

CAP Project Initiation Agreement
Draft/February 2003

I. Parties Involved

The purpose of this Project Initiation Agreement (Agreement) is to promote a Cooperative Assessment Project (CAP) at [description of project site and designation of Project Name to be used in this Agreement] between the Trustees and the Company(ies):

Participating Trustees
[Identify participating Trustee(s) individually]

Participating Company(ies)
[Identify participating Company(ies) individually]

The signatory of each Party certifies that he or she is authorized by the Party(ies) whom he or she represents to enter into this Agreement and bind the Party(ies) to this Agreement. The provisions of this Agreement will apply to the participating Parties and become effective once all the Party representatives sign the Agreement.

II. Definitions

Agreement means this signed Project Initiation Agreement.

Company(ies) means a Potentially Responsible Party(ies) who is a signatory to this Agreement.

Framework means the agreed upon Framework for participating in CAP.

Party(ies) means one of the signatories to this Agreement.

[Project Name] means _____.

Trustee(s) means a natural resource trustee who is a signatory to this Agreement.

III. Non-Participants Module [as appropriate]

The Parties have used their best efforts to identify and contact all other known potential Parties for [Project Name]. As part of this Agreement, the Parties acknowledge that there are Trustees and Company(ies) that are affected, may be interested in, but choose not to participate in [Project Name]. The following Non-Participating Trustees and Company(ies), that are known to be associated with [Project Name], have been contacted and are included in a non-participating capacity:

Non-Participating Trustees
[Identify non-participating Trustee(s) individually]

Non-Participating Company(ies)
[Identify non-participating Company(ies) individually]

The Parties must keep these Non-Participating Trustees and Company(ies) informed on [Project Name] activities.

Non-Participating Trustees may join in a settlement or enter [Project Name] prior to settlement based on the understanding that prior commitments by the Participating Trustees to the Participating Company(ies) will not be revisited without new and substantive information.

Optional

Should one or more Companies decide not to participate in [Project Name] or later withdraw from [Project Name], the remaining Company(ies) may continue only if the Company(ies) takes on the responsibility of the Non-Participating Company(ies) or liability can be divided reliably from the remaining, Non-Participating Company(ies).

IV. Expectations

CAP is based on the premise that the Parties can provide appropriate restoration outcomes more cost-effectively than might otherwise be the case by expediting the natural resource damage assessment and restoration process while maintaining damage assessment and restoration standards at [Project Name].

Should this Agreement be terminated for any reason, the Participating Trustees have the right to pursue a natural resource damage assessment under the applicable [CERCLA, or OPA] natural resource damage assessment rules at [43 C.F.R. Part 11, or 15 C.F.R. Part 990].

Consistent with the language and spirit of CAP and to ensure a successful outcome for [Project Name], the Parties are expected to commit to:

- The CAP Framework;
- The project-specific requirements in this Agreement; and
- Any subsequent agreements of any form, including modifications to any agreements specific to [Project Name].

The [Project Name] under CAP is intended to:

- Define a process and mechanisms whereby the Company(ies) can employ initiative and creativity in resolving their natural resource liability, while retaining Trustee oversight responsibility;

- Be cost-and time effective for both the Participating Trustees and Company(ies) to ensure a positive outcome for all Parties;
- Be flexible to address the uniqueness of [Project Name] by tailoring the assessment and restoration process to facilitate innovative and creative solutions; and
- Be open, fair, and balanced to all the affected and interested Parties.

V. Objectives

The objectives of [Project Name] are to:

[To be defined based on the project. Objectives must identify the outcome (or endpoint) of the object in question.]

VI. Authorities

The Trustees enter into this Agreement pursuant to the authorities provided to natural resource trustees by the [Comprehensive Environmental, Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9601 *et seq.*,] or [Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 *et seq.*,]; Subpart G of the National contingency Plan, 40 C.F.R. §§ 300.600, *et seq.*; Executive Order 12580, 3 C.F.R., 1987, Comp. p. 193, 52 Fed. Reg. 2923 (January 23, 1987), as amended by Executive Order 12777, 56 Fed. Reg. 54757 (October 9, 1991); the [CERCLA Natural Resources Damage Assessment Regulations, as amended, 43 C.F.R. Part 11] or [Oil Pollution Act Damage Assessment Regulations, 15 C.F.R. Part 990]. The State(s) of _____ also enters into this Agreement pursuant to [state authorities].

The following officials, or their designees, represent agencies that act on behalf of the public under the above authorities with respect to natural resources being addressed under this Agreement:

[Party’s name, agency name, resources and services covered]

_____, etc.

The designation of representatives in this Agreement is for coordination and planning purposes. For each Party, the designation of a representative in this Agreement does not constitute a delegation of any legal or policy making authority nor does it authorize the representative to create policy positions, to create liabilities or debts against the Party, or otherwise legally obligate the Party in any way. The Parties will communicate any tentative consensus decisions or positions to their respective management and seek expeditious approval.

VII. Trustee Coordination

The Trustees will coordinate their efforts for [Project Name].

[NOTE: There are several ways this coordination might be accomplished, as demonstrated by the options below.]

Option One:

The Trustees have an existing Memorandum of Understanding (MOU) that would be appropriate for [Project Name].

Option Two:

The trustees agree to:

- 1) Abide by the coordination responsibilities under the Framework; and
- 2) Document additional coordination requirements in the public record necessary to initiate and manage the Project, including, but not limited to:
 - a) Identifying the LAT;
 - b) Defining the decisionmaking process, including roles and responsibilities of decisionmakers;
 - c) Defining, with the Company(ies), contracting needs and access; and
 - d) Defining, with the Company(ies), an acceptable dispute resolution process.

The trustees agree to:

- 1) Abide by the coordination responsibilities under the Framework; and
- 2) Document additional coordination requirements in the public record necessary to initiate and manage the Project, including, but not limited to:
 - a) Identifying the LAT;
 - b) Defining the decisionmaking process, including roles and responsibilities of decisionmakers;
 - c) Defining, with the Company(ies), contracting needs and access; and
 - d) Defining, with the Company(ies), an acceptable dispute resolution process.

Option Three:

The Trustees agree to coordinate all activities and matters under this Agreement accordance with the decisionmaking procedures described below.

To the extent authorized by applicable law and policies, the Trustees may take the following actions, among others, to address the purposes of this Agreement:

- 1) Conduct, participate in, and/or oversee scientific and technical work

conducted pursuant to this Agreement related to the assessment and quantification of injury to natural resources and their services resulting from the [release] or [discharge] and the restoration of injured resources and services;

2) Participate in negotiations with the Company(ies), when appropriate;

3) Oversee the development and implementation of a plan for the restoration of the injured natural resources and services;

4) In accordance with applicable law, make all necessary decisions for the management and administration of any joint funds; and

5) In accordance with applicable law, arrange for one or more contracts with professional consultants, technical or otherwise, that the Trustees determine are necessary and best qualified to provide services to the Trustees.

The trustees agree that the Lead Administrative Trustee for [Project Name] will be: [Name, agency, contact information]. The duties of the LAT will include, but are not limited to: coordinating and expediting the progress of the injury assessment and restoration process; scheduling of meetings of the Trustees and preparing agendas for those meetings; acting as a central contract point for the Trustees; and carrying out such other duties as directed by the Trustees. The LAT will be responsible for informing the other Trustees of all pertinent developments on a timely basis.

The Trustees agree that all decisions implementing this Agreement will require unanimous approval of the Trustees. In the event that unanimous agreement cannot be reached among Trustees, the matter in dispute will be elevated to the Trustees' management for resolution, at the appropriate time. If necessary, the Trustees may establish further mechanisms by which disputes may be resolved. The Trustees further agree that decision making deliberations will focus upon the Trustees' mutual purpose of assessing natural resource damages and restoring, rehabilitating, replacing, and/or acquiring the equivalent of the affected natural resources, rather than upon control or respective trusteeship over those resources.

Option Four:

The Trustees will develop a Memorandum of Understanding to attach to this Agreement.¹

VIII. Multiple Company Coordination Module [as appropriate]

By signing this Agreement, multiple Companies agree to coordinate among themselves,

¹ An example is attached.

consistent with the Framework. The Companies will provide promptly the Trustees information concerning project staffing, associated roles and responsibilities, and the Companies' related project actions.

IX. Coordination with Response

If response actions are underway or planned at [Project Name], the Parties must coordinate closely with the lead response agency, as noted in the Framework. If response actions are not underway or planned, the Parties must notify the potential lead response agency and proceed according to the guidance in the Framework.

X. Funding

The Company(ies) agrees to pay the full and reasonable costs, both direct and indirect, associated with the natural resource injury assessment and restoration actions associated with [Project Name]. Costs associated with the development of the CAP program itself, above and beyond those costs necessary for the joint development of this Agreement and for activities associated with [Project Name], are not to be included in funding under this Agreement.

The payment of any costs and expenses under this section is without prejudice to any trustee claims for assessment costs, or any associated defenses, that are beyond the funding levels provided under this Agreement or have been or are incurred outside the scope or effective period of this Agreement or associated attachments.

[NOTE: Some Trustees may be able to receive advance funding for their participation under this Agreement. Other Trustees may only be able to seek reimbursement of their expenditures. Therefore, Trustees may want to choose between the two options given here. If neither option is entirely appropriate for a given situation, the Parties may wish to draft some other arrangements for funding Trustees' activities and to attach such language to this Agreement.]

Option One: Advance Funding

The Company(ies) agrees to fund the trustee administrative costs and expenses in advance as they participate with the Company(ies) in the joint development of this Agreement. Once this Agreement is in effect, the Trustees will provide, on a basis as determined by the Parties, a periodic budget estimate for their upcoming needs, identifying the scope and expected timeline for those needs in implementing this Agreement. The Trustees' budget estimates will be received on behalf of the Company(ies) by:

[Name & Title]
[Address]

Upon receipt of the Trustee's budget estimate, the Company(ies) will provide such

funding to the Trustees within 180 calendar days. Should a deficit exist at the end of the year, the amount of the deficit will be included in the estimate for the next year. The trustees, as soon as possible after the end of each fiscal year or some other periodic basis agreed upon by the Parties, provide to the Company(ies) an accounting of costs expended pursuant to this Agreement.

Option Two: Reimbursement of Cost Incurred

The Company(ies) agrees to reimburse the Trustees for the costs of the joint development of this Agreement and of implementing this Agreement. Each Trustee may periodically submit to the Company(ies) an accounting of costs incurred pursuant to this Agreement. The accounting will consist of a summary of the costs incurred with supporting documentation as to each Trustee's costs. The Trustees' accounting of these costs will be received on behalf of the Company(ies) by:

[Name & Title]
[Address]

Upon receipt of the Trustees' accounting, the Company(ies) will reimburse the Trustees' costs within [30] calendar days.

Option Three: Allowing for Different Payment Schemes

Since individual Trustees may not necessarily be able to agree to one funding scheme, the Companies and Trustees will determine appropriate payment mechanisms and schedules that addresses their unique circumstances. Payment schemes may be a combination of Option One and Two or additional schemes not identified above.

XI. Payment of Trustee Costs

The Company(ies) will make the payment required by paragraph ____ above in the form of electronic transfer of funds or a certified or cashier's check made payable to the [appropriate designation for Federal agency] or [appropriate designation for state agency] and tendered to the appropriate trustee designated person. The Company(ies) will state that it is paying for costs related to [Project Name], will reference [appropriate file or account number]. Copies of the check are to be sent to the persons specified in Paragraph ____.

Promptly upon receipt of funds from the Company, the Trustee(s) will provide the Company with a written acknowledgment of such receipt.

XII. Public Record

The Parties will establish and maintain a public record for [Project Name]. The public record should be opened concurrently with the effective date of this Agreement and

should contain those documents relied upon by the Parties in carrying out this agreement.

The Parties agree that all information arising out of this Agreement may be placed in the publicly available administrative record and otherwise may be made public as soon as the Trustees determine that the release will not prejudice the ongoing assessment. The Trustees will consult the guidance provided in [43 CFR ____] or [15 CFR 990.45] for determining the appropriate materials to be included in the administrative record. In addition to scientific data (once they have been validated), the type of documents that may be made public or placed in the administrative record include workplans, photographs, maps, charts, laboratory and field analyses, final draft reports, final reports, draft restoration plans, comments on draft restoration plans, and final restoration plans. The Parties should decide on what information goes into the public record subject to the guidelines of the Framework.

Although the public record can be comprised of documents developed by any Party, the Trustees are responsible for maintaining the original documents in the public record, consistent with relevant document retention policies.

XIII. Public Involvement

The Trustees are required by law to give public notice and to solicit public review and comment when engaged in a natural resource damage assessment and restoration. The Parties therefore agree to involve the public and document such intentions as appropriate to the circumstances of the project. As appropriate, the Company(ies) will participate in the planning and preparation of public planning and dissemination efforts. Since public participation is a Trustee responsibility, the Trustees will be responsible for overseeing and leading such activities.

The public must have the opportunity to review and submit comments on the contents of the public record. Therefore, a local repository should be established at or near the project, available to the public at reasonable times. Access through the Internet may be provided in addition to, but not as a substitute for, the local repository.

XIV. Technical Standards, Policies, and Procedures

Decisions made by the Parties during the conduct of [Project Name] must be based on sound science and objective implementation of appropriate standards, policies, and procedures. Therefore, when considering issues and information of a scientific or technical nature for [Project Name], the Parties must be consistent with:

- General scientific principles and procedures;
- Scientific principles and procedures of the particular, applied discipline;
- The scientific and technical standards under [CERCLA at 43 C.F.R. Part 11 or OPA at 15 C.F.R. Part 990]; and

- Policies that apply to each Party's affiliation.

Beyond this, the Parties may need to develop scientific or technical requirements specific to the project. Determining and approving such project-specific requirements will ensure that the project objectives will be fulfilled. While the Company(ies) may suggest and must concur with any project-specific requirements, it is the responsibility of the Trustees to ultimately determine and approve the requirements appropriate to [Project Name].

Scientific and technical requirements appropriate to [Project Name] will be determined as the project proceeds. As project-specific requirements develop, concurrence by the Company(ies) to the requirements and approval of the requirements by the Trustees must be documented in the public record.

XV. Implementation of the Process

Option One:

As may be appropriate to efficiently achieve the objectives of this Agreement, the Parties agree that Technical Work Groups may be formed to assist in the development of plans for use in implementing a natural resource injury assessment, quantification, and restoration pursuant to this Agreement. Technical Work Groups, membership in those groups, and roles and responsibilities of the groups and members will be set forth in attachments to this Agreement or in the public record.

The Parties agree that the technical representatives of any Party may be present at any and all locations where work that is part of the injury assessment and restoration process is being performed. The Parties will fully and freely share all data developed for the purposes of the studies as well as study design and procedures, including quality assurance/quality control procedures, and the Parties' representatives will have access to and use of all such data collection during the period of this Agreement.

The Parties will employ good faith efforts to reach agreement on the interpretation of the data resulting from the implementation of any process. Unless otherwise agreed to in this Agreement or in an attachment or stipulation incorporated into this Agreement, the Parties expressly reserve and maintain the right to join or not join, in a timely manner, in the interpretation of the data resulting from any work or, alternatively, to produce separate and independent findings and conclusions. The Parties will also endeavor to jointly conduct all injury assessment work. The Parties agree that independent injury assessment work under this Agreement will not be undertaken unless such work proposals have first been presented to all the Parties for joint consideration. Further, the conduct and implementation of an independent work will be in accordance with access, observation, and data sharing requirements. However, unless otherwise agreed to in this Agreement or in an attachment or stipulation incorporated into this Agreement, the Parties expressly reserve the right to perform independent injury assessment work.

The Parties will endeavor to enter into stipulations, when appropriate, during the course of the cooperative injury assessment, quantification, and restoration process. Any Party may propose a stipulation at any time. A stipulation, agreed to by all the Parties, will be attached to this Agreement. Any matter covered by a stipulation or other form of agreement under this Agreement will not be subject to objection or challenge by any Party.

Option Two:

The Parties will endeavor to jointly conduct work related to [Project Name]. The Parties agree that independent work under this Agreement will not be undertaken unless such work has first been presented to all the Parties for joint consideration. Further, the conduct and implementation of independent work will be in accordance with the access, observation, and data sharing requirements in paragraph _____. However, unless otherwise agreed to in this Agreement or in an attachment or stipulation incorporated into this Agreement, the Parties expressly reserve the right to perform independent work. The Parties will attempt to reach consensus work on the necessity, selection, design, and protocols for performing work relating to this project.

A. Work Categories and Technical Work Groups The Parties will identify potential injury work categories for the purpose of coordinating the cooperative injury assessment and restoration to minimize redundancy. The Parties may jointly identify other work categories as the process continues, as appropriate. As appropriate, the Parties will form a Technical Work Group with respect to each category, to be led in each case by a Trustee representative.

The Parties will develop workplans for any work, as needed. Any work plans developed will be attached to this Agreement. Included in these work plans, among other requirements listed in the CAP Framework, will be a schedule for all work. The Parties are required to keep to these schedules within reasonable and practical constraints. Changes to either activities or schedules must be communicated to the other Parties within [Time Period to be Defined] prior to initiating such changes. The Trustees must provide written approval of all substantive Company(ies) actions, or changes to those activities or schedules, within [Time Period to be Defined] of the request of the proposed Company(ies) action(s). No substantive Company(ies) action may be initiated without such Trustee approval.

B. Cooperative Work All Parties may propose work. Any proposed work that all Parties agree is reasonable and appropriate will be deemed “Cooperative Work.” A work plan for Cooperative Work will be attached to this Agreement and will be subject to all of this Agreement’s terms and conditions.

1. *Funding* The Company will fund the activities of the Technical Work Groups and all Cooperative Work through to completion, unless the Parties agree to the contrary or the work design calls for discontinuation upon the occurrence of a specified event.

2. *Retention of Persons Performing Cooperative Work:*

- a. *Jointly Designated Experts* In order to promote the [Project Name], the Parties may jointly agree on the retention of “Jointly Designated Experts” to perform work on behalf of [Project Name]. Prior to the completion of work for [Project Name], any person designated as a Jointly Designated Expert will not be retained separately by, and will not otherwise perform services on behalf of, any Party with respect to [Project Name]. The Parties may consult with such persons at scheduled meetings in which all the Parties will have an opportunity to participate. Neither the Parties nor any persons retained by them will engage in communications (other than routine, non-substantive communications) regarding the work with Jointly Designated Experts unless all Parties consent. Any and all contracts for Jointly Designated Experts will prohibit any such communications. The Parties will adopt such other reasonable strictures and controls as are appropriate to protect the objectivity and fairness of Jointly Designated Experts.

Any Party may call a Jointly Designated Expert as a witness in any judicial or administrative proceeding relating to natural resource damages arising from the [release] or [discharge], to testify regarding the conduct of, and conclusions reached, in performing such study. In addition, following completion of the relevant study, any Party may seek to retain, as a testifying or consulting expert, any Jointly Designated Expert, and no Party will object to the retention or testimony of such person on the basis of such person’s prior participation as a Jointly Designated Expert.

- b. *Separately Retained Experts* Any Party may separately retain an expert or experts for any issue relating to the project, but should first offer this proposed expert as a jointly Designated Expert. The Parties may elect to conduct one or more Cooperative Studies with the use of Separately Retained Experts and without the use of Jointly Designated Experts. The Trustees may propose the use of their own Separately Retained Experts as part of a proposed Cooperative Study and may propose that the cost of such experts be funded by the Company as part of such proposal.

3. *Data Collection and Analyses* All Parties may be present during data collection and analyses for Cooperative Work. The Parties agree to give at least 30 calendar days’ advance notice, unless otherwise agreed, by [facsimile or some other means] of data collection and analyses activities for Cooperative Work. All data collected for Cooperative Work will be fully and freely shared among the Parties as soon after it is collected as is reasonably practical.

4. *Interpretation* The Parties will attempt to reach consensus on the interpretation of, and conclusions to be drawn from, data collected during Cooperative Work, including how to address remaining uncertainty. Each Party expressly reserves the right to produce and present separate and independent interpretations and conclusions.
5. *Modification of Cooperative Work* The Parties may agree to modifications of work plans for Cooperative Work. The Work Contact designated by the Trustees pursuant to paragraph ____ may agree to modifications on behalf of all the Trustees.

C. *Independent Work* The Parties expressly reserve the right to perform independent assessment work (Independent Work). However, any independent work must first be proposed as Cooperative Work or the results of such work cannot be used in any proceedings, etc. If other Parties do not agree to conduct any work as Cooperative Work, then at least 30 calendar days, unless otherwise agreed, prior to the commencement of any Independent Work conducted by or on behalf of a Party, such Party will provide detailed work plans and protocols for such Independent Work to the other Parties. The Party conducting the Independent Work will also provide prompt notice of any changes made to the scope of work of any Independent Work in progress.

All parties may be present during data collection for Independent Work. The Parties agree to give 30 calendar days' advance notice, unless otherwise agreed, of data collection activities for Independent Work. All data, verified and unverified, collected for Independent Work will be fully and freely shared among the Parties as soon as is reasonably practical and, in any event, no later than it is transmitted by the analyst to the Party sponsoring the Independent Work.

Any Party conducting an Independent Work will provide to the Parties copies of any final documents relating to such work within 14 calendar days of its completion.

XVI. Disclosure of Contractors/Conflicts of Interest

When contractors are selected to conduct work for [Project Name], the Parties will have the opportunity to review: the proposed contractor's qualifications; the goals and objectives for the proposed contractor; the proposed contractor's scope of work and planned activities; and the schedule for work to be performed by the contractor. The Parties agree that they will require the disclosure of potentially conflicting relationships by the contractors, as part of their employment, to all Parties, and further agree to require in all contracts reasonable and appropriate strictures and controls to prevent the transfer of confidential information.

XVII. Weight of Agreements and Stipulations

The Parties agree that any agreements or stipulations reached pursuant to this Agreement shall be admissible in any judicial or administrative proceeding between or among the Parties relating to natural resource damages arising from the [release] or [discharge].

Nothing in this Agreement will be construed as an agreement by any Party that any Cooperative Work is admissible or binding in any judicial or administrative proceeding (including any proceeding relating to private party claims arising from the [release] or [discharge]) other than a proceeding between or among the Parties relating to natural resource damages arising from the [release] or [discharge]. Each Party reserves its right to challenge, in any judicial or administrative proceeding between or among the Parties relating to natural resource damages arising from the [release] or [discharge], any result, conclusion, or interpretation that the Party has timely challenged pursuant to this paragraph.

XVIII. Access Module [as needed]

If any property to which access is needed to implement this Agreement is owned or controlled by the Company(ies), the Company(ies) will provide the Trustees with access at all reasonable times for the purpose of conducting activities in connection with this Agreement.

The Trustees agree that their representatives seeking access to any property owned or controlled by the Company(ies) will fully comply with all health and safety requirements applicable to [Project Name]. The Company(ies) will assist the Trustees to the extent that the Trustees will need such assistance (e.g., instruction) in meeting health and safety compliance requirements. In the event that any such representative fails to comply with these requirements, access to the property may be denied.

If any property to which access is needed to implement this Agreement is owned or controlled by persons other than any of the Company(ies), the Company(ies) will use best efforts to secure from such persons an agreement to provide access to such property for the Company(ies), as well as for all the Parties, as necessary to implement this Agreement. If any access required to implement the injury assessment or restoration cannot be obtained in a timely manner, the Company(ies) will promptly notify the Trustees in writing, and include in that notification a summary of the steps the Company(ies) has taken to attempt to obtain access. Following such notice, the Trustees will use their available authorities to obtain the necessary access in a timely manner or, with the agreement of the Company(ies), will modify the relevant obligations of this Agreement to preclude the need for such access.

XIX. Indemnification

The Company(ies) waives all claims against the Trustees for damages or reimbursement or for set-off of any payments made or to be made to the Trustees arising from or on

account of any contract, agreement, or arrangement between any one or more of the Company(ies) and any person for performance of the injury assessment or restoration, including but not limited to claims on account of construction delays. In addition, the Company(ies) shall indemnify and hold harmless the Trustees with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Company(ies) and any person for performance of the injury assessment or restoration, including but not limited to claims on account of construction delays.

The Trustees do not assume any liability by entering into this Agreement. The Company(ies) shall indemnify, defend, save and hold harmless the Trustees and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action to the extent arising from, or on account of, negligent or other wrongful acts or omissions of the Company(ies), their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities under this Agreement. Further, the Company(ies) agrees to compensate the Trustees for any costs they incur, including attorneys fees and other expenses of litigation and settlement, arising from, or on account of, claims made against the Trustees based on negligent or other wrongful acts or omissions of the Company(ies), their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities under this Agreement. Neither the Company(ies) nor any such contractor shall be considered an agent of the United States or the State of _____. The Trustees shall promptly give notice of any claim for which they plan to seek indemnification under this paragraph, allow the Company(ies) to control the defense of the claim, and cooperate fully with the Company(ies). The indemnity provided by the Company(ies) does not include any claims or causes of action arising from or on account of acts or omissions of the Trustees, their agencies, departments, officials, employees, contractors, subcontractors, or other representatives.

The Trustees shall indemnify, defend, save and hold harmless the Company(ies) and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action to the extent arising from, or on account of, negligent or other wrongful acts or omissions of the Trustees, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities under this Agreement. Further, the Trustees agree to pay the Company(ies) any costs they incur, including attorneys fees and other expenses of litigation and settlement, arising from, or on account of, claims made against the Company(ies) based on negligent or other wrongful acts or omissions of the Trustees, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities under this Agreement. Neither the United States nor the State of _____ shall be considered an agent of the Company(ies). The Company(ies) shall promptly give notice of any claim for which they plan to seek indemnification under this paragraph, allow the Trustees to control the defense of the claim, and shall cooperate fully with the Trustees. The indemnity provided by the Trustees does not include any claims or causes of action

arising from or on account of acts or omissions of the Company(ies), their agencies, departments, officials, employees, contractors, subcontractors, or other representatives.

XX. Notice and Contacts

General Except as otherwise provided in this paragraph, Notice under this Agreement will be given to the following persons on behalf of the Parties:
As to the Company(ies):

As to Trustee (1):

As to Trustee (2):, etc.

A copy of any Notice will also be provided to the United States Department of Justice, at the following address:

XXI. Record Preservation

All records and documents in the possession of the Company(ies) generated under this Agreement will be preserved during the time period in which the terms of this Agreement are executed and for a minimum of 5 (five) years after the termination of this Agreement unless otherwise agreed to by the Parties. The foregoing requirement may be met by the Company's(ies') collectively preserving one set of the described records and documents. If one or more Trustee requests that the documents be saved, the Company(ies) will, at no cost to the Trustees, provide a single set of the documents to each requesting Trustee, subject to Section (Confidentiality). The documents may be provided as originals, copies, or in electronic form, or any combination thereof. Any documents provided in electronic form will be in a form accessible to the Trustees at the time they are provided.

XXII. Procedure Upon Disagreements

Option One:

Unless specifically excluded, the dispute resolution procedures in this Paragraph are the exclusive mechanism for resolving disputes relating to this Agreement. The Parties agree that all decisions implementing this Agreement will require consensus of the Parties. The Parties agree to attempt to resolve any disputes expeditiously, in good faith, and in accordance with the objectives of this Agreement. The Parties further agree that decisions making deliberations will focus upon the Parties' mutual purpose of assessment of injuries to and restoration of the affected natural resources and their services.

The Parties agree to attempt to resolve any disputes concerning the implementation of this agreement through good faith informal negotiations between the Company(ies) and

Trustees. A dispute will be considered to have arisen when one Party informs the other Parties, in writing, of the dispute with enough specificity to allow the other Parties to identify the issues involved and to respond effectively. Any disputes arising from the conduct or implementation of study plans will be addressed first by the Technical Work Group responsible for their formulation. Any disputes that are not resolved in such a manner will be presented to the Parties for informal negotiations. The period for informal negotiations will not exceed 30 calendar days from the time the dispute arises unless otherwise agreed in writing among all the Parties involved.

Option Two:

The Parties agree that all decisions implementing this Agreement will require consensus of the Parties. The Parties agree to attempt to resolve any disputes expeditiously, in good faith, and in accordance with the objectives of this Agreement. The Parties further agree that decisions making deliberations will focus upon the Parties' mutual purpose of assessment of injuries to and restoration of the affected natural resources and their services. However, the Parties may develop more formal procedures for resolving disputes. Any such process will be attached to this Agreement.

XXIII. Use of Agreement

This Agreement will not be used in any judicial or administrative proceeding to establish the truth of any matter stated herein except in an action to enforce this Agreement.

XXIV. Modification of Agreement

This Agreement may be modified or supplemented through attachments upon agreement in writing by all Parties. The Effective Date of any modification or supplement will be the later date of execution of that modification or supplement.

XXV. Termination of Agreement

Any Party may terminate its participation in this Agreement at any time by giving 30 calendar days written notice to all Parties. Notice of intent to terminate participation in the Agreement must clearly state the reasons for such termination and must be signed by an authorized representative of the terminating Party(ies). Termination by a single Party, where applicable, will not void the Agreement as to the remaining Parties.

Termination of this Agreement, either as between the Trustees and the Company(ies) or by a single Trustee Party, is prospective only. As such, this Agreement, and any associated agreements, and all attachments and stipulations incorporated prior to the effective date of termination, survives and will remain in effect following any termination.

Each Trustee will submit a final summary of its costs, along with cost documentation, within 180 calendar days after the termination of this Agreement.

Upon termination, the Company(ies) will not withdraw from its obligation to fund cooperative work so long as the work is agreed upon and conducted consistently.

XXVI. Duration

The period of duration of this Agreement is from the Effective Date until the purposes set forth in the Agreement are accomplished unless the Parties agree otherwise of the Agreement is terminated consistent with paragraph _____.

XXVII. Severability

This Agreement constitutes the entire understanding of the Parties with respect to the Project. The terms of this Agreement are severable. If any term, covenant, or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants, and conditions. However, within 30 calendar days after the court's determination, any Party to this Agreement may withdraw from this Agreement upon written notice to the other Parties.

XXVIII. Third-Party Challenges or Appeals

Nothing in this Agreement may be the basis of any third party challenges or appeals. Nothing in this Agreement creates any rights or causes of action in persons not parties to this agreement.

XXIX. Confidentiality

Documents between representatives of the Trustees and the Company that are part of settlement negotiations and are governed by Federal Rule of Evidence 408 (USCS Fed Rules Evid R 408 (2002)) shall be treated by the Parties as confidential. Any Party who receives a request for such documents pursuant to such statutes as the Freedom of Information Act or who is served with a subpoena or discovery request for any such documents, or who otherwise intends to release such a document to anyone other than a Party to this Agreement, shall provide notice to the other Parties at the earliest opportunity so as to allow them, if they so choose, to assert a privilege or statutory exception seeking to prevent the release of such documents.

Nothing in this Agreement is intended as, nor shall it be construed to be, a general waiver of any attorney-client privilege, work product privilege, deliberative process privilege, joint enforcement privilege, or any other applicable privilege.

XXX. Settlement Negotiations

Upon completion of the cooperative injury assessment, the Parties will employ good faith efforts to resolve any outstanding issues necessary for a final resolution of all natural

resource issues associated with the Company's(ies') _____ site. These issues may include, but are not limited to: (1) the location and scope of any natural resource restoration, replacement, and/or acquisition of equivalent natural resources to be undertaken and assessment costs to be paid by the Company; (2) the amount of assessment costs to be paid to the Trustees by the Company; (3) the contents and details of the final [Consent Decree] **or** [Settlement Agreement]; (4) protection of the Company(ies) from contribution actions or claims by third parties as provided by CERCLA § 113(f)(2), 42 U.S.C. Section 9613(f)(2), for matters addressed in this Agreement.

Any such negotiations and documents used in such discussions, whether a settlement is reached or not, will remain completely confidential between the Parties, unless all Parties consent to release such information or unless the release of such information is required by law or compelled by court order.

XXXI. Effect of Settlement

Nothing in this Agreement will be construed to create any rights in, or grant any cause of action to, or limit any Party's action against, any person not a party to this Agreement. The preceding sentence will not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law.

In any subsequent administrative or judicial proceeding initiated by the Trustees for injunctive relief, recovery of costs, or other appropriate relief relating to the [site], the Company(ies) will not assert, and may not maintain, any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Trustees in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraph ____ (Covenants Not To Sue By The Trustees).

XXXII. Reservation of Rights and Claims

Except as specifically in this Agreement or in any attachments or stipulations incorporated into this Agreement, the Parties agree that none of them is making any admission of fact or law by entering into this Agreement. This Agreement shall not be admissible as evidence or proof of liability or non-liability. Except as provided in this Agreement or in any attachments or stipulations incorporated into this Agreement, this Agreement may not be admissible as to the validity or non-validity of any claim or defense in any proceeding relating to this matter. Nothing in this Agreement is to be construed to abrogate the right of any Party to pursue contribution from another Party. Except as provided in this Agreement or in any attachments or stipulations incorporated into this Agreement, nothing in this Agreement is intended nor shall be construed as a waiver by any of the Parties of any defenses or affirmative claims in any proceedings relating to the Company(ies') operations at _____ or of any other rights or remedies.

Nothing in this Agreement is intended, nor shall be interpreted, to limit the scope of the natural resource injury assessment appropriate for this [site] or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment. Should this Agreement be terminated, the Trustees retain the right to pursue a NRDAR under the applicable [CERCLA] or [OPA] regulations at [43 CFR Part 11] or [15 CFR Part 990].

Nothing in this Agreement is intended, nor shall it be construed as a waiver of any attorney-client privilege, work product privilege, or any other privilege that has been or may be asserted in this or any other matter unless explicitly stated herein. Raw or factual data collected pursuant to this Agreement shall not be considered work product or attorney-client privileged. The Company(ies) is not released from any liability by signing this Agreement, including but not limited to claims for damage, injury, loss, or destruction of natural resources or their services, claims for the costs of assessing damage, injury, loss, or destruction of natural resources or their services, claims for restoration, rehabilitation, replacement, or acquisition of the equivalent of natural resources or lost services of those resources, or any other causes of action or requests for relief, either administratively or judicially, under either state or federal law, as well as any claims, causes of action, or requests for relief in admiralty, arising from the [releases] or [discharges] described above.

XXXIII. Temporary Stay on Trustee Enforcement

While this Agreement is in effect, the Trustees agree that they will not issue notice letters to or commence litigation against the Company(ies) with respect to natural resource damage claims of any Trustee for natural resource damages alleged to have occurred at [the site]. The purpose of this temporary stay period is to allow the Company(ies) and the Trustees an opportunity to work together to properly assess the extent of injury to natural resources, to evaluate restoration options available for the site, and to determine natural resource damages.

XXXIV. Tolling of Time Limitations

Any time limitations set forth in [Section 113(g) of CERCLA, as amended, 42 U.S.C. § 9613(g)] or [Section ___ of OPA, 33 U.S.C. ___], respecting claims for natural resource damages against the Company(ies), are tolled in their entirety until this Agreement is terminated. [or see Model Tolling Agreement]

XXXV. Signatures

Signature on the agreement lines provided below will constitute acceptance of the terms and conditions of this Agreement. This Agreement may be executed in one or more counterparts, all of which will be considered an original. The Effective Date of this Agreement will be the last date of execution of any counterpart.