

Superfund State Contract
Hamilton/Labree Roads Groundwater Contamination Superfund Site

This document contains November 2015 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 Part 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) Model 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”); other applicable Federal regulations including 40 CFR Part 35, Subpart O, and 2 CFR Parts 200 and 1500; the Model Toxics Control Act, Revised Code of Washington 70.105D and implementing regulations at the Washington Administrative Code Chapter 173-340 (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 Department of Ecology to work in partnership with EPA on behalf of the State of Washington (“the State”) concerning remedial actions¹ to be conducted at the Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Lewis County, WASFN1002174 (“the Site” or “this Site”). Ecology is also authorized to act on behalf of the State in carrying out state programs under CERCLA by RCW 70.105D.030(1)(d).

This SSC documents the roles and responsibilities of EPA, as the lead agency, and the State, as the support agency, and includes provisions that outline the basic purpose, scope, and administration of the SSC, as well as those activities described in the attached site-specific Statements of Work (SOW).

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 the Site as the remedial action covered by this SSC is an interim action. It is anticipated that additional remedial action(s) will be required at the Site. EPA and the State anticipate that the additional remedial action(s) will either be incorporated into this SSC via an amendment or a new SSC will be entered into by the parties.

¹ For the purposes of this SSC, the term “remedial action” does not include operation and maintenance (O&M) of an implemented remedy.

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 Site is about 2 miles south of the City of Chehalis, Washington, near the intersection of North Hamilton Road and Labree Road, west of Interstate 5 (I-5). The Site has been divided into two geographical areas, called Operable Units (OUs), to facilitate the identification and cleanup of hazardous substances. The Site includes OU1, also known as the Hamilton Road Impacted Area (HRIA), and Operable Unit 2 (OU2), which includes all other areas outside of OU1 where hazardous substances have come to be located, including the areas referred to as the Breen Property, the Thurman Berwick Creek Area, and the areas west and northwest of Labree Road.

EPA is addressing contamination at the Site through a phased approach beginning with an interim remedial action in Operable Unit 1 (OU1). This initial SSC covers only the interim remedial action in OU1. Additional data collection and evaluation from other areas of the Site is needed to develop, select, and implement other response actions for the Site that will achieve long-term protection of human health and the environment, e.g., restoration of groundwater.

A full 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 releases (contaminant type and affected media), past response actions, and the response actions that are still required and their expected benefits, is provided in the Superfund Record of Decision ("ROD") for the Hamilton/Labree Roads Groundwater Contamination Superfund Site, Operable Unit 1 (OU1) Interim Remedial Action, dated August 28, 2013.

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

Site-specific Statements of Work (SOW) for each remedial action 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, are to be established and attached to this SSC. Attached to this initial SSC is Appendix A which provides a general description of the tasks to be conducted as part of the OU1 interim remedial action.

8. Statement of Intention to Follow EPA and State 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 EPA's Administrative Record and those policy/guidance documents identified by the State during implementation of the attached site-specific SOWs.

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

For each remedial action covered under this SSC, a general description of the project schedule/milestones by calendar year which includes a summary of deliverables, is included within the attached site-specific SOWs.

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:

Tamara Langton
EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101
langton.tamara@epa.gov
206-553-2709

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:

Marv Coleman
Department of Ecology
PO Box 47775
Olympia, WA 98504-7775
mcol461@ecy.wa.gov
360-407-6259

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 SPM have joint authority to approve minor modifications to the attached site-specific SOWs, including minor schedule delays, without the need for amendment of the Contract, provided the modifications do not require a change in the selected remedial actions addressed under this Contract or cause project costs 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 when operation and maintenance (O&M) of an implemented remedial action addressed under this Contract is applicable, it will remain in effect for the expected life of such action. 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).

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. If O&M is applicable, the draft O&M Plan will continue to be refined by EPA during the remedial action. The O&M Plan may also be updated by the State and/or EPA when conditions change during any long-term response action and during O&M. As applicable, an ICIAP may also be developed.

At the present time, neither O&M nor institutional controls are anticipated for the OU1 interim remedial action addressed under this initial Contract. If in the future O&M or institutional controls are required, this provision of the Contract may be amended.

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 2014 National Capacity Assessment shows that there is adequate national capacity for the treatment and disposal of hazardous waste through calendar year 2039. This assessment included data provided by the State for the 2011 National Biennial RCRA Hazardous Waste Report.

Based upon the assessment and other data, EPA expects that there will be adequate national hazardous treatment and disposal capacity during the 20-year period following signature of this Contract. Based on EPA's expectation, the State 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).

In order to ensure the continued availability of capacity for the treatment and disposal of hazardous waste, the State agrees to work with EPA to meaningfully participate in the national capacity planning process.

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 required during implementation of the OU1 interim remedial action. EPA or its representative, in its invitation for bids for remedial action, shall require respondents to provide adequate capacity for waste disposal at a facility (or facilities) that, at a minimum, meet(s) the requirements of Subtitle C of the Solid Waste Disposal Act. The State's acceptance of EPA's selection shall constitute this assurance.

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

The 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 OU1 interim remedial action. However, if needed in the future for this or future Site remedial actions, EPA may acquire an interest in real property 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.

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.

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

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), 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 actions 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. 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)]

At the present time, the estimated cost of the OU1 interim remedial action provided under this Contract is **\$18.5 million**. This estimate excludes EPA's intramural (i.e., payroll and travel) and indirect costs. This estimate also excludes costs for O&M. The estimated State cost share is **\$1.85 million**.

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 attached site-specific 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 Preliminary Estimate of Probable Construction Cost Memorandum for the OU1 Remedial Action Performance Work Statement dated February 12, 2016 (CDM Smith) and includes contingencies for change orders, which may or may not be executed, and construction management services.

C. Settlement Proceeds

If EPA expends funds from a settlement (or other instrument) with potentially responsible parties (PRPs) to perform work provided under this SSC, such expenditures will not require State cost share. Expenditures of such funds, however, will not alter the percentage owed by the State as cost share (i.e., 10%) for the portion of work conducted that is cost shareable (See Determination of Cost Share provision).

The use of settlement proceeds 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, 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.

At the present time, the State does not anticipate providing in-kind services to meet its 10% cost share obligation for the OU1 interim remedial action. If in the future the State does want to provide in-kind services towards this or future Site remedial action cost-share obligations, the State and EPA will negotiate a SACA and document this in an amendment of the SSC.

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).

At the present time, 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 annual payments of at least \$100,000, approximating the State's 10% cost share obligation towards annual expenditures incurred implementing the OU1 interim remedial action for the duration of the Contract, subject to the availability of funds appropriated by the State legislature (See Cost Assurance provision). The State will supplement these payments, subject to the availability of excess funds, with payments at the end of each budget biennium. Final payments (or reimbursements) will be settled at final financial reconciliation (See Final Financial Reconciliation provision).

All State payments pursuant to this SSC shall be made payable to the EPA Hazardous Substance Superfund and sent by U.S. Postal Service to the Post Office Box address specified below, by UPS, Federal Express or other private delivery service to the lockbox address specified below or one of several electronic payment options found at <http://www2.epa.gov/financial/makepayment>. At the time payment is made the State shall provide notice of the payment to the RPM designated in this SSC.

By U.S. Postal Service:

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

By Signed Receipt (UPS, Fed Ex, etc.):

U.S. Environmental Protection Agency
Government Lockbox 979076
Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

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 assigned to either EPA or the State and O&M activities assigned to the State as described in the attached site-specific SOWs 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 attached site-specific SOWs 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 attached site-specific SOWs 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 attached site-specific SOWs 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)]

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.

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

EPA and the State agree to exchange reports (*See State Review provision*).

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 with the exception of documents identified by the State as being attorney-client privileged documents or attorney-work product documents. 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 inspection is separate from the construction contract pre-final inspection, although both inspections may be conducted concurrently. For the OU1 interim remedial action, the joint pre-final inspection will be conducted at the same time as the construction contract pre-final inspection.

The joint EPA/State pre-final inspection will be led by the RPM accompanied by the SPM and other participants as deemed acceptable by the RPM and 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.

For the OU1 interim remedial Action, a joint final inspection will be conducted within one year of the pre-final inspection.

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 final inspection 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 (LTRA), where applicable, as described in the Ground and Surface Water Restoration Provision.

The O&F determination for the OU1 interim remedial action shall be made when the soil cleanup level, mass discharge reduction performance measure and remedial action objectives specified in the OU1 ROD have been achieved, and rehabilitation and revegetation of the Berwick Creek channel and adjacent areas is deemed complete. No O&M will be assigned to the State (See CERCLA Assurance: Operations and Maintenance provision) nor will an LTRA be initiated (See Ground and Surface Water Restoration [Long-term Response Action provision]).

A 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 (See State Review and Reports provisions). After EPA approves the Remedial Action Report, EPA will provide a copy to the State. The joint pre-final inspection will be conducted after construction of the OU1 interim remedial action is considered complete such that the soil cleanup level, mass discharge reduction performance measure, and remedial action objectives specified in the OU1 ROD have been achieved. The joint pre-final inspection will include a walk-through of the rehabilitated Berwick Creek channel and adjacent revegetated areas.

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

The OU1 interim remedial action provided under this initial Contract does not include ground or surface water restoration; therefore, no Long-term Response Action will be initiated.

For future Site remedial actions, under an amendment to the SSC or under a new SSC, that may include ground or surface water restoration, CERCLA § 104(c)(6) authorizes EPA 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 (LTRA). The O&F determination for ground or surface water restoration remedial actions marks the initiation of the LTRA.

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

When applicable, 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 costs (including all change orders, claims, total expenditures, total collections, exclusion of special account 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 O&F determination or LTRA completion, where applicable, for the final 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 remedies 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 site-specific SOWs or the remedial action cost estimates under this Contract must include updated SOWs 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)]

As of this time, there are no Support Agency Cooperative Agreements for this 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/or 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 actions described in the site-specific SOWs 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 45 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 elevated for resolution, as necessary, in the following order: immediate managers of the RPM and SPM; the EPA Regional Superfund Program Manager and Ecology Toxics Cleanup Southwest Regional Office Section Manager (or designee) ; the EPA Regional Superfund Director (or designee) and Ecology Toxics Cleanup Program Manager (or designee); and, finally, the EPA Region 10 Administrator (or designee) and Director (or designee) of Ecology. 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, §§ 1500.12-1500.19.

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). If EPA breaches this SSC, the State may, after providing 60 days' notice, file suit and seek remedies in the same court.

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).

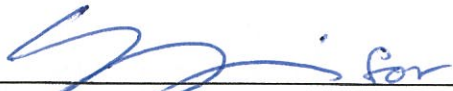
38. Use of Electronic Signatures

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 and shall be deemed original documents. After EPA's receipt of electronically signed documents, the EPA official will print and sign three copies of each document, each of which shall be deemed an original document, and will return one to the State, retain one, and deliver one to the Cincinnati Finance Office. 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: 8/4/2017

Sheryl Bilbrey, Director
Office of Environmental Cleanup
EPA Region 10

STATE OF WASHINGTON



Date: 8/4/2017

James J. Pendowski, Program Manager
Toxics Cleanup Program
Washington State Department of Ecology

Appendices

A. Site-specific Statement of Work for Hamilton/Labree OU1 Interim Remedy

Appendix A

Hamilton/Labree Site Superfund State Contract Site-specific Statement of Work for the Operable Unit 1 Interim Remedial Action

I. Purpose

This site-specific Statement of Work (SOW) provides a summary of the tasks to be implemented pursuant to the Hamilton/Labree Roads Groundwater Contamination Superfund Site (Hamilton/Labree Site or Site) Record of Decision (ROD) for the Operable Unit 1 (OU1) Interim Remedial Action dated August 28, 2013.

II. The Hamilton/Labree Superfund State Contract

The Hamilton/Labree Site Superfund State Contract (SSC) is an agreement that documents the roles and responsibilities of EPA Region 10 (EPA), as the lead agency, and the Washington State Department of Ecology (Ecology), as the support agency, in implementing remedial actions¹ at the Site.

Provision 7 of the SSC provides for site-specific SOWs to be established for each remedial action and attached to the SSC. These site-specific SOWs provide a summary of the tasks to be implemented 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.

Appendix A is the first site-specific SOW to be established under the Hamilton/Labree Site's initial SSC. This SOW provides the above SSC-required summary of tasks and cost estimates, as well as a description of the OU1 interim remedial action including the objectives, cleanup level, and performance measures to be attained and the remedy components to be designed and implemented.

It is anticipated that additional remedial action(s) will be required at the Site. Each of these remedial actions will require a separate site-specific SOW to be established. These SOWs will then be attached to an amendment to the initial SSC or to a new SSC entered into by EPA and the State.

¹ For the purposes of this SOW, the term "remedial action" does not include operation and maintenance (O&M) of an implemented remedy.

III. Hamilton/Labree Superfund Site Description

The Site is about 2 miles south of the City of Chehalis, Washington, near the intersection of North Hamilton Road and Labree Road, west of Interstate 5 (I-5). The Site has been divided into two geographical areas, called Operable Units (OUs), to facilitate the identification and cleanup of hazardous substances. The Site includes OU1, also known as the Hamilton Road Impacted Area (HRIA), and Operable Unit 2 (OU2), which includes all other areas outside of OU1 where hazardous substances have come to be located, including the areas referred to as the Breen Property, the Thurman Berwick Creek Area, and the areas west and northwest of Labree Road.

EPA is addressing contamination at the Site through a phased approach beginning with an EPA-lead interim remedial action in Operable Unit 1 (OU1). Additional data collection and evaluation from other areas of the Site is needed to develop, select, and implement other response actions for the Site that will achieve long-term protection of human health and the environment, e.g., restoration of groundwater.

IV. Operable Unit 1 Interim Remedial Action Description

a. Remedial Action Objectives

Remedial action objectives (RAOs) provide a general description of what a remedial action is intended to accomplish in terms of contaminants and media of concern, potential exposure pathways, and remediation goals and are the basis for establishing cleanup levels and performance measures. The OU1 RAOs and associated cleanup level and performance measures address Contaminants of Concern (COCs), primarily PCE, in sediment, soil, and groundwater and the risks associated with these contaminants within OU1. The following RAOs are defined for the OU1 interim remedial action:

- i. Prevent human exposure to groundwater in OU1 containing COCs above levels that are protective of drinking water.
- ii. Prevent human exposure to COCs in OU1 sediment and soil above levels that are protective of commercial/industrial workers, construction/utility (trench) workers, and recreational users.
- iii. Prevent ecological exposure to COCs in OU1 sediment and soil above levels that are protective of ecological receptors.
- iv. Reduce the Dense, Non-Aqueous Phase Liquid (DNAPL) contaminant mass and subsurface soil contamination within OU1 to minimize further migration of COCs from OU1 to downgradient groundwater.

b. One Cleanup Level and Two Performance Measures

Cleanup levels (CULs) are developed based on applicable or relevant and appropriate requirements (ARARs) from federal and state environmental standards. Where standards do not exist or provide an inadequate level of protection, CULs are based on risk-based calculations of acceptable exposure levels. Where achievement of CULs are not feasible, performance measures can be established to guide and evaluate the performance of the remedy.

For the OU1 interim remedial action, the following CUL and performance measures are identified in the OU1 ROD:

- i. **Soil Cleanup Level:** The CUL that addresses the soil-related RAOs is PCE in soil equal to or less than 10 milligrams/kilogram (mg/kg). This CUL is based on acceptable ecological risk-based exposure levels to the short-tailed shrew and is below EPA Human Health risk-based levels and State MTCA requirements. This CUL will be met by the OU1 interim action.
- ii. **Sediment Performance Measure:** The soil CUL is protective of human and terrestrial ecological receptors; however, it is not necessarily protective of aquatic organisms living in the sediment and nearby soil of the OU1 Berwick Creek channel. EPA's fresh water regional screening level (RSL) for protection of aquatic organisms from contact with and ingestion of PCE-contaminated sediment and soil is 0.468 mg/kg. This RSL is defined in the OU1 interim remedial action as a performance measure to achieve sediment-related RAOs.
- iii. **Groundwater Performance Measure:** It is not anticipated that the OU1 interim remedial action will achieve ARARs or risk-based CULs for groundwater; however, to minimize the downgradient migration of OU1 COCs in groundwater, a 90% reduction in PCE mass discharge across a compliance transect has been established as a performance measure.

c. Major Remedy Components

To achieve the one CUL and two performance measures so as to accomplish the OU1 RAOs, the following major remedy components are defined in the ROD for the OU1 interim remedial action:

- i. Diversion of Berwick Creek around areas of contamination during treatment
- ii. In-situ thermal treatment of sediment and soil with PCE concentrations greater than 10 (mg/kg)
- iii. Supplemental excavation, treatment and disposal of any remaining creek bed sediment and surface soil (0 to 5 feet below ground surface) with PCE concentrations greater than 10 mg/kg
- iv. Enhanced in-situ bioremediation treatment of any remaining subsurface soil (5 to 50' bgs) with PCE concentrations greater than 10 mg/kg
- v. Restoration of Berwick Creek Channel to include less than 0.468 PCE in sediment and nearby bank soil
- vi. Enhanced in-situ bioremediation of groundwater with PCE concentrations greater than 4,000 micrograms per liter (µg/L)
- vii. Institutional controls within OU1 to prevent the use of contaminated groundwater as a drinking water source and minimize exposure to contaminated sediment, soil, and groundwater
- viii. Monitoring to evaluate performance and protectiveness of the interim remedy.

d. Institutional Controls and Operation and Maintenance

EPA, as the lead agency, with support from Ecology and other interested parties, will work to identify and strengthen existing or develop new institutional controls during implementation of the OU1 interim remedial action. After the remedy is completed, EPA will continue to take the lead on ensuring ICs remain in place as part of a site-wide strategy to prevent the use of and minimize exposure to contaminated groundwater, and reduce the concentrations of COCs in groundwater. As such, there are no ICs to be transferred to the State after the OU1 interim remedial action is completed.

EPA will also be the lead agency for monitoring during implementation of the OU1 interim remedial action. After completion of the OU1 interim remedial action, EPA will continue to monitor the performance of the remedy. This includes monitoring surface and groundwater in OU1 as part of the site-wide strategy mentioned above, and monitoring and maintaining the restored creek channel and adjacent areas. As such, there is no O&M associated with the implemented OU1 interim remedial action to be transferred to the State.

V. OU1 Interim Remedial Action Tasks

The OU1 Interim Remedial Action Acquisition Strategy called for the development of a Remedial Action Performance Work Statement (RA PWS) to be used as the primary document to procure a sole remedial action contractor to design and implement the OU1 interim remedial action. The OU1 RA PWS is to include details on the major remedy components and tasks to be performed, as well as the CUL, performance measures, objectives and requirements that are to be met.

At the present time, the OU1 RA PWS is under development by EPA Region 10, the United States Army Corps of Engineers (USACE) Seattle District, and Ecology. As the lead agency, EPA Region 10 will provide remedial action funding via an interagency agreement to USACE Seattle District directing them to procure and administer a remedial action contract pursuant to a final RA PWS.

During the design and implementation of the OU1 interim remedial action, as identified in the initial SSC, EPA will provide draft technical reports and documents to the State for review and comment. EPA will also involve and seek advice from other governmental and community stakeholders regarding their interests in the performance objectives of the project.

The major categories of tasks identified in the draft RA PWS for the RA contractor to perform include the following:

Task Category 1: Project Planning and Management (project milestones, schedule, meetings, documents)

Task Category 2: Project Plan Submittals (Project Management Plan to include a requirement that a sign is posted at the Site providing the appropriate contacts for obtaining information on activities being conducted and for reporting suspected criminal activities; RA Work Plan to include Health and Safety Plan, Field Sampling and Quality Assurance Project Plans, Environmental Compliance and Waste Management Plan, and Design Submittals; Performance Monitoring Reports, Final Remedial Action Report)

Task Category 3: Remedy Implementation (Mobilization, Health and Safety, Temporary Facilities, Utilities, Trash/Debris, Equipment Lay-Down Areas, Security and Signs, Subsurface Clearance, Surveying, Interstate 5, Waste Disposal, Quality Assurance, Inadvertent Discovery of Cultural Resources, and Remedy Component-specific tasks. The latter group includes Baseline Mass Discharge Measurements; Berwick Creek Diversion and Restoration; Thermal Design, Installation, and Operation; Post-thermal Excavation and/or Enhanced Bioremediation; EAB Design, Installation, and Operations; and Performance Monitoring).

VI. Project Schedule/Milestones and Estimated Costs

Below is a summary-level project schedule and an estimate of remedial action costs. Remedial action activities are planned to be started in the fall of 2018 and completed in September 2023 at a total estimated remedial action costs of \$18.5 million including contingencies. This estimated cost is derived from the Preliminary Estimate of Probable Construction Cost Memorandum for the OU1 Remedial Action Performance Work Statement dated February 12, 2016 (CDM Smith) and includes contingencies for change orders, which may or may not be executed, and construction management services. These costs, and schedule, will change with completion of the final RA PWS and award of the RA Contract.

CY/Q Funds To Be Obligated	Amount	Activities	Start	Complete
2017/3	\$3.6 million	<ul style="list-style-type: none"> - New RA IA Awarded - USACE prepares RA procurement bid documents (other than Performance Work Statement); evaluates bids; thru actual award of RA task order (\$500K) - RA Task Order Awarded (Incremental Funding) - RA Contractor Project Planning Documents, Subcontracting & Prep (\$3.1 million) 	10/1/2017 8/2/2018	9/30/2017 7/30/2018 8/1/2018 1/31/2019
2018/3	\$9.2 million	<ul style="list-style-type: none"> - Baseline Mass Discharge (MD) Workplan incl. Baseline MD Measurement (\$600K) - Creek Diversion (\$1.6 million) - ISTR including confirmation sampling (\$7 million) 	2/1/2019 4/1/2019 9/1/2019	6/30/2019 8/30/2019 3/31/2021
2019/3	\$5 million	<ul style="list-style-type: none"> - EAB including performance monitoring (\$5 million) 	4/1/2020	10/30/2022
2020/3	\$700K	<ul style="list-style-type: none"> - Creek Diversion Restoration (\$400K) - Post-treatment MD Measurements (\$300K) 	1/1/2021 TBD	9/30/2021 9/30/2023

VII. Deliverables

A current schedule of deliverables is provided in the Technical Exhibit 7 in the draft RA PWS.