

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

In the Matter of:

[Site Name and Address]

[Settling Respondent Name and Address]

Docket No. [DTSC Inserts Docket]

AGREEMENT AND COVENANT NOT TO SUE

Health & Safety Code

Sections 25300 et seq.,

58009 & 58010

I. INTRODUCTION

1.1. **Parties.** This Agreement and Covenant Not to Sue (Agreement) is made and entered into by and between the State of California, California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) and **[insert name of Settling Respondent]** (collectively the "Parties"). The Settling Respondent is not affiliated with any person potentially liable for response actions at the site.

1.2. **Site.** This Agreement applies to the Site located at **[physical address]**, in **[County Name]** County, California **[Zip Code]** (Site), identified by **[County]** Assessor's Parcel Number(s) **[XXX, XXX, etc.]**, and any off-site area to which hazardous substances have or may have migrated from the Site. **[If the Site occupies a portion of the APN(s), add the following sentence: "The Site occupies a portion of the Assessor Parcel Number(s)."]** The Site is approximately **[X]** acres in size and is bordered by **[list adjacent roadways or other known physical markers]**. **[Describe current and historic land uses of the Site and uses bordering the Site.]** Site location map and a Site diagram are attached as Exhibits A and B. A legal description of the Site is attached as Exhibit C.

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1.3. Jurisdiction. DTSC enters into this Agreement pursuant to Health and Safety Code Sections 25300 et seq. (the Hazardous Substance Account Act), 58009 and 58010. DTSC has authority to enter into agreements whereby DTSC covenants not to sue or assert claims for environmental remediation against prospective purchasers of environmentally impacted properties, if such agreements are sufficiently in the public interest.

1.4. Purpose. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections V Covenants Not to Sue and VIII Certification, the potential liability of the Settling Respondent for the Existing Contamination (hereinafter defined) at the Site which would otherwise result from Settling Respondent becoming the owner of the Site.

The Parties intend and believe that, based upon competent engineering and other data previously considered, the intended uses (and all activities anticipated to be undertaken in connection therewith) will not exacerbate or contribute to the Existing Contamination (hereinafter defined) or pose health risks to persons present at the Site. The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to DTSC of a substantial benefit, is in the public interest. DTSC has determined that this Agreement is fair, reasonable and in the public interest. **[Add site specific description regarding public benefit, including development plans, number of jobs, and any increased tax base.]** Finally, the Settling Respondent will be working with DTSC and to ensure that the development process will be consistent with the requirements of the remedy at the Site. As necessary, the Settling Respondent will be enhancing the remedy in conjunction with the construction process (see Scope of Work requirements in Exhibit [X]).

This Agreement shall be subject to the Settling Respondent's acquisition of title to the Site. If Settling Respondent fails to acquire title to the Site, the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against Settling Respondent.

OR – FOR LONG TERM LEASES

This Agreement shall be subject to the Settling Respondent's execution of

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a long-term (xx-year) lease agreement for the Site with xx year extension options. The Settling Respondent is not affiliated with any person potentially liable for response actions at the Site. If Settling Respondent fails to execute the long-term lease agreement with the Present Property Owners (hereinafter defined), this Agreement shall be null and void and DTSC reserves all rights it may otherwise have against Settling Respondent.

The Settling Respondent will be responsible for [xxxx the operation and maintenance of the final remedies selected for the soil, soil vapor, and groundwater at the Site], which will be mutually agreed upon by the Parties. If required by DTSC, the Settling Respondent will enter into an Operation and Maintenance Agreement with DTSC for the duration of the Settling Respondent's lease. The Operation and Maintenance Agreement will provide for adequate financial assurance in accordance with California Health and Safety Code section 25355.2 for the operation and maintenance activities required by DTSC as described in the Operation and Maintenance Plan and any revision thereof.

1.5 Expectations of the Present Property Owners. **[applies to long term lessees]** A xxxxx dated commitment letter addressed to DTSC memorialized that the Present Property Owner has no objection to Settling Respondent enrolling in the Prospective Purchaser Agreement. This letter is attached as Exhibit C.

If required, DTSC may request that the Present Property Owner (hereinafter defined) enter into a Land Use Covenant. A Land Use Covenant may be required if DTSC concludes that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment. If a Land Use Covenant is required, the Settling Respondent will be responsible for all associated obligations including oversight costs.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Health and Safety Code or in regulations promulgated under the Health and Safety Code shall have the meaning assigned to them in the Health and Safety Code or in such regulations, including any amendments thereto.

2.1. "DTSC" shall mean the State of California, Environmental Protection Agency, Department of Toxic Substances Control and any successor departments or agents of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement.

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2.2. "Existing Contamination" shall mean any contamination caused by any hazardous substances, pollutants or contaminants, present or existing at, on, or under (including within the groundwater beneath) the Site as of the Effective Date of this Agreement [including without limitation, that contamination identified in the orders, plans, reports and other documents listed in Exhibit C hereto.

2.3. "Land Use Controls" shall mean recorded instruments restricting the present and future uses of the Site, including but not limited, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, pursuant to Health and Safety Code section 25355.5, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by DTSC pursuant to Health and Safety Code, sections 25355.5 and 25356.1. Land use controls shall also meet the requirements of California Code of Regulations, title 22, section 67391.1

2.4. "Notice" shall refer to that notice, in the form of Exhibit [X] hereto, to be executed by each successor and/or transferee of the Site owner and Occupant pursuant to Section 9.21 Notices hereof.

2.5. "Parties" shall mean the State of California, California Environmental Protection Agency, Department of Toxic Substances Control, and the Settling Respondent.

2.6. "Settling Respondent" shall mean [Insert name of Settling Respondent].

2.7. "Site" shall mean the Site which is described in Exhibit C of this Agreement.

III. FINDINGS OF FACT

DTSC hereby finds:

3.1. Ownership. The Site is owned by [Property Owner]. [If Site consists of more than one parcel, identify the owners of each parcel.]

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3.2. Site History. [Briefly describe the historical uses of the Site, including any hazardous materials/waste handling, storage or disposal areas, if known.]

3.3. Substances Found at the Site. [Include, if known, reports containing the results of environmental media sampling conducted at the Site, indicate that the (list media) is contaminated with hazardous substances, including (list contaminants).

3.4. The Settling Respondent represents, and for the purposes of this Agreement DTSC relies on those representations, that Settling Respondent's involvement with the Site has been limited to the following: [Provide facts of any involvement by Settling Respondent with the Site, for example performing an environmental audit, or if Settling Respondent has had no involvement with the Site so state.]

IV. AGREEMENT

4.1. IT IS HEREBY AGREED THAT DTSC will provide review and oversight of the response activities conducted by the Settling Respondent in accordance with the Scope of Work contained in Exhibit [X]. Settling Respondent shall conduct the activities in the manner specified herein and in accordance with the schedule specified in Exhibit [X]. All work shall be performed consistent with H&SC section 25300 et seq., as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; U.S. EPA and DTSC Superfund guidance documents regarding site investigation and remediation.

4.2. Financial Assurance. If long-term operation and maintenance of the remedy is required by DTSC, the Settling Respondent will be required to provide financial assurance for [X] years of [state type of maintenance that requires O&M, e.g., cap maintenance] costs. The financial assurance mechanism shall be provided as described in Exhibit D and shall be activated/funded within thirty (30) days of the Settling Respondent acquiring the property. The financial mechanisms are outlined in Title 22 of the California Code of Regulations Section 66264.140. The Settling Respondent shall select a mechanism which meets the criteria set forth in the regulations for the selected mechanism.

4.3. Scope of Work and DTSC Oversight. DTSC shall review and provide Settling Respondent with written comments on all Settling Respondent's deliverables as described in Exhibit [X] (Scope of Work) and, other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and

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remedial activities, as appropriate. DTSC's completion of activities described above shall constitute DTSC's complete performance under this Agreement.

V. COVENANTS NOT TO SUE

**[THIS SECTION MUST BE REVIEWED BY OLC PRIOR TO SHARING DRAFT WITH
SETTLING RESPONDENT]**

5.1. DTSC's Covenant Not to Sue. Subject to Sections 5.2. Reservation of Rights and 5.3 Reservation of Rights as to Unknown conditions or New Information of this Agreement, and upon completion of the work described in Exhibit [X] (Scope of Work) to the satisfaction of DTSC, DTSC covenants not to sue or take any civil, judicial or administrative action, to pursue any claim, enter any order or make any demand against Settling Respondent for claims pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; section 7003 of RCRA; 42 U.S.C. § 6973; or chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with section 25301), division 20 of the Health and Safety Code, or pursuant to other applicable laws, regulations or civil, judicial or administrative authorities, solely with respect to the Existing Contamination at the Site and arising solely from the ownership, operation or possession of the Site, or any portion thereof. This Covenant shall inure to the benefit of, and pass with each and every portion of the Site and shall benefit any respective successors and assignees thereof.

5.2. DTSC's Reservation of Rights. The covenant not to sue set forth in Section 5.1. above does not pertain to any matters other than those expressly specified in Section 5.1 DTSC Covenant Not to Sue. DTSC reserves and this Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by Settling Respondent and its successors or assignees to meet a requirement of this Agreement;
- (b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent and its successors or assignees;
- (c) any liability resulting from exacerbation by Settling Respondent and its successors or assignees of Existing Contamination;
- (d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the Effective Date of this Agreement, not within the definition of Existing Contamination;

- (e) criminal liability;
- (f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by agencies other than DTSC;
- (g) liability for transportation and disposal after the Effective Date of this Agreement by Settling Respondent and its successors or assignees; and
- (h) liability for violations of local, state or federal law or regulations.

5.2.1. With respect to any claim or cause of action asserted by DTSC, the Settling Respondent and/or its successors and assignees shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

5.2.2. If Settling Respondent and/or any successor or assignee is determined, through adjudication or the administrative or the regulatory processes, to have committed an act or omission after the Effective Date for which DTSC has specifically reserved its rights in (a) through (h) above, Settling Respondent (if it was so determined to have committed the act or omission), or the particular successor or assignee that was determined to have committed the act or omission, shall be liable for all enforcement costs including, but not limited to, litigation costs, incurred by DTSC in conjunction with that act or omission.

5.2.3. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which DTSC may have against any person, firm, corporation or other entity not a party to this Agreement.

5.2.4. Nothing in this Agreement is intended to limit the right of DTSC to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent and/or any successor and assignee to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by DTSC in exercising its authority under federal and state law. Settling Respondent acknowledges that it is purchasing property where response actions may be required.

5.3. DTSC' Reservation of Rights as to Unknown Conditions or New Information. The covenant not to sue set forth in Section 5.1. does not apply (and DTSC reserves the right to seek modification of this Agreement or to institute an action under federal or state law, or to take administrative action against any person), if previously unknown conditions are discovered or information is received, in whole or in part, after the

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Effective Date, and these previously unknown conditions or this new information demonstrate that Settling Respondent or a particular successor or assignee is liable for the Existing Contamination for reasons other than that liability that may be incurred solely by virtue of holding or acquiring an interest in the Site (as is expressly contemplated in Section 5.1 above). This reservation shall apply only to that successor or assignee with respect to whom such unknown conditions discovered hereunder pertain.

5.4. Settling Respondent's Covenant Not to Sue. In consideration of DTSC's Covenant Not To Sue in Section 5.1. of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against DTSC, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Waste Control Account, Hazardous Substance Account, or Hazardous Substance Cleanup Fund through Health and Safety Code section 25375 or any other provision of law; (ii) any claim against the State of California under sections 107 or 113 of CERCLA or section 7003 of RCRA; (iii) any other claims arising out of response activities at the Site, including but not limited to nuisance, trespass, takings, equitable indemnity and indemnity under California law, or strict liability under California law, based on DTSC's oversight activities or approval of plans for such activities. This Covenant is made and given, effective upon execution by Settling Respondent of this Agreement and of a Notice by each successor and assignee, and does not extend to or bind any other persons.

5.5. Settling Respondent's Reservation of Rights. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against DTSC based on gross negligence or willful misconduct taken directly by DTSC, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to the Hazardous Waste Control Account, Hazardous Substance Account, or Hazardous Substance Cleanup Fund through Health and Safety Code section 25375, CERCLA, or RCRA.

VI. CONTRIBUTION PROTECTION

6.1. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are [all response actions taken or to be taken and response costs incurred or to be incurred by DTSC or any other person for the Site with respect to the Existing Contamination].

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6.2. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify DTSC in writing no later than sixty (60) days prior to the initiation of any such suit or claim.

6.3. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing DTSC within ten (10) days of service of the complaint on them.

VII. DUE CARE/COOPERATION

7.1 The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations. The Settling Respondent shall also comply with all obligations needed to maintain the final remedy, including land use controls. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Site, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with DTSC in the implementation of response actions at the Site and further agree not to interfere with such response actions.

7.2 DTSC agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under the Health and Safety Code, or any other law, immediately notify DTSC of such release or threatened release. Furthermore, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, unless Present Property Owner is already taking all such actions and has confirmed the same with DTSC.

VIII. CERTIFICATION

8. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DTSC all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If DTSC determines, within its sole discretion, that information provided by the Settling Respondent is not materially accurate and complete, the Covenant Not to Sue in Section V of the Agreement shall be null and void and DTSC reserves all rights it may otherwise have against Settling Respondent.

IX. GENERAL PROVISIONS

9.1. Site Access. Commencing upon the date that it acquires title to the Site, and thereafter, Settling Respondent, agrees to provide access to the Site and laboratories used for analyses of samples under this Agreement at all reasonable times to employees, contractors, and consultants of DTSC. Nothing in this section is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of Settling Respondent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by Settling Respondent.

9.2. Site Access for Respondents Conducting Response Activities. The Settling Respondent shall grant access to parties conducting response activities pursuant to this Agreement or for activities deemed necessary by DTSC to complete required response activities. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the property as of the Effective Date of this Agreement and shall ensure that any subsequent leases or subleases in the Site are consistent with this Section, and Section 9.25 Parties Bound, of this Agreement.

9.3. Cost Recovery. Subject to Section 5.1 DTSC's Covenant Not to Sue, the Settling Respondent is required to pay (a) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement; and (b) all costs

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incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents and activities described in Exhibit C and associated documents, and oversight of field activities. The Statement of Cost Recovery Policies and Billing Procedures, included with each invoice, details DTSC's invoicing and collections activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice.

An estimate of DTSC's oversight costs is attached as Exhibit X. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an adjusted cost estimate as the work progresses. Prior to adjusting the cost estimate, DTSC will provide Settling Respondent with a written notice and a detailed explanation of the change to the cost estimate. DTSC will bill the Settling Respondent quarterly. The Settling Respondent agrees to make payment within 30 days of receipt of DTSC's billing.

Cost recovery may be pursued by DTSC under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law. The State of California reserves the right to bring an action against Settling Respondent under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law, for recovery of all response and oversight costs incurred by the State of California related to this Agreement and not reimbursed by Settling Respondent, as well as any other unreimbursed past and future costs incurred by the State of California in connection with response activities at the Site.

9.3.1 Advance Payment. In anticipation of oversight activities to be conducted, Settling Respondent shall make an advance payment of \$ _____ **[Insert amount of advance payment – 50% of total estimate unless otherwise approved by Brownfields Coordinator and Branch Chief]** to DTSC no later than 10 days after this Agreement is fully executed. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. DTSC will draw-down from the advance payment, which will be documented in DTSC's invoice. When the advance payment is depleted, DTSC will continue to request payment through the invoice process.

9.4. Future Costs. With respect to DTSC's review of response activities performed by the Settling Respondent pursuant to this Agreement, the Respondent shall pay all costs of DTSC's review of activities by Settling Respondent or Respondents' agents under this Agreement and/or related to this Agreement, as such costs are incurred. Costs of DTSC's review of Settling Respondents' activities include all direct and indirect costs. Under all circumstances, Settling Respondent shall remain liable for all costs incurred by DTSC for matters addressed by this Agreement as specified by Health and Safety Code section 25360, including interest thereon as provided by law. DTSC shall bill Settling Respondent on a quarterly basis for response and oversight costs incurred during the previous quarter. DTSC shall provide Settling

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Respondent with a summary description of DTSC's oversight activities for which it seeks oversight costs. Settling Respondent shall maintain the right to review and make copies of documentation supporting the costs claimed by DTSC. Settling Respondent shall remit payment as specified in the billing within sixty (60) days of the date of the billing. Outstanding costs not paid within the sixty (60) days are subject to interest charges.

9.5. Payment. All payments made by the Settling Respondent pursuant to this Agreement shall be by check made payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the Site **[Site Code]** and the docket number **[Docket Number]** of this Agreement. Payments shall be sent to:

Accounting Office
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

9.5.1. If any bill is not paid by the Settling Respondent within sixty (60) days after it is sent by DTSC, the Settling Respondent may be deemed to be in material default of this Agreement.

9.6. Project Coordinator. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. The Settling Respondent shall submit: a) the name and address of the project coordinator; and b) in order to demonstrate expertise in hazardous substance site cleanup, the resume of the coordinator. The Settling Respondent shall promptly notify DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

9.7. Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication:

[Name]

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Branch Chief
Site Mitigation and Restoration Program
Department of Toxic Substances Control
[Address]

Settling Respondent
[Name, Title]
[Company]
[Address]

9.8. Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to Settling Respondent in writing by the Site Mitigation Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by Settling Respondent shall be construed to relieve Settling Respondent of the obligation to obtain such formal approvals as may be required.

9.9. DTSC Review and Approval. (a) If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may:

- (1) Modify the document as deemed necessary and approve the document as modified; or
- (2) Return comments to Settling Respondent with recommended changes and a date by which Settling Respondent(s) must submit to DTSC a revised document incorporating the recommended changes.

(b) Any modifications, comments or other directive issued pursuant to (a) above, are incorporated into this Agreement. Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Agreement.

9.10. Compliance with Applicable Laws. Settling Respondent shall carry out this Agreement in compliance with all applicable state, local, and federal laws, regulations and requirements including, but not limited to, requirements to obtain permits and to

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assure worker safety.

9.11. Sampling, Data and Document Availability. Settling Respondent shall permit DTSC and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by Settling Respondent or on Settling Respondent's behalf in any way pertaining to work undertaken pursuant to this Agreement. Settling Respondent shall submit all such data upon the request of DTSC. Copies shall be provided within seven (7) days of receipt of DTSC's written request. Settling Respondent shall inform DTSC at least seven (7) days in advance of all field sampling under this Agreement, and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Settling Respondent pursuant to this Agreement. Settling Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Agreement.

9.12. Record Retention. All such data, reports and other documents shall be preserved by Settling Respondent for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Settling Respondent shall either comply with that request or deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. Settling Respondent shall notify DTSC in writing, at least six (6) months prior to destroying any documents prepared pursuant to this Agreement and shall provide DTSC with an opportunity to copy any documents at the expense of DTSC.

9.13. Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Settling Respondent, or related parties specified in Section 9.5, Parties Bound, in carrying out activities pursuant to this Agreement, nor shall the State of California be held as party to any contract entered into by Settling Respondent or its agents in carrying out activities pursuant to this Agreement.

9.14. Additional Actions. By entering into this Agreement, DTSC does not waive the right to take any further actions authorized by law.

9.15. Extension Requests. If Settling Respondent is unable to perform any activity or submit any document within the time required under this Agreement, Settling Respondent may, prior to expiration of the time, request an extension of the time in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

9.16. Extension Approvals. If DTSC determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Settling Respondent shall comply with the new schedule incorporated in this Agreement.

9.17. Severability. The requirements of this Agreement are severable, and Settling Respondent shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

9.18. Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Settling Respondent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval or as modified pursuant to Section 9.9, DTSC Review and Approval, and shall be implemented by Settling Respondent. Any noncompliance with the documents incorporated in this Agreement, shall be deemed a failure or refusal to comply with this Agreement.

9.19. Modifications. This Agreement may be amended in writing by mutual agreement of DTSC and Settling Respondent. Any amendment to this Agreement shall be effective upon the date the modification is signed by DTSC and shall be deemed incorporated in this Agreement.

9.20. Time Periods. Unless otherwise specified, time periods begin from the Effective Date of this Agreement and "days" means calendar days.

9.21. Effective Date. The Effective Date of this Agreement is the date when this Agreement is fully executed.

9.22. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

9.23. Third Party Actions. In the event that the Settling Respondent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Settling Respondent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party action. Settling Respondent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

9.24. Governing Law. This Agreement shall be construed and governed by the

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laws of the State of California.

9.25. Parties Bound. This Agreement shall apply to and be binding upon DTSC, and shall apply to and be binding on the Settling Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. Each signatory of a party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party.

9.26. Transfer. Notwithstanding any other provisions of this Agreement, all of the rights and benefits conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person pursuant to Section 9.27, Notices. In the event of an assignment or transfer of the Site or an assignment or transfer of an interest in the Site, the Settling Respondent shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement.

9.27. Notices. Prior to or simultaneous with any assignment or transfer of the Site, the assignee or transferee shall as a precondition to receiving the benefit of the DTSC Covenant Not to Sue, execute a written instrument in the form attached hereto as Exhibit __, which shall accompany each purchase relating to the Site.

9.28. Representative Authority Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.

9.28. Exhibits All exhibits attached to this Agreement are incorporated herein by this reference.

X. NOTICE OF SETTLEMENT

10. This Agreement shall be subject to a thirty-day comment period, after which DTSC may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. Settling Respondent shall prepare the notice for the thirty-day comment period; the notice shall require that all comments be forwarded simultaneously

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to Settling Respondent and DTSC.

IN WITNESS WHEREOF, the Parties execute this Agreement as of the date set forth below.

Settling Respondent
[Company Name, Place of Incorporation]

Date

Department of Toxic Substances
Control, Branch Chief

Date

SAMPLE TEXT SUBJECT TO CHANGE

LIST OF EXHIBITS TO THE AGREEMENT

EXHIBIT A: SITE LOCATION MAP

EXHIBIT B: SITE DIAGRAM **[Must include Site boundaries]**

EXHIBIT C: LEGAL DESCRIPTION

EXHIBIT D: SCOPE OF WORK

EXHIBIT E: COST ESTIMATE FOR DTSC OVERSIGHT SERVICES

EXHIBIT F: CALENDAR OF TASKS AND SCHEDULE

EXHIBIT G:-LETTER FROM OWNER (FOR LONG TERM TENANTS)

SAMPLE TEXT SUBJECT TO CHANGE

EXHIBIT A

NOTICE OF PROPERTY TRANSFER AND
COVENANT NOT TO SUE

_____ [Name of Owner] (the "Undersigned")
became an Owner [Holder of a Property Interest] of _____ [Address],
California (the "Site") on _____, 20___. Capitalized terms not defined
herein shall have the meaning ascribed in the Agreement (hereinafter defined).

1. The Undersigned, by signing below, verifies that it has read the Agreement and Covenant Not to Sue (the "Agreement"), DTSC Docket No. _____
2. The Undersigned understands and agrees that Section 5.1 of the Agreement contains a DTSC Covenant not to pursue enforcement actions against the Owner of the Site (the "DTSC Covenant").
3. The Undersigned also understands and agrees that it may enjoy the benefits of the DTSC Covenant only if the Undersigned covenants not to sue the DTSC pursuant to the covenant set forth in Section 5.4 of the Agreement.
4. The Undersigned further understands and agrees that its right to rely upon and benefit from the DTSC Covenant is expressly subject to and conditioned upon its own, and only its own, compliance with its obligations under the Agreement, including all exhibits, attachments, and appendices thereto.
5. Submittals to the Undersigned, pursuant to Section 9.7 of the Agreement, shall be addressed as follows:

[Name of Company] _____
[Street Address] _____
[City, County, _____
State, Zip Code] _____
Attention: _____
Telephone: _____
E-Mails: _____

The Undersigned, by signing below, verifies that (i) it is aware that hazardous substances have been found within the boundaries of the Site, and (ii) such condition renders its interest in the Site subject to the Agreement and to all applicable laws and regulations of the State of California.

The Undersigned, by signing below, certifies that she or he is fully authorized to enter into the terms and conditions of this Notice and to execute and legally bind the Owner to this Notice.

Dated: _____

[Typed Name of Person Authorized to Sign on Behalf of Owner]

Title: _____

To become effective, this Notice must be sent by United States mail, postage paid, certified, return receipt requested to:

[Name]
Branch Chief
Site Mitigation and Restoration Program
Department of Toxic Substances Control
[Address]

This Notice shall be effective three business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested.

EXHIBIT B
SCOPE OF WORK

[The following tasks are an example of the scope of work tasks for agreements. Include only those tasks or portions of the tasks which are relevant, delete the sections which are not applicable, and renumber the tasks accordingly.]

Include the following text to provide the Settling Respondent with information on likely tasks which may follow, if applicable:

In the event that DTSC determines that further action is needed upon completion of Task xxx, the following additional tasks may be requested. Additional tasks will be included as a new cost estimate and scope of work to this Agreement.]

The following tasks will be completed as part of this Agreement:

TASK 1 Document Review

Settling Respondent will submit to DTSC available background information, environmental assessment reports, and any other information pertinent to the hazardous substance management, release, characterization, and/or cleanup of the Site. DTSC may review some or all the information to identify areas and media of concern and to determine the additional work, if any, required to complete the investigation (which includes assessment/evaluation activities not requiring field sampling) and/or remediation of the Site. Settling Respondent may also provide environmental investigation and/or cleanup-related documents for a specific review to determine if actions conducted without DTSC oversight were protective of human health and the environment. The information submitted by Settling Respondent shall be reviewed for conformance with DTSC standards for quality assurance/quality control, investigation, and remediation.

Based on DTSC's review, these documents may be considered to be Preliminary Endangerment Assessment equivalent documents.

Subsequent to its review, DTSC may issue correspondence to the Settling Respondent describing deficiencies of the environmental investigation or cleanup, indicate a limited concurrence with the findings, or make a different determination based on specific circumstances and documents included in the review. For projects where the scope of work is limited to document review only, a formal scoping meeting may not be required, based on mutual agreement between DTSC and the Settling Respondent.

Documents included in this task are:

1. [Name of Report, written by, date]
2. etc
3. etc

TASK 2 Scoping Meeting

Scoping meetings are required for all voluntary projects where investigation or cleanup is an anticipated aspect of the scope of work; these are conducted shortly after the

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agreement has been executed, or depending on specific circumstances, may be held during the agreement-negotiation period. During the scoping meeting, potential issues, concerns, opportunities to optimize and expedite the investigation (which includes assessment/evaluation activities not requiring field sampling) and cleanup process, as applicable, and end-points/exit criteria will be discussed.

An abbreviated version of the scoping meeting is recommended prior to submittal of work plans, reports and cleanup plans to ensure that both the Settling Respondent and DTSC are moving forward with clear and well-defined expectations.

The following elements may be addressed during the Scoping Meeting:

- a) **Site Objectives:** current and proposed future land uses and redevelopment plans and timetables, etc.
- b) **Site History:** historic operations and land uses, chemical uses, hazardous substance releases, permits, etc.
- c) **Conceptual Site Model:** identification of size, location, geology, lithology, hydrogeology, areas of concern, contaminants of concern, recognized environmental conditions, historic sampling locations and results, data gaps, risk assessments, offsite concerns, etc.
- d) **Scope of Work:** scope of work (phases) as specified in the Agreement based on the available information and preliminary document review; may include discussion about the cleanup determination (e.g., “No Further Action”) and decision document proposed for the Site, e.g., Preliminary Endangerment Assessment, Removal Action Work Plan for removal action with costs below \$2 million, or Remedial Action Plan for projects exceeding \$2 million in capital costs, or proposing innovative technologies, etc.
- e) **Data Quality Objectives and Remedial Action Objectives:** discussion of specific Data Quality Objectives to ensure that appropriate data of sufficient quality is collected to facilitate decision-making; discussion of potential cleanup goals and objectives.
- f) **Risk Assessment and Models:** evaluation of published screening levels, if available and appropriate, or use of project-specific risk assessments; discuss risk management and risk communication strategies.
- g) **California Environmental Quality Act (CEQA) requirements:** identification of project-specific requirements where applicable, e.g., cultural resources, traffic concerns, ecological resource protection, etc.; identify what DTSC’s CEQA role is predicted to be, which documents will be developed, and how to integrate CEQA needs within the overall schedule.
- h) **Public Participation & Tribal Outreach:** discussion of community and tribal involvement and public outreach process, methods, translation needs, and schedule.

- i) **Schedule:** agreed-upon submittal and review dates and timelines for work plans, fact sheets, reports and other key documents; development of optimal sequencing of activities to efficiently reach project goals.
- j) **Resources:** Review checklists, quick reference sheets, and templates are available for use by those developing documents for DTSC review and approval. (These tools will be periodically updated and may be made available to Settling Respondents by the DTSC Project Manager)
- k) **Exit Strategy & Completion of Agreement:** proposed future land use, Site acquisition and construction dates, funding limitations or requirements, approval for occupancy, etc. to ensure alignment of Settling Respondent and DTSC goals.
- l) **Site Visit:** A visit to the Site will be conducted to verify and confirm current conditions and project discussions; the visit may take place on the same date as the scoping meeting. Subsequent visits may be needed if Site conditions change, if new staff are assigned, or for field oversight.

TASK 3 Preliminary Endangerment Assessment (PEA)

Settling Respondent shall conduct a PEA or utilize PEA-equivalent documentation to determine whether a release or threatened release of hazardous substances exists at the Site, which poses a threat to human health or the environment. The PEA shall be conducted in accordance with the most current DTSC guidance manual for evaluating hazardous substance release sites titled, [Preliminary Endangerment Assessment Guidance Manual, State of California, Environmental Protection Agency, Department of Toxic Substances Control](#). Specific requirements of the PEA that are not typically required for other types of investigations include the site-specific human health and ecological screening evaluations, public participation requirements, data collection, and scoping activities.

Documents are required as part of the PEA are:

- 3.1 **PEA Work Plan.** This work plan shall include a sampling plan designed to determine the type and general extent of contamination at the Property; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control plan to produce data of known quality.
- 3.2 **PEA Report.** This report will document whether a release has occurred, or threatened release exists, the threat the Site poses to human health and the environment, and whether further action is necessary.
- 3.3 **PEA with a Land Use Covenant.** If a Land Use Covenant (LUC) is being implemented during the PEA phase as a final remedy, Settling Respondent, under the direction of DTSC, will comply with applicable public notice requirements and requirements to notify the current and adjacent property owners.

TASK 4 Supplemental Site Investigation (SSI)

- 4.1 **SSI Work Plan.** Settling Respondent will submit a work plan that describes the activities proposed to further characterize soil, soil gas, surface water and/or groundwater. The work plan should also include a health and safety plan, quality

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assurance/quality control plan, sampling plan, and implementation schedule. Settling Respondent will begin implementation of the approved work plan in accordance with the approved implementation schedule. DTSC may provide oversight of work plan implementation.

- 4.2 SSI Report. Settling Respondent will submit an SSI Report that, at a minimum, presents the data, summarizes the findings of the investigation, validates the data, and includes recommendations and conclusions.

TASK 5 Health Risk Assessment

Settling Respondent will conduct a risk evaluation consistent with [U.S. EPA Risk Assessment Guidance for Superfund](#) and the most current version of the applicable [DTSC guidance documents](#). This evaluation must identify chemicals of concern and potential routes of exposure; characterize the potential risk and/or non-cancer hazard; evaluate potential threats to environmental receptors; consider existing and contemplate uses; and identify cleanup goals.

TASK 6 Remedy Selection Document

- 6.1 Removal Action Work Plan. If DTSC determines a removal action is appropriate, Settling Respondent will prepare a Removal Action Work Plan (RAW) in accordance with Health and Safety Code sections 25323.1 and 25356.1.

The Removal Action Work Plan will include:

- A description of the onsite contamination;
- The goals to be achieved by the removal action;
- An analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
- A description of the recommended alternative (including any required land use covenants, financial assurance, and operation and maintenance plan and agreement requirements).
- Administrative record list;
- Sampling and Analysis Plan with corresponding Quality Assurance Plan to confirm the effectiveness of the RAW, if applicable; and
- Health and Safety Plan describing methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action. A detailed community air monitoring plan shall be included if requested by DTSC.

- 6.2 Remedial Action Plan. If the proposed removal action does not meet the requirements of Health and Safety Code section 25356.1(h), Settling Respondent will prepare a Remedial Action Plan (RAP) in accordance with Health and Safety Code section 25356.1(c) for DTSC review and approval.

The RAP summarizes the results of the site characterization, risk evaluation and feasibility study and sets forth in detail appropriate steps to remedy soil, surface water and groundwater contamination at the Site and adjacent areas. In addition, the RAP shall contain a schedule for implementation of all proposed removal and remedial actions.

TASK 7 California Environmental Quality Act (CEQA)

In order to meet [CEQA](#) obligations, DTSC will prepare the necessary CEQA documents. If required, the Settling Respondent shall submit the information necessary for DTSC to prepare these documents.

TASK 8 Remedial Design and Implementation Plan

Settling Respondent will either (a) prepare and submit a Remedial Design and Implementation Plan (RDIP) in accordance with the agreed upon schedule contained in the approved Remedy Selection Document; or (b) depending on the complexity of the proposed removal or remedial action, incorporate the factors typically addressed in a RDIP into the Remedy Selection Document.

The factors typically addressed in a RDIP are:

- a) technical and operational plans and engineering designs for implementation of the approved remedial or removal action alternative(s);
- b) a schedule for implementing the construction phase;
- c) a description of the construction equipment to be employed;
- d) a site specific hazardous waste transportation plan (if necessary);
- e) any required registration requirements for contractors, transporters and other persons conducting the removal and remedial activities for the Site;
- f) post-remedial sampling and monitoring procedures for air, soil, surface water and groundwater;
- g) operation and maintenance procedures and schedules;
- h) a health and safety plan; and
- i) a community air monitoring plan, if required by DTSC.

TASK 9 Implementation of Remedy

Upon DTSC approval of the final RAW or RAP and RDIP (if required), the Settling Respondent shall implement the remedy, as approved.

TASK 10 Remedial Action Completion Report

Settling Respondent shall submit a report documenting the implementation of the final RAW or RAP and RDIP and noting any deviations from the approved plan.

During implementation of the final RAW or RAP and RDIP, DTSC may specify such additions, modifications and revisions to the RAW or RDIP as deemed necessary to protect human health and safety or the environment or to implement the RAW or RAP.

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TASK 11 Public Participation

DTSC requires that specific [public engagement](#) activities be conducted for projects undergoing a PEA, RAW, or RAP. However, based on the level of community interest, media interest, sensitive land uses, demographics and other factors, as determined by DTSC, public engagement activities may be requested for other projects types as well. Settling Respondent will be responsible for all costs associated with the translation and/or interpretation of public participation content required under DTSC's policies, procedures, guidance documents, and state and federal law.

The following tasks apply only if a RAW or RAP is being required by DTSC:

- 11.1 Settling Respondent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest, if needed. Settling Respondent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7 (and 25356.1(e), if conducting a RAP) and with DTSC's review and approval.
- 11.2 A scoping meeting regarding the RAW or RAP will include a discussion on the appropriate activities that will be conducted to address public participation.
- 11.3 DTSC may conduct an assessment of community interest in the Site, which may include, but will not be limited to, the development of a survey, outreach to local elected and public officials and community members, distribution of the survey through mail and/or social media, analysis of survey results, and community interviews. Results of the survey will be shared with the Settling Respondent and should be included in the community profile.
- 11.4 Settling Respondent, working collaboratively with DTSC, shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; surrounding land uses; demographic profile and languages; CalEnviroScreen results; information repositories; recommended public engagement activities; and involvement of community groups and elected officials. The community profile may also include a quarter-mile radius mailing list for the Site, a list of applicable elected officials, and any known community members who may have expressed an interest in the Site.
- 11.5 Settling Respondent, working collaboratively with DTSC, shall develop and submit fact sheets or community updates to DTSC for review and approval when specifically requested by DTSC. Settling Respondent may be responsible for printing and distribution of fact sheets or community updates upon DTSC approval using the approved community mailing list.
- 11.6 Settling Respondent, as directed by DTSC, shall publish, in a major local newspaper(s), a public notice announcing the availability of the RAW/RAP for

public review and comment. The public comment period shall last a minimum of thirty (30) days.

- 11.7 DTSC may require that Settling Respondent hold a public meeting to inform the public of the proposed activities and to receive public comments on the RAW/RAP.
- 11.8 After the close of the public comment period, DTSC will prepare a response to the public comments received. If required, Settling Respondent shall submit the information necessary for DTSC to prepare this document.
- 11.9 If appropriate, Settling Respondent will revise the RAW/RAP on the basis of comments received from the public and submit the revised RAW/RAP to DTSC for review and approval. If significant or fundamental changes are required, additional public participation activities, including an additional review and comment period, may be required. Settling Respondent will also notify the public of any significant changes from the action proposed in the RAW/RAP.

TASK 12 Tribal Outreach and Consultation

DTSC's assigned Project Manager will coordinate with DTSC's Office of Environmental Equity to ensure compliance with DTSC's Tribal Consultation Policy. This process may include consultation with California tribes to determine whether or not they have an interest in Site activities.

TASK 13 Land Use Covenant

A [land use covenant](#) (LUC) pursuant to California Code of Regulations, title 22, section 67391.1 may be necessary to ensure full protection of the environment and human health. DTSC may require such a LUC in a DTSC-approved remedy based on a RAW, RAP, PEA, or other decision document. If Settling Respondent is the owner of the Site, Settling Respondent agrees to record the LUC as approved by DTSC within ten (10) days of receipt of a fully executed original.

If the Settling Respondent is not the owner of the Site and a LUC is required, Settling Respondent will work with the owner to provide DTSC with written confirmation that the owner will cooperate in implementing the DTSC-approved remedy, which may include a LUC. The Settling Respondent must provide DTSC with the owner's written confirmation prior to the date the draft decision document is to be circulated for public notice and comment. If the Settling Respondent is unable to provide DTSC with written confirmation from the owner, a LUC may not be executed for the Site and the proposed remedy will be reevaluated.

TASK 14 Operation and Maintenance (O&M)

Settling Respondent shall comply with any and all operation and maintenance requirements in accordance with the final RAW, final RAP, or a DTSC-approved RDIP or O&M Plan. If deemed necessary, DTSC may require Settling Respondent to enter into an O&M Agreement with DTSC.

TASK 15 Financial Assurance

Settling Respondent shall establish and maintain a [financial assurance mechanism](#) pursuant to California Health and Safety Code section 25355.2 and DTSC's costs incurred in overseeing these activities prior to implementing any required O&M activities, LUC-related activities, and five-year review activities. Settling Respondent shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

TASK 16 Discontinuation of Remedial Technology

Any remedial technology employed in implementation of the final RAP/RAW shall be left in place and operated by Settling Respondent until and except to the extent that DTSC authorized Settling Respondent in writing to discontinue, move or modify some or all of the remedial technology because Settling Respondent has met the criteria specified in the final RAW/RAP for its discontinuance, or because the modifications would better achieve the goals of the final RAW/RAP.

TASK 17 Health and Safety Plan

The Settling Respondent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192. The Health and Safety Plan shall be submitted before field activities begin.

TASK 18 Quality Assurance/Quality Control (QA/QC) Plan

All sampling and analysis conducted by Settling Respondent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by Settling Respondent and approved by DTSC. The QA/QC Plan will describe:

- a) The procedures for the collection, identification, preservation and transport of samples;
- b) The calibration and maintenance of instruments;
- c) The processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
- d) How the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

EXHIBIT C COST ESTIMATE

[This Excel document will be updated on annual basis and is available on the [Voluntary Agreement SharePoint](#) site. Note that tasks in Cost Estimate should match up with tasks in Scope of Work. All Cost Estimates should be inserted into the document. JPEGs should not be used.]

| COST ESTIMATE WORKSHEET | | | | | | | | | | | | | |
|---|------------|--------------------|-------------|------------|---------|----------------------|----------------|----------------------|---------|-------|-------|--------------------|-----|
| Type of Agreement: | | | | | | | | | | | | | |
| Date: | | | | | | | | | | | | | |
| Site Name: | | | | | | | | | | | | | |
| Site Code: | | | | | | | | | | | | | |
| DTSC Project Team | VCP Coord. | Project Management | Supervision | Toxicology | Geology | Industrial Hygienist | HQ Engineering | Public Participation | HQ CEQA | OEJTA | Legal | Project Assistants | |
| Classification (personnel) | | | | | | | | | | | | | |
| TASK: (enter # hrs) | | | | | | | | | | | | | |
| Agreement | | | | | | | | | | | | | |
| Prep./Negotiation | | | | | | | | | | | | | |
| Project Management | | | | | | | | | | | | | |
| Scoping Meeting | | | | | | | | | | | | | |
| Site Visit | | | | | | | | | | | | | |
| Review and comment on existing data | | | | | | | | | | | | | |
| Preliminary Endangerment Assessment | | | | | | | | | | | | | |
| - Workplan | | | | | | | | | | | | | |
| - Implementation | | | | | | | | | | | | | |
| - Report | | | | | | | | | | | | | |
| Supplemental Site Characterization | | | | | | | | | | | | | |
| - Workplan | | | | | | | | | | | | | |
| - Implementation | | | | | | | | | | | | | |
| - Report | | | | | | | | | | | | | |
| CLRRRA Site Assessment | | | | | | | | | | | | | |
| - Workplan | | | | | | | | | | | | | |
| - Implementation | | | | | | | | | | | | | |
| - Report | | | | | | | | | | | | | |
| CLRRRA Report of Findings | | | | | | | | | | | | | |
| Risk Analysis | | | | | | | | | | | | | |
| Public Participation | | | | | | | | | | | | | |
| CEQA | | | | | | | | | | | | | |
| Cleanup Plan (RAW, CLRRRA Response Plan, RAP, etc.) | | | | | | | | | | | | | |
| Implement Cleanup Plan | | | | | | | | | | | | | |
| Cleanup Completion Report | | | | | | | | | | | | | |
| Design | | | | | | | | | | | | | |
| Certification | | | | | | | | | | | | | |
| Deed Restriction | | | | | | | | | | | | | |
| Operation & Maint | | | | | | | | | | | | | |
| Total No. Hours/Class | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Hourly Rate/Class | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Cost/Class | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Subtotal | \$0 | | | | | | | | | | | | |
| Contingency (10%) | \$0 | | | | | | | | | | | | |
| Grand Total Cost | \$0 | | | | | | | | | | | | |
| Advance Payment | \$0 | | | | | | | | | | | | |
| Notes: | | | | | | | | | | | | | |

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EXHIBIT D
CALENDAR OF TASKS AND SCHEDULE

[Adjust schedule to match scope of work included in Agreement]

| Activity | Schedule |
|--|---|
| Scoping Meeting | During Agreement negotiation, or shortly after Agreement execution based on DTSC evaluation of project needs |
| Advance Payment | Within 10 days of Agreement execution |
| Submit existing data | Within 10 days of Agreement execution, or as requested by DTSC |
| DTSC Completion of Document Review | Within 30-45 days of receipt of documents included in review and/or completion of Scoping Meeting |
| Submit investigation work plan | Within 30 days of scoping meeting, or as decided during scoping meeting |
| DTSC decision on investigation work plan | Within 75 days of date received by DTSC ¹ |
| Submit investigation report | Within 45 days of completion of field work ² |
| DTSC decision on investigation report | Within 100 days of receipt by DTSC ¹ . May include recommendation for further investigation or cleanup, no further action, or no further action with conditions. |
| Submit draft cleanup plan | As directed by DTSC |
| Submit Community Profile | Within 30 days of DTSC's request |
| Submit CEQA documentation | Concurrent with the cleanup plan |
| Public Review/Comment Period, mailing of fact sheet to site mailing list and placement of public notice. | Upon DTSC's approval of cleanup plan for public review and comment. |
| DTSC decision on cleanup plan | DTSC to approve cleanup plan, if appropriate, after addressing public comments, within ~150 days of receipt of draft. |

1 Note that DTSC approvals in the target timeframes are contingent upon receiving documents that meet industry standards, comply with DTSC's direction, and that responses to DTSC questions and/or comments are received in a timely manner.

2 If workplan activities are not initiated within six months of the date of DTSC approval, DTSC may require additional investigation, public participation activities, and/or revision to the document.

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| | |
|--|---|
| Implement cleanup | Within 90 days of DTSC approval of cleanup plan, or as directed by DTSC in conjunction with Settling Respondent ³ |
| Submit cleanup completion report | Within 90 days from the date of implementation of cleanup plan |
| DTSC decision on cleanup completion report | Within 100 days of received by DTSC ¹ . May include recommendation for no further action, or no further action with conditions. |
| Submit Operation and Maintenance Plan | As directed by DTSC |
| Operations and Maintenance Agreement | As directed by DTSC |
| Land Use Covenant | As directed by DTSC |
| Invoices | DTSC issues quarterly |
| Cost estimate and Scope of Work Updates and Amendments | DTSC updates the scope and cost estimate annually, or as needed, based on work needed to complete the Agreement. Amendments are issued on an as-need basis. |

³ If cleanup plan activities are not initiated within one year of the date of DTSC approval, DTSC may require additional investigation, public participation activities, or revision to the document.

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