

**SUPERFUND STATE CONTRACT
BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY
AND THE STATE OF WASHINGTON**

**PALERMO WELLFIELD GROUNDWATER CONTAMINATION SUPERFUND SITE
OU-2**

TUMWATER, WASHINGTON

Preface from Superfund State Contract Model Provisions

This document contains model provisions for use in standard Superfund State Contracts (SSCs). When appropriate, regions and states may alter these provisions to suit their agreements, and, pursuant to 40 CFR 35.6805(s), may add other provisions deemed necessary by all parties to facilitate the response activities. However, alterations or additions may require consultation with EPA Headquarters and must comply with statutory and regulatory requirements set forth in CERCLA, as amended (herein referred to as “CERCLA”), 40 CFR 35, Subpart O, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP) and any applicable state statute or rule.

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Superfund State Contract (SSC) Provisions

1. General Authorities [CERCLA §104; 40 CFR 300.515(a); 40 CFR Part 35, Subpart O; 2 CFR Parts 200 & 1500]

This Superfund State Contract ("Contract" or "SSC") is entered into pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, as amended (herein referred to as "CERCLA"); the National Oil and Hazardous Substances Pollution Contingency Plan, 55 F.R. 8666 *et seq.* (40 CFR Part 300, March 8, 1990, hereinafter referred to as the "NCP"); and other applicable Federal regulations including 40 CFR Part 35, Subpart O, and 2 CFR Parts 200 and 1500.

The Washington State Department of Ecology is authorized by the Revised Code of Washington (RCW), Chapter 70A.305, the Washington Model Toxics Control Act and its implementing regulations, the Washington Administrative Code (WAC), Chapter 173-340 to act on behalf of the State in carrying out state programs under CERCLA (herein referred to as "MTCA").

2. Purpose of the SSC [40 CFR 300.180 & 300.510(a); 40 CFR 35.6805(b)]

This SSC is an agreement between the United States Environmental Protection Agency (EPA) and the State of Washington. The Governor has designated the Washington State Department of Ecology (Ecology) to work in partnership with EPA on behalf of Washington ("the State") concerning remedial actions to be conducted at Operable Unit 2 (OU-2) at the Palermo Wellfield Groundwater Contamination Superfund Site, Tumwater, Thurston County, Washington, EPA National Priorities List (NPL) Site Identification number WA000002653 ("Palermo" or "the Site" or "this Site"). This SSC documents the responsibilities of EPA and the State and includes provisions that outline the basic purpose, scope, and administration of the SSC, as well as those activities described in the attached Statement of Work (SOW), Appendix A. For the purposes of this SSC, the term "remedial action" does not include operation and maintenance.

EPA and the State previously entered into an SSC at this Site ("Superfund State Contract for Remedial Action, Palermo Wellfield Site, Tumwater, Washington," May 12, 2000). EPA and the State agreed to a final reconciliation of costs under that SSC in 2008 ("Financial Closeout of Superfund State Contracts for the American Crossarm, Boomsnub, Frontier Hard Chrome, Lakewood, Palermo, Silver Mountain Mine, and Yakima Plating Sites," July 10, 2008). EPA and the State agree the 2000 SSC is no longer in effect. EPA and the State further agree this Contract supersedes any prior SSCs applicable to this Site.

3. Duration of the SSC

This Contract shall become effective upon execution by EPA and the State and shall remain in effect until terminated (See Termination provision) or the terms for final SSC conclusion of the Contract are met (See Conclusion of this SSC provision).

This Contract constitutes an initial SSC for remedial action specific to OU-2. A separate SSC will be entered into the parties specific to the anticipated remedial action at OU-1.

4. Negation of Agency Relationship between the Signatories [40 CFR 35.6805(c)]

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract and the State (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the EPA in any matter relating to the subject matter of this Contract.

5. Emergency Response Activities [40 CFR 300.415 & 300.525]

Any emergency response activities, emergency circumstances or removal actions conducted pursuant to the NCP shall not be restricted by the terms of this Contract. However, remedial activities may be suspended until the emergency activities are concluded, in which case, the SSC may be subject to amendment.

6. Site Description [40 CFR 300.430(f); 40 CFR 35.6105(a)(2)(i) & 35.6805(d)]

The Record of Decision Amendment (RODA) is attached as Appendix C and contains a description of the Site, including a discussion of the location of the Site, its physical characteristics (site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions, and the response actions that are still required, and their expected benefits.

7. Site-specific Statement of Work [40 CFR 300.430(f) & 300.435(b); 40 CFR 35.6105(a)(2)(ii) & 35.6805(e)]

A site-specific Statement of Work (SOW) for all remedial (or other response) actions provided under this SSC, including estimated costs per task, and a standard task to ensure that a sign is posted at the Site providing the appropriate contacts for obtaining information on activities being conducted at the Site, and for reporting suspected criminal activities, is attached in Appendix B.

8. Statement of Intention to Follow EPA Policy and Guidance [40 CFR 300.430(f)(5)(ii)(B); 40 CFR 35.6805(f)]

In addition to the requirements specified in CERCLA, MTCA, and the NCP, EPA and the State intend to follow all policy and guidance pertinent to this remedy, including those identified in the Administrative Record and/or stated here.

9. Project Schedule [40 CFR 35.6805(g)]

A general description of the project schedule/milestones—either by calendar year or Federal Fiscal year—which includes a summary of deliverables, as specified in the SOW, is attached as Appendix A and in the cost schedule provided in Appendix B.

10. Designation of Primary Contacts and their Responsibilities [40 CFR 300.120(f) & 300.180(a); 40 CFR 35.6805(h)]

A. EPA Designation

EPA has designated the following person to serve as the Remedial Project Manager (RPM) and act on behalf of EPA in the implementation of this Contract.

Stephen Lukas
Remedial Project Manager
U.S. Environmental Protection Agency
Superfund Emergency Management Division
1200 6th Avenue, Suite 155
Seattle, WA 98101-3188
Lukas.stephen@epa.gov
(206) 553-2111

The designated RPM may be changed by written notification in a timely manner to the State signatories, and incorporated by reference herein without amending this Contract.

B. State Designation

The State has designated the following person to serve as the State Project Manager (SPM) and act on behalf of the State in the implementation of this Contract.

John Pearch, LHG
Hydrogeologist/Cleanup Site Manager
Southwest Regional Office - Toxics Cleanup Program
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503-1274
jope461@ecy.wa.gov
360-819-0460

The designated SPM may be changed by written notification in a timely manner to the Federal (EPA) signatories, and incorporated by reference herein without amending this Contract.

C. Authority to Approve Minor Modifications

The RPM and the SPM have joint authority to approve minor modifications to the SOW, including minor schedule delays, without the need for amendment of the Contract, provided the modifications do not require a change in the selected remedy addressed under this Contract or cause the project cost to exceed the remedial action cost estimate. Such modifications must be in writing and approved by the RPM and SPM.

11. CERCLA Assurance: Operation and Maintenance [CERCLA §104(c)(3)(A); 40 CFR 300.435(f)] & 300.510(c)(1); 40 CFR 35.6105(b)(1) & 35.6805(i)(1)]

In accordance with CERCLA §104(c)(3)(A), and 40 CFR 300.510(c)(1), the State hereby assures that the operation and maintenance (O&M) of implemented remedial actions addressed under this Contract will remain in effect for the expected life of such actions. The State also guarantees, pursuant to 40 CFR 35.6105(b)(1), that, if the designated agent, Ecology, conducting O&M on behalf of the State, defaults, the State will be responsible for assuming all O&M activities.

In addition, when applicable, once institutional controls identified in this contract have been implemented, the State assures that the institutional controls will be maintained and enforced as specified in the O&M Plan or Institutional Control Implementation and Assurance Plan (ICIAP). Furthermore, the State will be provided an opportunity to comment on draft and draft final versions of all O&M Plans and an ICIAP, if developed.

In accordance with 40 CFR 300.510(c)(1), the State and EPA shall consult on a plan for O&M prior to the initiation of each remedial action addressed under this Contract. The draft O&M Plan will continue to be refined during the remedial action, and the O&M Plan will be updated by the State and/or EPA as conditions change during the long-term response action (LTRA) and O&M. As applicable, an ICIAP may also be developed.

12. CERCLA Assurance: Twenty-Year Waste Capacity [CERCLA §104(c)(9); 40 CFR 300.510(e); 40 CFR 35.6105(b)(3) & 35.6805(i)(2)]

EPA's 2019 National Capacity Assessment Report shows that there is adequate national capacity for the treatment and disposal of hazardous waste through calendar year 2044. This assessment included 2017 Biennial Report data provided by the State of Washington.

Based upon the assessment and other data, as appropriate, EPA expects that there will be adequate national hazardous waste treatment and disposal capacity during the 20-year period following signature of this contract. The State of Washington hereby assures the availability of hazardous waste treatment or disposal facilities for the next 20 years, following signature of this contract, pursuant to CERCLA 104(c)(9), 42 U.S.C. 9604(c)(9).

In order to ensure the continued availability of capacity for the treatment and disposal of

hazardous waste, the State of Washington agrees to work with EPA to meaningfully participate in the national capacity planning process and any activities needed to either identify shortfalls in capacity or to address any identified shortfalls.

13. CERCLA Assurance: Off-Site Storage, Treatment, or Disposal [CERCLA §§104(c)(3)(B) & 121(d)(3); 40 CFR 300.510(d); 40 CFR 35.6105(b)(4) & 35.6805(i)(3)]

Pursuant to CERCLA §§104(c)(3)(B) & 121(d)(3), EPA and the State have determined that off-site treatment, storage, or disposal of hazardous substances is not required for this response action.

14. Out-of-State Transfers of CERCLA Waste [40 CFR 35.6120 & 35.6805(v)]

EPA or the State must provide written notification of out-of-state shipments in accordance with 40 CFR 35.6120.

15. CERCLA Assurance: Real Property Acquisition [CERCLA §104(j); 40 CFR 300.510(f); 40 CFR 35.6105(b)(5) & 35.6400 & 35.6805(i)(4); 2 CFR 200.311; 49 CFR Part 24]

At the present time, EPA does not anticipate the need to acquire real property to implement the OU-2 remedial action. EPA may determine that an interest in real property must be acquired in order to conduct a response action. However, EPA may acquire an interest in real estate in order to conduct a remedial action only if the State in which the interest to be acquired is located provides assurances that the State will accept transfer of the interest upon completion of the remedial action.

The State shall not acquire any interest in real property without prior written concurrence by EPA.

If an interest in real property is required, EPA shall acquire such interest consistent with CERCLA §104(j) and pursuant to 40 CFR 300.510(f), and 40 CFR 35.6105(b)(5) & 35.6805(i)(4). The State assures it will accept the transfer of such interest, including institutional controls restricting the use of the real property, on or before completion of the remedial action. The State provides this assurance even if it intends to transfer this interest to a third party, or to allow a political subdivision to accept transfer on behalf of the State. If the political subdivision is accepting the transferred interest in real property, the State guarantees that it will accept transfer of such interest in the event of default by the political subdivision. If the State or political subdivision disposes of the transferred real property, it shall comply with the requirements for real property in 2 CFR 200.311.

16. CERCLA Assurance: Provision of State Cost Share [CERCLA §§104(c)(3) & 104(d)(1); 40 CFR 300.510(b)(1); 40 CFR 35.6105(b)(2) & 35.6805(i)(5)]

A. Determination of Cost Share

Pursuant to CERCLA §§104(c)(3) & 104(d)(1), the EPA must determine whether the State or political subdivision performed operations at the Site at the time of release in order to determine the State's cost share.

This Site was not operated by the State or political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances at the facility. Therefore, the State's cost share for the remedial action provided under this Contract is 10 percent.

B. Cost Share Assurance

Pursuant to CERCLA §104(c)(3), the State assures it will seek sufficient funding to pay its State cost share as set forth in the Payment Schedule subparagraph of the Cost Share Conditions provision of this Contract. Payments or encumbrance of funds shall be subject to the availability of funds appropriated by the State legislature subject to the State's constitutional debt limit. The State shall make best efforts to obtain funding to meet this obligation, including seeking appropriations from the State Legislature until this obligation is met. No provision herein shall be interpreted to require obligation or payment of funds in violation of applicable State law.

If the State is unable to make all or part of any payment required as set forth in the Payment Schedule subparagraph of the Cost Share Conditions provision of this Contract, the State shall notify EPA of that fact as soon as practicable, but no later than 90 days before the due date for the given payment. EPA and the State may revise the payment schedule in this Contract to allow the State additional time to pay its full cost share, but only to the extent consistent with law, and EPA regulation, and in consideration of EPA policy and guidance. Any agreement between EPA and the State to revise the payment schedule must be documented in an amendment to this Contract. If a new payment schedule cannot be agreed upon, EPA may be required to suspend some or all work at the Site or may seek to terminate this Contract (See Termination of this SSC provision) and enforce the payment terms associated with EPA's expenditures, including costs incurred by EPA as a result of suspending or terminating work.

If EPA does not have the necessary funds available to continue the remedial action at any given time during the term of this Contract, EPA will notify the State as soon as practicable, and will meet with the State to determine the appropriate action, including modifying the payment schedule or terminating the Contract, given the absence of, or a reduction in, funding.

17. Cost Share Conditions

A. Cost Estimate [40 CFR 35.6805(j)(1)]

The estimated cost of the remedial action(s) and long-term response action(s) provided under this Contract is \$14,721,000. This estimate excludes EPA's intramural (i.e., payroll and travel) and indirect costs. The estimated State cost share is \$1,472,100.

If infrastructure funds or special account funds are available for remaining response action costs that would be subject to cost share, this SSC will be amended, and the cost share amount reduced.

EPA may not expend appropriated funds in excess of this cost estimate, nor shall the State's assurance exceed the cost share amount identified in this provision. Any increase in the cost estimate for this remedial action, the State's share, or modifications that exceed the SOW for this Contract require an amendment to this Contract.

B. Basis for Calculating Cost Estimate [40 CFR 35.6805(j)(2)]

The estimated cost is derived from the Focused Feasibility Study and Remedial Design report and includes contingencies for change orders, which may or may not be executed, and construction management services.

C. Settlement Proceeds and/or Use of Infrastructure Funds

EPA expenditures derived from a settlement (or other instrument) with potentially responsible parties (PRPs) ("special account funds") or funds provided by the Infrastructure Investment and Jobs Act of 2021 ("infrastructure funds") to perform work provided under this SSC do not require State cost share. Such expenditures will not alter the cost share percentage (i.e., 10% or 50%) owed by the State for the portion of the future work conducted that is subject to cost share requirements. The use of such funds to conduct any portion of the work under this SSC must be addressed no later than during final financial reconciliation (See Final Financial Reconciliation provision).

D. Periodic Financial Review

EPA and the State are both responsible for reviewing cumulative expenditures for the work provided under this SSC on an annual basis. Such a review may also include a review of credits and in-kind services, use of contingency funds, cost share payments, and SSC cost estimates. Once expenditures incurred are 10% of the estimate, and again at 25% of the estimate, the parties agree to consult on the necessity to amend the cost estimate. Failure to consult does not preclude amendments to this Contract to amend the cost estimate.

E. In-kind Services [40 CFR 35.6815(a)(1); 2 CFR 200.306]

The Support Agency (State) may provide equipment and services (in-kind services) to satisfy its cost share requirements, which is documented in a Support Agency Cooperative Agreement (SACA) with EPA. The use of the SACA as a vehicle for providing cost share must be documented in the SSC. The recipient must comply with applicable requirements regarding in-kind and donated services pursuant to 2 CFR 200.306. In-kind services are not credit and cannot be reimbursed to the State nor used to satisfy cost share requirements at another site.

F. Credit [CERCLA §§101(24) & 104(c)(5); 40 CFR 300.510(b)(2); 40 CFR 35.6285(c) & 35.6805(j)(2)]

Credit may be used to satisfy the State's cost-share requirements in this Contract. Credits are limited to State, site-specific, expenses that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds for remedial action, as defined in CERCLA §101(24), that have not been previously applied or reimbursed, and that are consistent with a permanent remedy at the Site. Documented excess credit cannot be reimbursed to the State but may be used to satisfy cost share requirements at another site (See Final Financial Reconciliation provision).

The State does not intend to submit a claim for credit for expenditures incurred at the Site. Through amendment to this Contract, the State, in the future, may use EPA approved credit at this Site, based on EPA prior authorization for the State to incur expenditures for remedial action at this Site, or by directing EPA to use excess credit earned at another site.

G. Payment Schedule [40 CFR 35.6285 & 35.6805(j)(3) & 35.6815(a)]

The State will make incremental payments for the work provided under this SSC during the course of activity and ending before the technical completion of the activities in the SOW of this Contract. Subject to 16(B), final payments (or reimbursements) will be settled at final financial reconciliation (See Final Financial Reconciliation provision). Subject to 16(B), cost share payments pursuant to the schedule below shall be based on EPA billings for expenditures incurred annually during the performance period. Billing documentation shall include EPA's RA and LTRA cost summary.

Payment Date (and/or Milestone)	Estimated Payment Amount
Annually, within 180 days from date of invoice, expected within six (6) months of the end of the fiscal year	-
FY 2027	\$ 344,751
FY 2028	\$ 568,786

FY 2029	\$ 82,169
FY 2030	\$ 93,592
FY 2031	\$ 240,134
FY 2032	\$ 28,529
FY 2033	\$ 28,529
FY 2034	\$ 28,529
FY 2035	\$ 28,529
FY 2036	\$ 28,529
Total Payment Amount:	\$1,472,100 (rounded)

All State payments shall be made payable to EPA and sent to the Regional Financial Management Office as specified below:

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

In the event the EPA does not receive an annual payment or acceptable credit within 1 year of the due date, interest shall accrue from the due date in accordance with 2 CFR 200.346. Interest will be charged at the rate established for the Superfund Trust fund.

The due date is the date or dates specified in this Contract unless the State invokes the Issue Resolution provision set forth in this Contract. If issue resolution is invoked, for purposes of interest calculation, interest will accrue on the unpaid portion of the final resolution amount beginning on the established invoice date above, unless otherwise provided for in the final dispute resolution decision.

18. Site Access [CERCLA §§104(e) & 121(e); 40 CFR 300.400(d); 40 CFR 35.6805(p)]

EPA and the State shall each make best efforts to secure their own separate access to the Site and adjacent properties as well as all rights-of-way, leases, easements, and other instruments necessary to implement the response actions and O&M described in the SOW of this Contract. EPA and the State will each attempt to secure access to the Site, as appropriate, for itself, its agents and representatives, and for contractors performing the work under the SOW of this Contract.

In entering into any access agreement, EPA will use its best efforts to negotiate for continuous and transferable access rights to all elements of the SOW of this Contract, and, upon transfer to the State, shall assign its access rights to the State. As requested by EPA, the State, to the extent of its legal authority, shall assist EPA in securing Site access and shall cooperate with EPA to satisfy all Federal, State, and local requirements for permits and approvals in accordance

with CERCLA §121(e). Compliance with local requirements for permits or other local regulations shall be the responsibility of the EPA contractor(s).

The inability of EPA or the State to obtain access necessary to implement the elements of the SOW of this Contract may require an amendment to, or termination of, this SSC (See Termination of this SSC provision).

With reasonable notice to the RPM, and upon condition that they comply with any site safety plan then in effect, representatives of the State shall have access to the Site. Similarly, whenever possible, representatives of the federal government will coordinate access to the Site in advance with the SPM.

19. State Review [40 CFR 300.505(a) & 300.505(c) & 300.505(d); 40 CFR 35.6805(t)]

The State must review and comment on the response actions provided under this Contract.

EPA will provide draft technical reports and documents to the State for review. The State shall submit any comments on draft technical reports and documents within 15 working days of receipt. The RPM and SPM may, by agreement, extend the deadline for submission of such comments. Unless otherwise stated in the SSC, all time frames for review must follow those prescribed in the NCP.

Note that any consultation requirements in this Contract supersede existing Superfund Memorandum of Agreement consultation requirements.

20. Reports [40 CFR 35.6815(c)(1)]

EPA and the State agree to exchange reports.

21. Records Access [40 CFR 35.6710 & 35.6815(d); 40 CFR Part 2, Subpart B; 2 CFR 200.326 & 200.336]

At the State's request, and to the extent allowed by federal law, EPA shall make available to the State any information in its possession concerning the Site. If any information is provided to EPA with a claim of confidentiality of business information, it will be treated in accordance with 40 CFR Part 2, Subpart B. EPA may only share confidential business information with the State if it is permitted under 40 CFR Part 2, Subpart B.

At EPA's request, and to the extent allowed by State law, the State shall make available to EPA any information in its possession concerning the Site. EPA shall not disclose information submitted by the State under a claim of confidentiality of business information unless EPA is required to do so by federal law, and has given the State advance notice of its intent to release that information. Absent notice of such claim of confidentiality of business information, EPA may make said information available to the public without further notice.

22. Records Retention [40 CFR 300.515(h)(3)(i); 40 CFR 35.6705 & 35.6710 & 35.6815(d); 2 CFR 1500.6]

Where the State must maintain records on a site-specific basis, the State must comply with the requirements regarding record retention described in 40 CFR 35.6705.

23. Inspection of the Remedy [40 CFR 300.435(f) & 300.515(g); 40 CFR 35.6805(q)]

A. Joint EPA/State Pre-final Inspection

A joint EPA/State pre-final inspection will be conducted at the conclusion of construction of each remedial action addressed by this Contract. This includes inspections at the one-year and ten-year post remedy implementation milestones. This inspection is separate from the construction contract pre-final inspection, although both inspections may be conducted concurrently. The joint EPA/State pre-final inspection will be led by the RPM accompanied by the SPM. The joint EPA/State pre-final inspection generally will consist of a walk-through inspection of the constructed remedial action. This inspection will determine whether each element of work is complete and consistent with the contract documents and the EPA approved remedy. Jointly, EPA and the State will determine if there are any outstanding construction items. An attempt shall be made to determine resolutions for all remaining items. EPA will provide an inspection report to the State for review and comment. If the EPA/State pre-final inspection results in significant outstanding items, EPA may choose to delay the determination that construction of the remedial action is complete until the significant items have been resolved.

B. Joint EPA/State Final Inspection

A joint EPA/State final inspection will be conducted to determine that each remedial action addressed under this Contract is functioning properly and performing as designed. The joint EPA/State final inspection will be led by the RPM, accompanied by the SPM and other parties, where appropriate, from the EPA/State pre-final inspection.

The EPA/State final inspection generally will consist of a walk-through inspection of the constructed remedial action, with the inspection focusing on the items necessary to ensure the remedial action is operating properly and performing as designed. The RPM and the SPM will also confirm that all outstanding items from the EPA/State pre-final inspection have been resolved.

24. Operational and Functional [40 CFR 300.435(f) & 300.510(c)(2)]

The completion of the joint EPA/State pre-final inspection marks the point in time when construction of each remedial action is considered complete for purposes of this Contract. It is used to document the beginning of the up to one-year O&F period. Consistent with 40 CFR 300.435(f)(2), the “remedy becomes operational and functional (O&F) either one year after

construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and performing as designed, whichever is earlier.” EPA’s intention is to schedule and conduct a joint EPA/State final inspection within one year of the completion of the joint EPA/State pre-final inspection. The completion date of the EPA/State final inspection, assuming it is done within one year of the pre-final inspection, will be used as the date of the O&F determination. In the event that the joint EPA/State inspection and does not occur within one year, the NCP (40 CFR §§ 300.435(f)) provides EPA the discretion to make an O&F determination without this inspection. As discussed in §300.435(f)(2) of the NCP, “EPA may grant extensions to the one-year O&F period, as appropriate.” When the O&F determination has been made, EPA will provide written notification to the State documenting the O&F determination. Since the O&F time period is part of the remedial action, the State cost share is applicable.

In accordance with 40 CFR §300.435(f)(1), the O&F determination results in the transfer of each remedial action to the State for O&M or initiation of the long-term response action, as described in the Ground and Surface Water Restoration Provision.

The Remedial Action Report will be prepared once each remedial action is O&F. The State may review and comment on the draft Remedial Action Report. After EPA approves the Remedial Action Report, EPA will provide a copy to the State.

25. Ground and Surface Water Restoration (Long-term Response Action) [CERCLA §104(c)(6); 40 CFR 300.435(f)]

The remedial action provided under this Contract includes ground or surface water restoration. Pursuant to CERCLA §104(c)(6), EPA is authorized to share in the cost of the restoration of ground or surface water for a period of up to ten years or until the level of protectiveness, as defined in the Record of Decision, is achieved, whichever comes first. The ten-year period will adhere to the provisions provided in 40 CFR 300.435(f)(3). This ten-year period of ground or surface water restoration is referred to as long-term response action. The O&F determination marks the initiation of the LTRA.

The State has elected not to take the lead for the LTRA. EPA shall conduct the LTRA. The State cost share, 10 percent, shall be applicable for the portion of the future work conducted that is subject to cost share requirements. The estimated value of the State’s share of LTRA is approximately \$400,000. This estimate is incorporated in the total cost share estimate.

26. Personal Property [40 CFR 35.6815(b)]

The State agrees that it will accept title to fixed-in place equipment, and equipment that is an integral part of services to individuals, used as all or part of the remedy. EPA shall no longer have an interest in this equipment once installed and EPA has certified that the remedy is operational and functional. The State must use, manage, and dispose of equipment acquired under this Contract in accordance with state laws and procedures.

27. Final Financial Reconciliation [35.6285(d) & 40 CFR 35.6805(k)]

The financial settlement and final financial reconciliation of remedial action and other response costs (including all change orders, claims, total expenditures, total collections, exclusion of special account or infrastructure expenditures, verification and application of credit and in-kind services, final payments, refunds, or transfers of State overpayments, etc.) must be completed and documented to ensure that both EPA and the State have satisfied the CERCLA cost share requirement. Final financial reconciliation must be completed before this Contract can be administratively closed and must be documented pursuant to the Administrative Closure subparagraph of the Conclusion of this SSC provision. EPA will provide draft financial reconciliation documentation to the State within one year of the LTRA completion for the remedial action conducted under this Contract.

Credit and in-kind services must be used first to satisfy the State's cost share requirements at this Site. Per the State's request, EPA may use verified excess credit from this Site to satisfy cost share requirements at another site, but only after final financial reconciliation has been completed. Excess credit cannot be refunded to the State. In-kind services cannot be used at another site and cannot be refunded to the State. Cash overpayments will be refunded to the State, or at the State's direction, will be used to satisfy cost-share requirements at another site.

28. SSC Amendments [40 CFR 300.510; 40 CFR 35.6805(l)]

This Contract may be amended to alter any provision of this agreement, but only to the extent consistent with federal and state laws and regulations, and in consideration of EPA policy and guidance. Amendments are required when there are changes in the selected remedy addressed under this Contract, project costs exceed the remedial action cost estimate, payment schedules are altered, to document Administrative Closure or Final SSC Conclusion, or when alterations affect the State's assurances pursuant to the NCP and CERCLA. Any amendments that affect the SOW or the remedial cost estimate under this Contract must include an updated SOW reflecting these changes. All amendments to the Contract must be agreed to, in writing, by the signatories, except as provided in this Contract (See Authority to Approve Minor Modifications subparagraph), and must be reflected in all response agreements affected by the change(s).

29. List of Support Agency Cooperative Agreements [40 CFR 35.6805(m)]

There are no support agency cooperative agreements currently in effect for the Site.

30. Litigation [CERCLA §§106 & 107; 40 CFR 300.520; 40 CFR 35.6805(n)]**A. No Waiver to Bring Action**

This Contract does not constitute a waiver of EPA's rights or the State's rights, nor can either party waive the other party's rights, to bring an action against any person or persons

for liability under CERCLA §106, to compel cleanup, or for cost recovery under CERCLA §107, or to bring an action against any person or persons under any other statutory provision or common law.

B. Asserting Claims

EPA and the State may be entitled to assert claims against a third party (herein referred to as the "potentially responsible party" or "PRP," whether one or more parties) for reimbursement of any services, materials, monies, or other things of value expended by EPA or the State for Fund-financed response activity, related to the remedial action described in the SOW under this Contract.

- i. EPA and the State hereby agree that they shall cooperate in, and coordinate efforts to, recover their respective costs of response actions taken at the Site, including the negotiation of settlements and the filing and management of any judicial actions against PRPs. EPA and the State also hereby agree that neither shall enter into a settlement with, or initiate a judicial or administrative proceeding against, a PRP for the recovery of such sums, except after having given notice in writing to the other party to this Contract 90 days prior to the date of proposed settlement or commencement of the proposed judicial or administrative proceedings.
- ii. Neither party to this Contract shall attempt to negotiate for, or collect, reimbursement of any expenditures incurred for work performed under this Contract on behalf of the other party, and authority to do so is hereby expressly negated and denied. A State must enter its own settlement with a PRP, or be a party to an EPA settlement, in order to obtain reimbursement for its payments to EPA.
- iii. Unless otherwise specified in a settlement (or judgment), any settlement for past costs that EPA enters into, to which the State is not a party, only reimburses EPA's expenditures of appropriated funds. EPA will neither reimburse the State for cost share payments it has made to EPA nor reduce the cost share owed pursuant to the Cost Share Conditions provision in this Contract based on EPA's recovery of past costs. Similarly, any settlement into which the State enters into, to which EPA is not a party, only reimburses the State's costs and does not affect the costs EPA has or will incur under this Contract nor the share owed to EPA pursuant to the Cost Share Conditions provision in this Contract.

31. Issue Resolution

In the event issues arise relating to the Site, or questions are raised about any term of this Contract, such issues, to the extent possible, will be resolved by the RPM and the SPM. Note that matters unrelated to this SSC, such as those between the State and other federal agencies, are not subject to the terms of this Contract, since the SSC is a bilateral agreement.

If any such disagreement cannot be resolved by the RPM and the SPM, it shall be referred, as necessary, to the Regional Superfund Branch Chief (or designee) and Ecology Toxics Southwest Regional Office Section Manager (or designee); the EPA Regional Superfund Director (or designee) and Ecology Toxics Cleanup Program Manager (or designee), the EPA Region 10 Administrator (or designee) and Director of Ecology (or designee), and, finally, the Assistant Administrator, Office of Land and Emergency Management (OLEM), U.S. EPA (or designee) and Ecology Director, for final agency action. EPA and the State agree that the final decisions achieved resulting from this process shall be considered final agency actions. Nothing in this agreement precludes a party from pursuing other available adjudication processes should the final agency actions not lead to a mutual agreement. Proposals to compromise debts owed to EPA under this Contract must be referred to the EPA Claims Officer or the Department of Justice, depending on the value of the compromise (40 CFR 13.31).

Contractual resolutions and final audit determinations, impacting work performed under this Contract, shall also constitute final agency actions, and may require amendment to this SSC.

Disputes associated with cooperative agreements are subject to the dispute resolution procedures described in 2 CFR Part 1500, Subpart E §§1500.13-1500.17.

32. Sanctions for Failure to Comply with Terms of this SSC [CERCLA §104(d)(2); 40 CFR 35.6805(o)]

EPA may seek to enforce this Contract or to recover any costs incurred due to a breach of the SSC in the Federal district court, Western District of Washington, Seattle Division. If the State fails to comply with the terms of this Contract, any CERCLA assurance, and/or the negotiated payment terms, EPA may, after providing sixty days' notice, proceed under the provisions of CERCLA §104(d)(2). Other signatories to this Contract may seek remedies in the appropriate court of competent jurisdiction.

33. Exclusion of Third-Party Benefits [40 CFR 35.6805(r)]

This Contract benefits only the State and EPA. It extends no benefit or right to any third party that is not a signatory to this Contract.

34. Liability

EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed any limitations contained in applicable federal law. The State does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed any limitations contained in applicable state law.

35. Responsible Party Activities [40 CFR 35.6805(u)]

If, at any time during the period of this Contract, performance of either all or part of the work provided under this Contract is voluntarily undertaken, or undertaken for any other reason by a PRP or entities not party to this Contract, then this Contract will be modified or terminated (See Termination of this SSC provision) as appropriate. Upon modification or termination, the parties to this agreement shall be relieved from further duties to perform those actions undertaken by PRPs or entities not party to this Contract.

36. Termination of this SSC

The parties may agree to enter into a written termination agreement, which will establish the effective date for the termination of this Contract and final financial reconciliation (See Final Financial Reconciliation provision), including the amount and date of any sums due either party. Reconciliation costs shall also include cost sharing of any costs associated with termination of this Contract. If the parties cannot agree to enter into a termination agreement, they may engage in the process described in the Issue Resolution provision of this Contract.

37. Conclusion of this SSC [40 CFR 35.6820]

There are two components associated with the completion of this Contract: Administrative Closure and Final SSC Conclusion.

A. Administrative Closure

In order to administratively close this Contract, the signatories must concur through amendment to this Contract that EPA and the State have:

- i. Satisfactorily completed the response activities under this Contract (See 40 CFR 35.6805(q) and Inspection of the Remedy provision);
- ii. Completed final financial reconciliation for this Contract (See 40 CFR 35.6805(k) and Final Financial Reconciliation provision);
- iii. Accepted transfer of any Federal interest in real property (See 40 CFR 35.6805(i)(4) and CERCLA Assurance: Real Property Acquisition provision), as applicable; and
- iv. Assumed responsibility for all future O&M (See 40 CFR 35.6805(i)(1) and CERCLA Assurance: O&M provision), as applicable.

After the administrative closure of this SSC, EPA will continue to monitor, as warranted, compliance of the State's assurance to provide for all future O&M as required by CERCLA §104(c).

B. Final SSC Conclusion

Although this Contract may be administratively closed once the criteria in the Administrative Closure subparagraph are met, this Contract, specifically the O&M assurance provision, will remain in effect as long as O&M is required at this Site, unless the Contract is terminated pursuant to this subparagraph.

The final conclusion of this SSC shall only occur once O&M is concluded pursuant to an amendment to this Contract, a PRP has taken over O&M requirements for the Site and this Contract is terminated, or this Contract is terminated for other reasons (See Termination of this SSC provision).

38. Use of Electronic Signatures

EPA agrees that the State may execute this SSC and subsequent Amendments by electronic signature. All electronically signed documents must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) who signed the document; (3) the title of the electronic signer; and (4) the date and time it was signed. The State may deliver electronically signed documents by facsimile transmission or email to the EPA RPM, Stephen Lukas, at lukas.stephen@epa.gov, or the acting EPA RPM should the EPA RPM assignment change, including EPA's Cincinnati Finance Office, and shall be deemed original documents. The EPA and State acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

39. Signatures


In witness whereof, the parties hereto have executed this Contract.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date:

Kira Lynch, Branch Manager
Remedial Cleanup Branch
Superfund & Emergency Management Division
United States Environmental Protection Agency, Region 10

STATE OF WASHINGTON

DocuSigned by:

CE73C1188CD0449...

4/8/2025

Date:

Heather R. Bartlett
Deputy Director
Washington Department of Ecology