISSIONS.....	184
14	XXVI.	RETENTION OF JURISDICTION	191
15			
16	XXVII.	APPENDICES.....	191
17	XXVIII.	COMMUNITY RELATIONS.....	192
18			
19	XXIX.	MODIFICATION.....	193
20	XXX.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	194
21			
22	XXXI.	SIGNATORIES/SERVICE.....	195
23	XXXII.	FINAL JUDGMENT.....	196

24
25
26
27
28

1 **I. BACKGROUND**

2 A. The United States of America (“United States”), on behalf of the
3 Administrator of the United States Environmental Protection Agency (“EPA”),
4 filed, on February 4, 2010, a complaint (Case No. CV 10-0824 PSG (SSx))
5 pursuant to Section 107 of the Comprehensive Environmental Response,
6 Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, and Section
7 7003 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §
8 6973. The City of Rialto and the Rialto Utility Authority (collectively “Rialto”)
9 filed, on October 15, 2009, a complaint (Case No. CV 09-07501 PSG (SSx))
10 pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, Section
11 7002 of RCRA, 42 U.S.C. § 6972, Section 1367 of the Federal Code of Civil
12 Procedure, 28 U.S.C. § 1367, Sections 2201 and 2202 of the Declaratory Judgment
13 Act, 28 U.S.C. §§ 2201 and 2202, state statutes, and common law. The City of
14 Colton (“Colton”) filed, on October 6, 2009, a complaint (Case No. CV 09-01864
15 PSG (SSx)) pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§
16 9607(a) and 9613(g)(2), and Sections 2201 and 2202 of the Declaratory Judgment
17 Act, 28 U.S.C. §§ 2201 and 2202, state statutes, and common law. Emhart
18 Industries, Inc., Kwikset Locks, Inc., Black & Decker Inc., and Fred Skovgard (the
19 “Emhart Parties”) filed, on October 15, 2009, a complaint (Case No. CV 09-07508
20 PSG (SSx)) pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§
21 9607(a) and 9613(g)(2), and Sections 2201 and 2202 of the Declaratory Judgment
22 Act, 28 U.S.C. §§ 2201 and 2202, state statutes, and common law. Emhart
23 Industries, Inc., Kwikset Locks, Inc., Black & Decker Inc., and Fred Skovgard (the
24 “Emhart Parties”) filed, on October 15, 2009, a complaint (Case No. CV 09-07508
25 PSG (SSx)) pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§
26 9607(a) and 9613(g)(2), and Sections 2201 and 2202 of the Declaratory Judgment
27 Act, 28 U.S.C. §§ 2201 and 2202, state statutes, and common law. Emhart
28 Industries, Inc., Kwikset Locks, Inc., Black & Decker Inc., and Fred Skovgard (the
“Emhart Parties”) filed, on October 15, 2009, a complaint (Case No. CV 09-07508
PSG (SSx)) pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§

1 9607(a) and 9613(g)(2), Sections 2201 and 2202 of the Declaratory Judgment Act,
2 28 U.S.C. §§ 2201 and 2202. The County of San Bernardino filed, on September
3 11, 2009, a complaint (Case Nos. CV 09-06632 PSG (SSx)) pursuant to Sections
4 107, 113 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607, 9613 and 9613(g)(2), and
5 sought equitable indemnity. Goodrich Corporation (“Goodrich”) also filed, on
6 September 11, 2009, a complaint (CV 09-06630 PSG (SSx)) under CERCLA and
7 state law. These cases were consolidated by orders filed on January 20, 2010 and
8 June 3, 2010.
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12 B. The United States in its complaint seeks, *inter alia*:
13 (1) reimbursement of costs incurred by EPA and the Department of Justice for
14 response actions at the B.F. Goodrich Superfund Site in Rialto, California, together
15 with accrued interest; and (2) performance of response actions by the defendants at
16 the B.F. Goodrich Superfund Site consistent with the National Contingency Plan,
17 40 C.F.R. Part 300 (as amended) (“NCP”). The Cities of Rialto and/or
18 Colton (“Cities”) in their complaints seek, *inter alia*: (1) recovery of response
19 costs incurred by the Cities in response to the release and threatened release of
20 hazardous substances from the Rialto Ammunition Backup Storage Point
21 (“RABSP”); (2) injunctive relief directing defendants to investigate, abate, and
22 remediate contamination resulting from releases of hazardous substances from the
23 RABSP; (3) declaratory relief that defendants are responsible for future response
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1 costs incurred by the Cities necessary to respond to the release or threatened
2 release of hazardous substances from the RABSP; and (4) damages under various
3 state law claims. The Emhart Parties in their complaint seek, *inter alia*,
4 reimbursement of costs incurred by them for response actions at the B.F. Goodrich
5 Superfund Site and declaratory relief for future response costs. The County of San
6 Bernardino in its complaint seeks, *inter alia*, reimbursement of costs incurred by it
7 for response actions taken in the Rialto-Colton Groundwater Basin including the
8 RABSP and declaratory relief for future response costs. Goodrich in its complaint
9 seeks reimbursement of costs incurred by it for response actions taken in the
10 RABSP and declaratory relief for future response costs.

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15 C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42
16 U.S.C. § 9621(f)(1)(F), EPA notified the State of California (the “State”) on
17 December 9, 2010, of negotiations with potentially responsible parties (“PRPs”)
18 regarding the implementation of the remedial design and remedial action for the
19 B.F. Goodrich Superfund Site, and EPA has provided the State with an opportunity
20 to participate in such negotiations and be a party to this Consent Decree.
21

22
23 D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C.
24 § 9622(j)(1), EPA notified the U.S. Fish and Wildlife Service and the California
25 Department of Fish and Game on November 15, 2010, of negotiations with PRPs
26 regarding the release of hazardous substances that may have resulted in injury to
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1 the natural resources under federal trusteeship and encouraged the trustees to
2 participate in the negotiation of this Consent Decree.

3
4 E. The settling defendants and federal agencies that have entered into
5 this Consent Decree (“Settling Defendants” and “Settling Federal Agencies”) do
6 not admit any liability in the Consolidated Federal Action arising out of the
7 transactions or occurrences alleged in the complaints, nor do they acknowledge
8 that the release or threatened release of hazardous substance(s) at or from the B.F.
9 Goodrich Superfund Site or the West Side Site constitutes an imminent and
10 substantial endangerment to the public health or welfare or the environment.
11 Settling Defendants, Settling Federal Agencies, and the Cities do not admit any
12 liability arising out of the transactions or occurrences alleged in any claim or
13 counterclaim asserted by any party in the Consolidated Federal Action.
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18 F. The United States has requested and reviewed Financial Information
19 and Insurance Information from Settling Ability to Pay Defendants to determine
20 whether they are financially able to pay response costs incurred and to be incurred
21 in connection with the B.F. Goodrich Superfund Site. Based upon such Financial
22 Information and Insurance Information, the United States has determined that
23 Settling Ability to Pay Defendants are able to pay no more than the amounts
24 specified in Appendix C to this Consent Decree.
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28 G. The United States’ complaint and this Consent Decree, and the

1 history of the B.F. Goodrich Superfund Site, exist within a larger context of
2 litigation and a larger context of activities in and around the B.F. Goodrich
3 Superfund Site, as follows:
4

5 1) During and immediately after World War II, certain United
6 States agencies owned a tract known as the Rialto Ammunition Backup Storage
7 Point (“RABSP”) in the City of Rialto in San Bernardino, California;
8

9 2) The RABSP sits atop the Rialto-Colton Groundwater Basin;

10 3) After World War II, the United States agencies sold the RABSP
11 property off in different parcels, including a 160-acre parcel (“160-Acre Area”)
12 bounded by West Casa Grande Drive on the north, Locust Avenue on the east,
13 Alder Avenue on the west, and an extension of Summit Avenue on the south.
14
15 Certain Settling Defendants and other parties to the Consolidated Federal Action
16 owned and/or operated businesses within the area formerly occupied by the
17 RABSP;
18
19

20 4) The United States on behalf of EPA, asserts that there are two
21 source areas within the area formerly occupied by the RABSP (the “RABSP
22 Area”) from which contaminated groundwater is emanating. These two source
23 areas are known as the West Side Area and the 160-Acre Area;
24

25 5) The West Side Area is in the western portion of the former
26 RABSP Area. For purposes of this Consent Decree, it consists of property
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1 currently owned by San Bernardino County, otherwise known as the Mid Valley
2 Sanitary Landfill (“County Property”), and the Stonehurst Property, which is
3 located adjacent to the County Property;
4

5 6) The State of California’s Water Resources Control Board and
6 its Santa Ana Regional Water Quality Control Board have assumed jurisdiction
7 over, among other things, the cleanup of the County Property and the Stonehurst
8 Property, and the County of San Bernardino has assumed responsibility for
9 implementing a cleanup of releases from the County Property pursuant to Cleanup
10 and Abatement Order, Regional Water Quality Control Board Order No. R8-2003-
11 0013, as amended by R8-2004-0072, (“CAO”);
12
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15 7) Certain claims in the Consolidated Federal Action are the
16 subject of consent decrees entered in the Central District of California under case
17 number ED CV 09-1864 (SSx) (Docket Nos. 772, 1192, and 1258);
18

19 8) The 160-Acre Area is in the eastern portion of the former
20 RABSP, and is the source area encompassed in the B.F. Goodrich Superfund Site;
21

22 H. In response to a release or a substantial threat of a release of a
23 hazardous substance(s) at or from the B. F. Goodrich Superfund Site, EPA
24 commenced on January 15, 2009, a Remedial Investigation and Feasibility Study
25 (“RI/FS”) for the B. F. Goodrich Superfund Site pursuant to 40 C.F.R. § 300.430;
26
27

28 I. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed

1 the B.F. Goodrich Superfund Site on the National Priorities List, set forth at 40
2 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September
3 23, 2009, 74 Fed. Reg. 48412. By placing the B.F. Goodrich Superfund Site on the
4 National Priorities List, U.S. EPA assumed jurisdiction over its cleanup;
5

6 J. EPA completed a Remedial Investigation (“RI”) and Feasibility Study
7 (“FS”) Report for the B.F. Goodrich Superfund Site on January 25, 2010. Pursuant
8 to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the
9 completion of the FS and of the proposed plan for remedial action on February 5,
10 2010, in a major local newspaper of general circulation. EPA provided an
11 opportunity for written and oral comments from the public on the proposed plan
12 for remedial action. A copy of the transcript of the public meeting is available to
13 the public as part of the administrative record upon which an Assistant Director of
14 the Superfund Division, EPA Region 9, based the selection of the response action.
15 The decision by EPA on a first remedial action to be implemented at the B.F.
16 Goodrich Superfund Site is embodied in an Interim Record of Decision (“2010
17 ROD”), executed on September 30, 2010, on which the State has given its
18 concurrence. The 2010 ROD includes a responsiveness summary to the public
19 comments. Notice of the final plan was published in accordance with Section
20 117(b) of CERCLA, 42 U.S.C. § 9617(b). The 2010 ROD in part requires
21 installation, operation, and maintenance of a groundwater pump and treat system to
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1 limit the spread of contaminated groundwater from the 160-Acre Area;

2 K. The Remedial Action Objectives of the 2010 ROD remedy are to: 1)
3 protect water supply wells and groundwater resources downgradient of the target
4 area (as described in the 2010 ROD) by limiting the spread of contaminated
5 groundwater from the 160-Acre Area; and 2) remove the contaminants from the
6 groundwater in that targeted area;
7
8

9 L. EPA is currently performing an additional RI to determine whether
10 any further remedial action will be necessary at the B.F. Goodrich Superfund Site
11 beyond those remedial actions specified in the 2010 ROD and, if so, the extent of
12 such further remedial action;
13
14

15 M. Based on the information presently available to EPA, EPA believes
16 that the Work required by this Consent Decree will be properly and promptly
17 conducted by Settling Work Defendant if conducted in accordance with the
18 requirements of this Consent Decree and its appendices;
19

20 N. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C.
21 § 9613(j), the remedy set forth in the 2010 ROD and the Work to be performed by
22 Settling Work Defendant, shall constitute a response action taken or ordered by the
23 President for which judicial review shall be limited to the administrative record;
24
25

26 O. The Parties recognize, and the Court by entering this Consent Decree
27 finds, that this Consent Decree has been negotiated by the Parties in good faith,
28

1 that implementation of this Consent Decree will expedite the cleanup of the B.F.
2 Goodrich Superfund Site and will avoid prolonged and complicated litigation
3 between the Parties, and that this Consent Decree is fair, reasonable, and in the
4 public interest.
5

6 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:
7

8 **II. JURISDICTION**

9 1. This Court has jurisdiction over the subject matter of this
10 Consolidated Federal Action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367 and to
11 42 U.S.C. §§ 9607, 9613(b), and 6973. The claims and counterclaims brought in
12 accordance with state law arise from the same common nucleus of operative facts
13 as the claims under federal law. This Court also has personal jurisdiction over
14 Rialto, Colton, Settling Defendants, and Settling Federal Agencies. The
15 Consolidated Federal Action is properly venued in this Court. Settling Defendants,
16 Settling Federal Agencies, Rialto, and Colton shall not challenge the terms of this
17 Consent Decree or this Court's jurisdiction to enter and enforce this Consent
18 Decree.
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23 **III. PARTIES BOUND**

24 2. This Consent Decree applies to and is binding upon the United States,
25 on behalf of the EPA, Rialto, Colton, Settling Defendants, and Settling Federal
26 Agencies and upon their heirs, successors, and assigns. Any change in ownership
27
28

1 used in this Consent Decree that are defined in CERCLA or in regulations
2 promulgated under CERCLA shall have the meaning assigned to them in CERCLA
3 or in such regulations. Whenever terms listed below are used in this Consent
4 Decree or in the appendices attached hereto and incorporated hereunder, the
5 following definitions shall apply solely for purposes of this Consent Decree:
6
7

8 “160-Acre Area” shall mean the area located in San Bernardino County that
9 is bounded by West Casa Grande Drive on the north, Locust Avenue on the east,
10 Alder Avenue on the west, and an extension of Summit Avenue on the south. The
11 160-Acre Area is depicted generally on the map included in Appendix A.
12

13 “2010 Record of Decision” or “2010 ROD” shall mean the document
14 entitled “USEPA Superfund Interim Action Record of Decision” relating to the
15 Source Area Operable Unit, B.F. Goodrich Superfund Site, San Bernardino
16 County, CA, EPA ID: CAN000905945, dated September 30, 2010, signed by the
17 Assistant Director, Superfund Division, EPA Region 9, and all attachments thereto.
18 The 2010 ROD is attached as Appendix B.
19
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22 “2010 ROD Capital Costs” shall mean the design, permitting, capital
23 construction and capital equipment costs incurred on and after October 10, 2012,
24 by Settling Work Defendant that are necessary for the implementation or
25 performance of the 2010 ROD and are consistent with the National Contingency
26 Plan. The term includes capital equipment replacement costs necessitated by (1)
27
28

1 an upgrade to capital equipment (less salvage value of original equipment) required
2 by EPA; (2) a weather event, natural disaster, or act of war, not otherwise covered
3 by insurance; or (3) an unavoidable accident, act of arson, or vandalism, not caused
4 by Settling Work Defendant or its contractor and not otherwise covered by
5 insurance. 2010 ROD Capital Costs shall not include attorney's fees, or capital
6 equipment replacement costs that do not meet the above criteria.
7

9 "2010 ROD O&M Costs" shall mean all operation and maintenance costs,
10 including equipment replacement, unless such replacement is specifically provided
11 for in the definition of 2010 ROD Capital Costs, incurred by Settling Work
12 Defendant necessary to maintain the effectiveness of the 2010 ROD in accordance
13 with the applicable Performance Standards and consistent with the National
14 Contingency Plan. 2010 ROD O&M Costs shall not include attorney's fees.
15
16

17 "Basin Contaminants" shall mean any type of perchlorate; trichloroethylene
18 ("TCE"); carbon tetrachloride; chloroform; or methylene chloride; including any
19 breakdown or "daughter" products of the foregoing.
20
21

22 "B.F. Goodrich Special Account" shall mean the special account, within the
23 EPA Hazardous Substances Superfund, established for the B.F. Goodrich
24 Superfund Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §
25 9622(b)(3).
26

27 "B.F. Goodrich Superfund Site" shall mean the B.F. Goodrich Superfund
28

1 Site, which includes the 160-Acre Area and all areas where contamination from the
2 160-Acre Area otherwise comes to be located.

3
4 “B.F. Goodrich Superfund Site 2010 ROD Trust Fund” or “2010 ROD Trust
5 Fund” shall be a trust account held by Settling Work Defendant which may be
6 invested only in Investment-Grade Debt Securities and may be used only to fund
7 and/or reimburse costs of the Work pursuant to the terms of this Consent Decree.
8

9 “B.F. Goodrich Superfund Site Disbursement Special Account” or “Initial
10 Disbursement Special Account” shall be the account described in Paragraph 69.
11

12 “B.F. Goodrich Superfund Site Escrow Account” shall mean the escrow
13 account into which Settling Defendants and the United States on behalf of Settling
14 Federal Agencies shall pay their funds pursuant to Paragraphs 60, 61, 63-66, and
15 70 of this Decree.
16

17
18 “CERCLA” shall mean the Comprehensive Environmental Response,
19 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
20

21 “Certification of Completion of the Final Remedial Action” shall mean the
22 certification of completion of the remedial action associated with the Final Record
23 of Decision for the B.F. Goodrich Site.
24

25 “Cities” shall mean Colton and Rialto collectively.

26 “Colton” shall mean the City of Colton and any of its present, former, or
27 future subdivisions, departments, commissions, agencies, or instrumentalities.
28

1 “Consent Decree” or “Decree” shall mean this Consent Decree and all
2 Appendices attached hereto (listed in Section XXVII). In the event of conflict
3 between this Consent Decree and any Appendix, this Consent Decree shall control.
4

5 “Consolidated Federal Action” shall mean *City of Colton v. American*
6 *Promotional Events, Inc., et al.*, Case No. ED CV 09-01864 PSG (SSx); *Goodrich*
7 *Corporation v. Chung Ming Wong, et al.*, Case No. CV 09-6630 PSG (SSx);
8 *County of San Bernardino, et al., v. Tung Chun Co., et al.*, Case No. CV 09-06632
9 PSG (SSx); *City of Rialto and Rialto Utility Authority v. United States Department*
10 *of Defense, et al.*, Case No. CV 09-7501 PSG (SSx); and *Emhart Industries, Inc. v.*
11 *American Promotional Events, Inc.-West, et al.*, Case No. CV 09-07508 PSG
12 (SSx), all of which were consolidated pursuant to an order issued on January 20,
13 2010; *United States of America v. Goodrich Corporation, et al.*, Case No. 10-
14 00824 PSG (SSx), which was consolidated with the previously consolidated cases
15 pursuant to an order issued on June 3, 2010; and *City of Colton v. American*
16 *Promotional Events, Inc., et al.*, Case No. ED CV 05-01479 PSG (SSx), which was
17 consolidated with the previously consolidated cases pursuant to an order issued on
18 March 24, 2011.
19

20 “Construction of the Remedial Action” shall mean all activities Settling
21 Work Defendant is required to perform under the Consent Decree to implement the
22 2010 ROD through the Certification of Completion of Construction of the
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1 Remedial Action described in Paragraph 55, in accordance with the SOW, the final
2 Remedial Design and Remedial Action Work Plans, and other plans approved by
3 EPA, and excluding performance of O&M and the activities required under
4 Section XXIII (Retention of Records).
5

6 “County Property” shall mean the property known as the Mid Valley
7 Sanitary Landfill, which is currently owned by the County of San Bernardino,
8 including those areas currently leased to Robertson’s Ready Mix. The County
9 Property is bounded by Summit Avenue on the north, generally by Alder Avenue
10 on the east (until Alder Avenue terminates at or within the Robertson’s Ready Mix
11 leasehold), generally by the municipal boundaries of the cities of Fontana and
12 Rialto on the west except for a strip of land located in the city of Fontana, and by
13 Casmalia Street on the south. The County Property is depicted generally on the
14 map included in Appendix A.
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19 “Day” shall mean a calendar day unless expressly stated to be a working
20 day. The term “working day” shall mean a day other than a Saturday, Sunday, or
21 federal holiday. In computing any period of time under this Consent Decree, when
22 the last day falls on a Saturday, Sunday, or federal holiday, the period shall run
23 until the close of business of the next working day.
24
25

26 “DOJ” shall mean the United States Department of Justice and its successor
27 departments, agencies, or instrumentalities.
28

1 “Effective Date” shall be the earlier of the date upon which this Consent
2 Decree is entered by the Court as recorded on the Court docket, or, if the Court
3 issues an order approving the Consent Decree, the date such order is recorded on
4 the Court docket.
5

6 “Emhart Related Parties” shall mean Black & Decker Corporation (“BDC”);
7 Black & Decker Inc. (“BDI”); Kwikset Corporation (“Kwikset”); Kwikset Locks,
8 Inc. (“KLI”); all other parent, subsidiary, and affiliate entities of BDC, BDI,
9 Kwikset, KLI, and Emhart Industries, Inc.; Fred Skovgard and his presumptive
10 heirs and estate; and Mildred Wilkens (deceased) and her heirs and estate.
11
12

13 “EPA” shall mean the United States Environmental Protection Agency and
14 any successor departments or agencies of the United States.
15

16 “Federal Contract” means any prime contract, subcontract, or any other
17 agreement transferring value between a party to this Consent Decree and a
18 department, agency, or instrumentality of the United States, including but not
19 limited to, contracts for goods or services, grants, and cooperative agreements.
20
21

22 The term “Federal Contract” does not include this Consent Decree.
23

24 “Final Record of Decision” shall mean the final Record of Decision (and all
25 attachments) for the B.F. Goodrich Superfund Site that will be signed by EPA in
26 the future, and after lodging of this Consent Decree.
27

28 “Final Remedial Action” shall mean activities associated with implementing

1 the Final Record of Decision.

2 “Financial Information” shall mean those financial documents identified in
3 Appendix H.
4

5 “Further Settlor” shall mean any party to the Consolidated Federal Action
6 and not a signatory to this Consent Decree, with whom the United States, on behalf
7 of EPA, reaches final settlement.
8

9 “Future Response Costs” shall mean all costs, including, but not limited to,
10 direct and indirect costs, that the United States incurs in reviewing or developing
11 plans, reports, and other deliverables submitted pursuant to this Consent Decree, or
12 otherwise implementing, overseeing, or enforcing this Consent Decree, including,
13 but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the
14 costs incurred pursuant to Section VII (Remedy Review), Section IX (Access)
15 (including, but not limited to, the cost of attorney time and any monies paid to
16 secure access including, but not limited to, the amount of just compensation),
17 Section XV (Emergency Response), Paragraph 53 (Funding for Work Takeover),
18 and Section XXVIII (Community Relations).
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23 “Institutional Controls” shall mean Proprietary Controls and state or local
24 laws, regulations, ordinances, zoning restrictions, or other governmental controls
25 or notices that: (a) limit land, water, and/or resource use to minimize the potential
26 for human exposure to Waste Material at or in connection with the B.F. Goodrich
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1 Superfund Site; (b) limit land, water, and/or resource use to implement, ensure
2 non-interference with, or ensure the protectiveness of the Remedial Action; and/or
3
4 (c) provide information intended to modify or guide human behavior at or in
5 connection with the B.F. Goodrich Superfund Site.

6 “Insurance Information” shall mean those insurance documents identified in
7
8 Appendix I.

9 “Interest” shall mean interest at the rate specified for interest on investments
10 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
11 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
12 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
13 interest accrues. The rate of interest is subject to change on October 1 of each
14 year.
15
16
17

18 “Investment Grade Debt Securities” shall mean any government or corporate
19 debt security that, when acquired, was rated “investment grade” by at least one
20 nationally recognized statistical rating agency as set forth in 12 U.S.C. §
21 1834e(d)4(A).
22

23 “MSW” shall mean municipal solid waste material: (a) generated by a
24 household (including a single or multifamily residence); or (b) generated by a
25 commercial, industrial, or institutional entity, to the extent that the waste material:
26
27 (1) is essentially the same as waste normally generated by a household; (2) is
28

1 collected and disposed of with other municipal solid waste as part of normal
2 municipal solid waste collection services; and (3) contains a relative quantity of
3 hazardous substances no greater than the relative quantity of hazardous substances
4 contained in waste material generated by a typical single-family household.
5

6 “National Contingency Plan” or “NCP” shall mean the National Oil and
7 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
8 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and
9 any amendments thereto.
10
11

12 “Operation and Maintenance” or “O&M” shall mean all activities required
13 to operate and maintain the systems constructed to implement the Remedial Action
14 as required under the Operation and Maintenance Plan approved or developed by
15 EPA pursuant to Section VI (Performance of the Work by Settling Work
16 Defendant) and the SOW.
17
18

19 “Paragraph” shall mean a portion of this Consent Decree identified by an
20 Arabic numeral or an upper or lower case letter.
21

22 “Parties” shall mean the United States, Settling Defendants, Rialto, and
23 Colton.
24

25 “Past Response Costs” shall mean all costs, including, but not limited to,
26 direct and indirect costs, that the United States paid (by EPA or by the Department
27 of Justice in representing EPA) at or in connection with the B.F. Goodrich
28

1 Superfund Site through September 30, 2010, plus Interest on all such costs which
2 has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

3 “Performance Standards” shall mean the cleanup standards, the Applicable
4 or Relevant and Appropriate Requirements (“ARARs”), and other measures of
5 achievement of the goals of the Remedial Action, set forth in Section 2.11.2.1,
6 Table 12, and Table 13 of the 2010 ROD. Settling Work Defendant will continue
7 to implement the RD/RA until Settling Work Defendant can demonstrate that:
8 (1) the concentrations of the chemicals of concern identified in the 2010 ROD, in
9 groundwater at monitoring locations to be determined, do not exceed State or
10 federal MCLs identified in the 2010 ROD; and (2) such concentrations are not
11 reasonably expected, based on sound and generally accepted scientific principles,
12 to increase above their respective MCLs after the RD/RA ceases operation.
13
14
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17

18 “Plaintiff” shall mean the United States on behalf of EPA.

19 “Proprietary Controls” shall mean easements or covenants running with the
20 land that: (a) limit land, water, or resource use and/or provide access rights, and
21 (b) are created pursuant to common law or statutory law by an instrument that is
22 recorded by the owner in the appropriate land records office.
23
24

25 “RABSP Area” shall mean the approximately 2,800 acre parcel of land
26 originally containing the former Rialto Ammunition Backup Storage Point, located
27 in San Bernardino, California. The 160-Acre Area is within the geographic area of
28

1 the RABSP Area. The RABSP Area is depicted, generally, in the map included in
2 Appendix A.

3 “RABSP Site” shall mean the RABSP Area and all areas where
4 contamination from the RABSP Area comes to be located.
5

6 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
7 §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
8

9 “Remedial Action” or “RA” shall mean all activities Settling Work
10 Defendant is required to perform under this Consent Decree as specified in the
11 SOW, and under the final Remedial Design Work Plan approved by EPA to
12 implement the 2010 ROD, until the Performance Standards are met, excluding the
13 activities required under Section XXIII (Retention of Records). Remedial Action
14 includes Startup Activities.
15
16

17 “Remedial Action Work Plan” shall mean the document developed pursuant
18 to Paragraph 17 and approved by EPA, and any modifications thereto.
19

20 “Remedial Design” or “RD” shall mean those activities to be undertaken by
21 Settling Work Defendant to develop the final plans and specifications for the
22 Remedial Action pursuant to the Remedial Design Work Plan.
23

24 “Remedial Design Work Plan” shall mean the document developed pursuant
25 to Paragraph 16 and approved by EPA, and any modifications thereto authorized
26 by this Consent Decree.
27
28

1 “Rialto” shall mean the City of Rialto and any of its present, former, or
2 future subdivisions, departments, commissions, agencies, or instrumentalities,
3 including, but not limited to, the Rialto Utility Authority and the Rialto
4 Redevelopment Agency.
5

6 “San Bernardino County Settling Parties” shall include the parties identified
7 in Appendix E.
8

9 “Section” shall mean a portion of this Consent Decree identified by a Roman
10 numeral.
11

12 “Settling Ability to Pay Defendants” shall mean the parties identified in
13 Appendix C.
14

15 “Settling Cashout Defendants” shall mean the parties identified in
16 Appendix D.
17

18 “Settling Defendants” shall mean collectively the Settling Ability to Pay
19 Defendants, the Settling Cashout Defendants, the San Bernardino County Settling
20 Parties, the Emhart Related Parties, and the Settling Work Defendant, as those
21 Parties are identified in this Decree and in Appendices C, D, and E.
22

23 “Settling Federal Agencies” shall mean any federal agency, department, or
24 instrumentality named or alleged to be liable for contamination in the Consolidated
25 Federal Action, including but not limited to the United States Army, the
26 Department of the Navy, the United States Air Force, the United States
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1 Department of Defense, the Farm Credit Administration, the United States
2 Customs and Border Protection, the National Aeronautics and Space
3 Administration, the United States Department of Energy, Lawrence Livermore
4 National Laboratory, the United States Forest Service, and any other federal entity
5 that is alleged to have transported, disposed of, or released any Waste Material
6 within the area encompassed by the RABSP Area, as depicted in Appendix A, and
7 any of their predecessors or successors.
8
9

10 “Settling Work Defendant” shall mean Emhart Industries, Inc.
11

12 “Startup Activities” shall mean those activities performed by Settling Work
13 Defendant after the Certification of Completion of Construction of the Remedial
14 Action to make the remedy “Operational and Functional,” including, but not
15 limited to, activities which fall within the definition of 2010 ROD Capital Costs
16 and/or 2010 ROD O&M Costs. The remedy shall be deemed Operational and
17 Functional when EPA determines that the remedy is functioning properly and is
18 performing as designed.
19
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21

22 “State” shall mean the State of California.
23

24 “Statement of Work” or “SOW” shall mean the statement of work that
25 Settling Work Defendant has agreed to perform as set forth in this Consent Decree
26 for implementation of the Remedial Design, Remedial Action, and O&M at the
27 B.F. Goodrich Superfund Site, as set forth in Appendix F to this Consent Decree
28

1 and any modifications made in accordance with this Consent Decree.

2 “Stonehurst Property” shall mean the approximately 5-acre property in San
3 Bernardino County, County APNs 1133-07-105, 1133-07-106, and 1133-07-107,
4 collectively, located at 2298 West Stonehurst Drive, Rialto, California. The
5 Stonehurst Property is depicted generally on the map included in Appendix A.
6

7
8 “Supervising Contractor” shall mean the principal contractor retained by
9 Settling Work Defendant to supervise and direct the implementation of the Work
10 under this Consent Decree.
11

12 “United States” shall mean the United States of America and each
13 department, agency, and instrumentality of the United States, specifically including
14 EPA and the Settling Federal Agencies.
15

16 “Waste Material” shall mean: (1) any “hazardous substance” under Section
17 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
18 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste”
19 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous
20 material” under all applicable or relevant and appropriate State statutory authority.
21
22

23 “West Side Area” shall mean the County Property and the Stonehurst
24 Property. The West Side Area is depicted generally on the map included in
25 Appendix A.
26

27 “West Side Site” shall mean the West Side Area and all areas where
28

1 perchlorate and TCE contamination from the West Side Area comes to be located.

2 “Work” shall mean all activities and obligations Settling Work Defendant is
3 required to perform under this Consent Decree, except the activities required under
4 Section XXIII (Retention of Records).
5

6 **V. GENERAL PROVISIONS**
7

8 5. Objectives of the Parties. The objectives of the Parties in entering
9 into this Consent Decree are to protect public health or welfare or the environment
10 by the design and implementation of response actions required by this Consent
11 Decree at the B.F. Goodrich Superfund Site by Settling Work Defendant; to have
12 Settling Federal Agencies, Settling Cashout Defendants, Settling Ability to Pay
13 Defendants, and the San Bernardino County Settling Parties pay a portion of the
14 Work costs and/or Plaintiff’s response costs; to resolve disputed claims in the
15 Consolidated Federal Action; to provide Rialto, Colton, Settling Defendants, and
16 Settling Federal Agencies with contribution protection pursuant to Section
17 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2); and to provide Rialto, Colton,
18 Settling Defendants, and Settling Federal Agencies with the protections granted by
19 an order from this Court finding that the settlement herein described has been made
20 in good faith, is reasonable, and is fair under federal and state law.
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26 6. Commitments by Settling Work Defendant.
27

28 a. Settling Work Defendant shall perform all of the Work and

1 finance portions of the Work in accordance with this Consent Decree, the 2010
2 ROD, the SOW, all work plans, other plans, standards, specifications, and
3 schedules set forth in this Consent Decree or developed by Settling Work
4 Defendant and approved by EPA pursuant to this Consent Decree.
5

6 b. Settling Work Defendant is not required to perform any of the
7 Work prior to the funding of the 2010 ROD Trust Fund, except that Settling Work
8 Defendant shall commence on October 10, 2012, its obligations to (1) enter into
9 implementation agreements with Rialto, Colton, the County of San Bernardino,
10 and any other third party necessary to perform the Work and (2) prepare
11 groundwater flow modeling, conduct the remedial design (including compliance
12 with associated reporting requirements in the SOW), and initiate permitting and
13 remedial action planning required by the SOW.
14
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18 c. Additional Limitations on Settling Work Defendant's
19 Obligations to Perform the Work.

20 1) If Rialto and/or Colton fail to meet their respective
21 obligations set forth in Paragraph 10 of this Consent Decree, Settling Work
22 Defendant's obligations to perform the Work shall cease to the extent Settling
23 Work Defendant is prevented by the actions of Rialto and/or Colton from
24 performing some or all of the Work, unless EPA directs Settling Work Defendant
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1 to perform that work and Settling Work Defendant is reimbursed for any such
2 additional work.

3
4 2) If, at any time, the water rights leased from Colton are
5 insufficient to allow Settling Work Defendant to meet the objectives of the 2010
6 ROD, Settling Work Defendant shall make good faith efforts to arrange with other
7 water purveyors for the ability to extract sufficient groundwater to meet the
8 objectives of the 2010 ROD. If Settling Work Defendant is unable, after a good
9 faith effort, to have sufficient additional water rights committed to the Work,
10 Settling Work Defendant's obligation to extract groundwater shall be limited to
11 Colton's available water rights, plus – subject to the limitation below – any
12 additional water rights Settling Work Defendant has successfully secured. Settling
13 Work Defendant shall not be obligated to pay any water purveyor materially more
14 than the actual, incremental cost increase the water purveyor incurs because it
15 receives the water from Settling Work Defendant and then delivers that water to its
16 customers, instead of extracting (*i.e.*, pumping) an equivalent amount of
17 groundwater itself and delivering that water to its customers.
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23 3) In connection with the limitations on the Work set forth
24 in this Paragraph 6. c., Settling Work Defendant shall promptly enforce all
25 applicable rights in its implementation agreements with Rialto and Colton.
26
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1 7. Commitments by Settling Federal Agencies.

2 The United States, on behalf of the Settling Federal Agencies, shall finance
3 portions of the Work and other response costs by providing a lump sum cash
4 payment to the B.F. Goodrich Superfund Site Escrow Account as provided in
5 Paragraph 66. a. of this Consent Decree, by sharing risks of specified 2010 ROD
6 Capital Costs overruns with Settling Work Defendant as described in Paragraph
7 66. d., and by agreeing to finance portions of the 2010 ROD O&M Costs as
8 described in Paragraph 66. e.
9
10
11

12 8. Commitments by Settling Cashout Defendants.

13 Each Settling Cashout Defendant shall make a lump sum cash payment to
14 the B.F. Goodrich Superfund Site Escrow Account as provided in this Consent
15 Decree and as set forth in Appendix D. The Settling Cashout Defendants shall not
16 bear any obligation or responsibility of Settling Work Defendant, other than those
17 obligations or responsibilities shared by all Settling Defendants or as otherwise
18 specified in this Consent Decree.
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22 9. Commitments by Settling Ability to Pay Defendants.

23 Each Settling Ability to Pay Defendant shall make a cash payment to the
24 B.F. Goodrich Superfund Site Escrow Account as provided in this Consent Decree
25 and as set forth in Appendix C. The Settling Ability to Pay Defendants shall not
26 bear any obligation or responsibility of Settling Work Defendant, other than those
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1 obligations or responsibilities shared by all Settling Defendants or as otherwise
2 specified in this Consent Decree.

3
4 10. Cooperation Commitments by the Cities.

5 a. Mutual Commitments of Colton and Settling Work Defendant.

6
7 1) Colton shall facilitate Settling Work Defendant's
8 performance of the Work by the following commitments enforceable by the United
9 States on behalf of EPA under this Consent Decree:

10
11 a) Colton shall lease (for a nominal cost) to Settling
12 Work Defendant its water rights in the Rialto-Colton Groundwater Basin as
13 necessary to perform the Work to the maximum extent Colton has such rights
14 under the 1961 Decree in *The Lytle Creek Water and Improvement Co. v. Fontana*
15 *Ranchos Water Co., et al.*, San Bernardino County Superior Court Case No. 81254,
16 or any subsequent modification of that Decree, less: (i) the water already
17 committed to the County of San Bernardino pursuant to the settlement agreement
18 referenced in Paragraph 119. a.; and (ii) the water necessary to accommodate
19 seasonal water demands. EPA will work with Colton to provide flexibility to
20 accommodate seasonal water demands.
21
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25 b) Colton shall accept an equal amount of treated
26 water for distribution to its customers, and Colton shall provide the access
27 necessary to accept the treated water.
28

1 2) If, at any time, EPA alleges that Colton has failed to
2 perform its obligations under Paragraph 10. a. 1), prior to EPA seeking
3 enforcement of those obligations under this Consent Decree, EPA shall provide to
4 Colton written notice of such alleged failure, including a reasonably detailed
5 description of the alleged failure and EPA's requested action to correct it. Colton
6 shall have seven (7) working days from receipt of such notice to cure the alleged
7 noncompliance. If Colton chooses instead to contest EPA's allegation of a failure
8 to perform or the corrective action requested by EPA, Colton shall have seven (7)
9 working days from receipt of the notice to serve upon EPA its statement of
10 position, with material factual data, analysis, or opinion supporting that position
11 and supporting documentation. EPA will attempt to serve on Colton its responsive
12 statement of position, with material factual data, analysis, or opinion supporting
13 that position and supporting documentation, within seven (7) working days
14 thereafter. The Division Director of the Superfund Division of EPA Region 9 shall
15 thereafter issue EPA's final decision regarding the dispute. If Colton wishes to
16 dispute this decision by EPA, it may seek resolution of the dispute by filing an
17 appropriate motion with the Court to resolve a dispute under the Consent Decree
18 within thirty (30) days after receipt of EPA's final decision. In such proceeding,
19 the review will be de novo and the decision will be based on a preponderance of
20 evidence.
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1 3) Colton and Settling Work Defendant shall enter into an
2 implementation agreement (“Colton/Settling Work Defendant Implementation
3 Agreement”) within ninety (90) Days of Settling Work Defendant’s completion of
4 Groundwater Flow Modeling described in Paragraph 16. e., or thirty (30) Days
5 after EPA approves the Remedial Design Work Plan described in Paragraphs 16. a.
6 and 16. b., whichever is later. The Colton/Settling Work Defendant
7
8 Implementation Agreement shall contain in all material respects:
9

- 10
- 11 a) The terms set forth in Paragraph 10. a. 1);
 - 12 b) Colton’s agreement to reimburse Settling Work
13 Defendant only for the lifting costs of the water to be treated and delivered (as
14 potable) to Colton by Settling Work Defendant to the extent such costs do not
15 exceed the lifting costs incurred by Colton when operating its own extraction wells
16 in the Rialto-Colton Groundwater Basin;
17
 - 18 c) Colton's agreement to ensure that knowledgeable
19 representatives are available, as reasonably necessary, to work with Settling Work
20 Defendant during the design, permitting, and construction phases of the Work;
21
 - 22 d) Mutual indemnification commitments; and
23
 - 24 e) All other consistent, necessary, and appropriate
25 terms.
26
- 27
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1 4) If either Colton or Settling Work Defendant fails to enter
2 into the Colton/Settling Work Defendant Implementation Agreement pursuant to
3 Paragraph 10. a. 3), that failure shall be enforceable under this Consent Decree.
4
5 Upon the execution of the Colton/Settling Work Defendant Implementation
6 Agreement, the obligations of Colton and Settling Work Defendant to each other in
7 this Paragraph shall be governed by the Colton/Settling Work Defendant
8 Implementation Agreement, not Paragraph 10. a. 3). Nothing in this subparagraph
9 shall affect the rights of the United States on behalf of EPA under 10 a. 1) and 10
10 a. 2).

11
12
13 5) If, at any time, a dispute arises between Colton and the
14 Settling Work Defendant regarding the Colton/Settling Work Defendant
15 Implementation Agreement, that dispute shall be resolved as provided for in
16 Paragraph 86 (Dispute Resolution By or Between Settling Work Defendant, Rialto,
17 Colton, and/or the County of San Bernardino Regarding Implementation
18 Agreements Entered Pursuant to Paragraphs 10 and 12) of Section XIX (Dispute
19 Resolution).

20
21 b. Mutual Commitments of Rialto and Settling Work Defendant.

22
23 1) Rialto shall facilitate Settling Work Defendant's
24 performance of the Work by the following commitments enforceable by EPA
25 under this Consent Decree:
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1 a) providing access (for a nominal fee) to certain real
2 property for the installation and operation of the groundwater extraction and
3 monitoring wells required by the Remedial Action, and for the construction and
4 operation of a groundwater treatment system and associated connective piping, as
5 follows:
6

7
8 (i) Rialto will provide access to its public rights of
9 way for the installation, monitoring, operation and maintenance of monitoring and
10 extraction wells and associated connective piping;
11

12 (ii) Rialto will provide access to its property for
13 the construction and operation of a single treatment plant at the location of the
14 existing groundwater treatment system constructed by the County of San
15 Bernardino at Rialto-03 water supply well, with expansions at that location as
16 necessary to satisfy the objectives of the 2010 ROD if such expansion does not
17 materially increase the area of real property beyond that already designated for the
18 existing treatment plant. In the alternative, Rialto will provide access to its
19 property for the construction and operation of a treatment plant at a location
20 reasonably proximate to Rialto-02 water supply well, subject to Rialto's reasonable
21 approval of the exact location, consistent with Rialto's land use and development
22 plans and entitlements, and aesthetic standards; and
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1 (iii) Rialto will provide access for the siting of
2 wells proposed by EPA in locations owned and controlled by Rialto other than
3 public rights of way if EPA concludes that satisfactory completion of the Remedial
4 Action requires that a well or wells be located other than in a right of way. If EPA
5 so concludes, it shall inform Rialto as to where it generally believes that a well
6 should be located, seek input from Rialto, complete a detailed evaluation of
7 options, and use its best efforts to minimize impacts on Rialto's development and
8 land use plans in determining where it proposes to site the well or wells. The
9 parties shall work in good faith to reach agreement on well location. If Rialto and
10 EPA cannot agree as to appropriate well location, Rialto may invoke the dispute
11 resolution process set forth in Paragraph 10. b. 2). In the event that Rialto files an
12 appropriate motion with the Court, the Court may then decide whether the parties
13 have negotiated in good faith and whether EPA has used its best efforts to
14 minimize impacts and to assure satisfactory completion of the Remedial Action
15 while, to the maximum extent feasible, avoiding detrimental impacts to Rialto.
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22 b) operating the groundwater treatment system and
23 extraction wells (as authorized under Rialto's state drinking water system permit,
24 as it may need to be amended), as a contractor to Settling Work Defendant;
25 provided, however, that Rialto's commitments in this Paragraph 10. b. 1) b) are
26 conditioned upon Settling Work Defendant's satisfactory performance of its
27
28

1 material reciprocal covenants with Rialto in the Rialto/Settling Work Defendant
2 Implementation Agreement as defined below; and

3
4 c) transporting the treated water through Rialto's
5 existing water supply system to (i) Colton, and/or (ii) to a water purveyor other
6 than Colton, if the piping and infrastructure exists for such transport and if such
7 water purveyor agrees to accept such water at no increased cost to Rialto.
8

9
10 2) If, at any time, EPA alleges that Rialto has failed to
11 perform its obligations under Paragraph 10. b. 1), prior to EPA's seeking
12 enforcement of those obligations under this Consent Decree, EPA shall provide to
13 Rialto written notice of such alleged failure, including a reasonably detailed
14 description of the alleged failure and EPA's requested action to correct it. Rialto
15 shall have seven (7) working days from receipt of such notice to cure the alleged
16 noncompliance. If Rialto chooses instead to contest EPA's allegation of a failure
17 to perform or the corrective action requested by EPA, Rialto shall have seven (7)
18 working days from receipt of the notice to serve upon EPA its statement of
19 position, with material factual data, analysis, or opinion supporting that position
20 and supporting documentation. EPA will attempt to serve on Rialto its responsive
21 statement of position, with material factual data, analysis, or opinion supporting
22 that position and supporting documentation, within seven (7) working days
23 thereafter. The Division Director of the Superfund Division of EPA Region 9 shall
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CONSENT DECREE

1 thereafter issue EPA's final decision regarding the dispute. If Rialto wishes to
2 dispute this decision by EPA, it may seek resolution of the dispute by filing an
3 appropriate motion with the Court to resolve a dispute under the Consent Decree
4 within thirty (30) Days after receipt of EPA's final decision. In such proceeding,
5 the review will be de novo and the decision will be based on a preponderance of
6 evidence.
7
8

9
10 3) Rialto and Settling Work Defendant shall enter into an
11 implementation agreement ("Rialto/Settling Work Defendant Implementation
12 Agreement") within ninety (90) Days following the completion of Groundwater
13 Flow Modeling described in Paragraph 16. e., or thirty (30) Days following EPA
14 approval of the Remedial Design Work Plan described in Paragraphs 16. a. and 16.
15 b., whichever is later. The Rialto/Settling Work Defendant Implementation
16 Agreement shall contain in all material respects the terms outlined in the Material
17 Terms To Be Included in the Rialto/Settling Work Defendant Implementation
18 Agreement appended hereto as Appendix J, and all other consistent, necessary, and
19 appropriate terms. If either Rialto or Settling Work Defendant fails to enter into
20 the Rialto/Settling Work Defendant Implementation Agreement pursuant to
21 Paragraph 10. b. 3), that failure shall be enforceable under this Consent Decree.
22
23 Upon the execution of the Rialto/Settling Work Defendant Implementation
24 Agreement, the obligations of Rialto and Settling Work Defendant to each other
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1 addressed in that agreement shall be governed by the Rialto/Settling Work
2 Defendant Implementation Agreement, not Paragraph 10. b. 1) above.

3
4 4) If, at any time, a dispute arises between Rialto and
5 Settling Work Defendant regarding the Rialto/Settling Work Defendant
6 Implementation Agreement, that dispute shall be resolved as provided for in
7 Paragraph 86 (Dispute Resolution By or Between Settling Work Defendant, Rialto,
8 Colton, and/or the County of San Bernardino Regarding Implementation
9 Agreements Entered Pursuant to Paragraphs 10 and 12) of Section XIX (Dispute
10 Resolution). Nothing in this subparagraph shall affect the rights of the United
11 States on behalf of EPA under 10. b. 1) and 10. b. 2).

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15 11. Commitments by the San Bernardino County Settling Parties.

16
17 The San Bernardino County Settling Parties shall make a cash payment to
18 the B.F. Goodrich Superfund Site Escrow Account as provided in Paragraph 65 of
19 this Consent Decree. The San Bernardino County Settling Parties also shall
20 provide covenants not to sue any Settling Defendant or Settling Federal Agency
21 subject to a reservation of rights, as set forth in this Consent Decree in Section XXI
22 (Covenants, Releases, and Reservations of Rights).

23
24
25 12. Mutual Commitments of the County of San Bernardino and Settling
26 Work Defendant.

27
28 a. The County of San Bernardino and Settling Work Defendant

1 shall negotiate in good faith the terms and conditions of a mutually acceptable
2 implementation agreement which may include, among other things, agreements as
3 to: (1) whether and how to integrate the County of San Bernardino's existing
4 treatment systems (located at Rialto well Rialto-03) with the treatment systems
5 necessary for Settling Work Defendant to meet the objectives of the 2010 ROD;
6
7 (2) whether and how to integrate the County of San Bernardino's existing capture
8 wells (Rialto-03, Miro 2, and Miro 3), required by the CAO, with the capture
9 well(s) necessary for Settling Work Defendant to meet the objectives of the 2010
10 ROD; (3) whether and how integrated treatment and/or capture systems can meet
11 the separate and distinct remediation obligations under the CAO (for the County of
12 San Bernardino) and this Consent Decree (for Settling Work Defendant); and (4)
13 whether and how the County of San Bernardino and Settling Work Defendant can
14 terminate their participation in the integrated treatment and/or capture systems
15 upon meeting their respective closure standards under the CAO (for the County of
16 San Bernardino) or this Consent Decree (for Settling Work Defendant), and the
17 remaining party can continue, at its own expense, to operate the integrated
18 treatment and/or capture systems as necessary until that party has terminated all its
19 remedial obligations.
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26 b. If the County of San Bernardino and Settling Work Defendant
27 do not enter into a mutually agreeable implementation agreement as provided for
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1 in Paragraph 12. a., and, if in the future (i) a material portion of the Basin
2 Contaminants being treated by the County of San Bernardino treatment system has
3 originated from the 160-Acre Area and/or (ii) a material portion of the Basin
4 Contaminants being treated by the Settling Work Defendant's treatment system has
5 originated from the County Property, the County of San Bernardino and Settling
6 Work Defendant shall negotiate in good faith the terms of an agreement which
7 fairly allocates between them the operation and maintenance costs and a dispute
8 resolution mechanism to address disputes regarding such costs.
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12 13. Compliance with Applicable Law.

13 All activities undertaken by Settling Work Defendant pursuant to this
14 Consent Decree shall be performed in accordance with the requirements of all
15 applicable federal, state, and local laws and regulations. Settling Work Defendant
16 must also comply with all applicable or relevant and appropriate requirements of
17 all federal and state environmental laws as set forth in the 2010 ROD and the
18 SOW. The activities conducted pursuant to this Consent Decree, if approved by
19 EPA, shall be deemed to be consistent with the NCP.
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23 14. Permits.

24 a. As provided in Section 121(e) of CERCLA, 42 U.S.C.
25 § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any
26 portion of the Work conducted entirely on-site (i.e., within the areal extent of
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1 contamination or in very close proximity to the contamination and necessary for
2 implementation of the Work). Where any portion of the Work that is not on-site
3 requires a federal, state, or local permit or approval, Settling Work Defendant shall
4 submit timely and complete applications and take all other actions necessary to
5 obtain all such permits or approvals.
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8 b. Settling Work Defendant may seek relief under the provisions
9 of Section XVIII (Force Majeure) for any delay in the performance of the Work
10 resulting from a failure to obtain, or a delay in obtaining, any permit or approval
11 referenced in Paragraph 14. a. and required for the Work, provided that they have
12 submitted timely and complete applications and taken all other actions necessary to
13 obtain all such permits or approvals.
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16 c. This Consent Decree is not, and shall not be construed to be, a
17 permit issued pursuant to any federal, state, or local statute or regulation.
18

19 **VI. PERFORMANCE OF THE WORK BY SETTLING WORK**
20 **DEFENDANT**

21 15. Selection of Supervising Contractor.
22

23 a. All aspects of the Work to be performed by Settling Work
24 Defendant pursuant to Sections VI (Performance of the Work by Settling Work
25 Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data
26 Analysis), IX (Access), and XV (Emergency Response) shall be under the
27 direction and supervision of the Supervising Contractor, the selection of which
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1 shall be subject to disapproval by EPA. Within 30 Days after lodging of the
2 Consent Decree, Settling Work Defendant shall notify EPA and the Cities in
3 writing of the name, title, and qualifications of any contractor proposed to be the
4 Supervising Contractor. With respect to any contractor proposed to be Supervising
5 Contractor, Settling Work Defendant shall demonstrate that the proposed
6 contractor has a quality assurance system that complies with ANSI/ASQC E4-
7 1994, "Specifications and Guidelines for Quality Systems for Environmental Data
8 Collection and Environmental Technology Programs" (American National
9 Standard, January 5, 1995), by submitting a copy of the proposed contractor's
10 Quality Management Plan ("QMP"). The QMP should be prepared in accordance
11 with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-
12 01/002, March 2001, reissued May 2006) or equivalent documentation as
13 determined by EPA. EPA will issue a notice of disapproval or an authorization to
14 proceed regarding hiring of the proposed contractor. If at any time thereafter,
15 Settling Work Defendant proposes to change a Supervising Contractor, Settling
16 Work Defendant shall give notice of such proposal to EPA and the Cities and must
17 obtain an authorization to proceed from EPA before the new Supervising
18 Contractor performs, directs, or supervises any Work under this Consent Decree.

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26 b. If EPA disapproves a proposed Supervising Contractor, EPA
27 will notify Settling Work Defendant and the Cities in writing, and Settling Work
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1 Defendant shall submit to EPA a list of contractors, including the qualifications of
2 each contractor, which would be acceptable to Settling Work Defendant within
3 thirty (30) Days of receipt of EPA's disapproval of the contractor previously
4 proposed. EPA will provide written notice of the names of any contractor(s) that it
5 disapproves and an authorization to proceed with respect to any of the other
6 contractors. Settling Work Defendant may select any contractor from that list that
7 is not disapproved and shall notify EPA and the Cities of the name of the
8 contractor selected within twenty-one (21) Days of EPA's authorization to
9 proceed.
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13 c. If EPA fails to provide written notice of its authorization to
14 proceed or disapproval as provided in this Paragraph and this failure prevents
15 Settling Work Defendant from meeting one or more deadlines in a plan approved
16 by EPA pursuant to this Consent Decree, Settling Work Defendant may seek relief
17 under Section XVIII (Force Majeure).
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20 16. Remedial Design and Remedial Action Planning.

21 a. Within thirty (30) Days after EPA's issuance of an
22 authorization to proceed pursuant to Paragraph 15, Settling Work Defendant shall
23 submit to EPA, with copies to the State and the Cities, a work plan for the design
24 of the Remedial Action at the B.F. Goodrich Superfund Site (Remedial Design
25 Work Plan). The Remedial Design Work Plan shall provide for design of the
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1 remedy as required by this Consent Decree, the 2010 ROD, and the SOW. Upon
2 its approval by EPA, the Remedial Design Work Plan shall be incorporated into
3 and enforceable under this Consent Decree. Within forty-five (45) Days after
4 EPA's issuance of an authorization to proceed under Paragraph 15, Settling Work
5 Defendant shall submit to EPA, with copies to the State and the Cities, a Health
6 and Safety Plan for field design activities that conforms to the applicable
7 Occupational Safety and Health Administration and EPA requirements including,
8 but not limited to, 29 C.F.R. § 1910.120.

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12 b. The Remedial Design Work Plan shall include plans and
13 schedules for implementation of all remedial design tasks identified in the SOW,
14 including, but not limited to, plans and schedules for the completion of: (1) a
15 Remedial Design Investigation sampling and analysis plan (including, but not
16 limited to, a Quality Assurance Project Plan ("QAPP") in accordance with Section
17 VIII (Quality Assurance, Sampling, and Data Analysis) and a Health and Safety
18 Plan which conforms to the applicable Occupational Safety and Health
19 Administration and EPA requirements including, but not limited to, 29 C.F.R. §
20 1910.120.); (2) a Remedial Design Investigation; (3) a Remedial Design
21 Investigation Report; (4) Groundwater Flow Modeling; (5) a preliminary design
22 submission; (6) a pre-final/final design submission; (7) an O&M Plan; (8) a
23 Compliance Monitoring Plan; and (9) a Construction Quality Assurance Plan. In
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1 addition, the Remedial Design Work Plan shall include a proposed schedule for
2 completion of the Remedial Action Work Plan.

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4 c. Upon approval of the Remedial Design Work Plan by EPA,
5 after a reasonable opportunity for review and comment by the State and the Cities,
6 Settling Work Defendant shall implement the Remedial Design Work Plan.
7
8 Settling Work Defendant shall submit to EPA, with copies to the State and the
9 Cities, all plans, reports, and other deliverables required under the approved
10 Remedial Design Work Plan in accordance with the approved schedule for review
11 and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other
12 Deliverables). Unless otherwise directed by EPA, Settling Work Defendant shall
13 not commence further Remedial Design activities at the B.F. Goodrich Superfund
14 Site prior to approval of the Remedial Design Work Plan.
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18 d. The Remedial Design Investigation shall provide (1) updated
19 groundwater data needed for the remedial design; (2) data if needed to support
20 proposals to phase construction of portions of the Remedy; and (3) data to address
21 any concerns about the quantity, quality, completeness, or usability of water
22 quality or other data upon which the design will be based.
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25 e. Groundwater Flow Modeling shall include activities needed to
26 determine final groundwater extraction rates and locations for the remedy,
27 including the use of a numeric groundwater flow model, submittal of preliminary
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1 modeling results to EPA, and submittal of a Groundwater Flow Modeling Report at
2 the completion of the modeling effort. It may also include provisions for one or
3 more submittals that describe the development and calibration of a new model, or
4 any changes to the calibration of the EPA/CH2M Hill model.
5

6 f. The preliminary design submission shall include, at a
7 minimum, the following: (1) design criteria; (2) project delivery strategy;
8 (3) preliminary plans, drawings, and sketches; (4) required specifications in outline
9 form; and (5) preliminary construction schedule.
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12 g. The intermediate design submission, if independently submitted
13 by Settling Work Defendant, shall be a continuation and expansion of the
14 preliminary design.
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16 h. The pre-final/final design submission shall include, at a
17 minimum, the following: (1) final plans and specifications; (2) an Operation and
18 Maintenance Plan; and (3) a Compliance Monitoring Plan. A Construction Quality
19 Assurance Project Plan ("CQAPP") shall be submitted no later than ninety (90)
20 Days after receipt of EPA comments on the Preliminary Design Submittal. The
21 CQAPP, which shall detail the approach to quality assurance during construction
22 activities at the B.F. Goodrich Superfund Site, shall specify a quality assurance
23 official, independent of the Supervising Contractor, to conduct a quality assurance
24 program during the construction phase of the project.
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1 i. The Operation and Maintenance Plan shall address material and
2 maintenance needs; recordkeeping; staffing needs; routine data collection and
3 analysis activities; resin and carbon replacement criteria, if applicable; routine
4 reporting to EPA and the State; development of a Health and Safety Plan; potential
5 operating problems; waste disposal; development of a Sampling & Analysis Plan
6 ("SAP") or addendum to an existing SAP; and noncompliance notification to EPA
7 and the State.
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10 j. The Compliance Monitoring Plan shall address data collection,
11 analysis, and reporting activities needed to demonstrate that the Work satisfies
12 Performance Standards related to hydraulic control.
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15 k. The CQAPP shall ensure, with a reasonable degree of certainty,
16 that the completed RA will meet or exceed all design criteria, plans and
17 specifications, relevant Performance Standards, and other relevant requirements.
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19 17. Remedial Action.

20 a. Except as provided in Paragraph 6. c., within thirty (30) Days
21 after the approval of the final design submission, Settling Work Defendant shall
22 submit to EPA, with copies to the State and the Cities, a work plan for the
23 performance of the Remedial Action at the B.F. Goodrich Superfund Site
24 (Remedial Action Work Plan). The Remedial Action Work Plan shall provide for
25 construction and implementation of the remedy set forth in the 2010 ROD and
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1 achievement of the Performance Standards, in accordance with this Consent
2 Decree, the 2010 ROD, the SOW, and the design plans and specifications
3 developed in accordance with the Remedial Design Work Plan and approved by
4 EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be
5 incorporated into and enforceable under this Consent Decree.
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8 b. The Remedial Action Work Plan shall include the following:
9 (1) schedule for completion of the Remedial Action; (2) method for selection of the
10 contractor; (3) schedule for developing and submitting other required Remedial
11 Action plans; (4) methods for satisfying permitting requirements; and (5)
12 procedures and plans for the decontamination of equipment and the disposal of
13 contaminated materials. The Remedial Action Work Plan also shall include the
14 methodology for implementing the CQAPP and a schedule for implementing all
15 Remedial Action tasks identified in the final design submission and shall identify
16 the initial formulation of Settling Work Defendant's Remedial Action project team
17 (including, but not limited to, the Supervising Contractor).
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22 c. Upon approval of the Remedial Action Work Plan by EPA,
23 after a reasonable opportunity for review and comment by the State and the Cities,
24 Settling Work Defendant shall implement the activities required under the
25 Remedial Action Work Plan. Settling Work Defendant shall submit to EPA, with
26 copies to the State and the Cities, all reports and other deliverables required under
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1 the approved Remedial Action Work Plan in accordance with the approved
2 schedule for review and approval pursuant to Section XI (EPA Approval of Plans,
3 Reports, and Other Deliverables). Unless otherwise directed by EPA, Settling
4 Work Defendant shall not commence physical Remedial Action activities at the
5 B.F. Goodrich Superfund Site prior to approval of the Remedial Action Work Plan.
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8 18. Settling Work Defendant shall continue to implement the Remedial
9 Action until the Performance Standards are achieved.

10 19. Modification of SOW or Work Plans Required by the SOW.

11 a. If EPA determines that it is necessary to modify the Work
12 specified in the SOW and/or in work plans developed pursuant to the SOW to
13 achieve, maintain, and satisfy the Performance Standards or to carry out and
14 maintain the effectiveness of the remedy set forth in the 2010 ROD, and such
15 modification is consistent with the scope of the remedy set forth in the 2010 ROD
16 and is consistent with the limitations set forth in Paragraph 6.c., then EPA may
17 issue such modification in writing and shall notify Settling Work Defendant and
18 the Cities of such modification. For the purposes of this Paragraph and Paragraphs
19 55 (Completion of Construction of the Remedial Action), 56 (Completion of
20 Startup Activities), and 57 (Completion of the Work) only, the “scope of the
21 remedy set forth in the 2010 ROD” is the design, construction, operation,
22 maintenance, and evaluation of groundwater extraction wells, water treatment
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1 systems, pipelines, pumps, conveyance systems, groundwater monitoring wells,
2 and other equipment, needed to: 1) intercept and provide hydraulic control of
3 contaminated groundwater in a targeted area of contamination identified in the
4 2010 ROD during all expected groundwater flow conditions; 2) deliver the treated
5 groundwater to local water utilities for distribution to their customers; and 3)
6 achieve, maintain, and satisfy the Performance Standards. If Settling Work
7 Defendant objects to the EPA modification made pursuant to this Paragraph,
8 Settling Work Defendant may, within thirty (30) Days after EPA's notification,
9 seek dispute resolution under Paragraph 83 (Record Review).

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13 b. The SOW and/or related work plans shall be modified: (i) in
14 accordance with the modification issued by EPA; or (ii) if Settling Work
15 Defendant invokes dispute resolution, in accordance with the final resolution of the
16 dispute. The modification shall be incorporated into and enforceable under this
17 Consent Decree, and Settling Work Defendant shall implement all work required
18 by such modification. Settling Work Defendant shall incorporate the modification
19 into the Remedial Design or Remedial Action Work Plan under Paragraph 16 or
20 17, as appropriate.

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23 c. Nothing in this Paragraph shall be construed to limit EPA's
24 authority to require performance of further response actions as otherwise provided
25 in this Consent Decree.
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1 20. Nothing in this Consent Decree, the SOW, or the Remedial Design or
2 Remedial Action Work Plans constitutes a warranty or representation of any kind
3 by Plaintiff that compliance with the Work requirements set forth in the SOW and
4 the Work Plans will achieve the Performance Standards.
5

6 21. Off-Site Shipment of Waste Material.
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8 a. Settling Work Defendant may ship Waste Material from the
9 B.F. Goodrich Superfund Site to an off-Site facility only if it verifies, prior to any
10 shipment, that the off-Site facility is operating in compliance with the requirements
11 of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. §
12 300.440, by obtaining a determination from EPA that the proposed receiving
13 facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. §
14 300.440.
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18 b. Settling Work Defendant may ship Waste Material from the
19 B.F. Goodrich Superfund Site to an out of state waste management facility only if,
20 prior to any shipment, Settling Work Defendant provides written notice to the
21 appropriate state environmental official in the receiving facility's state and to the
22 EPA Project Coordinator. This notice requirement shall not apply to any off-Site
23 shipments when the total quantity of all such shipments will not exceed ten (10)
24 cubic yards. The written notice shall include the following information, if
25 available: (i) the name and location of the receiving facility; (ii) the type and
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1 quantity of Waste Material to be shipped; (iii) the schedule for the shipment; and
2 (iv) the method of transportation. Settling Work Defendant also shall notify the
3 state environmental official referenced above and the EPA Project Coordinator of
4 any major changes in the shipment plan, such as a decision to ship the Waste
5 Material to a different out-of-state facility. Settling Work Defendant shall provide
6 the written notice after the award of the contract for Remedial Action construction
7 and before the Waste Material is shipped.
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10 **VII. REMEDY REVIEW**

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12 22. Periodic Review. Settling Work Defendant shall conduct any studies
13 and investigations that EPA requests in order to permit EPA to conduct reviews of
14 whether the Remedial Action is protective of human health and the environment at
15 least every five (5) years as required by Section 121(c) of CERCLA, 42 U.S.C. §
16 9621(c), and any applicable regulations.
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19 23. EPA Selection of Further Response Actions. If EPA determines, at
20 any time, that the Remedial Action is not protective of human health and the
21 environment, EPA may select further response actions for the B.F. Goodrich
22 Superfund Site in accordance with the requirements of CERCLA and the NCP.
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25 24. Opportunity to Comment. Settling Work Defendant, the Cities, and if
26 required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or
27 9617, the public, will be provided with an opportunity to comment on any further
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1 response actions proposed by EPA as a result of the review conducted pursuant to
2 Section 121(c) of CERCLA and to submit written comments for the record during
3 the comment period.
4

5 **VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

6
7 25. Quality Assurance.

8 a. Settling Work Defendant shall use quality assurance, quality
9 control, and chain of custody procedures for all design, compliance, and
10 monitoring samples in accordance with “EPA Requirements for Quality Assurance
11 Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001, reissued May 2006),
12 “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/240/R-02/009,
13 December 2002), and subsequent amendments to such guidelines upon notification
14 by EPA to Settling Work Defendant, with a copy to the Cities, of such amendment.
15 Amended guidelines shall apply only to procedures conducted after such
16 notification.
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21 b. Prior to the commencement of any monitoring project under
22 this Consent Decree, Settling Work Defendant shall submit to EPA for approval,
23 after a reasonable opportunity for review and comment by the State and the Cities,
24 a QAPP that is consistent with the SOW, the NCP, and applicable guidance
25 documents. If relevant to the proceeding, the Parties agree that validated sampling
26 data generated in accordance with the QAPP(s) and reviewed and approved by
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1 EPA shall be admissible as evidence, without objection, in any proceeding under
2 this Consent Decree. Settling Work Defendant shall ensure that EPA personnel
3 and its authorized representatives are allowed access at reasonable times to all
4 laboratories utilized by Settling Work Defendant in implementing this Consent
5 Decree. In addition, Settling Work Defendant shall ensure that such laboratories
6 shall analyze all samples submitted by EPA pursuant to the QAPP for quality
7 assurance monitoring. Settling Work Defendant shall ensure that the laboratories
8 they utilize for the analysis of samples taken pursuant to this Consent Decree
9 perform all analyses according to accepted EPA methods. Accepted EPA methods
10 consist of those methods that are documented in the “USEPA Contract Laboratory
11 Program Statement of Work for Inorganic Analysis, ILM05.4,” and the “USEPA
12 Contract Laboratory Program Statement of Work for Organic Analysis,
13 SOM01.2,” and any amendments made thereto during the course of the
14 implementation of this Decree; however, upon approval by EPA, Settling Work
15 Defendant may use other analytical methods which are as stringent as or more
16 stringent than the CLP-approved methods. Settling Work Defendant shall ensure
17 that all laboratories they use for analysis of samples taken pursuant to this Consent
18 Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Work
19 Defendant shall use only laboratories that have a documented Quality System
20 which complies with ANSI/ASQC E4-1994, “Specifications and Guidelines for
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CONSENT DECREE

1 Quality Systems for Environmental Data Collection and Environmental
2 Technology Programs” (American National Standard, January 5, 1995), and “EPA
3 Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002,
4 March 2001, reissued May 2006) or equivalent documentation as determined by
5 EPA. EPA may consider laboratories accredited under the National Environmental
6 Laboratory Accreditation Program (“NELAP”) as meeting the Quality System
7 requirements. Settling Work Defendant shall ensure that all field methodologies
8 utilized in collecting samples for subsequent analysis pursuant to this Consent
9 Decree are conducted in accordance with the procedures set forth in the QAPP
10 approved by EPA.
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15 26. Upon request, Settling Work Defendant shall allow split or duplicate
16 samples to be taken by EPA or its authorized representatives. Settling Work
17 Defendant shall notify EPA not less than twenty-eight (28) Days in advance of any
18 sample collection activity unless shorter notice is agreed to by EPA. In addition,
19 EPA shall have the right to take any additional samples that EPA deems necessary.
20 Upon request, EPA shall allow Settling Work Defendant to take split or duplicate
21 samples of any samples it takes as part of Plaintiff’s oversight of Settling Work
22 Defendant’s implementation of the Work.
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26 27. Settling Work Defendant shall submit to EPA and the Cities copies of
27 the results of all sampling and/or tests or other data obtained or generated by or on
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1 behalf of Settling Work Defendant with respect to the B.F. Goodrich Superfund
2 Site and/or the implementation of this Consent Decree unless EPA agrees
3 otherwise.
4

5 28. Notwithstanding any provision of this Consent Decree, the United
6 States retains all of its information gathering and inspection authorities and rights,
7 including enforcement actions related thereto, under CERCLA, RCRA, and any
8 other applicable statutes or regulations.
9

10 IX. ACCESS

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12 29. Access by Settling Defendants Other Than the San Bernardino County
13 Settling Parties. If the B.F. Goodrich Superfund Site, or any other real property
14 where access is needed or land/water use restrictions are needed, is owned or
15 controlled by any of such Settling Defendants:
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18 a. Such Settling Defendant shall, commencing on the date of
19 lodging of the Consent Decree, provide the United States and Settling Work
20 Defendant, and their representatives, contractors, and subcontractors, with access
21 at all reasonable times, and, where feasible, with three working days' notice, to any
22 portions of the B.F. Goodrich Superfund Site, or such other real property, over
23 which they have ownership or control, to conduct any activity regarding the
24 Consent Decree including, but not limited to, the following activities:
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- 27
28 1) Monitoring the Work;

- 1 2) Verifying any data or information submitted to the
2 United States;
- 3 3) Conducting investigations regarding contamination at or
4 near the B.F. Goodrich Superfund Site;
- 5 4) Obtaining samples;
- 6 5) Assessing the need for, planning, or implementing
7 additional response actions at or near the B.F. Goodrich Superfund Site;
- 8 6) Assessing implementation of quality assurance and
9 quality control practices as defined in the approved Quality Assurance Project
10 Plans;
- 11 7) Implementing the Work pursuant to the conditions set
12 forth in Paragraph 111 (Work Takeover);
- 13 8) Inspecting and copying records, operating logs, contracts,
14 or other documents related to the Work that are maintained or generated by such
15 Settling Defendants or Settling Work Defendant or their agents, consistent with
16 Section XXIV (Access to Information);
- 17 9) Assessing such Settling Defendants' and Settling Work
18 Defendant's compliance with the Consent Decree; and
- 19 10) Determining whether the B.F. Goodrich Superfund Site
20 or other real property is being used in a manner that is prohibited or restricted
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1 under this Consent Decree, or that may need to be prohibited or restricted under the
2 Consent Decree.

3 b. Commencing on the date of lodging of the Consent Decree,
4 such Settling Defendants shall not use the B.F. Goodrich Superfund Site, or such
5 other real property in any manner that EPA determines will pose an unacceptable
6 risk to human health or to the environment due to exposure to Waste Material or
7 interfere with or adversely affect the implementation, integrity, or protectiveness of
8 the Remedial Action.
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11 30. Access by the San Bernardino County Settling Parties. If the B.F.
12 Goodrich Superfund Site, or any other real property where access is needed or
13 land/water use restrictions are needed for the Work, is owned or controlled by any
14 of the San Bernardino County Settling Parties:
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17 a. San Bernardino County Settling Parties shall, commencing on
18 the date of lodging of the Consent Decree, provide the United States and Settling
19 Work Defendant, and their representatives, contractors, and subcontractors, with
20 access at all reasonable times, and, where feasible, with three working days'
21 notice, to any portions of the B.F. Goodrich Superfund Site, or such other real
22 property, over which they have ownership or control, to conduct any activity
23 regarding the Consent Decree including, but not limited to, the following activities:
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26

- 27 1) Monitoring the Work;
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- 1 2) Verifying any data or information submitted to the
2 United States;
- 3 3) Conducting investigations regarding contamination
4 related to the B.F. Goodrich Superfund Site;
- 5 4) Obtaining samples related to the B.F. Goodrich
6 Superfund Site;
- 7 5) Assessing the need for, planning, or implementing
8 additional response actions related to the B.F. Goodrich Superfund Site;
- 9 6) Implementing the Work pursuant to the conditions set
10 forth in Paragraph 111 (Work Takeover);
- 11 7) Inspecting and copying records, operating logs, contracts,
12 or other documents related to the Work maintained or generated by the San
13 Bernardino County Settling Parties or their agents , consistent with Section XXIV
14 (Access to Information);
- 15 8) Assessing the San Bernardino County Settling Parties’
16 and Settling Work Defendant’s compliance with the Consent Decree; and
- 17 9) Determining whether the B.F. Goodrich Superfund Site
18 or other real property is being used in a manner that is prohibited or restricted
19 under this Consent Decree, or that may need to be prohibited or restricted under the
20 Consent Decree.
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1 b. Commencing on the date of lodging of the Consent Decree, the
2 San Bernardino County Settling Parties shall not use the B.F. Goodrich Superfund
3 Site, or other real property where access is needed or land/water use restrictions are
4 needed for the Work, in any manner that EPA determines will pose an
5 unacceptable risk to human health or to the environment due to exposure to Waste
6 Material or interfere with or adversely affect the implementation, integrity, or
7 protectiveness of the Remedial Action.
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10 31. If the B.F. Goodrich Superfund Site, or any other real property where
11 access and/or land/water use restrictions, needed for performance of the Work, is
12 owned or controlled by persons other than any Party to this Consent Decree, then
13 Settling Work Defendant shall use its best efforts to secure from such persons:
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16 a. An agreement to provide access thereto for the United States
17 and Settling Work Defendant, and their representatives, contractors, and
18 subcontractors, to conduct any activity regarding the Consent Decree including,
19 but not limited to, the activities listed in Paragraph 29. a.;
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22 b. An agreement, enforceable by Settling Work Defendant and the
23 United States, to refrain from using the B.F. Goodrich Superfund Site, or such
24 other real property, in any manner that EPA determines will pose an unacceptable
25 risk to human health or to the environment due to exposure to Waste Materials or
26 interfere with or adversely affect the implementation, integrity, or protectiveness of
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1 the Remedial Action.

2 c. Such agreements shall include, but not be limited to, the
3 execution and recordation in the appropriate land records office of Proprietary
4 Controls, that (i) grant a right of access to conduct any activity regarding the
5 Consent Decree including, but not limited to, those activities listed in Paragraph
6 29. a.
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9 32. For purposes of Paragraph 31, “best efforts” include the payment of
10 reasonable sums of money to obtain access, an agreement to restrict land/water
11 use, a Proprietary Control, and/or an agreement to release or subordinate a prior
12 lien or encumbrance. If, after Settling Work Defendant has exhausted its best
13 efforts, Settling Work Defendant has not: (a) obtained agreements to provide
14 access, restrict land/water use or record Proprietary Controls, as required by
15 Paragraph 31. a. or 31. b.; or (b) obtained, pursuant to Paragraph 29 or 30,
16 agreements from the holders of prior liens or encumbrances to release or
17 subordinate such liens or encumbrances to the Proprietary Controls, Settling Work
18 Defendant shall promptly notify the United States and the Cities in writing, and
19 shall include in that notification a summary of the steps that Settling Work
20 Defendant has taken to attempt to comply with Paragraph 29 or 31. The United
21 States may, as it deems appropriate, assist Settling Work Defendant in obtaining
22 access, agreements to restrict land/water use, Proprietary Controls, or the release or
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1 subordination of a prior lien or encumbrance. Settling Work Defendant shall
2 reimburse the United States under Section XVI (Establishment of Escrow and
3 Trust Accounts, and Payments), for all costs incurred, direct or indirect, by the
4 United States in obtaining such access, agreements to restrict land/water use,
5 Proprietary Controls, and/or the release/subordination of prior liens or
6 encumbrances including, but not limited to, the cost of attorney time and the
7 amount of monetary consideration paid or just compensation.
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11 33. If EPA determines that Institutional Controls in the form of state or
12 local laws, regulations, ordinances, zoning restrictions, or other governmental
13 controls are needed, Settling Work Defendant shall cooperate with EPA's, the
14 State's and the Cities' efforts to secure and ensure compliance with such
15 governmental controls.
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18 34. In the event that any of the Settling Federal Agencies acquires an
19 interest in any real property within the B.F. Goodrich Superfund Site, or other
20 affected property, that Settling Federal Agency shall provide reasonable access to
21 EPA and/or Settling Work Defendant, subject to the provisions of federal law and
22 regulations, to effectuate the response actions set forth in this Consent Decree.
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25 35. Notwithstanding any provision of the Consent Decree, the United
26 States, the State, the County of San Bernardino, and the Cities retain all of their
27 access authorities, access rights, rights to require Institutional Controls, and related
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1 enforcement authorities under CERCLA, RCRA, and any other applicable statute,
2 regulations, municipal codes, or ordinances.

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4 **X. REPORTING REQUIREMENTS**

5 36. In addition to any other requirement of this Consent Decree,
6 beginning in the first month following the Effective Date, Settling Work Defendant
7 shall submit to EPA, with copies to the State and the Cities, monthly progress
8 reports that: (a) describe deliverables submitted and actions taken during the
9 previous month on each active task required by the SOW or the approved RD or
10 RA Work Plans; (b) include a summary of all results of sampling and tests and all
11 other data received or generated by Settling Work Defendant or its contractors or
12 agents in the previous month; (c) describe problems arising since the previous
13 report and steps planned or underway to mitigate the problems; (d) describe actions
14 scheduled for the next two (2) months; (e) describe any anticipated changes in the
15 schedule; (f) describe the nature of, duration of, and response to any
16 noncompliance with Performance Standards or other requirements; and (g)
17 describe any community relations activities completed during the previous month
18 or planned for the next two (2) months. Progress reports are due by the tenth (10th)
19 Day of every month. Settling Work Defendant shall submit these progress reports
20 to EPA, with copies to the State and the Cities, by the tenth (10th) day of every
21 month following the lodging of this Consent Decree until EPA notifies Settling
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1 Work Defendant and the Cities pursuant to Paragraph 55. b. of Section XIV
2 (Certifications of Completion). If requested by EPA, Settling Work Defendant
3 shall also provide briefings for EPA to discuss the progress of the Work. After
4 EPA issues its Certification of Completion of Construction of the Remedial
5 Action pursuant to Paragraph 55 (Certification of Completion of Construction of
6 the Remedial Action), Settling Work Defendant shall submit to EPA, with copies
7 to the Cities, annual reports on the effectiveness of the Remedial Action.
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10 37. Settling Work Defendant shall notify EPA and the Cities of any
11 change in the schedule described in the monthly progress report for the
12 performance of any activity, including, but not limited to, data collection and
13 implementation of work plans, no later than seven (7) Days prior to the
14 performance of the activity.
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17 38. Upon the occurrence of any event during performance of the Work
18 that Settling Work Defendant is required to report pursuant to Section 103 of
19 CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and
20 Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Settling Work
21 Defendant shall within twenty-four (24) hours of the onset of such event orally
22 notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in
23 the event of the unavailability of the EPA Project Coordinator), or, in the event that
24 neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is
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1 available, the Emergency Response Section, Region 9, United States
2 Environmental Protection Agency. These reporting requirements are in addition to
3 the reporting required by CERCLA Section 103 and/or EPCRA Section 304.
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5 39. Within twenty (20) Days of the onset of such an event, Settling Work
6 Defendant shall furnish to EPA, with copies to the Cities, a written report, signed
7 by Settling Work Defendant's Project Coordinator, setting forth the events that
8 occurred and the measures taken, and to be taken, in response thereto. Within
9 thirty (30) Days of the conclusion of such an event, Settling Work Defendant shall
10 submit a report to EPA setting forth all actions taken in response thereto, and
11 provide copies to the Cities.
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15 40. Settling Work Defendant shall submit all plans, reports, data, written
16 notifications, and other deliverables required by the SOW, the Remedial Design
17 Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA
18 in accordance with the schedules set forth in such plans. Settling Work Defendant
19 shall simultaneously submit copies of all such plans, reports, data, written
20 notifications, and other deliverables to the State and the Cities. Upon request by
21 EPA, Settling Work Defendant shall submit in electronic form all or any portion of
22 any deliverables Settling Work Defendant is required to submit pursuant to the
23 provisions of this Consent Decree.
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28 41. All deliverables submitted by Settling Work Defendant to EPA that

1 purport to document Settling Work Defendant's compliance with the terms of this
2 Consent Decree shall be signed by an authorized representative of Settling Work
3 Defendant.
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5 **XI. EPA APPROVAL OF PLANS, REPORTS, AND OTHER**
6 **DELIVERABLES**

7 42. Initial Submissions.

8 a. After review of any plan, report, or other deliverable that is
9 required to be submitted for approval pursuant to this Consent Decree, EPA, shall:
10 (i) approve, in whole or in part, the submission; (ii) approve the submission upon
11 specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv)
12 any combination of the foregoing.
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15 b. EPA also may modify the initial submission to cure deficiencies
16 in the submission if: (i) EPA determines that disapproving the submission and
17 awaiting a resubmission would cause substantial disruption to the Work; or (ii)
18 previous submission(s) have been disapproved due to material defects and the
19 deficiencies in the initial submission under consideration indicate a bad faith lack
20 of effort to submit an acceptable plan, report, or deliverable.
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23 43. Resubmissions. Upon receipt of a notice of disapproval under
24 Paragraph 42. a. (iii) or (iv), or if required by a notice of approval upon specified
25 conditions under Paragraph 42. a. (ii), Settling Work Defendant shall, within
26 fourteen (14) Days or such longer time as specified by EPA in such notice, correct
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1 the deficiencies and resubmit the plan, report, or other deliverable for approval.

2 After review of the resubmitted plan, report, or other deliverable, EPA may: (a)
3 approve, in whole or in part, the resubmission; (b) approve the resubmission upon
4 specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in
5 part, the resubmission, requiring Settling Work Defendant to correct the
6 deficiencies; or (e) any combination of the foregoing.
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9 44. Material Defects. If an initially submitted or resubmitted plan, report,
10 or other deliverable contains a material defect, and the plan, report, or other
11 deliverable is disapproved or modified by EPA under Paragraph 42 or Paragraph
12 43 due to such material defect, then the material defect shall constitute a lack of
13 compliance for purposes of Paragraph 87. The provisions of Section XIX (Dispute
14 Resolution) and Section XX (Stipulated Penalties) shall govern the accrual and
15 payment of any stipulated penalties regarding Settling Work Defendant's
16 submissions under this Section.
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20 45. Implementation. Upon approval, approval upon conditions, or
21 modification by EPA under Paragraph 42 or Paragraph 43, of any plan, report, or
22 other deliverable, or any portion thereof: (a) such plan, report, or other deliverable,
23 or portion thereof, shall be incorporated into and enforceable under this Consent
24 Decree; and (b) Settling Work Defendant shall take any action required by such
25 plan, report, or other deliverable, or portion thereof, subject only to their right to
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1 invoke the Dispute Resolution procedures set forth in Section XIX (Dispute
2 Resolution) with respect to the modifications or conditions made by EPA. The
3 implementation of any non deficient portion of a plan, report, or other deliverable
4 submitted or resubmitted under Paragraph 42 or 43 shall not relieve Settling Work
5 Defendant of any liability for stipulated penalties under Section XX (Stipulated
6 Penalties).
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10 **XII. PROJECT COORDINATORS**

11 46. Within forty (40) Days after the lodging of this Consent Decree,
12 Settling Work Defendant and EPA will notify each other, in writing, and provide
13 copies to the Cities, of the name, address, and telephone number of their respective
14 designated Project Coordinators and Alternate Project Coordinators. If a Project
15 Coordinator or Alternate Project Coordinator initially designated is changed, the
16 identity of the successor will be given to the other Parties at least five (5) working
17 days before the change occurs, unless impracticable, but in no event later than the
18 actual day the change is made. Settling Work Defendant's Project Coordinator
19 shall be subject to disapproval by EPA and shall have the technical expertise
20 sufficient to adequately oversee all aspects of the Work. Settling Work
21 Defendant's Project Coordinator shall not be an attorney for any Settling
22 Defendant in this matter. He or she may assign other representatives, including
23 other contractors, to serve as representatives for oversight of performance of daily
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1 operations during remedial activities.

2 47. EPA may designate other representatives, including, but not limited
3 to, EPA employees, and federal contractors and consultants, to observe and
4 monitor the progress of any activity undertaken pursuant to this Consent Decree.
5 EPA's Project Coordinator and Alternate Project Coordinator shall have the
6 authority lawfully vested in a Remedial Project Manager ("RPM") and an On-
7 Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's Project
8 Coordinator or Alternate Project Coordinator shall have authority, consistent with
9 the NCP, to halt any Work required by this Consent Decree and to take any
10 necessary response action when he or she determines that conditions at the B.F.
11 Goodrich Superfund Site constitute an emergency situation or may present an
12 immediate threat to public health or welfare or the environment due to release or
13 threatened release of Waste Material.
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15 48. EPA's Project Coordinator and Settling Work Defendant's Project
16 Coordinator will communicate regularly.
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19 **XIII. PERFORMANCE GUARANTEE**
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21 49. In order to ensure the full and final completion of the Work, Settling
22 Work Defendant shall establish and maintain a performance guarantee, initially in
23 the amount of a performance guarantee by Black & Decker Inc. of eighteen million
24 seven hundred and fifty thousand dollars (\$18,750,000) and by Settling Work
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1 Defendant in the amount of the balance in the 2010 ROD Trust Fund (hereinafter
2 collectively “estimated cost of the Work”). Furthermore, Black & Decker Inc. will
3 assume all Settling Work Defendant's obligations under this Consent Decree in the
4 event Settling Work Defendant defaults on those obligations, for the benefit of
5 EPA, and the United States may then enforce those obligations as to Black &
6 Decker Inc. pursuant to this Consent Decree. The performance guarantee, which
7 must be satisfactory in form and substance to EPA, shall be in the form of one or
8 more of the following mechanisms (provided that, if Settling Work Defendant
9 intends to use multiple mechanisms, such multiple mechanisms shall be limited to
10 surety bonds guaranteeing payment, letters of credit, trust funds, and insurance
11 policies):

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

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

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

3 For purposes of this Paragraph, the B.F. Goodrich Superfund Site 2010 ROD Trust
4 Fund may qualify as a performance guarantee mechanism, if it is properly
5 established consistent with this Paragraph and pursuant to other requirements of
6 this Consent Decree. If the B.F. Goodrich Superfund Site 2010 ROD Trust Fund is
7 used as a partial performance guarantee, Settling Work Defendant shall report to
8 EPA the 2010 ROD Trust Fund's most recent balance annually on the anniversary
9 of the Effective Date of this Decree. To the extent that any decrease in the 2010
10 ROD Trust Fund exceeds any corresponding reduction in the amount of the
11 performance guarantee set forth in Paragraph 54 a., Settling Work Defendant shall
12 offset such decrease with additional performance guarantees within thirty (30)
13 Days after that anniversary date;

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

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26 e. A demonstration by Settling Work Defendant that it meets the
27 financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost
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1 of the Work (plus the amount(s) of any other federal or any state environmental
2 obligations financially assured through the use of a financial test or guarantee),
3 provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's
4 satisfaction; or
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6 f. A written guarantee to fund or perform the Work executed in
7 favor of EPA by one or more of the following: (i) a direct or indirect parent
8 company of a Settling Work Defendant, or (ii) a company that has a "substantial
9 business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one (1)
10 Settling Work Defendant; provided, however, that any company providing such a
11 guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial
12 test and reporting requirements for owners and operators set forth in subparagraphs
13 (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the
14 Work (plus the amount(s) of any other federal or any state environmental
15 obligations financially assured through the use of a financial test or guarantee) that
16 it proposes to guarantee hereunder.
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22 50. Settling Work Defendant has selected, and EPA has found
23 satisfactory, as the initial performance guarantee, the guarantee in the form set
24 forth in Appendix G. Within ten (10) Days after the later of (1) the Effective Date
25 or (2) the conclusion of the appeal process described in Paragraph 61, Settling
26 Work Defendant shall execute or otherwise finalize all instruments or other
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1 documents required in order to make the selected performance guarantee(s) legally
2 binding in a form substantially identical to the documents attached hereto as
3 Appendix G , and such performance guarantee(s) shall thereupon be fully effective.
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5 Within thirty (30) Days of the later of (1) the Effective Date or (2) the conclusion
6 of the appeal process described in Paragraph 61, Settling Work Defendant shall
7 submit copies of all executed and/or otherwise finalized instruments or other
8 documents required in order to make the selected performance guarantee(s) legally
9 binding to the EPA Regional Financial Management Officer in accordance with
10 Section XXV (Notices and Submissions), with copies to the United States and
11 EPA as specified in Section XXV (Notices and Submissions).
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15 51. If, at any time after the Effective Date and before issuance of the
16 Certification of Completion of the Work pursuant to Paragraph 57. b., Settling
17 Work Defendant provides a performance guarantee for completion of the Work by
18 means of a demonstration or guarantee pursuant to Paragraph 49. e. or 49. f.,
19 Settling Work Defendant shall also comply with the other relevant requirements of
20 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in
21 this Consent Decree, including but not limited to: (a) the initial submission of
22 required financial reports and statements from the relevant entity's chief financial
23 officer ("CFO") and independent certified public accountant ("CPA"), in the form
24 prescribed by EPA in its financial test sample CFO letters and CPA reports
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1 available at:

2 [http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-](http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf)
3 [samples.pdf](http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf); (b) the annual re-submission of such reports and statements within
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5 ninety (90) Days after the close of each such entity's fiscal year; and (c) the prompt
6 notification of EPA, with copies to the Cities, after each such entity determines that
7 it no longer satisfies the financial test requirements set forth at 40 C.F.R. §
8 264.143(f)(1) and in any event within ninety (90) Days after the close of any fiscal
9 year in which such entity no longer satisfies such financial test requirements. For
10 purposes of the performance guarantee mechanisms specified in this Section,
11 references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and
12 "plugging and abandonment" shall be deemed to include the Work; the terms
13 "current closure cost estimate," "current post-closure cost estimate," and "current
14 plugging and abandonment cost estimate" shall be deemed to include the Estimated
15 Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to
16 Settling Work Defendant making a demonstration under Paragraph 49. e.; and the
17 terms "facility" and "hazardous waste facility" shall be deemed to include the B.F.
18 Goodrich Superfund Site.
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25 52. In the event that EPA determines at any time that a performance
26 guarantee provided by Settling Work Defendant pursuant to this Section is
27 inadequate or otherwise no longer satisfies the requirements set forth in this
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1 Section, whether due to an increase in the estimated cost of completing the Work
2 or for any other reason, or in the event that any Settling Work Defendant becomes
3 aware of information indicating that a performance guarantee provided pursuant to
4 this Section is inadequate or otherwise no longer satisfies the requirements set
5 forth in this Section, whether due to an increase in the estimated cost of completing
6 the Work or for any other reason, Settling Work Defendant, within thirty (30) Days
7 of receipt of notice of EPA's determination or, as the case may be, within thirty
8 (30) Days of Settling Work Defendant becoming aware of such information, shall
9 obtain and present to EPA for approval, with copies to the Cities, a proposal for a
10 revised or alternative form of performance guarantee listed in Paragraph 49 that
11 satisfies all requirements set forth in this Section; provided, however, that if
12 Settling Work Defendant cannot obtain such revised or alternative form of
13 performance guarantee within such thirty (30) Day period, and provided further
14 that Settling Work Defendant shall have commenced to obtain such revised or
15 alternative form of performance guarantee within such thirty (30) Day period, and
16 thereafter diligently proceeds to obtain the same, EPA shall extend such period for
17 such time as is reasonably necessary for Settling Work Defendant in the exercise of
18 due diligence to obtain such revised or alternative form of performance guarantee,
19 such additional period not to exceed sixty (60) Days. On Day thirty (30), Settling
20 Work Defendant shall provide to EPA, with copies to the Cities, a status report on
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1 its efforts to obtain the revised or alternative form of guarantee. In seeking
2 approval for a revised or alternative form of performance guarantee, Settling Work
3 Defendant shall follow the procedures set forth in Paragraph 54. b. 2). Settling
4 Work Defendant's inability to post a performance guarantee for completion of the
5 Work shall in no way excuse performance of any other requirements of this
6 Consent Decree, including, without limitation, the obligation of Settling Work
7 Defendant to complete the Work in strict accordance with the terms of this Consent
8 Decree.

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12 53. Funding for Work Takeover. The commencement of any Work
13 Takeover pursuant to Paragraph 111 shall trigger EPA's right to receive the benefit
14 of any performance guarantee(s) provided pursuant to Paragraphs 49. a., 49. b.,
15 49. c., 49. d., or 49. f., and at such time EPA shall have immediate access to
16 resources guaranteed under any such performance guarantee(s), whether in cash or
17 in kind, as needed to continue and complete the Work assumed by EPA under the
18 Work Takeover. Upon the commencement of any Work Takeover, if (a) for any
19 reason EPA is unable to promptly secure the resources guaranteed under any such
20 performance guarantee(s), whether in cash or in kind, necessary to continue and
21 complete the Work assumed by EPA under the Work Takeover, or (b) in the event
22 that the performance guarantee involves a demonstration of satisfaction of the
23 financial test criteria pursuant to Paragraph 49. e. or Paragraph 49. f. (ii), Settling
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1 Work Defendant (or in the case of Paragraph 49. f. (ii), the guarantor) shall
2 immediately upon written demand from EPA deposit into a special account within
3 the EPA Hazardous Substance Superfund or such other account as EPA may
4 specify, in immediately available funds and without setoff, counterclaim, or
5 condition of any kind, a cash amount up to but not exceeding the estimated cost of
6 completing the Work as of such date, as determined by EPA. In addition, if at any
7 time EPA is notified by the issuer of a performance guarantee that such issuer
8 intends to cancel the performance guarantee mechanism it has issued, then, unless
9 Settling Work Defendant provides a substitute performance guarantee mechanism
10 in accordance with this Section no later than thirty (30) Days prior to the
11 impending cancellation date, EPA shall be entitled (as of and after the date that is
12 thirty (30) Days prior to the impending cancellation) to draw fully on the funds
13 guaranteed under the then-existing performance guarantee. All EPA Work
14 Takeover costs not reimbursed under this Paragraph shall be reimbursed under
15 Section XVI (Establishment of Escrow and Trust Accounts, and Payments).

22 54. Modification of Amount and/or Form of Performance Guarantee

23 a. Reduction of Amount of Performance Guarantee. If Settling
24 Work Defendant believes that the estimated cost of completing the Work has
25 diminished below the amount set forth in Paragraph 49, Settling Work Defendant
26 may, on any anniversary of the Effective Date, or at any other time agreed to by
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1 EPA and Settling Work Defendant, petition EPA in writing, with copies to the
2 Cities, to request a reduction in the amount of the performance guarantee provided
3 pursuant to this Section so that the amount of the performance guarantee is equal to
4 the estimated cost of completing the Work. Settling Work Defendant shall submit
5 a written proposal for such reduction to EPA that shall specify, at a minimum, the
6 estimated cost of completing the Work and the basis upon which such cost was
7 calculated. In seeking approval for a reduction in the amount of the performance
8 guarantee, Settling Work Defendant shall follow the procedures set forth in
9 Paragraph 54. b. 2) for requesting a revised or alternative form of performance
10 guarantee, except as specifically provided in this Paragraph 54. a. If EPA decides
11 to accept Settling Work Defendant's proposal for a reduction in the amount of the
12 performance guarantee, either to the amount set forth in Settling Work Defendant's
13 written proposal or to some other amount as selected by EPA, EPA will notify
14 Settling Work Defendant of such decision in writing and provide copies of the
15 notification to the Cities. Upon EPA's acceptance of a reduction in the amount of
16 the performance guarantee, the Estimated Cost of the Work shall be deemed to be
17 the estimated cost of completing the Work set forth in EPA's written decision.
18 After receiving EPA's written decision, Settling Work Defendant may reduce the
19 amount of the performance guarantee in accordance with and to the extent
20 permitted by such written acceptance and shall submit copies of all executed
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1 and/or otherwise finalized instruments or other documents required in order to
2 make the selected performance guarantee(s) legally binding in accordance with
3 Paragraph 54. b. 2). In the event of a dispute, Settling Work Defendant may
4 reduce the amount of the performance guarantee required hereunder only in
5 accordance with a final administrative or judicial decision resolving such dispute
6 pursuant to Section XIX (Dispute Resolution). No change to the form or terms of
7 any performance guarantee provided under this Section, other than a reduction in
8 amount, is authorized except as provided in Paragraph 52 or Paragraph 54. b.

12 b. Change of Form of Performance Guarantee.

13 1) If, after the Effective Date, Settling Work Defendant
14 desires to change the form or terms of any performance guarantee(s) provided
15 pursuant to this Section, Settling Work Defendant may, on any anniversary of the
16 Effective Date, or at any other time agreed to by the United States and Settling
17 Work Defendant, petition EPA in writing, and provide copies to the Cities, to
18 request a change in the form or terms of the performance guarantee provided
19 hereunder. The submission of such proposed revised or alternative performance
20 guarantee shall be as provided in Paragraph 54. b. 2). Any decision made by EPA
21 on a petition submitted under this Paragraph shall be made in EPA's sole and
22 unreviewable discretion, and such decision shall not be subject to challenge by
23 Settling Work Defendant pursuant to the dispute resolution provisions of this
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1 Consent Decree or in any other forum.

2 2) Settling Work Defendant shall submit a written proposal
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4 for a revised or alternative performance guarantee to EPA, and provide copies to
5 the Cities, which shall specify, at a minimum, the estimated cost of completing the
6 Work, the basis upon which such cost was calculated, and the proposed revised
7 performance guarantee, including all proposed instruments or other documents
8 required in order to make the proposed performance guarantee legally binding.
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10 The proposed revised or alternative performance guarantee must satisfy all
11 requirements set forth or incorporated by reference in this Section. Settling Work
12 Defendant shall submit such proposed revised or alternative performance guarantee
13 to the EPA Regional Financial Management Officer in accordance with Section
14 XXV (Notices and Submissions). EPA will notify Settling Work Defendant in
15 writing of its decision, and provide copies to the Cities of its decision, to accept or
16 reject a revised or alternative performance guarantee submitted pursuant to this
17 Paragraph. Within ten (10) Days after receiving a written decision approving the
18 proposed revised or alternative performance guarantee, Settling Work Defendant
19 shall execute and/or otherwise finalize all instruments or other documents required
20 in order to make the selected performance guarantee(s) legally binding in a form
21 substantially identical to the documents submitted to EPA as part of the proposal,
22 and such performance guarantee(s) shall thereupon be fully effective. Settling
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1 Work Defendant shall submit copies of all executed and/or otherwise finalized
2 instruments or other documents required in order to make the selected performance
3 guarantee(s) legally binding to the EPA Regional Financial Management Officer
4 and to the Cities within thirty (30) Days of receiving a written decision approving
5 the proposed revised or alternative performance guarantee in accordance with
6 Section XXV (Notices and Submissions) and to the United States and EPA as
7 specified in Section XXV.
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11 c. Release of Performance Guarantee. Settling Work Defendant
12 shall not release, cancel, or discontinue any performance guarantee provided
13 pursuant to this Section except as provided in this Paragraph. If Settling Work
14 Defendant receives written notice from EPA in accordance with Paragraph 57 that
15 the Work has been fully and finally completed in accordance with the terms of this
16 Consent Decree, or if EPA otherwise so notifies Settling Work Defendant in
17 writing, with copies to the Cities, Settling Work Defendant may thereafter release,
18 cancel, or discontinue the performance guarantee(s) provided pursuant to this
19 Section. In the event of a dispute, Settling Work Defendant may release, cancel, or
20 discontinue the performance guarantee(s) required hereunder only in accordance
21 with a final administrative or judicial decision resolving such dispute pursuant to
22 Section XIX (Dispute Resolution).
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XIV. CERTIFICATIONS OF COMPLETION

55. Completion of Construction of the Remedial Action

a. Within ninety (90) Days after Settling Work Defendant

concludes that the Construction of the Remedial Action has been fully performed, consistent with the requirements in the SOW, Settling Work Defendant shall schedule and conduct a Final Construction Inspection to be attended by Settling Work Defendant and EPA, with an opportunity for the Cities to attend at their discretion. If, after the Final Construction Inspection, Settling Work Defendant still believes that Construction of the Remedial Action has been fully performed and the requirements of the SOW related to Construction of the Remedial Action have been achieved, it shall submit a written report and request for certification to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables), with copies to the Cities and County of San Bernardino, within thirty (30) Days after the inspection. In the report, a registered professional engineer and Settling Work Defendant's Project Coordinator shall state that Construction of the Remedial Action has been completed in full satisfaction of the requirements of the SOW and this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Work Defendant or Settling Work Defendant's Project

1 Coordinator:

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

10 If, after completion of the Final Construction Inspection and receipt and review of
11 the written report, EPA determines that the Construction of the Remedial Action or
12 any portion thereof has not been completed in accordance with the SOW or this
13 Consent Decree, EPA will notify Settling Work Defendant in writing, and provide
14 copies to the Cities, of the activities that must be undertaken by Settling Work
15 Defendant pursuant to this Consent Decree to complete the Construction of the
16 Remedial Action, provided, however, that EPA may only require Settling Work
17 Defendant to perform such activities pursuant to this Paragraph to the extent that
18 such activities are consistent with Settling Work Defendant's obligations in
19 Paragraph 6 and the "scope of the remedy set forth in the 2010 ROD," as that term
20 is defined in Paragraph 19. a. EPA will set forth in the notice a schedule for
21 performance of such activities consistent with the Consent Decree and the SOW or
22 require Settling Work Defendant to submit a schedule to EPA for approval
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CONSENT DECREE

1 pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables).
2 Settling Work Defendant shall perform all activities described in the notice in
3 accordance with the specifications and schedules established pursuant to this
4 Paragraph, subject to its right to invoke the dispute resolution procedures set forth
5 in Section XIX (Dispute Resolution).
6

7
8 b. If EPA concludes, based on the initial or any subsequent report
9 requesting Certification of Completion of Construction of the Remedial Action,
10 that Construction of the Remedial Action has been performed in accordance with
11 the SOW and this Consent Decree, EPA will so certify in writing to Settling Work
12 Defendant, and provide copies to the Cities and County of San Bernardino. This
13 certification shall constitute the Certification of Completion of Construction of the
14 Remedial Action for purposes of this Consent Decree. Certification of Completion
15 of Construction of the Remedial Action shall not affect Settling Work Defendant's
16 remaining obligations under this Consent Decree, and specifically shall not affect
17 Settling Work Defendant's obligation under this Consent Decree to achieve and
18 maintain Performance Standards.
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23 56. Completion of Startup Activities.

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25 a. Within ninety (90) Days after Settling Work Defendant
26 concludes that the remedy is Operational and Functional, Settling Work Defendant
27 shall schedule and conduct a pre-certification inspection to be attended by Settling
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1 Work Defendant and EPA, with an opportunity for the Cities to attend at their
2 discretion. If, after the pre-certification inspection, Settling Work Defendant still
3 believes that the remedy is Operational and Functional, it shall submit a Request
4 for Certification and draft Remedial Action Report to EPA for approval pursuant to
5 Section XI (EPA Approval of Plans, Reports, and Other Deliverables), with copies
6 to the State, the Cities, and the County of San Bernardino, within thirty (30) Days
7 of the inspection. In the report, a registered professional engineer and Settling
8 Work Defendant's Project Coordinator shall state that the remedy is Operational
9 and Functional. The Remedial Action Report shall include as-built drawings
10 signed and stamped by a professional engineer. The report shall contain the
11 following statement, signed by a responsible corporate official of Settling Work
12 Defendant or Settling Work Defendant's Project Coordinator:

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18 I certify under penalty of law that this document and all attachments
19 were prepared under my direction or supervision in accordance with a
20 system designed to assure that qualified personnel properly gather and
21 evaluate the information submitted. Based on my inquiry of the
22 person or persons who manage the system, or those persons directly
23 responsible for gathering the information, the information submitted
24 is, to the best of my knowledge and belief, true, accurate, and
25 complete. I am aware that there are significant penalties for
26 submitting false information, including the possibility of fine and
27 imprisonment for knowing violations.
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29 If, after completion of the pre-certification inspection and receipt and review of the
30 draft Remedial Action Report, EPA, determines that the remedy or any portion

1 thereof is not Operational and/or Functional, EPA will notify Settling Work
2 Defendant in writing, and provide copies to the Cities and the County of San
3 Bernardino, of the activities that must be undertaken by Settling Work Defendant
4 pursuant to this Consent Decree to complete Startup Activities, provided, however,
5 that EPA may only require Settling Work Defendant to perform such activities
6 pursuant to this Paragraph to the extent that such activities are consistent with
7 Settling Work Defendant's obligations in Paragraph 6 and the "scope of the remedy
8 set forth in the 2010 ROD," as that term is defined in Paragraph 19. a. EPA will
9 set forth in the notice a schedule for performance of such activities consistent with
10 the Consent Decree and the SOW or require Settling Work Defendant to submit a
11 schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans,
12 Reports, and Other Deliverables). Settling Work Defendant shall perform all
13 activities described in the notice in accordance with the specifications and
14 schedules established pursuant to this Paragraph, subject to its right to invoke the
15 dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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22 b. If EPA concludes, based on the initial or any subsequent report
23 requesting Certification of Completion of Startup Activities, that Startup Activities
24 have been performed in accordance with this Consent Decree, EPA will so certify
25 in writing to Settling Work Defendant and provide copies to the Cities and the
26 County of San Bernardino. This certification shall constitute the Certification of
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1 Completion of Startup Activities for purposes of this Consent Decree, including,
2 but not limited to, Section XXI (Covenants, Releases, and Reservations of Rights).
3
4 Certification of Completion of Startup Activities shall not affect Settling Work
5 Defendant's remaining obligations to complete the Work pursuant to this Consent
6 Decree.

7
8 57. Completion of the Work.

9 a. Within ninety (90) Days after Settling Work Defendant
10 concludes that the Work, other than any remaining activities required under
11 Section VII (Remedy Review), have been fully performed, Settling Work
12 Defendant shall schedule and conduct a pre-certification inspection to be attended
13 by Settling Work Defendant and EPA, with an opportunity for the Cities and the
14 County of San Bernardino to attend at their discretion. If, after the pre-certification
15 inspection, Settling Work Defendant still believes that the Work has been fully
16 performed, Settling Work Defendant shall submit a written report by a registered
17 professional engineer stating that the Work has been completed in full satisfaction
18 of the requirements of this Consent Decree to EPA for approval pursuant to
19 Section XI (EPA Approval of Plans, Reports, and Other Deliverables), with copies
20 to the Cities and the County of San Bernardino. The report shall contain the
21 statement set forth in Paragraph 55. a., signed by a responsible corporate official of
22 Settling Work Defendant or Settling Work Defendant's Project Coordinator. If,
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1 after review of the written report, EPA, after reasonable opportunity for review and
2 comment by the State and the Cities, determines that any portion of the Work has
3 not been completed in accordance with this Consent Decree, EPA will notify
4 Settling Work Defendant in writing, and provide Copies to the Cities and the
5 County of San Bernardino of the activities that must be undertaken by Settling
6 Work Defendant pursuant to this Consent Decree to complete the Work, provided,
7 however, that EPA may only require Settling Work Defendant to perform such
8 activities pursuant to this Paragraph to the extent that such activities are consistent
9 with Settling Work Defendant's obligations in Paragraph 6 and the "scope of the
10 remedy set forth in the 2010 ROD," as that term is defined in Paragraph 19. a.
11 EPA will set forth in the notice a schedule for performance of such activities
12 consistent with the Consent Decree and the SOW or require Settling Work
13 Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA
14 Approval of Plans, Reports, and Other Deliverables). Settling Work Defendant
15 shall perform all activities described in the notice in accordance with the
16 specifications and schedules established therein, subject to its right to invoke the
17 dispute resolution procedures set forth in Section XIX (Dispute Resolution).

18 b. If EPA concludes, based on the initial or any subsequent
19 request for Certification of Completion of the Work by Settling Work Defendant
20 and after a reasonable opportunity for review and comment by the State and Rialto,
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1 that the Work has been performed in accordance with this Consent Decree, EPA
2 will so notify Settling Work Defendant in writing and provide copies to the Cities
3 and the Settling Defendants.
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5 **XV. EMERGENCY RESPONSE**

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7 58. If any action or occurrence during the performance of the Work
8 causes or threatens a release of Waste Material from the B.F. Goodrich Superfund
9 Site that constitutes an emergency situation or may present an immediate threat to
10 public health or welfare or the environment, Settling Work Defendant shall, subject
11 to Paragraph 59, immediately take all appropriate action to prevent, abate, or
12 minimize such release or threat of release, and shall immediately notify the EPA's
13 Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate
14 Project Coordinator. If neither of these persons is available, Settling Work
15 Defendant shall notify the EPA Emergency Response Unit, Region 9. Settling
16 Work Defendant shall also immediately notify Rialto and Colton. Settling Work
17 Defendant shall take such actions in consultation with EPA's Project Coordinator
18 or other available authorized EPA officer and in accordance with all applicable
19 provisions of the Health and Safety Plans, the Contingency Plans, and any other
20 applicable plans or documents developed pursuant to the SOW. In the event that
21 Settling Work Defendant fails to take appropriate response action as required by
22 this Section, and EPA takes such action instead, Settling Work Defendant shall
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1 reimburse EPA all costs of the response action under Section XVI (Establishment
2 of Escrow Account, Trust Fund, and Payments). To the extent the emergency
3 situation requires Settling Work Defendant to take any action involving further
4 2010 ROD Capital Costs and/or 2010 ROD O&M Costs, the United States shall, as
5 provided in Paragraphs 66. d. and 66. e., reimburse Settling Work Defendant for
6 fifty percent (50%) of those costs; provided that, in the event the emergency
7 situation was caused by the Settling Work Defendant or any of its contractors or
8 subcontractors, Settling Work Defendant shall pay the costs of any response action
9 needed to address the emergency situation.
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13 59. Subject to Section XXI (Covenants, Releases, and Reservations of
14 Rights), nothing in the preceding Paragraph or in this Consent Decree shall be
15 deemed to limit any authority of the United States: (a) to take all appropriate
16 action to protect human health and the environment or to prevent, abate, respond
17 to, or minimize an actual or threatened release of Waste Material on, at, or from
18 the B.F. Goodrich Superfund Site, or (b) to direct or order such action, or seek an
19 order from the Court, to protect human health and the environment or to prevent,
20 abate, respond to, or minimize an actual or threatened release of Waste Material
21 on, at, or from the B.F. Goodrich Superfund Site.
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1 Paragraph 69. Settling Work Defendant generally bears the responsibility of
2 funding and performing the Work, and may draw on the 2010 ROD Trust Fund
3 and/or seek reimbursement from the Initial Disbursement Special Account to do
4 so. However, Settling Work Defendant is only permitted to spend up to ten million
5 dollars (\$10,000,000) in total from the 2010 ROD Trust Fund and the Initial
6 Disbursement Special Account combined for the 2010 ROD Capital Costs. 2010
7 ROD Capital Costs beyond ten million dollars (\$10,000,000) will not be funded by
8 the 2010 ROD Trust Fund or Initial Disbursement Special Account; rather, they
9 will be funded equally by Settling Work Defendant (50 percent) and Settling
10 Federal Agencies (50 percent) as described in Paragraph 66. d. below. Settling
11 Work Defendant shall be responsible for the 2010 ROD O&M Costs for the first
12 twenty-five (25) years of operation, and may use the 2010 ROD Trust Fund for that
13 purpose until it is exhausted. Settling Work Defendant and Settling Federal
14 Agencies shall equally (50 percent each) fund 2010 ROD O&M Costs beyond the
15 first twenty-five (25) years of the 2010 ROD's operation, as described in Paragraph
16 66. e. below.

23 61. Establishment and Maintenance of the B.F. Goodrich Superfund Site
24 Escrow Account. No later than ten (10) working days after Settling Work
25 Defendant receives notice that this Consent Decree has been lodged with the Court,
26 Settling Work Defendant shall assure that an escrow account entitled the B.F.
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1 Goodrich Superfund Site Escrow Account is established at a bank whose trust
2 operations are regulated and examined by a federal or state agency. The purpose
3 of the B.F. Goodrich Superfund Site Escrow Account is to receive, hold, and
4 distribute (as jointly authorized by Rialto, Colton, EPA, and Settling Work
5 Defendant) certain settlement payments required by this Consent Decree.
6
7 However, if the Court's entry or failure to enter this Consent Decree is appealed
8 for any reason which would implicate funds placed in the B.F. Goodrich Superfund
9 Site Escrow Account, and the appeal process results in the Consent Decree being
10 vacated, funds in the B.F. Goodrich Superfund Site Escrow Account shall be
11 returned to each Party that made payment into the B.F. Goodrich Superfund Site
12 Escrow Account in the amount of such payment, together with the interest earned
13 thereon, if any, within fifteen (15) Days of the conclusion of the appeal process.
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15 These and other terms of the B.F. Goodrich Superfund Site Escrow Account, and
16 the instructions to the Escrow Agent, shall be mutually agreed upon by Settling
17 Work Defendant and the United States, consistent with this Consent Decree.
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19 Settling Work Defendant is responsible for establishing and maintaining the B.F.
20 Goodrich Superfund Site Escrow Account, including but not limited to paying all
21 account fees, if any. The B.F. Goodrich Superfund Site Escrow Account shall be
22 subject to the continuing jurisdiction of the Court. All disputes related to the B.F.
23 Goodrich Superfund Site Escrow Account shall be subject to the dispute resolution
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CONSENT DECREE

1 procedures set forth in Section XIX (Dispute Resolution).

2 62. Establishment and Maintenance of the B.F. Goodrich Superfund Site
3 2010 ROD Trust Fund. No later than thirty (30) Days after the later of (1) the
4 Effective Date or (2) the conclusion of the appeal process described in Paragraph
5 61, Settling Work Defendant shall establish a trust fund entitled the B.F. Goodrich
6 Superfund Site 2010 ROD Trust Fund (“2010 ROD Trust Fund”). Settling Work
7 Defendant is responsible thereafter for maintaining the 2010 ROD Trust Fund,
8 including but not limited to paying all account fees, if any. Funds in the 2010
9 ROD Trust Fund may be invested only in Investment-Grade Debt Securities. The
10 purpose of the B.F. Goodrich Superfund Site 2010 ROD Trust Fund is to receive,
11 hold, and distribute certain settlement funds which Settling Work Defendant shall
12 use only to pay for and/or reimburse necessary costs of response in implementing
13 the Work, and, if Settling Work Defendant so chooses, as a performance guarantee,
14 in accordance with the terms of this Consent Decree, except Settling Work
15 Defendant may use no more than ten million dollars (\$10,000,000) from the 2010
16 ROD Trust Fund and/or Initial Disbursement Special Account combined to pay for
17 and/or reimburse 2010 ROD Capital Costs. Any funds remaining in the B.F.
18 Goodrich Superfund Site 2010 ROD Trust Fund after EPA has certified the
19 Completion of the Work pursuant to this Consent Decree shall be deposited into
20 the B.F. Goodrich Superfund Site Special Account or deposited into the EPA
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1 Hazardous Substances Superfund, whichever of the two EPA chooses.

2 63. Payment by Settling Cashout Defendants to the B.F. Goodrich
3 Superfund Site Escrow Account. Within ten (10) working days of the Effective
4 Date, or ten (10) working days after receiving payment instructions from the
5 United States on behalf of EPA, whichever is later, Settling Cashout Defendants
6 shall pay to the B.F. Goodrich Superfund Site Escrow Account the amounts set
7 forth in Appendix D, in accordance with those payment instructions.
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10 64. Payments by Settling Ability to Pay Defendants to the B.F. Goodrich
11 Superfund Site Escrow Account. Within ten (10) working days of the Effective
12 Date, or ten (10) working days after receiving payment instructions from the
13 United States on behalf of EPA, whichever is later, Settling Ability to Pay
14 Defendants shall pay to the B.F. Goodrich Superfund Site Escrow Account the
15 amounts set forth in Appendix C, in accordance with those payment instructions.
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18 65. Payments by the San Bernardino County Settling Parties to the B.F.
19 Goodrich Superfund Site Escrow Account. Within ten (10) working days of the
20 Effective Date, or ten (10) working days after receiving payment instructions from
21 the United States on behalf of EPA, whichever is later, the San Bernardino County
22 Settling Parties shall pay to the B.F. Goodrich Superfund Site Escrow Account two
23 million dollars (\$2,000,000), in accordance with those payment instructions.
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26 66. Payments by Settling Federal Agencies.
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1 a. Payment to B.F. Goodrich Superfund Site Escrow Account and
2 Cities. Within sixty (60) Days after a final judgment, including any appeals, the
3 United States, on behalf of Settling Federal Agencies, shall pay to the B.F.
4 Goodrich Superfund Site Escrow Account twenty-one million two hundred fifty
5 thousand dollars (\$21,250,000), together with Interest accrued on that twenty-one
6 million two hundred fifty thousand dollars (\$21,250,000), if any. In the event that
7 the United States, on behalf of the Settling Federal Agencies, enters into a
8 settlement subsequent to the lodging of this Consent Decree with any entity, not a
9 party to this Consent Decree, and provides additional consideration in that
10 subsequent settlement, the payment of this subparagraph shall be reduced to
11 nineteen million five hundred thousand dollars (\$19,500,000), together with
12 Interest accrued, if any. Interest on any amounts due under this subparagraph shall
13 be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. §
14 9607(a), commencing on the 61st day from the Effective Date of this Decree until
15 the payment is made.

16 b. Any reduction in payment as described in Paragraph 66. a. will
17 not affect the payments made by the B.F. Goodrich Superfund Site Escrow
18 Account to the 2010 ROD Trust Fund, to Colton, and to Rialto, or the funds
19 transferred by EPA to the Initial Disbursement Special Account, which shall
20 remain as described in Paragraphs 70. a. 1) a), b), and c), and in Paragraph 69,
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1 respectively.

2 c. The United States, on behalf of the Settling Federal Agencies,
3 reserves the right to pay directly to the Cities in a separate agreement a portion of
4 the payments that are otherwise due to Colton under Paragraph 70. a. 1) b) and
5 Rialto under Paragraph 70. a. 1) c). Any such direct payment would reduce the
6 amounts received by Colton under Paragraph 70. a. 1) b) by the amount of the
7 direct payment to Colton, and to Rialto under Paragraph 70. a. 1) c) by the amount
8 of the direct payment to Rialto, and would reduce the amount the Settling Federal
9 Agencies pay to the B.F. Goodrich Superfund Site Escrow Account by the amount
10 of the combined direct payment. The total amount of the Settling Federal
11 Agencies' obligations would not change, and the obligations and commitments of
12 Parties other than the United States, Rialto, and Colton would not change.

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18 d. Payment to Settling Work Defendant for 2010 ROD Capital
19 Costs in Excess of Ten Million Dollars. Subject to and in the manner described in
20 Paragraph 66. f.-p., the United States, on behalf of Settling Federal Agencies, shall
21 pay directly to Settling Work Defendant, and not into the B.F. Goodrich Superfund
22 Site Escrow Account, fifty percent (50 percent) of Settling Work Defendant's 2010
23 ROD Capital Costs in excess of ten million dollars (\$10,000,000). Settling Work
24 Defendant shall be solely responsible for the remaining fifty percent (50 percent)
25 of the 2010 ROD Capital Costs in excess of ten million dollars (\$10,000,000).
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1 e. Payment to Settling Work Defendant for 2010 ROD O&M
2 Costs. Subject to and in the manner described in Paragraph 66. f.-p., the United
3 States, on behalf of Settling Federal Agencies, shall, commencing twenty-five (25)
4 years after the date of EPA's Certification of Completion of Construction of the
5 Remedial Action issued pursuant to Paragraph 55 (Completion of Construction of
6 the Remedial Action), pay directly to Settling Work Defendant, and not to the B.F.
7 Goodrich Superfund Site Escrow Account, fifty percent (50 percent) of Settling
8 Work Defendant's 2010 ROD O&M Costs; provided, however, that this cost
9 sharing shall not take effect until after all funds in the 2010 ROD Trust Fund have
10 been exhausted. Settling Work Defendant shall be solely responsible for the first
11 twenty-five (25) years of 2010 ROD O&M Costs and thereafter the remaining fifty
12 percent (50 percent) of those costs.
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18 f. On or before August 15 of each calendar year, Settling Work
19 Defendant will send the United States a statement that includes an accounting of
20 2010 ROD Capital Costs and 2010 ROD O&M Costs paid from January 1 to June
21 30 of that year (if any). On or before February 15 of each succeeding calendar
22 year, Settling Work Defendant will send the United States a statement that includes
23 an accounting of 2010 ROD Capital Costs or 2010 ROD O&M Costs paid from
24 July 1 to December 31 of the preceding calendar year (if any). No accounting is
25 required by this Paragraph if Settling Work Defendant has not incurred 2010 ROD
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1 Capital Costs or 2010 ROD O&M Costs during the applicable six (6) month
2 period. In no event shall Settling Work Defendant submit or be entitled to recover
3 from the United States a 2010 ROD Capital Cost or 2010 ROD O&M Cost more
4 than two (2) years after it has been incurred by Settling Work Defendant.
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6 g. Included with each statement shall be copies of invoices, a
7 description of the Work underlying the invoices, and other documentation
8 reasonably requested by the United States sufficient to support the claimed 2010
9 ROD Capital Costs in excess of ten million dollars (\$10,000,000) and/or 2010
10 ROD O&M Costs beyond twenty-five (25) years of O&M. Each statement shall
11 also contain a certification by Settling Work Defendant under penalty of perjury
12 that each claimed item qualifies as 2010 ROD Capital Costs in excess of ten
13 million dollars (\$10,000,000) and/or 2010 ROD O&M Costs beyond twenty-five
14 (25) years of O&M, and was incurred and paid by Settling Work Defendant. As a
15 precondition for seeking reimbursement, Settling Work Defendant shall also
16 certify under penalty of perjury that they have not recovered any claimed 2010
17 ROD Capital Costs in excess of ten million dollars (\$10,000,000), and/or 2010
18 ROD O&M Costs beyond twenty-five (25) years of O&M, from the United States
19 or from any other source, including insurers. Settling Work Defendant shall notify
20 the United States before making any claims to other parties for reimbursement of
21 2010 ROD Capital Costs in excess of ten million dollars (\$10,000,000), and/or
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1 2010 ROD O&M Costs beyond twenty-five (25) years of O&M.

2 h. Within ninety (90) Days of the United States' receipt of each
3 accounting statement, the United States, on behalf of Settling Federal Agencies,
4 shall reimburse Settling Work Defendant fifty percent (50 percent) of the 2010
5 ROD Capital Costs in excess of ten million dollars (\$10,000,000), and 2010 ROD
6 O&M Costs beyond twenty-five (25) years of O&M, contained in the statement
7 that are properly included and supported, except as otherwise provided in
8 Paragraph 66. i. of this Consent Decree. Payment shall be made pursuant to
9 instructions given by Settling Work Defendant, provided these instructions comply
10 with federal and any other applicable law.

11 i. If Settling Work Defendant fails to support 2010 ROD Capital
12 Costs in excess of ten million dollars (\$10,000,000), and/or 2010 ROD O&M
13 Costs beyond twenty-five (25) years of O&M, with documentation required in
14 Paragraph 66. g., or otherwise fails to demonstrate that a cost is properly
15 reimbursable under this Consent Decree, the United States may object, in writing,
16 within sixty (60) Days of receipt of the statement, and said objection shall be sent
17 to Settling Work Defendant's designated counsel. Any such objection shall
18 identify the contested cost item and the basis for objection. In the event of an
19 objection, the United States, on behalf of Settling Federal Agencies, shall, within
20 the ninety (90) Day period, reimburse its share of any uncontested 2010 ROD
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1 Capital Costs in excess of ten million dollars (\$10,000,000) and 2010 ROD O&M
2 Costs beyond twenty-five (25) years of O&M to Settling Work Defendant. After
3 the transmission of any objection, the United States shall initiate the dispute
4 resolution procedures provided in this Paragraph.
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6 j. If any payment required to be made by this Paragraph is not
7 made in accordance with the provisions of this Section, Interest on the unpaid
8 balance shall accrue from the date on which the payment was due.
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10 k. If the United States determines for any reason that a portion of
11 2010 ROD Capital Costs in excess of ten million dollars (\$10,000,000), and/or
12 2010 ROD O&M Costs beyond twenty-five (25) years of O&M, for which
13 reimbursement was made to Settling Work Defendant pursuant to this Consent
14 Decree was not properly subject to reimbursement, the United States, on behalf of
15 Settling Federal Agencies, may demand credit, with Interest, of all payments made
16 previously with regard to those costs, which credit shall be applied to Settling
17 Work Defendant's subsequent demands for 2010 ROD Capital Costs in excess of
18 ten million dollars (\$10,000,000), and/or 2010 ROD O&M Costs beyond twenty-
19 five (25) years of O&M. Within sixty (60) Days of receiving such a demand,
20 Settling Work Defendant shall credit such prior payments to the United States, on
21 behalf of Settling Federal Agencies, with Interest from the date of the prior
22 payments to the date of return of those payments, unless Settling Work Defendant
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1 provides written notice contesting that demand for credit within said sixty (60) Day
2 period, in which case the dispute resolution provisions of this Paragraph shall take
3 effect. The United States, on behalf of Settling Federal Agencies, shall not
4 demand credit for any payment of 2010 ROD Capital Costs in excess of ten million
5 dollars (\$10,000,000), and/or 2010 ROD O&M Costs beyond twenty-five (25)
6 years of O&M, more than two (2) years after it has made that payment, except in
7 cases of fraud or bad faith, or where the United States could not have reasonably
8 determined, from the information submitted by Settling Work Defendant before the
9 payment, that a claimed cost was not a valid 2010 ROD Capital Costs in excess of
10 ten million dollars (\$10,000,000), and/or 2010 ROD O&M Costs beyond twenty-
11 five (25) years of O&M.

16 1. A determination by the United States not to object to 2010
17 ROD Capital Costs in excess of ten million dollars (\$10,000,000), and/or 2010
18 ROD O&M Costs beyond twenty-five (25) years of O&M, shall not constitute an
19 admission, agreement, understanding, or other indication by the United States that
20 any such cost is within the scope of this Consent Decree, that such cost was
21 necessary or incurred consistent with the NCP, or is otherwise reimbursable under
22 this Consent Decree or under any statute, regulation, or other provision of law or
23 equity.
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28 m. Dispute Resolution for Settling Work Defendant's 2010 ROD

1 Capital Costs in Excess of Ten Million Dollars and 2010 ROD O&M Costs Beyond
2 Twenty-Five Years of O&M. Any dispute with respect to the obligation of the
3 United States, on behalf of Settling Federal Agencies, to reimburse 2010 ROD
4 Capital Costs in excess of ten million dollars (\$10,000,000), and/or 2010 ROD
5 O&M Costs beyond twenty-five (25) years of O&M, under this Consent Decree
6 shall in the first instance be the subject of informal negotiations between the United
7 States and Settling Work Defendant. The period for informal negotiations shall last
8 sixty (60) Days from the date the United States transmits its objection pursuant to
9 this Paragraph, or Settling Work Defendant transmits an intention to contest a
10 demand for credit, unless this period is extended by written agreement of the United
11 States and Settling Work Defendant. If informal negotiations are unsuccessful, the
12 United States and Settling Work Defendant may notify the Court of the dispute and
13 the need for a resolution, either by the Court or through the use of Court-annexed
14 alternative dispute resolution procedures, unless the United States and Settling
15 Work Defendant agree in writing, and provide copies to the Cities, to an alternative
16 method of dispute resolution.

23 n. In the event informal negotiations are unsuccessful, neither the
24 United States nor Settling Work Defendant shall submit or rely on any evidence, in
25 any form, to resolve the disputed 2010 ROD Capital Costs in excess of ten million
26 dollars (\$10,000,000), and/or 2010 ROD O&M Costs beyond twenty-five (25)
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1 years of O&M, that was not disclosed to the other party prior to the expiration of
2 the informal negotiation period, except upon leave of Court or appointed/agreed
3 mediator. However, nothing in this Paragraph shall preclude a party from
4 submitting or relying on: (i) expert testimony; (ii) factual evidence not in existence
5 at the time of the informal negotiation period; (iii) factual evidence not known to
6 the party at the time of the informal negotiation period; or (iv) evidence that is, or
7 was at the time of the informal negotiation period, exclusively within the
8 possession of the other party.
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12 o. If a reimbursement is determined to be due, the United States,
13 on behalf of Settling Federal Agencies, shall pay the sum determined to be due
14 within sixty (60) Days of the resolution of the dispute (with accrued Interest
15 pursuant to this Consent Decree). If a credit is determined to be due to the United
16 States, on behalf of Settling Federal Agencies, pursuant to this Paragraph, such
17 credit shall be applied to Settling Work Defendant's subsequent claims for
18 reimbursement. In the event Settling Work Defendant makes no subsequent claims
19 for reimbursement exceeding the credit, then it shall refund any remaining credit to
20 the United States, on behalf of Settling Federal Agencies, with Interest accruing
21 from the date the credit was determined due.
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26 p. Interest. In the event that any payment required by Paragraph
27 66. d. or e. is not made within the time frame provided therein, Interest on the
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1 unpaid balance shall be paid at the rate established pursuant to Section 107(a) of
2 CERCLA, 42 U.S.C. § 9607(a), commencing on the date it was due.

3
4 67. The Parties to this Consent Decree recognize and acknowledge that
5 the payment obligations of Settling Federal Agencies under this Consent Decree
6 can only be paid from appropriated funds legally available for such purpose.
7
8 Nothing in this Consent Decree shall be interpreted or construed as a commitment
9 or requirement that any Settling Federal Agency obligate or pay funds in
10 contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
11 applicable provision of law.
12

13 68. Payments by Settling Work Defendant to EPA for Future Response
14 Costs. In the event that EPA incurs Future Response Costs, Settling Work
15 Defendant is required to pay under this Consent Decree only those Future
16 Response Costs that are related to Section IX (Access) and/or Paragraph 111
17 (Work Takeover) and are necessary and not inconsistent with the NCP.
18
19

20 69. Establishment of B.F. Goodrich Superfund Site Disbursement Special
21 Account and Reimbursement of Settling Work Defendant's Expenditures. Within
22 thirty (30) Days after the Effective Date, EPA shall establish the B.F. Goodrich
23 Superfund Site Disbursement Special Account ("Initial Disbursement Special
24 Account") and shall transfer two million eight hundred thousand dollars
25 (\$2,800,000) from the B.F. Goodrich Superfund Site Special Account to the Initial
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1 Disbursement Special Account. Subject to the terms and conditions set forth in
2 this Paragraph, EPA agrees to make the funds in the Initial Disbursement Special
3 Account, including Interest earned on such funds, available for disbursement to
4 Settling Work Defendant as partial reimbursement for performance of portions the
5 Work undertaken by Settling Work Defendant.
6

7
8 a. Requests for Disbursement of Initial Disbursement Special
9 Account Funds.

10 1) Within sixty (60) Days after the Effective Date, and no
11 more frequently than twice per year thereafter, Settling Work Defendant shall
12 submit to EPA a Cost Summary and Certification, as defined in Paragraph 69. a.
13 2), covering the Work performed pursuant to this Consent Decree up to the date of
14 submission of that Cost Summary and Certification. Settling Work Defendant
15 shall not include in any submission costs included in a previous Cost Summary and
16 Certification if those costs have been previously sought and reimbursed, but may
17 include any costs for Work not previously sought or reimbursed regardless of when
18 the Work was performed.
19

20 2) Each Cost Summary and Certification shall include a
21 complete and accurate written cost summary and certification of the necessary
22 costs incurred and paid by Settling Work Defendant for the Work covered by the
23 particular submission, excluding costs not eligible for disbursement under
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1 Paragraph 69. c. Each Cost Summary and Certification shall contain the following
2 statement signed by an Independent Certified Public Accountant:

3
4 I certify that, to the best of my knowledge, after thorough
5 investigation and review of Emhart Industries, Inc.'s documentation of
6 costs incurred and paid for work performed pursuant to a certain
7 Consent Decree entered by the District Court in Central District of
8 California Case No. 09-01864 PSG (SSx) as Docket No. [_____] on
9 [DATE] during the period covered by this Cost Summary and
10 Certification, the information contained in or accompanying this
11 submission is true, accurate, and complete. I am aware that there are
12 significant penalties for knowingly submitting false information,
13 including the possibility of fine and imprisonment.

14 The Independent Certified Public Accountant shall also provide EPA a list of the
15 documents that he or she reviewed in support of the Cost Summary and
16 Certification. Upon request by EPA, Settling Work Defendant shall submit to EPA
17 any additional information that EPA deems necessary for its review and approval
18 of a Cost Summary and Certification.

19 3) If EPA finds that a Cost Summary and Certification
20 includes a mathematical error, costs excluded under Paragraph 69. c., costs that are
21 inadequately documented, or costs submitted in a prior Cost Summary and
22 Certification, it will notify Settling Work Defendant and provide it an opportunity
23 to cure the deficiency by submitting a revised Cost Summary and Certification. If
24 Settling Work Defendant fails to cure the deficiency within thirty (30) Days after
25 being notified of, and given the opportunity to cure, the deficiency, EPA will
26 recalculate Settling Work Defendant's costs eligible for disbursement for that
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1 submission and disburse the corrected amount to Settling Work Defendant.

2 Settling Work Defendant may dispute EPA's recalculation under this Paragraph
3 pursuant to Section XIX (Dispute Resolution). In no event shall Settling Work
4 Defendant be disbursed funds from the Initial Disbursement Special Account in
5 excess of amounts properly documented in a Cost Summary and Certification
6 accepted or modified by EPA.
7

8
9 b. Timing, Amount, and Method of Disbursing Funds From the
10 Initial Disbursement Special Account. Within thirty (30) Days after EPA's receipt
11 of a Cost Summary and Certification, as defined by Paragraph 69. a. 2), or if EPA
12 has requested additional information under Paragraph 69. a. 2), or a revised Cost
13 Summary and Certification under Paragraph 69. a. 3), within thirty (30) Days after
14 receipt of the additional information or revised Cost Summary and Certification,
15 and subject to the conditions set forth in this Paragraph, EPA shall disburse the
16 funds from the Initial Disbursement Special Account.
17

18
19 c. Costs Excluded from Disbursement. The following costs are
20 excluded from, and shall not be sought by Settling Work Defendant for,
21 disbursement from the Initial Disbursement Special Account: (1) any payments
22 made by Settling Work Defendant to the United States pursuant to this Consent
23 Decree, including, but not limited to, any interest or stipulated penalties paid
24 pursuant to Section XX (Stipulated Penalties); (2) attorneys' fees and costs, except
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1 for reasonable attorneys' fees and costs necessarily related to obtaining access or
2 institutional controls, as required by Section IX (Access); (3) costs of any response
3 activities Settling Work Defendant performs that are not required under, or
4 approved by EPA pursuant to, this Consent Decree; (4) costs related to Settling
5 Work Defendant's litigation, settlement, development of potential contribution
6 claims, or identification of defendants; (5) internal costs of Settling Work
7 Defendant, including but not limited to, salaries, travel, or in-kind services, except
8 for those costs that represent the work of employees of Settling Work Defendant
9 directly performing the Work; (6) any costs incurred by Settling Work Defendant
10 prior to the Effective Date, except for the Work required by Paragraph 6.b. and/or
11 for other approved Work completed pursuant to this Consent Decree; or (7) any
12 costs incurred by Settling Work Defendant pursuant to Section XIX (Dispute
13 Resolution).
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19 d. Termination of Disbursements from the Initial Disbursement
20 Special Account. EPA's obligation to disburse funds from the Initial
21 Disbursement Special Account under this Consent Decree shall terminate upon
22 EPA's determination that Settling Work Defendant: (1) has knowingly submitted a
23 materially false or misleading Cost Summary and Certification; (2) has submitted a
24 materially inaccurate or incomplete Cost Summary and Certification, and has
25 failed to correct the materially inaccurate or incomplete Cost Summary and
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1 Certification within thirty (30) Days after being notified of, and given the
2 opportunity to cure, the deficiency; or (3) failed to submit a Cost Summary and
3 Certification as required by Paragraph 69 within thirty (30) Days (or such longer
4 period as EPA agrees) after being notified that EPA intends to terminate its
5 obligation to make disbursements pursuant to this Section because of Settling
6 Work Defendant's failure to submit the Cost Summary and Certification as
7 required by Paragraph 69. a. 2). EPA's obligation to disburse funds from the
8 Initial Disbursement Special Account shall also terminate upon EPA's assumption
9 of performance of any portion of the Work pursuant to Paragraph 111 (Work
10 Takeover), when such assumption of performance of the Work is not challenged by
11 Settling Work Defendant or, if challenged, is upheld under Section XIX (Dispute
12 Resolution). Settling Work Defendant may dispute EPA's termination of special
13 account disbursements under Section XIX (Dispute Resolution).
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19 e. Recapture of Initial Disbursement Special Account

20 Disbursements.

21
22 1) Upon termination of disbursements from the Initial
23 Disbursement Special Account under Paragraph 69, if EPA has previously
24 disbursed funds from the Initial Disbursement Special Account for activities
25 specifically related to the reason for termination, *i.e.*, discovery of a materially
26 false or misleading submission after disbursement of funds based on that
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1 submission, EPA shall submit a bill to Settling Work Defendant for those amounts
2 already disbursed from the Initial Disbursement Special Account specifically
3 related to the reason for termination, plus Interest on that amount covering the
4 period from the date of disbursement of the funds by EPA to the date of repayment
5 of the funds by Settling Work Defendant.
6

7
8 2) Within 30 days after receipt of EPA's bill, Settling Work
9 Defendant shall reimburse the EPA Hazardous Substance Superfund for the total
10 amount billed. Payment shall be made in accordance with Paragraph 70. b.
11
12 (Instructions for Future Response Cost Payments).

13
14 3) Upon receipt of payment, EPA may deposit all or any
15 portion thereof in the B.F. Goodrich Superfund Site Special Account, the Initial
16 Disbursement Special Account, or the EPA Hazardous Substance Superfund. The
17 determination of where to deposit or how to use the funds shall not be subject to
18 challenge by Settling Work Defendant pursuant to the dispute resolution provisions
19 of this Consent Decree or in any other forum. Settling Work Defendant may
20 dispute EPA's determination as to recapture of funds pursuant to Section XIX
21
22 (Dispute Resolution).
23

24
25 f. Balance of Special Account Funds. After EPA issues its
26 written Certification of Completion of the Work pursuant to this Consent Decree
27 and after EPA completes all disbursements to Settling Work Defendant in
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1 accordance with this Section, if any funds remain in the Initial Disbursement
2 Special Account, EPA may transfer such funds to the B.F. Goodrich Superfund
3 Site Special Account or to the EPA Hazardous Substance Superfund. Any transfer
4 of funds to the B.F. Goodrich Superfund Site Special Account or to the EPA
5 Hazardous Substance Superfund shall not be subject to challenge by Settling Work
6 Defendant pursuant to the dispute resolution provisions of this Consent Decree or
7 in any other forum.

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10
11 70. Payment and Disbursement Instructions.

12 a. Payments to, and Disbursements from, the B.F. Goodrich
13 Superfund Site Escrow Account. Each Settling Defendant, and the United States
14 on behalf of Settling Federal Agencies, shall deposit its respective payment into the
15 B.F. Goodrich Superfund Site Escrow Account in accordance with Paragraphs 61
16 and 63-66. Funds in the B.F. Goodrich Superfund Site Escrow Account shall be
17 disbursed as follows:

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19
20 1) The funds placed in the B.F. Goodrich Superfund Site
21 Escrow Account, together with interest earned thereon, if any, shall be disbursed as
22 described in this Paragraph 70.

23
24 a) Payment from the B.F. Goodrich Superfund Site
25 Escrow Account to the 2010 ROD Trust Fund. Within seventy-five (75) Days of
26 the Effective Date, or within seventy-five (75) Days of the conclusion of the appeal
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1 conclusion of the appeal process.

2 b. Instructions for Future Response Costs Payments and Stipulated
3 Penalties. All payments required, elsewhere in this Consent Decree, to be made in
4 accordance with this Paragraph 70. b. shall be made in accordance with
5 instructions to be provided by EPA following lodging of the Consent Decree, and
6 shall be identified as “future response costs payments” or “stipulated penalties” as
7 applicable. All payments to be made under this Paragraph shall reference the EPA
8 Site/Spill ID Number 09JW and DOJ Case Number 90-11-2-09952. At the time of
9 any payment required to be made in accordance with Paragraph 70. b., Settling
10 Defendants shall send notice that payment has been made to the United States, and
11 to EPA, in accordance with Section XXV (Notices and Submissions), and to the
12 EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by
13 mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall
14 also reference the EPA Site/Spill ID Number 09JW and DOJ Case Number 90-11-
15 2-09952.

16 71. Settling Work Defendant may contest any Future Response Costs
17 billed under Paragraph 68 (Payments by Settling Work Defendant to EPA for
18 Future Response Costs) if it determines that EPA has made a mathematical error or
19 included a cost item that is not within the categories of Future Response Costs
20 Settling Work Defendant is required to pay as set forth in Paragraph 68, or if it

1 believes EPA incurred excess costs as a direct result of an EPA action that was
2 inconsistent with a specific provision or provisions of the NCP. Such objection
3 shall be made in writing within thirty (30) Days after receipt of the bill and must be
4 sent to the United States pursuant to Section XXV (Notices and Submissions).
5

6 Any such objection shall specifically identify the contested Future Response Costs
7 and the basis for objection. In the event of an objection, Settling Work Defendant
8 shall pay all uncontested Future Response Costs to the United States within thirty
9 (30) Days after Settling Work Defendant's receipt of the bill requiring payment.
10

11 Simultaneously, Settling Work Defendant shall establish, in a duly chartered bank
12 or trust company, an interest-bearing escrow account that is insured by the Federal
13 Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds
14 equivalent to the amount of the contested Future Response Costs. Settling Work
15 Defendant shall send to the United States, as provided in Section XXV (Notices
16 and Submissions), a copy of the transmittal letter and check paying the uncontested
17 Future Response Costs, and a copy of the correspondence that establishes and
18 funds the escrow account, including, but not limited to, information containing the
19 identity of the bank and bank account under which the escrow account is
20 established as well as a bank statement showing the initial balance of the escrow
21 account. Simultaneously with establishment of the escrow account, Settling Work
22 Defendant shall initiate the dispute resolution procedures in Section XIX (Dispute
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1 Resolution). If the United States prevails in the dispute, Settling Work Defendant
2 shall pay the sums due (with accrued interest) to the United States within five (5)
3 Days after the resolution of the dispute. If Settling Work Defendant prevails
4 concerning any aspect of the contested costs, Settling Work Defendant shall pay
5 that portion of the costs (plus associated accrued interest) for which they did not
6 prevail to the United States within five (5) Days after the resolution of the dispute.
7
8 Settling Work Defendant shall be disbursed any balance of the escrow account.
9

10 All payments to the United States under this Paragraph shall be made in
11 accordance with Paragraph 70. b. (Instructions for Future Response Cost
12 Payments). The dispute resolution procedures set forth in this Paragraph in
13 conjunction with the procedures set forth in Section XIX (Dispute Resolution)
14 shall be the exclusive mechanisms for resolving disputes regarding Settling Work
15 Defendant's obligation to reimburse the United States for its Future Response
16 Costs.
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20 72. Interest. In the event that any payment for Response Costs required
21 under this Section is not made by the date required, any Settling Defendant that
22 makes late payment shall pay Interest on the unpaid balance. The Interest to be
23 paid under this Paragraph shall begin to accrue on the date the payment is required.
24
25 The Interest shall accrue through the date of that Settling Defendant's payment.
26
27 Payments of Interest made under this Paragraph shall be in addition to such other
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1 remedies or sanctions available to Plaintiffs by virtue of any Settling Defendant's
2 failure to make timely payments under Section XVI including, but not limited to,
3 payment of stipulated penalties pursuant to Paragraph 87.
4

5 **XVII. INDEMNIFICATION AND INSURANCE**

6
7 73. Settling Work Defendant's Indemnification of the United States.

8 a. The United States does not assume any liability by entering into
9 this Consent Decree or by virtue of any designation of Settling Work Defendant as
10 EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. §
11 9604(e). Settling Work Defendant shall indemnify, save and hold harmless the
12 United States and its officials, agents, employees, contractors, subcontractors, or
13 representatives for or from any and all claims or causes of action arising from, or
14 on account of, negligent or other wrongful acts or omissions of Settling Work
15 Defendant, its officers, directors, employees, agents, contractors, subcontractors,
16 and any persons acting on its behalf or under its control, in carrying out activities
17 pursuant to this Consent Decree, including, but not limited to, any claims arising
18 from any designation of Settling Work Defendant as EPA's authorized
19 representative under Section 104(e) of CERCLA. Further, Settling Work
20 Defendant agrees to pay the United States all costs it incurs including, but not
21 limited to, attorneys' fees and other expenses of litigation and settlement arising
22 from, or on account of, claims made against the United States based on negligent
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1 or other wrongful acts or omissions of Settling Work Defendant, its officers,
2 directors, employees, agents, contractors, subcontractors, and any persons acting
3 on its behalf or under its control, in carrying out activities pursuant to this Consent
4 Decree. The United States shall not be held out as a party to any contract entered
5 into by or on behalf of Settling Work Defendant in carrying out activities pursuant
6 to this Consent Decree. Neither Settling Work Defendant nor any such contractor
7 shall be considered an agent of the United States.
8

9
10 b. The United States shall give Settling Work Defendant notice of
11 any claim for which it plans to seek indemnification pursuant to Paragraph 73. a.,
12 and shall consult with Settling Work Defendant prior to settling such claim.
13

14 c. Nothing in this Paragraph shall alter any obligations of the
15 Settling Federal Agencies set forth elsewhere in this Consent Decree.
16

17 74. Settling Work Defendant covenants not to sue and agrees not to assert
18 any claims or causes of action against the United States for damages or
19 reimbursement or for set-off of any payments made or to be made to the United
20 States, arising from or on account of any contract, agreement, or arrangement
21 between Settling Work Defendant and any person for performance of Work on or
22 relating to the B.F. Goodrich Superfund Site, including, but not limited to, claims
23 on account of construction delays. In addition, Settling Work Defendant shall
24 indemnify and hold harmless the United States with respect to any and all claims
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1 for damages or reimbursement arising from or on account of any contract,
2 agreement, or arrangement between Settling Work Defendant and any person for
3 performance of Work on or relating to the B.F. Goodrich Superfund Site,
4 including, but not limited to, claims on account of construction delays.
5

6 75. No later than fifteen (15) Days before commencing any on-Site
7 Work, Settling Work Defendant shall secure, and shall maintain until the first
8 anniversary of EPA's Certification of Completion of the Work pursuant to
9 Paragraph 57. b. of Section XIV (Certifications of Completion) commercial
10 general liability insurance with limits of two million dollars (\$2,000,000), for any
11 one occurrence, and automobile liability insurance with limits of one million
12 dollars (\$1,000,000), combined single limit, naming the United States as an
13 additional insured with respect to all liability arising out of the activities performed
14 by or on behalf of Settling Work Defendant pursuant to this Consent Decree. In
15 addition, for the duration of this Consent Decree, Settling Work Defendant shall
16 satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable
17 laws and regulations regarding the provision of worker's compensation insurance
18 for all persons performing the Work on behalf of Settling Work Defendant in
19 furtherance of this Consent Decree. Prior to commencement of any on-Site Work
20 under this Consent Decree, Settling Work Defendant shall provide to EPA
21 certificates of such insurance and a copy of each insurance policy. Settling Work
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1 Defendant shall resubmit such certificates and copies of policies each year on the
2 anniversary of the Effective Date. If Settling Work Defendant demonstrates by
3 evidence satisfactory to EPA that any contractor or subcontractor maintains
4 insurance equivalent to that described above, or insurance covering the same risks
5 but in a lesser amount, then, with respect to that contractor or subcontractor,
6 Settling Work Defendant needs to provide only that portion of the insurance
7 described above that is not maintained by the contractor or subcontractor.
8
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10 **XVIII. FORCE MAJEURE**

11
12 76. “Force majeure,” for purposes of this Consent Decree, is defined as
13 any event arising from causes beyond the control of Settling Defendants, of any
14 entity controlled by Settling Defendants, or of Settling Defendants’ contractors,
15 that delays or prevents the performance of any obligation under this Consent
16 Decree despite Settling Defendants’ best efforts to fulfill the obligation. The
17 requirement that Settling Defendants exercise “best efforts to fulfill the obligation”
18 includes using best efforts to anticipate any potential force majeure and best efforts
19 to address the effects of any potential force majeure (1) as it is occurring and (2)
20 following the potential force majeure such that the delay and any adverse effects of
21 the delay are minimized to the greatest extent possible. “Force majeure” does not
22 include financial inability to complete the Work or a failure to achieve the
23 Performance Standards.
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1 77. If any event occurs or has occurred that may delay the performance of
2 any obligation under this Consent Decree for which Settling Defendants intend or
3 may intend to assert a claim of force majeure, Settling Defendants shall notify
4 orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project
5 Coordinator or, in the event both of EPA's designated representatives are
6 unavailable, the Director of the Superfund Division, EPA Region 9, within forty-
7 eight (48) hours of when Settling Defendants first knew that the event might cause
8 a delay. Settling Defendants shall also provide such notification to the Cities.
9
10 Within five (5) Days thereafter, Settling Defendants shall provide in writing to
11 EPA, with copies to the Cities, an explanation and description of the reasons for
12 the delay; the anticipated duration of the delay; all actions taken or to be taken to
13 prevent or minimize the delay; a schedule for implementation of any measures to
14 be taken to prevent or mitigate the delay or the effect of the delay; Settling
15 Defendants' rationale for attributing such delay to a force majeure; and a statement
16 as to whether, in the opinion of Settling Defendants, such event may cause or
17 contribute to an endangerment to public health or welfare, or the environment.
18
19 Settling Defendants shall include with any notice all available documentation
20 supporting their claim that the delay was attributable to a force majeure. Settling
21 Defendants shall be deemed to know of any circumstance of which Settling
22 Defendants, any entity controlled by Settling Defendants, or Settling Defendants'

1 contractors knew or should have known. Failure to comply with the above
2 requirements regarding an event shall preclude Settling Defendants from asserting
3 any claim of force majeure regarding that event, provided, however, that if EPA,
4 despite the late notice, is able to assess to its satisfaction whether the event is a
5 force majeure under Paragraph 76 and whether Settling Defendants have exercised
6 their best efforts under Paragraph 76, EPA may, in its unreviewable discretion,
7 excuse in writing Settling Defendants' failure to submit timely notices under this
8 Paragraph.
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12 78. If EPA agrees that the delay or anticipated delay is attributable to a
13 force majeure, the time for performance of the obligations under this Consent
14 Decree that are affected by the force majeure will be extended by EPA for such
15 time as is necessary to complete those obligations. An extension of the time for
16 performance of the obligations affected by the force majeure shall not, of itself,
17 extend the time for performance of any other obligation. If EPA does not agree
18 that the delay or anticipated delay has been or will be caused by a force majeure,
19 EPA will notify Settling Defendants in writing of its decision, and provide copies
20 to the Cities. If EPA agrees that the delay is attributable to a force majeure, EPA
21 will notify Settling Defendants in writing of the length of the extension, if any, for
22 performance of the obligations affected by the force majeure, and provide copies to
23 the Cities.
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1 79. If Settling Defendants elect to invoke the dispute resolution
2 procedures set forth in Section XIX (Dispute Resolution), they shall do so no later
3 than fifteen (15) Days after receipt of EPA's notice. In any such proceeding,
4 Settling Defendants shall have the burden of demonstrating by a preponderance of
5 the evidence that the delay or anticipated delay has been or will be caused by a
6 force majeure, that the duration of the delay or the extension sought was or will be
7 warranted under the circumstances, that best efforts were exercised to avoid and
8 mitigate the effects of the delay, and that Settling Defendants complied with the
9 requirements of Paragraphs 76 and 77. If Settling Defendants carry this burden,
10 the delay at issue shall be deemed not to be a violation by Settling Defendants of
11 the affected obligation of this Consent Decree identified to EPA and the Court.
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16 **XIX. DISPUTE RESOLUTION**

17
18 80. Unless otherwise expressly provided for in this Consent Decree, such
19 as in Paragraph 10. a. 2), 10. b. 2), or 66. m.-o., the dispute resolution procedures
20 of this Section shall be the exclusive mechanism to resolve disputes regarding this
21 Consent Decree. However, the procedures set forth in this Section shall not apply
22 to actions by the United States to enforce obligations of Settling Defendants that
23 have not been disputed in accordance with this Section.
24
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26 81. Any dispute regarding this Consent Decree shall in the first instance
27 be the subject of informal negotiations between the parties to the dispute. The
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1 period for informal negotiations shall not exceed twenty (20) Days from the time
2 the dispute arises, unless it is modified by written agreement of the parties to the
3 dispute. The dispute shall be considered to have arisen when one party sends the
4 other parties a written Notice of Dispute.
5

6 82. Statement of Position
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8 a. In the event that the parties cannot resolve a dispute by informal
9 negotiations under the preceding Paragraph, then the position advanced by EPA
10 shall be considered binding unless, within twenty (20) Days after the conclusion of
11 the informal negotiation period, Settling Defendants invoke the formal dispute
12 resolution procedures of this Section by serving on the United States, with copies
13 to the Cities, a written Statement of Position on the matter in dispute, including,
14 but not limited to, any factual data, analysis or opinion supporting that position and
15 any supporting documentation relied upon by Settling Defendants. The Statement
16 of Position shall specify Settling Defendants' position as to whether formal dispute
17 resolution should proceed under Paragraph 83 or Paragraph 84.
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22 b. Within forty (40) Days after receipt of Settling Defendants'
23 Statement of Position, EPA will serve on Settling Defendants, with copies to the
24 Cities, its Statement of Position, including, but not limited to, any factual data,
25 analysis, or opinion supporting that position and all supporting documentation
26 relied upon by EPA. EPA's Statement of Position shall include a statement as to
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1 whether formal dispute resolution should proceed under Paragraph 83 or Paragraph
2 84. Within ten (10) Days after receipt of EPA's Statement of Position, Settling
3 Defendants may submit a reply, with copies to the Cities.
4

5 c. If there is disagreement between EPA and Settling Defendants
6 as to whether dispute resolution should proceed under Paragraph 83 or Paragraph
7 84, the parties to the dispute shall follow the procedures set forth in the paragraph
8 determined by EPA to be applicable. However, if Settling Defendants ultimately
9 appeal to the Court to resolve the dispute, the Court shall determine which
10 paragraph is applicable in accordance with the standards of applicability set forth
11 in Paragraphs 83 and 84.
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15 83. Record Review. Formal dispute resolution for disputes pertaining to
16 the selection or adequacy of any response action and all other disputes that are
17 accorded review on the administrative record under applicable principles of
18 administrative law shall be conducted pursuant to the procedures set forth in this
19 Paragraph. For purposes of this Paragraph, the adequacy of any response action
20 includes, without limitation, the adequacy or appropriateness of plans, procedures
21 to implement plans, or any other items requiring approval by EPA under this
22 Consent Decree, and the adequacy of the performance of response actions taken
23 pursuant to this Consent Decree. Nothing in this Consent Decree shall be
24 construed to allow any dispute by Settling Defendants regarding the validity of the
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1 2010 ROD's provisions.

2 a. An administrative record of the dispute shall be maintained by
3 EPA and shall contain all statements of position, including supporting
4 documentation, submitted pursuant to this Section. Where appropriate, EPA may
5 allow submission of supplemental statements of position by the parties to the
6 dispute.
7
8

9 b. The Director of the Superfund Division, EPA Region 9, will
10 issue a final administrative decision resolving the dispute based on the
11 administrative record described in Paragraph 83. a. This decision shall be binding
12 upon Settling Defendants, subject only to the right to seek judicial review pursuant
13 to Paragraphs 83. c. and 83. d.
14

15 c. Any administrative decision made by EPA pursuant to
16 Paragraph 83. b. shall be reviewable by this Court, provided that a motion for
17 judicial review of the decision is filed by Settling Defendants with the Court and
18 served on all Parties within ten (10) Days of receipt of EPA's decision. The
19 motion shall include a description of the matter in dispute, the efforts made by the
20 parties to resolve it, the relief requested, and the schedule, if any, within which the
21 dispute must be resolved to ensure orderly implementation of this Consent Decree.
22 Within ten (10) days of the filing of such motion, the United States may file a
23 response to Settling Defendants' motion. The Cities will be served on all
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1 pleadings, and will be allowed, at their discretion, to file a response within the
2 timeline that applies to the United States.

3
4 d. In proceedings on any dispute governed by this Paragraph,
5 Settling Defendants shall have the burden of demonstrating that the decision of the
6 Superfund Division Director is arbitrary and capricious or otherwise not in
7
8 accordance with law. Judicial review of EPA's decision shall be on the
9 administrative record compiled pursuant to Paragraph 83. a.

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11 84. Unless otherwise provided in this Consent Decree, formal dispute
12 resolution for disputes that neither pertain to the selection or adequacy of any
13 response action nor are otherwise accorded review on the administrative record
14
15 under applicable principles of administrative law shall be governed by this
16 Paragraph.

17
18 a. Following receipt of Settling Defendants' Statement of Position
19 submitted pursuant to Paragraph 82, the Director of the Superfund Division, EPA
20 Region 9, will issue a final decision resolving the dispute. The Superfund Division
21 Director's decision shall be binding on Settling Defendants unless, within ten (10)
22 Days of receipt of the decision, Settling Defendants file with the Court and serve
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24 on the parties a motion for judicial review of the decision setting forth the matter in
25 dispute, the efforts made by the parties to resolve it, the relief requested, and the
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27 schedule, if any, within which the dispute must be resolved to ensure orderly
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1 implementation of the Consent Decree. The United States may file a response to
2 Settling Defendants' motion.

3 b. Notwithstanding Paragraph N (CERCLA Section 113(j) Record
4 Review of 2010 ROD and Work) of Section I (Background), judicial review of any
5 dispute governed by this Paragraph shall be governed by applicable principles of
6 law.
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9 85. The invocation of formal dispute resolution procedures under this
10 Section shall not extend, postpone, or affect in any way any obligation of Settling
11 Defendants under this Consent Decree, not directly in dispute, unless EPA or the
12 Court agrees otherwise. Stipulated penalties with respect to the disputed matter
13 shall continue to accrue but payment shall be stayed pending resolution of the
14 dispute as provided in Paragraph 94. Notwithstanding the stay of payment,
15 stipulated penalties shall accrue from the first day of noncompliance with any
16 applicable provision of this Consent Decree. In the event that Settling Defendants
17 do not prevail on the disputed issue, stipulated penalties shall be assessed and paid
18 as provided in Section XX (Stipulated Penalties).
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23 86. Dispute Resolution By or Between Settling Work Defendant, Rialto,
24 Colton, and/or the County of San Bernardino Regarding Implementation
25 Agreements Entered Pursuant to Paragraphs 10 and 12.
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1 a. Informal Dispute Resolution. Any dispute regarding the
2 implementation agreements entered into by and between Rialto, Colton, the
3 County of San Bernardino, and Settling Work Defendant as provided for in
4 Paragraphs 10 and 12 initially shall be the subject of informal negotiations between
5 the parties to the dispute. The period for informal negotiations shall not exceed
6 twenty (20) Days from the time the dispute arises, unless it is modified by written
7 agreement of the parties to the dispute. The dispute shall be considered to have
8 arisen when one party sends the other parties a written Notice of Dispute, a copy of
9 which shall be provided to EPA, Rialto, Colton, the County of San Bernardino, the
10 Settling Federal Agencies, and the Settling Work Defendant.

15 b. Resolution by this Court. If the parties are unable to resolve
16 their dispute through informal dispute resolution, any party to the dispute may
17 commence a proceeding in this action before this Court by motion as provided for
18 in the Local Rules of the Central District of California.

21 c. Standard for Dispute Resolution. This Court shall resolve any
22 dispute brought before it under this Paragraph under California contract law.

24 d. Additional Dispute Resolution Terms in Implementation
25 Agreements. In their respective implementation agreements with each other as
26 referenced in this Consent Decree, Settling Work Defendant, Rialto, Colton, and/or
27 the County of San Bernardino may provide for additional or substitute terms
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1 regarding dispute resolution of their commitments to each other. If they so
2 provide, the terms of such implementation agreements will control the disputes
3 between those parties in lieu of the dispute resolution procedure of this
4 Paragraph 86.
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7 **XX. STIPULATED PENALTIES**

8 87. Settling Defendants shall be liable for stipulated penalties in the
9 amounts set forth in Paragraphs 88, 89. a., and 90 to the United States, and in the
10 amounts set forth in Paragraph 89. b. to the Cities, for failure to comply with the
11 requirements of this Consent Decree specified below, unless excused under Section
12 XVIII (Force Majeure). “Compliance” by a Settling Defendant shall include
13 completion of all payments and activities required of that Settling Defendant under
14 this Consent Decree, or any plan, report, or other deliverable approved under this
15 Consent Decree, in accordance with all applicable requirements of law, this
16 Consent Decree, the SOW, and any plans, reports, or other deliverables approved
17 under this Consent Decree and within the specified time schedules established by
18 and approved under this Consent Decree. No Settling Defendant shall be liable or
19 otherwise responsible for any other Settling Defendant's violation of or failure to
20 comply with the requirements of this Consent Decree, except where specifically
21 provided.
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28 88. Stipulated Penalty Amounts - Work (Including Specifically

1 Enumerated Deliverables).

2 a. The following stipulated penalties shall accrue per violation per
3 day for any noncompliance identified in Paragraph 88. b.:

4 <u>Penalty Per Violation Per Day</u>	5 <u>Period of Noncompliance</u>
6 \$2,500	7 1st through 14th day
8 \$5,000	9 15th through 30th day
10 \$10,000	11 31st day and beyond

12 b. Performance of the Work and Compliance Milestones.

13 1) Failure to perform the Work as set forth in any and all
14 EPA approved plans, and/or to submit the following deliverables in a timely and
15 adequate fashion:

- 16 a) Remedial Design Work Plan;
- 17 b) Sampling & Analysis Plan and Health and Safety
18 Plan for Remedial Design Investigation;
- 19 c) Remedial Design Investigation Report;
- 20 d) Preliminary Design;
- 21 e) Prefinal Design;
- 22 f) Final Design;
- 23 g) Construction Quality Assurance Plan;
- 24 h) Operation and Maintenance (O&M) Plan;
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CONSENT DECREE

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- i) Compliance Monitoring Plan;
- j) Sampling & Analysis Plan and Health and Safety Plan to support O&M and Compliance Monitoring;
- k) Construction Health and Safety Plan;
- l) Remedial Action Work Plan;
- m) Remedial Action Report;
- n) Submittal of Analytical Data; and/or
- o) Submittal of Well Construction Information.

2) Failure to comply with the following Work schedule

milestones:

- a) Remedial Design Investigation;
- b) Groundwater Flow Modeling;
- c) Providing or arranging for access as set forth in Section IX (Access);
- d) Start of RA Implementation;
- e) Pre-Certification Inspections;
- f) Completion of all outstanding items identified in the Pre-Certification Inspections; and/or
- g) Start of Operation and Maintenance.

89. Stipulated Penalty Amounts - Late Payments.

1 a. Any Settling Defendant that makes a payment required by this
2 Consent Decree after it is due shall be in violation of this Consent Decree and shall
3 pay to the United States, as a stipulated penalty, as follows:
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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 7th day
\$5,000	8th through 14th day
\$10,000	15th through 30th day
\$20,000	31st day and beyond

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10 b. If the full payments due to the Cities, pursuant to Paragraphs
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12 70. a. 1) b) and c) are not paid by their respective required date(s) as set forth
13 therein, any Settling Defendant that has not made its payment required by
14 Paragraphs 63-66 as of five (5) days before such payments are due to the Cities,
15 shall be in violation of this Consent Decree and shall pay five thousand dollars
16 (\$5,000) per day to the unpaid City for each day after that Settling Defendant's
17 payment required by Paragraphs 63, 64, 65, and/or 66 is due. Any payments
18 pursuant to this subparagraph (89. b.) are due and payable within thirty (30) days
19 after the date of the demand for payment.
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23 90. Stipulated Penalty Amounts - Plans, Reports, and Other Deliverables
24 Not Specified in Paragraph 88. The following stipulated penalties shall accrue per
25 violation per day for failure to submit any plan, report, or other deliverable not
26 specifically set forth in Paragraph 88. b.:
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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,250	1st through 14th day
\$2,500	15th through 30th day
\$7,500	31st day and beyond

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91. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 111 (Work Takeover), Settling Work Defendant shall be liable for a stipulated penalty in the amount of the lesser of two million dollars (\$2,000,000) or three times the Response Costs incurred in performance of all such Work. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 53 (Funding for Work Takeover) and 111 (Work Takeover).

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92. 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: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 83. b. or 84. a. of Section XIX (Dispute

1 Resolution), during the period, if any, beginning on the 21st day after the date that
2 Settling Defendants' reply to EPA's Statement of Position is received until the date
3 that the Director issues a final decision regarding such dispute; or (c) with respect
4 to judicial review by this Court of any dispute under Section XIX (Dispute
5 Resolution), during the period, if any, beginning on the 31st day after the Court's
6 receipt of the final submission regarding the dispute until the date that the Court
7 issues a final decision regarding such dispute. Nothing in this Consent Decree
8 shall prevent the simultaneous accrual of separate penalties for separate violations
9 of this Consent Decree.
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13 93. Following EPA's determination that Settling Defendants have failed
14 to comply with a requirement of this Consent Decree, EPA may give Settling
15 Defendants written notification, and provide copies to the Cities, of the same and
16 describe the noncompliance. EPA may send Settling Defendants a written demand
17 for the payment of the penalties, and provide Copies to the Cities. However,
18 penalties shall accrue as provided in the preceding Paragraph regardless of whether
19 EPA has notified Settling Defendants of a violation.
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23 94. All penalties accruing under this Section shall be due and payable to
24 the United States within thirty (30) Days of Settling Defendants' receipt from EPA
25 of a demand for payment of the penalties, unless Settling Defendants invoke the
26 dispute resolution procedures under Section XIX (Dispute Resolution) within the
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1 thirty (30) Day period. All payments to the United States under this Section shall
2 indicate that the payment is for stipulated penalties, and shall be made in
3 accordance with Paragraph 70. b. (Payment Instructions). Under no circumstance
4 may a stipulated penalty, or any portion thereof, be paid from the B. F. Goodrich
5 Superfund Site 2010 ROD Trust Fund or funds derived therefrom.
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8 95. Penalties shall continue to accrue as provided in Paragraph 92 during
9 any dispute resolution period, but need not be paid until the following:

10 a. If the dispute is resolved by agreement of the Parties or by a
11 decision of EPA that is not appealed to this Court, accrued penalties so determined
12 to be owed shall be paid to EPA within fifteen (15) Days of the agreement or the
13 receipt of EPA's decision or order;
14

15 b. If the dispute is appealed to this Court and the United States
16 prevails in whole or in part, Settling Defendants shall pay all accrued penalties
17 determined by the Court to be owed to EPA within sixty (60) Days of receipt of the
18 Court's decision or order, except as provided in Paragraph 95. c.;

19 c. If the District Court's decision is appealed by any Party,
20 Settling Defendants shall pay all accrued penalties determined by the District Court
21 to be owed to the United States into an interest-bearing escrow account within
22 sixty (60) Days of receipt of the Court's decision or order. Penalties shall be paid
23 into this account as they continue to accrue, at least every sixty (60) Days. Within
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1 fifteen (15) Days of receipt of the final appellate court decision, the escrow agent
2 shall pay the balance of the account to EPA or to Settling Defendants to the extent
3 that they prevail.
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5 96. If any Settling Defendant fails to pay stipulated penalties when due,
6 that Settling Defendant shall pay Interest on the unpaid stipulated penalties as
7 follows: (a) if that Settling Defendant has timely invoked dispute resolution such
8 that the obligation to pay stipulated penalties has been stayed pending the outcome
9 of dispute resolution, Interest shall accrue from the date stipulated penalties are due
10 pursuant to Paragraph 94 until the date of payment; and (b) if that Settling
11 Defendant fails to timely invoke dispute resolution, Interest shall accrue from the
12 date of demand under Paragraph 94 until the date of payment. If any Settling
13 Defendant fails to pay stipulated penalties and Interest when due, the United States
14 may institute proceedings to collect the penalties and Interest against that Settling
15 Defendant.
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20 97. The payment of penalties and Interest, if any, shall not alter in any
21 way Settling Work Defendant's obligation to complete the performance of the
22 Work required under this Consent Decree.
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25 98. Nothing in this Consent Decree shall be construed as prohibiting,
26 altering, or in any way limiting the ability of the United States to seek any other
27 remedies or sanctions available by virtue of Settling Defendants' violation of this
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1 Consent Decree or of the statutes and regulations upon which it is based, including,
2 but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C.
3 § 9622(l), provided, however, that the United States shall not seek civil penalties
4 pursuant to Section 122(l) of CERCLA for any violation for which a stipulated
5 penalty is provided in this Consent Decree, except in the case of a willful violation
6 of this Consent Decree. Notwithstanding any other provision of this Section, the
7 United States may, in its unreviewable discretion, waive any portion of stipulated
8 penalties that have accrued pursuant to this Consent Decree.

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12 99. Stipulated Penalty Amounts Regarding Colton's and Rialto's
13 Commitments Under Paragraphs 10. a. 1) and 10. b. 1). Rialto and Colton shall be
14 liable for per day/per violation stipulated penalties, for each day that such penalties
15 accrue as provided below, for their failure to comply with their respective
16 commitments under Paragraphs 10. a. 1) and/or 10. b. 1):
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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
Up to \$250	1st through 30th day
Up to \$500	31st through 60th day
Up to \$1000	61st day and beyond

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26 All stipulated penalties shall begin to accrue on the day after Rialto or Colton (as
27 appropriate) receives from EPA written notice of an alleged failure to perform
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1 pursuant to Paragraph 10. a. 2) or 10. b. 2), unless Rialto or Colton (as appropriate)
2 within seven (7) working days after receipt of such notice either (i) corrects the
3 failure to perform, or (ii) serves upon EPA its statement of position and backup
4 documentation to contest the alleged failure to perform or the corrective action
5 requested by EPA, in which event the stipulated penalties which otherwise would
6 have accrued during this period are waived. If Rialto or Colton has timely served
7 upon EPA its statement of position to contest the alleged failure or the requested
8 corrective action, stipulated penalties shall not accrue until Rialto or Colton
9 receives the final written decision regarding the dispute from the Division Director
10 of the Superfund Division of EPA Region 9. If the Division Director finds in favor
11 of Rialto or Colton regarding the dispute, no stipulated penalties will be due. If the
12 Division Director's decision is not in favor of Rialto or Colton, stipulated penalties
13 will accrue on the day after receipt of that decision, and will continue accruing
14 until Rialto or Colton either corrects the performance failure or until Rialto or
15 Colton files with the Court its motion to resolve the dispute with EPA. Stipulated
16 penalties will thereafter not accrue until the Court issues a final decision regarding
17 the dispute. No stipulated penalties will be due if Rialto or Colton prevails in its
18 dispute with the Court, or if the Court finds that Rialto's or Colton's delay or
19 failure to perform was excusable nonperformance under the same standards and
20 procedures set forth in Section XVIII (Force Majeure). Nothing in this Consent
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CONSENT DECREE

1 Decree shall be construed as prohibiting, altering, or in any way limiting the ability
2 of the United States on behalf of EPA to seek any other remedies or sanctions
3 available by virtue of violation by Rialto or Colton of this Consent Decree or of the
4 statutes and regulations upon which it is based, including, but not limited to,
5 penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l); provided,
6 however, that the United States shall not seek civil penalties pursuant to Section
7 122(l) of CERCLA against Rialto or Colton for any violation for which a stipulated
8 penalty is provided pursuant to this Paragraph. Notwithstanding any other
9 provision of this Section, the United States may, in its unreviewable discretion,
10 waive any portion of stipulated penalties that have accrued pursuant to this
11 Consent Decree.
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16 **XXI. COVENANTS, RELEASES, AND RESERVATIONS OF RIGHTS**

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18 **A. COVENANTS AND RESERVATIONS OF RIGHTS BY THE UNITED**
19 **STATES ON BEHALF OF EPA**

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21 100. Covenants for Settling Work Defendant and Emhart Related Parties
22 by United States on Behalf of EPA. In consideration of the actions that will be
23 performed and the payments that will be made by Settling Work Defendant under
24 this Consent Decree, and except as specifically provided in Paragraphs 105-109 of
25 this Section, the United States on behalf of EPA covenants not to sue or to take
26 administrative action against Settling Work Defendant and/or Emhart Related
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1 Parties pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of
2 RCRA for the B.F. Goodrich Superfund Site. These covenants are conditioned
3 upon the satisfactory performance by Settling Work Defendant of its obligations
4 under this Consent Decree or stipulated penalties due under Section XX (Stipulated
5 Penalties). These covenants extend only to Settling Work Defendant and Emhart
6 Related Parties and do not extend to any other person except as specifically set
7 forth in this Consent Decree.
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11 101. Covenants for Settling Cashout Defendants by United States on
12 Behalf of EPA. In consideration of the payments that will be made by Settling
13 Cashout Defendants under this Consent Decree, and except as specifically
14 provided in Paragraphs 105-107 and 109 of this Section, the United States on
15 behalf of EPA covenants not to sue or to take administrative action against Settling
16 Cashout Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section
17 7003 of RCRA for the B.F. Goodrich Superfund Site. For each Settling Cashout
18 Defendant, these covenants shall take effect upon the receipt by EPA of the
19 payment required of that Settling Cashout Defendant by Paragraph 63 and any
20 Interest or stipulated penalties due thereon under Paragraph 72 (Interest) or Section
21 XX (Stipulated Penalties). For each Settling Cashout Defendant, these covenants
22 are conditioned upon the satisfactory performance by that Settling Cashout
23 Defendant of its obligations under this Consent Decree. These covenants extend
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1 only to Settling Cashout Defendants and do not extend to any other person except
2 as specifically set forth in this Consent Decree.

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4 102. Covenants for Settling Ability to Pay Defendants by United States on
5 Behalf of EPA. In consideration of the payments that will be made by Settling
6 Ability to Pay Defendants under this Consent Decree, the United States on behalf
7 of EPA covenants not to sue or to take administrative action against Settling
8 Ability to Pay Defendants pursuant to Sections 106 and 107(a) of CERCLA and
9 Section 7003 of RCRA for the B.F. Goodrich Superfund Site. For each Settling
10 Ability to Pay Defendant, these covenants shall take effect upon the receipt by
11 EPA of the payment required of that Settling Ability to Pay Defendant by
12 Paragraph 64 and any Interest or stipulated penalties due thereon under Paragraph
13 72 (Interest) or Section XX (Stipulated Penalties). For each Settling Ability to Pay
14 Defendant, these covenants are conditioned upon the satisfactory performance by
15 that Settling Ability to Pay Defendant of its obligations under this Consent Decree.
16 These covenants extend only to Settling Ability to Pay Defendants and do not
17 extend to any other person except as specifically set forth in this Consent Decree.
18 These covenants are also conditioned upon the veracity and completeness of the
19 financial information and the insurance information provided to EPA by Settling
20 Ability to Pay Defendants, and the financial, insurance, and indemnity
21 certifications made by Settling Ability to Pay Defendants, as described in
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1 Paragraph 145. If the Financial Information or Insurance Information provided by
2 any Settling Ability to Pay Defendant, or the financial, insurance, or indemnity
3 certification made by any Settling Ability to Pay Defendant is subsequently
4 determined by EPA to be false or, in any material respect, inaccurate, such Settling
5 Ability to Pay Defendant shall forfeit all payments made pursuant to this Consent
6 Decree and these covenants and the contribution protection in Paragraphs 135 and
7 136 shall be null and void as to such Settling Ability to Pay Defendant. Such
8 forfeiture shall not constitute liquidated damages and shall not in any way
9 foreclose the United States' right to pursue any other causes of action arising from
10 such Settling Ability to Pay Defendant's false or materially inaccurate information.
11 These covenants extend only to Settling Ability to Pay Defendants and do not
12 extend to any other person.

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18 103. Covenants for San Bernardino County Settling Parties by United
19 States on Behalf of EPA. In consideration of the payments that will be made by
20 the San Bernardino County Settling Parties under this Consent Decree, and except
21 as specifically provided in Paragraphs 105-107 and 109 of this Section, the United
22 States on behalf of EPA covenants not to sue or to take administrative action
23 against the San Bernardino County Settling Parties pursuant to Sections 106 and
24 107(a) of CERCLA and Section 7003 of RCRA for the B.F. Goodrich Superfund
25 Site. These covenants shall take effect upon the receipt by EPA of the payments
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1 required by Paragraph 65 and any Interest or stipulated penalties due thereon under
2 Paragraph 72 (Interest) or Section XX (Stipulated Penalties). These covenants are
3 conditioned upon the satisfactory performance by the San Bernardino County
4 Settling Parties of their obligations under this Consent Decree. These covenants
5 extend only to the San Bernardino County Settling Parties and do not extend to any
6 other person except as specifically set forth in this Consent Decree.
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9 104. Covenant for Settling Federal Agencies by EPA. In consideration of
10 the payments that will be made by the United States on behalf of Settling Federal
11 Agencies under this Consent Decree, and except as specifically provided in
12 Paragraphs 105-107 and 109, EPA covenants not to take administrative action
13 against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA
14 and Section 7003 of RCRA for the B.F. Goodrich Superfund Site. EPA's covenant
15 is conditioned upon the satisfactory performance by Settling Federal Agencies of
16 their obligations under this Consent Decree. EPA's covenant extends only to
17 Settling Federal Agencies and does not extend to any other person except as
18 specifically set forth in this Consent Decree.
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23 105. United States' Pre-Certification Reservations.

24 a. As to Settling Work Defendant and Emhart Related Parties:

25 Notwithstanding any other provision of this Consent Decree, the United States, on
26 behalf of EPA, reserves, and this Consent Decree is without prejudice to, the right
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1 to institute proceedings in this action or in a new action, or to issue an
2 administrative order, seeking to compel Settling Work Defendant and/or Emhart
3 Related Parties to perform further response actions relating to the Source Area
4 Operable Unit of the B.F. Goodrich Superfund Site and/or to pay the United States
5 for additional costs of response if, (a) prior to Certification of Completion of the
6 Work, (i) conditions at the Source Area Operable Unit of the B.F. Goodrich
7 Superfund Site, previously unknown to EPA, are discovered, or (ii) information,
8 previously unknown to EPA, is received, in whole or in part, and (b) EPA
9 determines that these previously unknown conditions or information together with
10 any other relevant information indicates that the Work is not protective of human
11 health or the environment. The Source Area Operable Unit of the B.F. Goodrich
12 Superfund Site does not include soils at the Site or groundwater downgradient of
13 the Target Area as defined in the 2010 ROD. If the United States institutes any
14 such action under this Paragraph, nothing in this Consent Decree shall preclude
15 Settling Work Defendant or Emhart Related Parties from, at their discretion,
16 bringing a claim for contribution, or otherwise, against Settling Defendants,
17 Settling Federal Agencies, and/or any other entity not a party to this Consent
18 Decree and the defendants in such action shall be entitled to assert any claims
19 against Settling Work Defendant and/or Emhart Related Parties; provided,
20 however, that Settling Work Defendant and Emhart Related Parties agree that they
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CONSENT DECREE

1 shall not bring such claim against any of the San Bernardino County Settling
2 Parties. Except as provided in Paragraph 140 (Res Judicata and Certain Other
3 Defenses), nothing in this Consent Decree precludes any Party from raising any
4 defense, whether asserted or not in the Consolidated Federal Action, to such new
5 action or order.
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8 b. As to Settling Cashout Defendants, Settling Federal Agencies,
9 and the San Bernardino County Settling Parties: Notwithstanding any other
10 provision of this Consent Decree, the United States, on behalf of EPA, reserves,
11 and this Consent Decree is without prejudice to, the right to institute proceedings
12 in this action or in a new action, or to issue an administrative order, seeking to
13 compel Settling Cashout Defendants, Settling Federal Agencies, and/or the San
14 Bernardino County Settling Parties to perform further response actions relating to
15 the B.F. Goodrich Superfund Site and/or to pay the United States for additional
16 costs of response if, (a) prior to Certification of Completion of the Final Remedial
17 Action for the B.F. Goodrich Superfund Site, (i) conditions at the B.F. Goodrich
18 Superfund Site, previously unknown to EPA, are discovered, or (ii) information,
19 previously unknown to EPA, is received, in whole or in part, and (b) EPA
20 determines that these previously unknown conditions or information together with
21 any other relevant information indicates that the Final Remedial Action for the
22 B.F. Goodrich Superfund Site is not protective of human health or the
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1 environment. If the United States institutes any such action under this Paragraph,
2 nothing in this Consent Decree shall preclude any Settling Cashout Defendant,
3 Settling Federal Agency, or the San Bernardino County Settling Parties, at their
4 discretion, from bringing a claim for contribution, or otherwise, against other
5 Settling Cashout Defendants, Settling Work Defendant, Emhart Related Parties,
6 Settling Federal Agencies, and/or any other entity not a party to this Consent
7 Decree. Except as provided in Paragraph 140 (Res Judicata and Certain Other
8 Defenses), nothing in this Consent Decree precludes any Party from raising any
9 defense, whether asserted or not in the Consolidated Federal Action, to such new
10 action or order.
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15 106. United States' Post-Certification Reservations.

16 a. As to Settling Work Defendant and Emhart Related Parties:

17 Notwithstanding any other provision of this Consent Decree, the United States, on
18 behalf of EPA, reserves, and this Consent Decree is without prejudice to, the right
19 to institute proceedings in this action or in a new action, or to issue an
20 administrative order, seeking to compel Settling Work Defendant and/or Emhart
21 Related Parties to perform further response actions relating to the Source Area
22 Operable Unit of the B.F. Goodrich Superfund Site and/or to pay the United States
23 for additional costs of response if, (a) subsequent to Certification of Completion of
24 the Work, (i) conditions at the Source Area Operable Unit of the B.F. Goodrich
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1 Superfund Site, previously unknown to EPA, are discovered, or (ii) information,
2 previously unknown to EPA, is received, in whole or in part, and (b) EPA
3 determines that these previously unknown conditions or information together with
4 any other relevant information indicates that the Work is not protective of human
5 health or the environment. The Source Area Operable Unit of the B.F. Goodrich
6 Superfund Site does not include soils at the Site or groundwater downgradient of
7 the Target Area. If the United States institutes any such action under this
8 Paragraph, nothing in this Consent Decree shall preclude Settling Work Defendant
9 or Emhart Related Parties from, at their discretion, bringing a claim for
10 contribution, or otherwise, against Settling Defendants, Settling Federal Agencies,
11 and/or any other entity not a party to this Consent Decree and the defendants in
12 such action shall be entitled to assert any claims against Settling Work Defendant
13 and/or Emhart Related Parties; provided, however, that Settling Work Defendant
14 and Emhart Related Parties agree that they shall not bring such claim against any
15 of the San Bernardino County Settling Parties. Except as provided in Paragraph
16 140 (Res Judicata and Certain Other Defenses), nothing in this Consent Decree
17 precludes any Party from raising any defense, whether asserted or not in the
18 Consolidated Federal Action, to such new action or order.

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26 b. As to Settling Cashout Defendants, Settling Federal Agencies,
27 and the San Bernardino County Settling Parties: Notwithstanding any other
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1 provision of this Consent Decree, the United States, on behalf of the EPA,
2 reserves, and this Consent Decree is without prejudice to, the right to institute
3 proceedings in this action or in a new action, or to issue an administrative order,
4 seeking to compel Settling Cashout Defendants, Settling Federal Agencies, and/or
5 the San Bernardino County Settling Parties to perform further response actions
6 relating to the B.F. Goodrich Superfund Site and/or to pay the United States for
7 additional costs of response if, (a) subsequent to Certification of Completion of the
8 Final Remedial Action for the B.F. Goodrich Superfund Site, (i) conditions at the
9 B.F. Goodrich Superfund Site, previously unknown to EPA, are discovered, or (ii)
10 information, previously unknown to EPA, is received, in whole or in part, and (b)
11 EPA determines that these previously unknown conditions or information together
12 with any other relevant information indicates that the Final Remedial Action for
13 the B.F. Goodrich Superfund Site is not protective of human health or the
14 environment. If the United States institutes any such action under this Paragraph,
15 nothing in this Consent Decree shall preclude any Settling Cashout Defendant,
16 Settling Federal Agency, or the San Bernardino County Settling Parties, at their
17 discretion, from bringing a claim for contribution, or otherwise, against other
18 Settling Cashout Defendants, Settling Work Defendant, Emhart Related Parties,
19 Settling Federal Agencies, and/or any other entity not a party to this Consent
20 Decree. Except as provided in Paragraph 140 (Res Judicata and Certain Other
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1 Defenses), nothing in this Consent Decree precludes any Party from raising any
2 defense, whether asserted or not in the Consolidated Federal Action, to such new
3 action or order.
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5 107. For purposes of Paragraph 105. a., the information and the conditions
6 known to EPA will include only that information and those conditions known to
7 EPA as of the date this Consent Decree is lodged with the Court. For purposes of
8 Paragraph 105. b., the information and the conditions known to EPA will include
9 only that information and those conditions known to EPA as of the date the Final
10 Record of Decision is signed. For purposes of Paragraph 106. a., the information
11 and the conditions known to EPA shall include only that information and those
12 conditions known to EPA as of the date of Certification of Completion of the
13 Work, and set forth in the Record of Decision, the administrative record supporting
14 the Record of Decision, the post-2010 ROD administrative record, or in any
15 information received by EPA pursuant to the requirements of this Consent Decree
16 prior to the Certification of Completion of the Work. For purposes of Paragraph
17 106. b., the information and the conditions known to EPA shall include only that
18 information and those conditions known to EPA as of the date of Certification of
19 Completion of the Final Remedial Action for the B.F. Goodrich Superfund Site.
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26 108. Reservations of Rights Regarding Scope of 2010 ROD. The United
27 States, on behalf of EPA, reserves, and this Consent Decree is without prejudice to,
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1 its right to institute proceedings in a new action, or to issue an administrative order,
2 to require reinjection of treated groundwater generated by the Remedial Action.
3 Absent such an action or order, Settling Work Defendant has no obligation under
4 this Consent Decree to reinject such groundwater. If the United States institutes
5 any such action under this Paragraph, nothing in this Consent Decree shall
6 preclude Settling Work Defendant or Emhart Related Parties from, at their
7 discretion, bringing a claim for contribution, or otherwise, relating to the costs of
8 reinjection against Settling Federal Agencies, and/or any other entity not a party to
9 this Consent Decree, and the defendants in such action shall be entitled to assert
10 any claims and defenses against Settling Work Defendant and/or Emhart Related
11 Parties relating to Settling Work Defendant's and/or Emhart Related Parties'
12 claims.
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18 109. General Reservations of Rights. The United States on behalf of EPA
19 and the federal natural resource trustee reserves, and this Consent Decree is
20 without prejudice to, all rights against Settling Defendants and Settling Federal
21 Agencies with respect to all matters not expressly included within Plaintiff's
22 covenants in Paragraphs 100-104. Notwithstanding any other provision of this
23 Consent Decree, the United States on behalf of EPA and the federal natural
24 resource trustee reserves all rights against Settling Defendants and Settling Federal
25 Agencies, with respect to:
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1 a. claims based on a failure by Settling Defendants or Settling
2 Federal Agencies to meet their respective requirements under this Consent Decree;

3 b. liability arising from the past, present, or future disposal,
4 release, or threat of release of Waste Material outside of the B.F. Goodrich
5 Superfund Site;
6

7 c. liability based on the ownership or operation of any portion of
8 the B.F. Goodrich Superfund Site by Settling Defendants or Settling Federal
9 Agencies when such ownership or operation commences after signature of this
10 Consent Decree and does not arise solely out of performance of the Work;
11

12 d. liability based on Settling Defendants' or Settling Federal
13 Agencies' transportation, treatment, storage, or disposal, or the arrangement for the
14 transportation, treatment, storage, or disposal of Waste Material at or in connection
15 with the B.F. Goodrich Superfund Site, other than as provided in the 2010 ROD,
16 the Work, or otherwise ordered by EPA, after signature of this Consent Decree;
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18 e. liability for damages for injury to, destruction of, or loss of
19 natural resources, and for the costs of any natural resource damage assessments;
20

21 f. criminal liability;

22 g. liability for violations of federal or state law which occur
23 during or after implementation of the Work;
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25 h. liability against Settling Work Defendant and/or Emhart
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1 Related Parties, prior to Certification of Completion of the Work, for additional
2 response actions that EPA determines are necessary to achieve and maintain
3 Performance Standards or to carry out and maintain the effectiveness of the
4 remedy set forth in the 2010 ROD, but that cannot be required pursuant to
5 Paragraph 19 (Modification of SOW or Work Plans Required by the SOW); and
6

7
8 i. liability against Settling Work Defendant for costs to be
9 incurred by the Agency for Toxic Substances and Disease Registry regarding the
10 B.F. Goodrich Superfund Site.
11

12 110. Notwithstanding any other provision of this Consent Decree, the
13 United States reserves, and this Consent Decree is without prejudice to, the right to
14 reinstitute or reopen this action, or to commence a new action seeking relief other
15 than as provided in this Consent Decree, if the Financial Information or the
16 Insurance Information provided by Settling Ability to Pay Defendants, or the
17 financial, insurance, or indemnity certification made by Settling Ability to Pay
18 Defendants in Paragraph 145, is materially false or, in any material respect,
19 inaccurate. This Paragraph only applies to Settling Ability to Pay Defendants.
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21

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23 111. Work Takeover.
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25 a. In the event EPA determines that Settling Work Defendant: (1)
26 has ceased implementation of any portion of the Work; (2) is seriously or
27 repeatedly deficient or late in its performance of the Work; or (3) is implementing
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1 the Work in a manner that may cause an endangerment to human health or the
2 environment, EPA may issue a written notice (“Work Takeover Notice”) to
3 Settling Work Defendant. Any Work Takeover Notice issued by EPA will specify
4 the grounds upon which such notice was issued and will provide Settling Work
5 Defendant a period of ten (10) Days within which to remedy the circumstances
6 giving rise to EPA’s issuance of such notice.
7

8
9 b. If, after expiration of the ten (10) Day notice period specified in
10 Paragraph 111. a., Settling Work Defendant has not remedied to EPA’s satisfaction
11 the circumstances giving rise to EPA’s issuance of the relevant Work Takeover
12 Notice, EPA may at any time thereafter assume the performance of all or any
13 portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will
14 notify Settling Work Defendant in writing (which writing may be electronic), and
15 provide copies to Rialto and Colton, if EPA determines that implementation of a
16 Work Takeover is warranted under this Paragraph 111. b. Funding of Work
17 Takeover costs is addressed under Paragraph 53.
18

19
20 c. Settling Work Defendant may invoke the procedures set forth in
21 Paragraph 83 (Record Review), to dispute EPA’s implementation of a Work
22 Takeover under Paragraph 111. b. However, notwithstanding Settling Work
23 Defendant’s invocation of such dispute resolution procedures, and during the
24 pendency of any such dispute, EPA may in its sole discretion commence and
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1 continue a Work Takeover under Paragraph 111. b. until the earlier of: (1) the date
2 that Settling Work Defendant remedies, to EPA's satisfaction, the circumstances
3 giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date
4 that a final decision is rendered in accordance with Paragraph 83 (Record Review)
5 requiring EPA to terminate such Work Takeover.
6

7
8 112. Notwithstanding any other provision of this Consent Decree, the
9 United States on behalf of EPA retains all authority and reserves all rights to take
10 any and all response actions authorized by law.
11

12 **B. COVENANTS, RELEASES, AND RESERVATIONS OF RIGHTS BY**
13 **ALL OTHER PARTIES**

14 113. Covenants. Except as specifically provided in Paragraph 10,
15 Paragraphs 115 through 119, and this Paragraph, Rialto, Colton, Settling
16 Defendants, and Settling Federal Agencies each release and covenant not to sue or
17 take administrative action against each other, pursuant to Sections 107(a) or 113 of
18 CERCLA, 42 U.S.C. §§ 9607(a) and 9613, Section 7002 of RCRA, 42 U.S.C. §
19 6972, or any other federal or state statute or common law with respect to all claims,
20 of any kind, known and unknown, against Rialto, Colton, Settling Defendants,
21 and/or Settling Federal Agencies in connection with the alleged release or
22 threatened release of any of the Basin Contaminants at, on, or under the RABSP
23 Site. These covenants and releases are also conditioned upon the satisfactory
24 performance by Rialto, Colton, Settling Defendants, and Settling Federal Agencies
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1 of their obligations under this Consent Decree, and the veracity and completeness
2 of the Financial Information and the Insurance Information provided to EPA by
3 Settling Ability to Pay Defendants. If the Financial Information or the Insurance
4 Information provided by any Settling Ability to Pay Defendant is subsequently
5 determined by EPA to be false or, in any material respect, inaccurate, such Settling
6 Ability to Pay Defendant shall forfeit all payments made pursuant to this Consent
7 Decree and these releases and covenants and the contribution protection in
8 Paragraphs 135 and 136 shall be null and void as to such Settling Ability to Pay
9 Defendant.
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13 114. In releasing all unknown claims as set forth in Paragraph 113, Rialto,
14 Colton, Settling Defendants, and Settling Federal Agencies each expressly waive
15 the provisions of Section 1542 of the California Civil Code, which provides:
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18 A general release does not extend to claims which the creditor does
19 not know or suspect to exist in his or her favor at the time of
20 executing the release, which if known by him or her must have
21 materially affected his or her settlement with the debtor.

22 115. Rialto and Colton each reserve, and this Consent Decree is without
23 prejudice to, all rights against Settling Defendants and Settling Federal Agencies
24 with respect to:

- 25 a. liability of the breaching Party for its failure to meet a
26 requirement of this Consent Decree;
27
28 b. criminal liability;

1 c. liability based on the ownership or operation of any portion of
2 the RABSP Site when such ownership or operation commences after lodging of
3 this Consent Decree and there is a new release of a Waste Material on or related to
4 such property;

6 d. liability based on transportation, treatment, storage, or disposal,
7 or arrangement for transportation, treatment, storage, or disposal of a Waste
8 Material at or in connection with the RABSP Site, after lodging of this Consent
9 Decree;

12 e. liability arising from the past, present, or future disposal,
13 release or threat of release of a Waste Material outside of the RABSP Site;

15 f. liability arising from the release, threat of release, or disposal of
16 a Waste Material either within or outside of the RABSP Site, where such release,
17 threat of release, or disposal occurs after the lodging of this Consent Decree;

19 g. liability arising from past, present, or future releases or
20 threatened releases at the RABSP Site, where the Waste Material at issue is not a
21 Basin Contaminant;

23 h. liability related to bodily injury;

25 i. any rights to enforce the land use covenant on the Stonehurst
26 Property, pursuant to the terms of that document, against current or future owners
27 of the Stonehurst Property, their heirs, successors, assignees, agents, and
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1 employees, and/or anyone who currently or at any time in the future holds title to
2 all or any portion of the Stonehurst Property and/or any person or entity currently
3 or in the future entitled by ownership, leasehold, or other legal relationship to the
4 right to occupy any portion of the Stonehurst Property;
5

6 j. claims for contribution whether based on federal or state
7 statutes or common law arising out of: (1) claims in *City of Riverside v. Black &*
8 *Decker (U.S.), Inc., et al.*, Case No. BC410878; (2) claims asserted by any person
9 or entity that was not a party to the Consolidated Federal Action on August 24,
10 2012; or, (3) claims for natural resource damages; and
11
12

13 k. any rights of Rialto that arise from the exercise and
14 enforcement of its municipal police power regulatory authority over persons,
15 entities, properties, and business transactions within the jurisdiction of the City of
16 Rialto. However, nothing in the foregoing sentence of this subparagraph k.
17 reserves Rialto's rights under any federal, state, or local law to seek enforcement
18 against the Settling Defendants and/or Settling Federal Agencies to remediate soil
19 or groundwater for existing Waste Material unless such right is reserved in other
20 subparagraphs of this Paragraph.
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25 For purposes of subparagraphs c., d., and f. of this Paragraph, migration of existing
26 Waste Material is not a new release or disposal of Waste Material into soil,
27 groundwater, or atmosphere.
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1 116. The San Bernardino County Settling Parties each reserve, and this
2 Consent Decree is without prejudice to, all rights against Rialto, Colton, Settling
3 Defendants, and Settling Federal Agencies with respect to:
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5 a. liability of the breaching Party for its failure to meet a
6 requirement of this Consent Decree;
7

8 b. criminal liability;

9 c. liability based on the ownership or operation of any portion of
10 the RABSP Site when such ownership or operation commences after lodging of
11 this Consent Decree and there is a new release of a Waste Material on or related to
12 such property;
13

14 d. liability based on transportation, treatment, storage, or disposal,
15 or arrangement for transportation, treatment, storage, or disposal of a Waste
16 Material at or in connection with the RABSP Site, after lodging of this Consent
17 Decree;
18

19 e. liability arising from the past, present, or future disposal,
20 release or threat of release of a Waste Material outside of the RABSP Site;
21

22 f. liability arising from the release, threat of release, or disposal of
23 a Waste Material either within or outside of the RABSP Site, where such release,
24 threat of release, or disposal occurs after the lodging of this Consent Decree;
25

26 g. liability arising from past, present, or future releases or
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1 threatened releases at the RABSP Site, where the Waste Material at issue is not a
2 Basin Contaminant;

3 h. liability related to bodily injury;

4 i. any rights to enforce the land use covenant on the Stonehurst
5 Property, pursuant to the terms of that document, against current or future owners
6 of the Stonehurst Property, their heirs, successors, assignees, agents, and
7 employees, and/or anyone who currently or at any time in the future holds title to
8 all or any portion of the Stonehurst Property and/or any person or entity currently
9 or in the future entitled by ownership, leasehold, or other legal relationship to the
10 right to occupy any portion of the Stonehurst Property; and
11

12 j. claims for contribution whether based on federal or state
13 statutes or common law arising out of: (1) claims in *City of Riverside v. Black &*
14 *Decker (U.S.), Inc., et al.*, Case No. BC410878; (2) claims asserted by any person
15 or entity that was not a party to the Consolidated Federal Action on August 24,
16 2012; or, (3) claims for natural resource damages.
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22 For purposes of subparagraphs c., d., and f. of this Paragraph, migration of existing
23 Waste Material is not a new release or disposal of Waste Material into soil,
24 groundwater, or atmosphere.
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27 117. The Settling Work Defendant, Settling Cashout Defendants, Settling
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1 Federal Agencies, Settling Ability to Pay Defendants, and Emhart Related Parties
2 each reserves, and this Consent Decree is without prejudice to, all rights against
3 Rialto, Colton, Settling Defendants, and Settling Federal Agencies with respect to:

4
5 a. liability of the breaching Party for its failure to meet a
6 requirement of this Consent Decree;

7
8 b. liability based on the ownership or operation of any portion of
9 the RABSP Site when such ownership or operation commences after lodging of
10 this Consent Decree and there is a new release of a Waste Material on or related to
11 such property;

12
13 c. liability based on transportation, treatment, storage, or disposal,
14 or arrangement for transportation, treatment, storage, or disposal of a Waste
15 Material at or in connection with the RABSP Site, after lodging of this Consent
16 Decree;

17
18
19 d. liability arising from the past, present, or future disposal,
20 release or threat of release of a Waste Material outside of the RABSP Site;

21
22 e. liability arising from the release, threat of release, or disposal of
23 a Waste Material either within or outside of the RABSP Site, where such release,
24 threat of release, or disposal occurs after the lodging of this Consent Decree;

25
26 f. liability arising from past, present, or future releases or
27 threatened releases at the RABSP Site, where the Waste Material at issue is not a
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1 Basin Contaminant;

2 g. liability related to bodily injury; and

3 h. claims for contribution whether based on federal or state

4 statutes or common law arising out of: (1) claims in *City of Riverside v. Black &*
5 *Decker (U.S.), Inc., et al.*, Case No. BC410878; (2) claims asserted by any person
6 or entity that was not a party to the Consolidated Federal Action on August 24,
7 2012; or, (3) claims for natural resource damages.
8

9
10 For purposes of subparagraphs b., c., and e. of this Paragraph, migration of existing
11 Waste Material is not a new release or disposal of Waste Material into soil,
12 groundwater, or atmosphere.
13

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15 118. Reservation of Rights Among the San Bernardino County Settling
16 Parties. Nothing in this Consent Decree affects the rights among the San
17 Bernardino County Settling Parties as to each other, and the covenants provided
18 herein shall not be construed as a release or covenant not to sue from one of the
19 San Bernardino County Settling Parties to any other of the individual San
20 Bernardino County Settling Parties.
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23 119. Reservation of Prior Settlements of San Bernardino County Settling
24 Parties.

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26 a. The releases and covenants not to sue in this Consent Decree do
27 not abrogate, supersede, release, covenant not to sue, or modify the commitments
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1 made to Rialto and Colton by the San Bernardino County Settling Parties in the
2 Settlement Agreement in Case No. ED CV 09-01864 PSG (SSx), entered by U.S.
3 District Court for the Central District of California on December 22, 2011,
4 including the underlying settlement agreement dated August 19, 2010 and executed
5 by Rialto, Colton, the County of San Bernardino, Robertson's Ready Mix, Inc.,
6 Robertson's Ready Mix, Ltd., RRM Properties, Ltd., Edward Stout individually
7 and as trustee of the Stout-Rodriguez Trust (also known as the "Schulz Family
8 Trust"), Elizabeth Rodriguez, John Callagy individually and as trustee of the
9 Frederiksen Children's Trust Under Trust Agreement Dated February 20, 1985 and
10 the E.F. Schulz Trust, Linda Frederiksen individually and as trustee of the Walter
11 M. Pointon Trust dated 11/19/91, the Michelle Ann Pointon Trust under Trust
12 Agreement dated February 15, 1985 and the E.F. Schulz Trust, Mary Callagy,
13 Jeanine Elzie, Stephen Callagy, Michelle Farris, and Anthony Rodriguez, attached
14 as Exhibit 69 to the Declaration of Martin N. Refkin [Docket No. 549] in support
15 of the County of San Bernardino, Robertson's Ready Mix, Inc., and Schulz Trust
16 Parties' Motion for Determination of Good Faith Settlement and Barring of Claims
17 [Docket No. 533] which was adopted and approved by the Court's Amended Order
18 Determining Good Faith Settlement and Barring Claims [Docket No. 1192] both of
19 which are expressly preserved by the parties to this Decree.
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1 b. The releases and covenants not to sue in this Consent Decree do
2 not abrogate, supersede, release, covenant not to sue, or modify the commitments
3 made to Rialto and Colton by the Zambelli Settling Parties in the Settlement
4 Agreement in Case No. ED CV 09-01864 PSG (SSx), entered by U.S. District
5 Court for the Central District of California on June 10, 2011, including the
6 underlying settlement agreement executed in August 2010 by Rialto, Colton,
7 Zambelli Fireworks Manufacturing Company, Inc., Zambelli Fireworks Company,
8 aka Zambelli Fireworks Internationale, and Zambelli Fireworks Manufacturing
9 Company (collectively, “Zambelli”), attached as Exhibit 1 to the Declaration of
10 Martin N. Refkin [Docket No. 573] in support of Zambelli’s Motion for
11 Determination of Good Faith Settlement and Barring of Claims [Docket No. 564]
12 which was adopted and approved by the Court’s Order For Determination of Good
13 Faith Settlement and Barring of Claims [Docket No. 772] both of which are
14 expressly preserved by the parties to this Decree.
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20 120. Further Settlers. Rialto, Colton, Settling Defendants, and Settling
21 Federal Agencies agree that in the event that: (a) the United States, on behalf of
22 EPA, reaches or has reached settlement with any other party to the Consolidated
23 Federal Action who is not a signatory to this Consent Decree (“Further Settlor”);
24 and (b) the United States, on behalf of the EPA, gives notice in accordance with
25 Section XXV (Notices and Submissions) to Rialto, Colton, Settling Defendants,
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1 and Settling Federal Agencies that such party has become a Further Settlor; then
2 upon Court approval of a future settlement, Rialto, Colton, Settling Defendants,
3 and Settling Federal Agencies commit that they shall extend to any such Further
4 Settlor identical releases and covenants not to sue and waiver to those set forth in
5 Paragraphs 113 and 114, without further monetary consideration for such
6 covenants and waiver, subject to the reservations of rights in Paragraphs 115-117,
7 and in exchange for mutual releases of claims and appeals by that Further Settlor
8 against Rialto, Colton, Settling Defendants, and Settling Federal Agencies identical
9 to the releases and covenants not to sue and waiver set forth in Paragraphs 113-
10 114. The commitments of Rialto, Colton, Settling Defendants, and Settling
11 Federal Agencies to provide such covenants not to sue, subject to the reservation of
12 rights, in the foregoing sentence shall not take effect as to any Future Settlor unless
13 and until the settlement with such Future Settlor becomes a final judgment
14 following any appeal. The United States, on behalf of EPA, has sole discretion to
15 determine whether a party is to be deemed a “Further Settlor” for purposes of this
16 Paragraph.

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24 121. Covenants Not to Sue the United States on Behalf of EPA by Rialto,
25 Colton, and Settling Defendants. Except as provided in Paragraph 124, Rialto,
26 Colton, and Settling Defendants covenant not to sue and agree not to assert any
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1 claims or causes of action against the United States on behalf of EPA, or its
2 contractors or employees, with respect to the B.F. Goodrich Superfund Site and
3 this Consent Decree, including, but not limited to:
4

5 a. any direct or indirect claim for reimbursement from the
6 Hazardous Substance Superfund (established pursuant to the Internal Revenue
7 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113
8 or any other provision of law;
9

10 b. any claims against the United States, including any department,
11 agency or instrumentality of the United States under CERCLA Sections 107 or
12 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding, the B.F.
13 Goodrich Superfund Site, the Work, past response actions regarding the B.F.
14 Goodrich Superfund Site, Past Response Costs, Future Response Costs and this
15 Consent Decree;
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18 c. any claims arising out of response actions at or in connection
19 with the B.F. Goodrich Superfund Site relating to the United States, including any
20 claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the
21 Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;
22
23

24 d. any claim, whether express or deemed by court order, in the
25 Consolidated Federal Action; and
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27 e. any direct or indirect claim for disbursement from the B.F.
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1 Goodrich Superfund Site Special Account or B. F. Goodrich Superfund Site
2 Disbursement Special Account, except as provided in Paragraph 69 (Establishment
3 of B.F. Goodrich Superfund Site Disbursement Special Account and
4 Reimbursement of Settling Work Defendant's Expenditures).
5

6 122. Settling Defendants' Agreement Regarding Recovery Under Federal
7 Contracts. Each Settling Defendant hereby agrees that it shall not in the future
8 seek or receive any portion of any amount it has agreed to pay in this Consent
9 Decree, through any Federal Contract. Pursuant to this Paragraph, each Settling
10 Defendant expressly acknowledges that it is prohibited from including any portion
11 of the payments made pursuant to this Consent Decree as either direct or indirect
12 costs, or otherwise, in any invoice, claim, or demand associated with any Federal
13 Contract.
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17 123. Covenant by Settling Federal Agencies. Settling Federal Agencies
18 agree not to assert any direct or indirect claim for reimbursement from the
19 Hazardous Substance Superfund (established pursuant to the Internal Revenue
20 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113
21 or any other provision of law with respect to the B.F. Goodrich Superfund Site.
22 The covenant by Settling Federal Agencies described in this Paragraph does not
23 preclude demand for reimbursement from the Superfund of costs incurred by any
24 of Settling Federal Agencies in the performance of its duties (other than pursuant
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1 to this Consent Decree) as lead or support agency under the National Contingency
2 Plan (40 C.F.R. Part 300).

3
4 124. Except as provided in Paragraph 129 (Claims Against MSW
5 Generators and Transporters), Paragraph 131 (Claims Against *De Minimis* and
6 Ability to Pay Parties), Paragraph 132 (Claims Against *De Micromis* Parties), and
7 Paragraph 140 (Res Judicata and Certain Other Defenses), the covenants in
8 Paragraph 121 (Covenants Not to Sue the United States by Rialto, Colton, and
9 Settling Defendants) shall not apply if the United States brings a cause of action or
10 Settling Defendants) shall not apply if the United States brings a cause of action or
11 issues an order pursuant to any of the reservations in Section XXI (Covenants,
12 Releases, and Reservations of Rights), other than in Paragraphs 109. a. (claims for
13 failure to meet a requirement of the Decree), 109. f. (criminal liability), and 109. g.
14 (violations of federal/state law during or after implementation of the Work), but
15 only to the extent that Settling Defendants' claims arise from the same response
16 action, response costs, or damages that the United States on behalf of EPA is
17 seeking pursuant to the applicable reservation.

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19 125. Claims Against Other Parties in the Consolidated Federal Action.
20 Settling Defendants, Settling Federal Agencies, Rialto, and Colton agree not to
21 assert any claims and to waive all claims or causes of action (including but not
22 limited to claims or causes of action under Sections 107(a) and 113 of CERCLA)
23 or any other federal or state law that they may have for response costs relating to
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1 the B.F. Goodrich Superfund Site and/or the West Side Site against each other or
2 any other person who is or was a party in the Consolidated Federal Action. This
3 waiver shall not apply with respect to any defense, claim, or cause of action that a
4 Settling Defendant, Settling Federal Agency, Rialto, or Colton may have against
5 any person if such person asserts a claim or cause of action relating to the B.F.
6 Goodrich Superfund Site and/or the West Side Site against such Settling
7 Defendant, Settling Federal Agency, Rialto, or Colton, after lodging of this
8 Consent Decree.

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12 126. Pursuant to the “Settlement Terms for Resolving Pending Appeals”
13 set forth in Appendix K, hereto, the United States, Settling Work Defendant, BDI,
14 and KLI shall dismiss their appeals before the Ninth Circuit in *United States of*
15 *America v. Zambelli Fireworks Manufacturing Co., et al.*, No. 11-56309, and
16 *United States of America v. City of Rialto, and County of San Bernardino, et al.*,
17 No. 12-55342, *Emhart Industries, Inc. v. Zambelli Fireworks Manufacturing Co. et*
18 *al.*, No 11-56159, and *Emhart Industries, Inc. v. County of San Bernardino, et al.*,
19 No. 12-55083, including associated appeals and each case subject to the Amended
20 Order Consolidating Appeals filed on April 16, 2012 (Dkt. 12), within thirty (30)
21 Days after the Effective Date of this Consent Decree.

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26 127. Settling Defendants, Rialto, and Colton reserve, and this Consent
27 Decree is without prejudice to, claims arising after the Effective Date against the
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1 United States, subject to the provisions of Chapter 171 of Title 28 of the United
2 States Code, and brought pursuant to any statute other than CERCLA or RCRA
3 and for which the waiver of sovereign immunity is found in a statute other than
4 CERCLA or RCRA, for money damages for injury or loss of property or personal
5 injury or death caused by the negligent or wrongful act or omission of any
6 employee of the United States, as that term is defined in 28 U.S.C. § 2671, while
7 acting within the scope of his or her office or employment under circumstances
8 where the United States, if a private person, would be liable to the claimant in
9 accordance with the law of the place where the act or omission occurred.
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13 However, the foregoing shall not include any claim based on EPA's selection of
14 response actions, or the oversight or approval of Settling Work Defendant's plans,
15 reports, other deliverables or activities. Settling Defendants, Rialto, and Colton
16 also reserve, and this Consent Decree is without prejudice to, contribution claims
17 against Settling Federal Agencies in the event any claim is asserted by the United
18 States against Settling Defendants pursuant to any of the reservations in Section
19 XXI (Covenants, Releases, and Reservations of Rights) other than in Paragraphs
20 109. a. (claims for failure to meet a requirement of the Consent Decree), 109. f.
21 (criminal liability), and 109. g. (violations of federal/state law during or after
22 implementation of the Work), but only to the extent that Settling Defendants'
23 claims arise from the same response action, response costs, or damages that the
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1 United States is seeking pursuant to the applicable reservation and the Settling
2 Federal Agencies shall be entitled to assert all claims and defenses in connection
3 with such actions.
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5 128. Nothing in this Consent Decree shall be deemed to constitute
6 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
7 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
8

9 129. Claims Against MSW Generators and Transporters. Settling
10 Defendants agree not to assert any claims and to waive all claims or causes of
11 action (including but not limited to claims or causes of action under Sections
12 107(a) and 113 of CERCLA) that they may have for all matters relating to the B.F.
13 Goodrich Superfund Site against any person where the person's liability to Settling
14 Defendants with respect to the B.F. Goodrich Superfund Site is based solely on
15 having arranged for disposal or treatment, or for transport for disposal or treatment,
16 of MSW at the B.F. Goodrich Superfund Site, if the volume of MSW disposed,
17 treated, or transported by such person to the B.F. Goodrich Superfund Site did not
18 exceed 0.2 percent of the total volume of waste at the B.F. Goodrich Superfund
19 Site.
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25 130. The waiver in Paragraph 129 (Claims Against MSW Generators and
26 Transporters) shall not apply with respect to any defense, claim, or cause of action
27 that a Settling Defendant may have against any person meeting the criteria in
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1 Paragraph 129 if such person asserts a claim or cause of action relating to the B.F.
2 Goodrich Superfund Site against such Settling Defendant. This waiver also shall
3 not apply to any claim or cause of action against any person meeting the above
4 criteria if EPA determines that: (a) the MSW contributed significantly or could
5 contribute significantly, either individually or in the aggregate, to the cost of the
6 response action or natural resource restoration at the B.F. Goodrich Superfund Site;
7
8 (b) the person has failed to comply with any information request or administrative
9 subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §
10 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the
11 person impeded or is impeding, through action or inaction, the performance of a
12 response action or natural resource restoration with respect to the B.F. Goodrich
13 Superfund Site.
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18 131. Claims Against *De Minimis* and Ability to Pay Parties. Settling
19 Defendants agree not to assert any claims or causes of action and to waive all
20 claims or causes of action (including but not limited to claims or causes of action
21 under Sections 107(a) and 113 of CERCLA) that they may have for all matters
22 relating to the B.F. Goodrich Superfund Site against any person that has entered or
23 in the future enters into a final CERCLA Section 122(g) *de minimis* settlement, or
24 a final settlement based on limited ability to pay, with EPA with respect to the B.F.
25 Goodrich Superfund Site. This waiver shall not apply with respect to any defense,
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1 claim, or cause of action that a Settling Defendant may have against any person if
2 such person asserts a claim or cause of action relating to the B.F. Goodrich
3 Superfund Site against such Settling Defendant.
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5 132. Claims Against *De Micromis* Parties. Settling Defendants agree not
6 to assert any claims and to waive all claims or causes of action (including but not
7 limited to claims or causes of action under Sections 107(a) and 113 of CERCLA)
8 that they may have for all matters relating to the B.F. Goodrich Superfund Site
9 against any person where the person's liability to Settling Defendants with respect
10 to the B.F. Goodrich Superfund Site is based solely on having arranged for
11 disposal or treatment, or for transport for disposal or treatment, of hazardous
12 substances at the B.F. Goodrich Superfund Site, or having accepted for transport
13 for disposal or treatment of hazardous substances at the B.F. Goodrich Superfund
14 Site, if all or part of the disposal, treatment, or transport occurred before April 1,
15 2001, and the total amount of material containing hazardous substances contributed
16 by such person to the B.F. Goodrich Superfund Site was less than 110 gallons of
17 liquid materials or 200 pounds of solid materials.
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23 133. The waiver in Paragraph 132 (Claims Against *De Micromis* Parties)
24 shall not apply with respect to any defense, claim, or cause of action that a Settling
25 Defendant may have against any person meeting the criteria in Paragraph 132 if
26 such person asserts a claim or cause of action relating to the B.F. Goodrich
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1 Superfund Site against such Settling Defendant. This waiver also shall not apply to
2 any claim or cause of action against any person meeting the criteria in Paragraph
3 132 if EPA determines:

4
5 a. that such person has failed to comply with any EPA requests for
6 information or administrative subpoenas issued pursuant to Section 104(e) or
7
8 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42
9 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the
10 performance of a response action or natural resource restoration with respect to the
11 B.F. Goodrich Superfund Site, or has been convicted of a criminal violation for the
12 conduct to which this waiver would apply and that conviction has not been vitiated
13 on appeal or otherwise; or
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16 b. that the materials containing hazardous substances contributed
17 to the B.F. Goodrich Superfund Site by such person have contributed significantly,
18 or could contribute significantly, either individually or in the aggregate, to the cost
19 of response action or natural resource restoration at the B.F. Goodrich Superfund
20 Site.
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23 **XXII. EFFECT OF SETTLEMENT CONTRIBUTION**

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25 134. Except as provided in Paragraph 125 (Claims Against Other Parties in
26 the Consolidated Federal Action), Paragraph 129 (Claims Against MSW
27 Generators and Transporters), Paragraph 131 (Claims Against *De Minimis* and
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1 Ability to Pay Parties), and Paragraph 132 (Claims Against *De Micromis* Parties),
2 nothing in this Consent Decree shall be construed to create any rights in, or grant
3 any cause of action to, any person not a Party to this Consent Decree. Except as
4 provided in Paragraph 120 (Further Settlers), Paragraph 125 (Claims Against Other
5 Parties in the Consolidated Federal Action), Paragraph 129 (Claims Against MSW
6 Generators and Transporters), Paragraph 131 (Claims Against *De Minimis*/Ability
7 to Pay Parties), and Paragraph 132 (Claims Against *De Micromis* Parties), each of
8 the Parties expressly reserves any and all rights (including, but not limited to,
9 pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims,
10 demands, and causes of action which each Party may have with respect to any
11 matter, transaction, or occurrence relating in any way to the B.F. Goodrich
12 Superfund Site and the RABSP Site against any person not a Party hereto. Nothing
13 in this Consent Decree diminishes the right of the United States, pursuant to
14 Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any
15 such persons to obtain additional response costs or response action and to enter
16 into settlements that give rise to contribution protection pursuant to Section
17 113(f)(2).
18

19 135. The Parties agree, and by entering this Consent Decree this Court
20 finds, that this Consent Decree constitutes a judicially-approved settlement for
21 purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Rialto,
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1 Colton, Settling Defendants, and Settling Federal Agencies are entitled, as of the
2 Effective Date, to protection from contribution actions or claims as provided by
3 Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for
4 “matters addressed” in this Consent Decree. The “matters addressed” in this
5 Consent Decree are all response actions taken or to be taken and all response costs
6 incurred or to be incurred at or in connection with the B.F. Goodrich Superfund
7 Site or the West Side Site by the United States or any other person; provided,
8 however, that if the United States, on behalf of EPA, exercises rights against
9 Settling Defendants (or if EPA or the federal natural resource trustee assert rights
10 against Settling Federal Agencies) under the reservations in Section XXI
11 (Covenants, Releases, and Reservations of Rights), other than in Paragraphs 109. a.
12 (claims for failure to meet a requirement of the Consent Decree), 109. f. (criminal
13 liability), or 109. g. (violations of federal/state law during or after implementation
14 of the Work), the “matters addressed” in this Consent Decree will no longer
15 include those response costs or response actions that are within the scope of the
16 exercised reservation. Nothing in this Paragraph shall limit or affect the ability of
17 any Settling Defendant, any Settling Federal Agency, Rialto, or Colton from
18 exercising their reservations of rights as to each other in Paragraphs 115, 116, 117,
19 118, or 119 as applicable.

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28 136. The Parties further agree, and by entering this Consent Decree this

1 Court further finds, that the payments and obligations provided for in this Consent
2 Decree represent a good faith compromise of disputed claims and that the
3 compromise represents a fair, reasonable, and equitable resolution. With regard to
4 any claims for costs, damages, or other claims against the Parties, the Parties agree
5 and this Court finds that the Settling Defendants and Settling Federal Agencies are
6 entitled to contribution protection pursuant to the California Code of Civil
7 Procedure §§ 877 and 877.6, and any other applicable provision of federal or state
8 law, whether by statute or common law.
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12 137. The Parties intend the broadest possible protection from contribution
13 actions provided by law for “matters addressed” in this Consent Decree.
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15 138. Rialto, Colton, each Settling Defendant, and each Settling Federal
16 Agency shall, with respect to any suit or claim brought by it for matters related to
17 this Consent Decree, notify the United States in writing no later than sixty (60)
18 Days, if practicable, prior to the initiation of such suit or claim, and provide a copy
19 to the Cities of such notification. If sixty (60) Days’ notice is not practicable, the
20 Party bringing such suit or claim shall provide whatever notice is practicable. This
21 Paragraph does not apply to suits or claims brought by any Party against its
22 contractors.
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26 139. Rialto, Colton, each Settling Defendant, and each Settling Federal
27 Agency shall, with respect to any suit or claim brought against it for matters related
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1 to this Consent Decree, notify in writing the United States, on behalf of EPA,
2 within ten (10) Days of service of the complaint or claim. In addition, Rialto,
3 Colton, Settling Defendants, and Settling Federal Agencies shall notify the United
4 States, on behalf of EPA, within ten (10) Days of service or receipt of any motion
5 for summary judgment and within ten (10) Days of receipt of any order from a
6 court setting a case for trial. This Paragraph does not apply to suits or claims
7 brought by any Party against its contractors or by any Party's contractor against
8 that Party.
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12 140. Res Judicata and Certain Other Defenses. In any subsequent
13 administrative or judicial proceeding initiated by the United States, on behalf of
14 EPA, for injunctive relief, recovery of response costs, or other appropriate relief
15 relating to the B.F. Goodrich Superfund Site, Settling Defendants shall not assert,
16 and may not maintain, any defense or claim based upon the principles of waiver,
17 res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses
18 based upon any contention that the claims raised by the United States, on behalf of
19 EPA, in the subsequent proceeding were or should have been brought in the instant
20 case; provided, however, that nothing in this Paragraph affects the enforceability of
21 the covenants not to sue set forth in Section XXI (Covenants, Releases, and
22 Reservations of Rights).
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XXIII. RETENTION OF RECORDS

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2 141. By signing this Consent Decree, the Settling Defendants hereby
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4 severally certify that they have, as of February 29, 2012, produced in the
5 Consolidated Federal Action all non-identical and non-privileged copies of
6 records, reports, or information in their possession or control (if any) that relate in
7
8 any manner to response actions taken at the B.F. Goodrich Superfund Site or the
9 liability of any person under CERCLA with respect to the B.F. Goodrich
10 Superfund Site and the RABSP Site. Except for the records, reports, and
11 information produced in the Consolidated Federal Action as certified above, or as
12 produced by other Parties to the Consolidated Federal Action, the Settling
13 Defendants shall preserve and retain, until one (1) year after EPA's Certification of
14 Completion of the Work pursuant to paragraph 57 (Certification of Completion of
15 the Work), all non-identical copies of records, reports, or information now in their
16 possession or control, or that come into their possession or control, that relate in
17 any manner to response actions taken at the B.F. Goodrich Site, RABSP Site, or
18 the liability of any person under CERCLA with respect to the B.F. Goodrich Site
19 or RABSP Site regardless of any governmental or corporate retention policy to the
20 contrary, except for those documents generated during the course of the
21 Consolidated Federal Action which are subject to the attorney-client privilege, the
22 attorney work-product doctrine, or were communications among counsel for the
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1 parties in the Consolidated Federal Action. The materials described in the
2 preceding sentence are hereinafter referred to as “Records.”

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4 142. After the conclusion of the document retention period in the preceding
5 Paragraph, each Settling Defendant shall notify EPA at least ninety (90) days prior
6 to the destruction of any Records, and, upon request by EPA, shall deliver the
7 requested Records to EPA. Each Settling Defendant may assert that certain
8 Records are privileged under the attorney-client privilege or any other privilege
9 recognized by federal law. If a Settling Defendant asserts such a privilege in lieu
10 of providing Records, it shall provide EPA with the following: (a) the title of the
11 Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or
12 firm), and address of the author of the Record; (d) the name and title of each
13 addressee and recipient; (e) a description of the subject of the Record; and (f) the
14 privilege asserted. If a claim of privilege applies only to a portion of a Record, the
15 Record shall be provided to EPA in redacted form to mask the privileged portion
16 only. Each Settling Defendant shall retain all Records that they claim to be
17 privileged until EPA has had a reasonable opportunity to dispute the privilege
18 claim and any such dispute has been resolved in such Settling Defendant’s favor.
19 The requirements in this Paragraph shall not apply to any Record withheld as
20 privileged in the Consolidated Federal Action and exempted by this Court’s Order
21 (Case Management Order No. 1, Docket No. 601, February 15, 2011) from the
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1 requirement to be listed in a privilege log.

2 143. Settling Defendants shall each certify that, to the best of their
3 knowledge and belief, after thorough inquiry, they have not altered, mutilated,
4 discarded, destroyed, or otherwise disposed of any Records (other than identical
5 copies) relating to their potential liability regarding the B.F. Goodrich Superfund
6 Site or the RABSP Site since the earlier of notification of potential liability by the
7 United States or the State or the filing of suit against it regarding the B.F. Goodrich
8 Superfund Site or the RABSP Site and that it has fully complied with any and all
9 EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA,
10 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.
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15 144. The United States acknowledges that each Settling Federal Agency
16 (1) is subject to all applicable Federal record retention laws, regulations, and
17 policies; and (2) hereby confirms that it has produced all relevant documents
18 responsive to discovery requests in the Consolidated Federal Action.
19

20 145. Each Ability to Pay Settling Defendant certifies that, to the best of its
21 knowledge and belief, after thorough inquiry, it has:
22

23 a. not altered, mutilated, discarded, destroyed or otherwise
24 disposed of any Records (other than identical copies) relating to its potential
25 liability regarding the B.F. Goodrich Superfund Site or the RABSP Site since the
26 earlier of notification of potential liability by the United States or the State or the
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1 analysis, chain of custody records, manifests, trucking logs, receipts, reports,
2 sample traffic routing, correspondence, or other documents or information
3 regarding the Work. Settling Defendants shall also make available to EPA, for
4 purposes of investigation, information gathering, or testimony, their employees,
5 agents, or representatives with knowledge of relevant facts concerning the
6 performance of the Work.
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9 147. Business Confidential and Privileged Documents.

10 a. Any Party may assert business confidentiality claims covering
11 part or all of the Records submitted to EPA under this Consent Decree to the extent
12 permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §
13 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by
14 EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no
15 claim of confidentiality accompanies Records when they are submitted to EPA, or
16 if EPA has notified the Party that the Records are not confidential under the
17 standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the
18 public may be given access to such Records without further notice to the Party.
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23 b. Any Party may assert that certain Records are privileged under
24 the attorney-client privilege or any other privilege recognized by federal law. If
25 any Party asserts such a privilege in lieu of providing Records, it shall provide
26 EPA with the following: (1) the title of the Record; (2) the date of the Record; (3)
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1 the name, title, affiliation (e.g., company or firm), and address of the author of the
2 Record; (4) the name and title of each addressee and recipient; (5) a description of
3 the contents of the Record; and (6) the privilege asserted by any Party. If a claim
4 of privilege applies only to a portion of a Record, the Record shall be provided to
5 the EPA in redacted form to mask the privileged portion only. Any Party shall
6 retain all Records that it claims to be privileged until the EPA has had a reasonable
7 opportunity to dispute the privilege claim and any such dispute has been resolved
8 in that Party's favor.

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12 c. No Records created or generated that are required by this
13 Consent Decree shall be withheld from the United States on the grounds that they
14 are privileged or confidential.
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16 148. No claim of confidentiality or privilege shall be made with respect to
17 the analytical results of any sampling of media (including soil, soil gas,
18 groundwater, surface water, air, drinking water) at or around the B.F. Goodrich
19 Superfund Site.
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22 **XXV. NOTICES AND SUBMISSIONS**

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24 149. Whenever, under the terms of this Consent Decree, written notice is
25 required to be given or a report or other document is required to be sent by one
26 Party to another, it shall be directed to the individuals at the addresses specified
27 below, unless those individuals or their successors give notice of a change to the
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1 other Parties in writing. All notices and submissions shall be considered effective
2 upon receipt, unless otherwise provided. Written notice as specified in this Section
3 shall constitute complete satisfaction of any written notice requirement of the
4 Consent Decree with respect to the United States, EPA, Settling Federal Agencies
5 and Settling Defendants, respectively. Notices required to be sent to EPA, and not
6 to the United States, under the terms of this Consent Decree should not be sent to
7 the U.S. Department of Justice.
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9
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11 As to the United States:

12 Chief, Environmental Enforcement Section
13 Environment and Natural Resources Division
14 U.S. Department of Justice
15 P.O. Box 7611
16 Washington, DC 20044-7611
17 Re: DJ # 90-11-2-09952

18 -and-

19 Chief, Environmental Defense Section
20 Environment and Natural Resources Division
21 U.S. Department of Justice
22 P.O. Box 7611
23 Washington, DC 20044-7611
24 Re: DJ # 90-11-6-17144/1

25 As to EPA:

26 Remedial Project Manager, B.F. Goodrich Site
27 Wayne Praskins
28 United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

CONSENT DECREE

1 As to Settling Work Defendant and Emhart Related Parties:

2 Theodore C. Morris, Esq.
3 Assistant General Counsel and Assistant Secretary
4 Stanley Black & Decker, Inc.
5 701 East Joppa Road
6 Towson, MD 21286

7 Deborah Geyer
8 Vice President Environmental Health and Safety
9 Stanley Black & Decker, Inc.
10 1000 Stanley Drive
11 New Britain, CT 06053

12 Joseph W. Hovermill, Esq
13 Miles & Stockbridge PC
14 100 Light Street
15 Baltimore, MD 21202

16 As to Rialto:

17 City Attorney for City of Rialto
18 Attn: Jimmy Gutierrez
19 12616 Central Avenue
20 Chino, CA 91710

21 -and-

22 Paul Hastings LLP
23 55 Second Street
24 Twenty-Fourth Floor
25 San Francisco, CA 94105
26 Attn: Peter H. Weiner (for notice only, not service of process)

27 -and-

28 Paul Hastings LLP
29 55 Second Street
30 Twenty-Fourth Floor
31 San Francisco, CA 94105

1 Attn: Deborah J. Schmall (for notice only, not service of process)

2 As to Colton:

3 City Manager
4 Attn: Rod Foster
5 City of Colton
6 650 North LaCadena Dr.
7 Colton, CA 92324

8 -and-

9 City Attorney
10 Attn: Dean Derleth
11 Best Best & Krieger LLP
12 3500 Porsche Way, Suite 200
13 Ontario, CA 91764

14 As to the County of San Bernardino:

15 County of San Bernardino County Counsel
16 385 North Arrowhead Avenue, 4th Floor
17 San Bernardino CA 92415-0140

18 -and-

19 Gallagher & Gallagher, a Professional Corporation (for notice only, not for
20 service of process)
21 1925 Century Park East, Suite 950
22 Los Angeles, CA 90067
23 Attn: Timothy V.P. Gallagher

24 As to Robertson's Ready Mix, Inc.:

25 Rob Binam
26 Robertson's Ready Mix
27 200 South Main Street
28 Corona, California 92882

1 As to the Schulz Parties:

2 John Callagy
3 c/o Asage Financial LLC
4 1910 Olympic Blvd., Suite 330
5 Walnut Creek, CA 90017

6 -and-

7 Elizabeth Rodriguez; Linda Frederiksen;
8 Edward Stout; Mary Callagy;
9 Stephen Callagy; Jeanine Elzie; and
10 Michelle Ferris
11 c/o William W. Funderburk, Jr.
12 Castellón & Funderburk LLP
13 811 Wilshire Blvd., Suite 1025
14 Los Angeles, CA 90017

15 As to the Zambelli Parties:

16 David Acker, Esq.
17 For Zambelli Fireworks Manufacturing Company, Inc.
18 25 North Mill Street
19 First Merit Plaza, Suite 500
20 New Castle, PA 16101

21 -and-

22 Jad Davis, Esq.
23 Kutak Rock LLP
24 18201 Von Karman, Suite 1100
25 Irvine, CA 92612-1077

26 As to APE, Inc.-West and APE, Inc.:

27 Tad Trout
28 President
American Promotional Events, Inc.-West
P.O. Box 2437
Fullerton, CA 92837

1 -and-

2
3 Vince Schilleci
4 General Counsel
5 American Promotional Events, Inc.
6 4511 Helton Drive
7 Florence, AL 35630

8 -and-

9 Steven H. Goldberg
10 Downey Brand LLP
11 621 Capitol Mall, 18th Floor
12 Sacramento, CA 95814

13 As to Broco, Inc. and J.S. Brower & Associates, Inc.:

14 Paul A. Brower
15 4197 La Junta Drive
16 Claremont, CA 91711

17 -and-

18 Allan E. Ceran
19 Burke, Williams & Soresnen, LLP
20 444 South Flower Street, Suite 2400
21 Los Angeles, CA 90071-2953

22 As to The Ensign-Bickford Co.:

23 Attn: Dorothy Hammett
24 The Ensign-Bickford Co.
25 125 Powder Forest Drive
26 P.O. Box 7
27 Simsbury, CT 06070

28 -and-

1 Tom Boer
2 Barg Coffin Lewis & Trapp, LLP
3 350 California Street, 22nd Floor
4 San Francisco, CA 94104-1435

5 As to Raytheon:

6 Molly Brown
7 Raytheon Company
8 870 Winter Street
9 Waltham, Massachusetts 02451

10 -and-

11 Steven E. Soule
12 Kirkland & Ellis LLP
13 333 S. Hope Street
14 Los Angeles, California 90071

15 As to Whittaker Corporation:

16 Eric Lardiere, President
17 Whittaker Corporation
18 1955 North Surveyor Avenue
19 Simi Valley, CA 93063-3369

20 -and-

21 Christopher T. Johnson
22 Dongell Lawrence Finney LLP
23 1629 K Street NW, Suite 300
24 Washington, DC 20006
25 (for notice only, not for service of process)

26 -and-

27 Matthew Clark Bures
28 Dongell Lawrence Finney LLP
707 Wilshire Blvd., 45th Floor
Los Angeles, CA 90017

1 (for notice only, not for service of process)

2 -and-

3 Reynold L. Siemens
4 Pillsbury Winthrop Shaw Pittman LLP
5 725 South Figueroa Street, Suite 2800
6 Los Angeles, CA 90017
7 (for notice only, not for service of process)

8 **XXVI. RETENTION OF JURISDICTION**

9 150. This Court retains jurisdiction over the subject matter of this Consent
10 Decree, and over Rialto, Colton, Settling Defendants, and Settling Federal
11 Agencies for the duration of the performance of the terms and provisions of this
12 Consent Decree for the purpose of enabling any of the Parties to apply to the Court
13 at any time for such further order, direction, and relief as may be necessary or
14 appropriate for the construction or modification of this Consent Decree, or to
15 effectuate or enforce compliance with its terms, or to resolve disputes in
16 accordance with Section XIX (Dispute Resolution).
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21 **XXVII. APPENDICES**

22 151. The following appendices are attached to and incorporated into this
23 Consent Decree:
24
25 “Appendix A” is a map of the 160-Acre Area, West Side Area, and RABSP
26 Area.
27
28 “Appendix B” is the 2010 ROD, together with its attachments.

1 “Appendix C” is the list of Settling Ability to Pay Defendants and Payment
2 Amounts.

3 “Appendix D” is the list of Settling Cashout Defendants and Payment
4 Amounts.
5

6 “Appendix E” is the list of San Bernardino County Settling Parties.
7

8 “Appendix F” is the SOW.

9 “Appendix G” is the performance guarantee.

10 “Appendix H” is a list of the financial documents submitted to EPA by
11 Settling Ability to Pay Defendants.
12

13 “Appendix I” is a list of the insurance documents submitted to EPA by
14 Settling Ability to Pay Defendants.
15

16 “Appendix J” sets forth Material Terms To Be Included in the
17 Rialto/Settling Work Defendant Implementation Agreement.
18

19 “Appendix K” sets forth “Settlement Terms for Resolving Pending Appeals.”
20

21 **XXVIII. COMMUNITY RELATIONS**

22 152. If requested by EPA, Settling Work Defendant shall participate in
23 community relations activities pursuant to the community involvement plan
24 ("Plan") to be developed by EPA. EPA will determine the appropriate role for
25 Settling Work Defendant under the Plan. Settling Work Defendant shall also
26 cooperate with EPA in providing information regarding the Work to the public. As
27
28

1 requested by EPA, Settling Work Defendant shall participate in the preparation of
2 such information for dissemination to the public and in public meetings which may
3 be held or sponsored by EPA to explain activities at or relating to the B.F.
4 Goodrich Superfund Site.
5

6
7 **XXIX. MODIFICATION**

8 153. Except as provided in Paragraph 19 (Modification of SOW or Related
9 Work Plans) and in Paragraph 154, material modifications to this Consent Decree,
10 including the SOW, shall be in writing, signed by the United States, Rialto, Colton,
11 and Settling Defendants, and shall be effective upon approval by the Court. Except
12 as provided in Paragraph 19 (Modification of SOW or Related Work Plans) and in
13 Paragraph 154, non-material modifications to this Consent Decree, including the
14 SOW, shall be in writing and shall be effective when signed by duly authorized
15 representatives of the United States, Rialto, Colton and Settling Defendants. A
16 modification to the SOW shall be considered material if it fundamentally alters the
17 basic features of the selected remedy within the meaning of 40 C.F.R. §
18 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW,
19 the United States will provide the State and the Cities with a reasonable
20 opportunity to review and comment on the proposed modification.
21

22 154. Modifications (non-material or material) that do not affect the rights
23 or obligations of, or the protections afforded to, Settling Cashout Defendants,
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1 Settling Ability to Pay Defendants, the Emhart Related Parties (other than BDI),
2 and/or the San Bernardino County Settling Parties (other than the County of San
3 Bernardino itself) may be executed without the signatures of the unaffected Parties.
4
5 Non-material modifications that do not affect the rights or obligations of, or the
6 protections afforded to, Rialto, Colton, Settling Work Defendant, BDI, and/or the
7
8 County of San Bernardino may be executed without the signatures of the
9
10 unaffected Parties.

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

13 **XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

14
15 156. This Consent Decree shall be lodged with the Court for a period of not
16
17 less than thirty (30) Days for public notice and comment in accordance with
18 Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The
19
20 United States reserves the right to withdraw or withhold its consent if the
21
22 comments regarding the Consent Decree disclose facts or considerations which
23
24 indicate that the Consent Decree is inappropriate, improper, or inadequate. Rialto,
25
26 Colton, and Settling Defendants consent to the entry of this Consent Decree
27
28 without further notice.

157. If for any reason the Court should decline to approve this Consent
Decree in the form presented, this agreement is voidable at the sole discretion of

1 any Party and the terms of the agreement may not be used as evidence in any
2 litigation between the Parties.

3
4 **XXXI. SIGNATORIES/SERVICE**

5 158. Each undersigned representative of a Settling Defendant to this
6 Consent Decree, Rialto, Colton, and the Associate Attorney General of the
7 Department of Justice and/or Assistant Attorney General for the Environment and
8 Natural Resources Division of the Department of Justice on behalf of the United
9 States, as reflected in the signature block below, certifies that he or she is fully
10 authorized to enter into the terms and conditions of this Consent Decree and to
11 execute and legally bind such Party to this document.
12
13
14

15 159. Rialto, Colton, Settling Defendants, and Settling Federal Agencies
16 agree not to oppose entry of this Consent Decree by this Court or to challenge any
17 provision of this Consent Decree unless the United States, on behalf of EPA, has
18 notified Settling Defendants, Settling Federal Agencies, Rialto, and Colton in
19 writing that it no longer supports entry of the Consent Decree.
20
21

22 160. Rialto, Colton, and Settling Defendants agree that the agents
23 identified in Paragraph 149 (Notices) are authorized to accept service of process by
24 mail on behalf of that Party with respect to all matters arising under or relating to
25 this Consent Decree. Rialto, Colton, and Settling Defendants agree to accept
26 service in that manner and to waive the formal service requirements set forth in
27
28

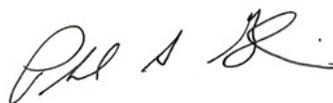
1 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of
2 this Court, including, but not limited to, service of a summons.

3
4 **XXXII. FINAL JUDGMENT**

5 161. This Consent Decree and its appendices constitute the final, complete,
6 and exclusive agreement and understanding among the Parties regarding the
7 settlement embodied in the Consent Decree. The Parties acknowledge that there
8 are no representations, agreements or understandings relating to the settlement
9 other than those expressly contained in this Consent Decree.
10
11

12 162. Upon entry of this Consent Decree by the Court, this Consent Decree
13 shall constitute a final judgment between and among the United States, Rialto,
14 Colton, and Settling Defendants. The Court finds that there is no just reason for
15 delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P.
16 54 and 58.
17
18

19 SO ORDERED THIS 2nd DAY OF July, 2013.
20

21 

22
23 **JUDGE PHILIP S. GUTIERREZ**
24 **UNITED STATES DISTRICT JUDGE**

1 FOR THE UNITED STATES OF AMERICA:

2
3
4 Dated: 11/20/12

By: Ignacia S. Moreno
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, DC 20530

5
6
7
8
9
10 Dated: 12/4/12

By: Deborah A. Gitlin
DEBORAH A. GITLIN
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
301 Howard St., Suite 1050
San Francisco, CA 94105

11
12
13
14
15
16
17 Dated: 12/4/12

By: Michael C. Augustini
MICHAEL C. AUGUSTINI
MARK A. RIGAU
ROBERT FOSTER
Environmental Defense Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

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CONSENT DECREE-

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

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3 Dated: 11/30/2012

By: 

JANE DIAMOND
Director, Superfund Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

4
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9
10 Dated: November 20, 2012

By: 

THOMAS B. BUTLER
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

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FOR THE CITY OF COLTON:

Dated: 10.17.2012

By: 

ROD FOSTER
CITY MANAGER

Dated: 10.17.12

By: 

GENE TANAKA
DANIELLE G. SAKAI
Best Best & Krieger LLP

1 FOR CITY OF RIALTO AND RIALTO UTILITY AUTHORITY:
2
3

4
5 Dated: 11/21/12
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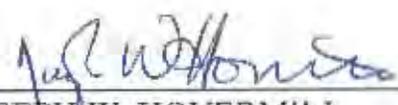
By: 
ED SCOTT, MAYOR PRO TEM
City of Rialto
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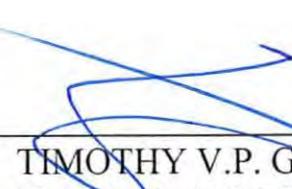
FOR SETTLING WORK DEFENDANT AND EMHART RELATED PARTIES:

Dated: 15 November 2012

By: 
JOSEPH W. HOVERMILL
Miles & Stockbridge PC

1 FOR THE COUNTY OF SAN BERNARDINO:
2
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4
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6 Dated: 11/16/2012

7 By: 
8 TIMOTHY V.P. GALLAGHER
9 THOMAS A. BLOOMFIELD
10 Gallagher & Gallagher

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CONSENT DECREE

1 FOR ROBERTSON'S READY MIX, INC.:

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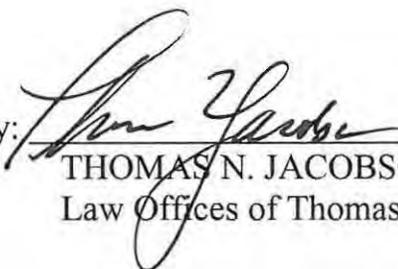
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7 Dated: November 16, 2012

By: 
THOMAS N. JACOBSON
Law Offices of Thomas N. Jacobson

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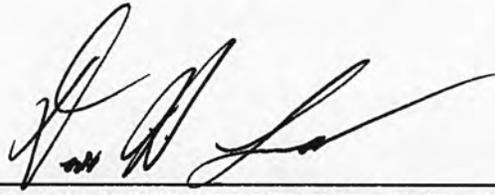
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CONSENT DECREE

1 FOR THE SCHULZ PARTIES:
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6
7 Dated: November 16, 2012

8 By: 
9 For: WILLIAM W. FUNDERBURK, JR.
10 Castellón & Funderburk LLP
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CONSENT DECREE

1 FOR THE ZAMBELLI PARTIES:
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7 Dated: 11/16/2012

By: Jad T. Davis
8 JAD T. DAVIS
9 Kutak Rock LLP
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FOR AMERICAN PROMOTIONAL EVENTS, INC.-WEST AND AMERICAN PROMOTIONAL EVENTS, INC.:

Dated: 10/10/12 By: Tad Trout

TAD TROUT, President
American Promotional Events, Inc.-West
Executive Vice President, APE, Inc.

Dated: October 10, 2012 By: Steven H. Goldberg

STEVEN H. GOLDBERG
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

Attorneys for American Promotional Events,
Inc. and American Promotional Events, Inc.-
West

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FOR BROCO, INC. AND J.S. BROWER & ASSOCIATES, INC.:

BURKE, WILLIAMS & SORENSEN, LLP

Dated: 11/19/12

By: 

ALLAN E. CERAN
AMY E. HOYT
Attorneys for BROCO, INC. and
J.S. BROWER & ASSOCIATES, INC.

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FOR THE ENSIGN-BICKFORD CO.:

Dated: 11-28-12

By: *Dorothy T. Hammett*
DOROTHY T. HAMMETT
Secretary, The Ensign-Bickford Co.

1 FOR RAYTHEON COMPANY AND RELATED ENTITIES LISTED IN
2 APPENDIX D:
3
4
5
6

7 Dated: 19 Nov 2012

By: 

8 STEVEN E. SOULE
9 Kirkland & Ellis LLP
10 333 S. Hope Street
11 Los Angeles, California 90071

12 Attorneys for Raytheon Company
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FOR WHITTAKER CORPORATION:

Dated: 11/20/12

By: 
ERIC G. LARDIERE
President
Whittaker Corporation
1955 North Surveyor Avenue
Simi Valley, California 93063-3369

Dated: 19 nov 12

By: 
CHRISTOPHER T. JOHNSON
Dongell Lawrence Finney LLP
1629 K Street NW, Suite 300
Washington, D.C. 20006

Attorneys for Whittaker Corporation

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