

PHASE 2 SETTLEMENT AGREEMENT

BY AND AMONG

THE UNITED STATES OF AMERICA

AND

THE NAVAJO NATION.

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SETTLEMENT AGREEMENT

This Phase 2 Settlement Agreement (“Agreement”) is made, as of the Effective Date of this Agreement, between the United States of America (“United States”) and the Navajo Nation, a federally recognized Indian Tribe (collectively referred to as the “Parties”).

RECITALS

WHEREAS, the Navajo Nation contends that it has claims against the United States relating to the approximately 523 abandoned uranium mines located on Navajo Lands (“AUMs”), including, but not limited to, claims under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) §§ 107 and 113, 42 U.S.C. §§ 9607 and 9613;

WHEREAS, the United States and the Navajo Nation entered into a settlement agreement on April 8, 2015 (“Phase 1 Settlement Agreement”), which provides for removal site evaluations to be conducted at each of sixteen (16) AUMs, listed on Appendix A to the Phase 1 Settlement Agreement, for which viable non-Federal potentially responsible parties have not been identified (“Orphan AUMs”) and which the Parties determined were a high priority for clean-up;

WHEREAS, the United States is continuing to search for viable potentially responsible parties at the AUMs and will identify additional Orphan AUMs in the course of that search;

WHEREAS, the Parties desire to enter into this Agreement to have a full and final resolution of any and all claims that were, could now be, or hereafter could be asserted by the Navajo Nation against the United States in connection with Covered Matters, as defined below, and to avoid the complication and expense of litigation of such claims between the Parties concerning the Orphan AUMs addressed in this Agreement;

WHEREAS, the Parties agree that close consultation and collaboration between the Navajo Nation Environmental Protection Agency (“NNEPA”) and the U.S. Environmental Protection Agency (“USEPA”), Region 9, is essential to the successful implementation of this Agreement;

WHEREAS, the Parties agree that this Agreement is fair, reasonable, and in the public interest;

WHEREAS, the United States does not admit any liability arising from occurrences or transactions pertaining to Covered Matters; and

WHEREAS, the Parties enter into this Phase 2 Settlement Agreement as a final settlement of all claims in connection with Covered Matters, except as expressly set forth in this Agreement.

THEREFORE, the Parties hereby agree as follows.

ARTICLE 1: DEFINITIONS

For the purposes of this Agreement, these terms shall be defined as follows:

1.1 Administrative Costs. “Administrative Costs” shall mean costs incurred in administering the Phase 2 RSE Trust and the Phase 2 Priority Orphan Trust.

1.2 Agency or Agencies. “Agency” shall mean either USEPA or NNEPA. “Agencies” shall mean both USEPA and NNEPA.

1.3 Agreement. “Agreement” shall mean this Phase 2 Settlement Agreement, including all addenda and attachments and any Scope of Work (“SOW”) associated with this Agreement. In the event of conflict between this Agreement and any SOW, this Agreement shall control.

1.4 AUMs. “AUMs” shall mean abandoned uranium mines located on Navajo Lands.

1.5 AUM Future Oversight Costs Special Account(s). “AUM Future Oversight Costs Special Account(s)” shall mean one or more special accounts, within the USEPA Hazardous Substance Superfund, established pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), for the RSE Sites, Priority Orphan Sites, and Water Studies required under this Agreement.

1.6 CERCLA. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-75.

1.7 Covered Matters. “Covered Matters” shall mean any and all claims that were, that could have been, that could now be, or that could hereafter be asserted by the Navajo Nation against the United States, that arise out of or in connection with: (1) the Work; (2) Future Oversight Costs incurred by USEPA and NNEPA with respect to the Work; (3) Administrative Costs; and (4) any

claims for cost recovery or reimbursement of Navajo Nation EPA Future Response Costs pursuant to Sections 3.2 and 3.3 of this Agreement.

1.8 Engineering Evaluation/Cost Analysis. “Engineering Evaluation/Cost Analysis” (“EE/CA”) shall mean an analysis of removal alternatives for a site. *See* 40 C.F.R. § 300.415(b)(4)(i) and, to the extent applicable and as guidance only, USEPA’s “Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA,” USEPA Office of Solid Waste and Emergency Response (Aug. 1993), *available* at <http://nepis.epa.gov/Exe/ZyPDF.cgi/9100SN02.PDF?Dockey=9100SN02.PDF>.

1.9 Effective Date. The “Effective Date” of this Agreement shall mean the date on which the later of the Parties signs the Agreement.

1.10 Environmental Response Trust. “Environmental Response Trust” or “ERT” shall mean the Phase 1 RSE Trust, the Phase 2 RSE Trust, or the Phase 2 Priority Orphan Trust, as applicable.

1.11 Estimated Cost(s). “Estimated Cost(s)” shall mean an estimate of the amount of funds required to perform a particular subset of the Work, as context provides, including Administrative Costs and Future Oversight Costs, which estimate shall rely primarily upon actual costs incurred to perform similar work at AUMs or, if similar work has not been performed at any AUMs, then at similar sites elsewhere.

1.12 Excluded Matters. “Excluded Matters” shall mean any claims and liabilities associated with: (a) areas subject to the authority conferred by the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 7901 *et seq.*; and (b) any other matters not expressly defined as Covered Matters.

1.13 Future Oversight Costs. “Future Oversight Costs” shall mean all costs of response, as defined in 42 U.S.C. § 9601(25), other than Navajo Nation EPA Future Response Costs, that are not inconsistent with the National Contingency Plan and that arise out of or in connection with Covered Matters and are incurred by USEPA or NNEPA, including, but not limited to, direct and indirect costs that USEPA or NNEPA incurs in reviewing or developing plans, reports and other items pursuant to this Agreement and the Phase 2 RSE and Phase 2 Priority Orphan trust

agreements, verifying the Work, or otherwise implementing or overseeing this Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

1.14 Navajo Lands. “Navajo Lands” shall mean all lands of the Navajo Nation as described in 7 N.N.C. § 254(A).

1.15 National Contingency Plan. “National Contingency Plan” (“NCP”) shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

1.16 Navajo Nation DOJ. “Navajo Nation DOJ” or “NNDOJ” shall mean the Navajo Nation Department of Justice.

1.17 Navajo Nation EPA. “Navajo Nation EPA” or “NNEPA” shall mean the Navajo Nation Environmental Protection Agency.

1.18 Navajo Nation EPA Future Response Costs. “Navajo Nation EPA Future Response Costs” shall mean any funds provided by the Navajo Nation EPA to the Phase 2 RSE Trust and/or the Phase 2 Priority Orphan Trust pursuant to Sections 3.2 and 3.3 of this Agreement, less any reimbursement from the Phase 2 RSE Trust or Phase 2 Priority Orphan Trust to the Navajo Nation EPA pursuant to those same sections.

1.19 NRD Pre-Assessment Project. “NRD Pre-Assessment Project” shall mean work conducted pursuant to 43 C.F.R. §§ 11.20-11.25 as an initial step in evaluating potential natural resource damages at Orphan AUMs.

1.20 Orphan AUM. “Orphan AUM” shall mean an AUM for which no viable non-Federal potentially responsible party has been identified.

1.21 Party or Parties. “Party” shall refer individually to and “Parties” shall refer collectively to the United States and the Navajo Nation.

1.22 Phase 1 RSE Trust. “Phase 1 RSE Trust” shall mean the trust created by the Phase 1 Settlement Agreement and the Phase 1 RSE Trust Agreement.

1.23 Phase 1 RSE Trust Agreement. “Phase 1 RSE Trust Agreement” shall mean the Environmental Response Trust Agreement entered into on April 30, 2015 between Sadie Hoskie

(in her official capacity as trustee), the United States, and the Navajo Nation, as subsequently twice amended, to conduct RSEs at the sixteen (16) Priority Orphan AUMs listed on Appendix A to the Phase 1 Settlement Agreement (reproduced here as Appendix A).

1.24 Phase 1 RSE Trustee. “Phase 1 RSE Trustee” shall mean the individual selected as trustee under the Phase 1 Settlement Agreement and the Phase 1 RSE Trust Agreement. As of the Effective Date of this Agreement, that individual is Sadie Hoskie.

1.25 Phase 1 Settlement Agreement. “Phase 1 Settlement Agreement” shall mean the settlement agreement entered into by the Parties on April 8, 2015, which provides for RSEs to be conducted at the sixteen (16) Priority Orphan AUMs listed on Appendix A.

1.26 Phase 2 Priority Orphan Trust. “Phase 2 Priority Orphan Trust” shall mean the trust to be established by a separate Environmental Response Trust agreement or an amendment to an existing Environmental Response Trust agreement, pursuant to Section 2.1(b) of this Agreement, to conduct EE/CAs and Removal Actions at the sixteen (16) Priority Orphan Sites.

1.27 Phase 2 Priority Orphan Trustee. “Phase 2 Priority Orphan Trustee” shall mean the individual or entity selected pursuant to Section 2.2 of this Agreement to be responsible for the Phase 2 Priority Orphan Trust.

1.28 Phase 2 RSE Trust. “Phase 2 RSE Trust” shall mean the trust to be established by a separate Environmental Response Trust agreement, pursuant to Section 2.1(a) of this Agreement, to conduct RSEs at the thirty RSE Sites.

1.29 Phase 2 RSE Trustee. “Phase 2 RSE Trustee” shall mean the individual or entity selected pursuant to Section 2.2 of this Agreement to be responsible for the Phase 2 RSE Trust.

1.30 Phase 2 Settlement Agreement. “Phase 2 Settlement Agreement” shall mean this Agreement.

1.31 Priority Orphan Site. “Priority Orphan Site” shall mean each of the sixteen (16) AUMs listed on Appendix A to the Phase 1 Settlement Agreement (and included for ease of reference as Appendix A to this Agreement), including the geographically proximate areas where Waste Material associated with each such AUM has been deposited, stored, disposed of, placed, or

otherwise come to be located. “Priority Orphan Sites” shall mean, collectively, all sixteen (16) such AUMs.

1.32 Remedial Project Manager. “Remedial Project Manager” or “RPM” is an individual with a Bachelor’s degree or higher in science or engineering capable of performing the following duties:

- a) Oversee and monitor work performed under the Phase 2 RSE Trust, and Phase 2 Priority Orphan Trust;
- b) Provide support and facilitate any trustee’s efforts to obtain access to the RSE Sites and Priority Orphan Sites;
- c) Review each Scope of Work to assure appropriate methods and tools are used to assess the AUMs and conduct RSEs and Removal Actions;
- d) Monitor the RSEs and Removal Actions to ensure that work is performed consistent with each Scope of Work;
- e) Conduct a technical review of deliverables and provide written comments in a timely manner;
- f) Coordinate the submittal of joint responses by USEPA and NNEPA to deliverables submitted by any trustee for NNEPA and USEPA review and approval;
- g) Coordinate with any trustee, USEPA, Navajo Nation departments, and other organizations and stakeholders as necessary; and
- h) Participate in community relations activities.

1.33 Removal Action. “Removal Action” shall have the same meaning as set forth in the National Contingency Plan at 40 C.F.R. § 300.5, reproduced here: As defined by section 101(23) of CERCLA, 42 U.S.C. § 9601(23), remove or removal means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary [to be] taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be

necessary to prevent, minimize, or mitigate damage to the public health or welfare of the United States or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, 42 U.S.C. § 9604, post-removal site control, where appropriate, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. For the purpose of the NCP, the term also includes enforcement activities related thereto.

1.34 Removal Site Evaluation. “Removal Site Evaluation” or “RSE” shall mean a removal preliminary site assessment and, if warranted, a removal site inspection and shall, for purposes of this Agreement, include, but not necessarily be limited to, the following activities: conducting background studies and gamma scans of surface soils, sampling surface and subsurface soils and sediments related to historic mining operations, sampling existing and accessible wells (if present at the Sites), mitigating physical hazards and other interim Response Actions, and preparing a final written report documenting the work performed and information obtained for each of the Sites, such as indicated in the exemplar Scopes of Work identified in Section 4.3 of this Agreement.

1.35 Response Action. “Response Action” shall have the same meaning as given to the term “response” under Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

1.36 RSE Site. “RSE Site” shall mean each of the thirty (30) AUMs to be identified pursuant to Section 4.1, including the geographically proximate areas where Waste Material associated with each such AUM has been deposited, stored, disposed of, placed, or otherwise come to be located. “RSE Sites” shall mean, collectively, all thirty (30) such AUMs.

1.37 Trust Assets. “Trust Assets” shall mean the funding provided to the ERTs by Article 3 and such other assets as may be acquired, earned, or held by an Environmental Response Trust prior to its termination.

1.38 United States. The “United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

1.39 USEPA. “USEPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

1.40 USEPA Hazardous Substance Superfund. “USEPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

1.41 Waste Material. “Waste Material” shall mean: (a) any “hazardous substance” as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant as defined under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” as defined under Section 1004(27) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*, 42 U.S.C. § 6903(27) (“RCRA”).

1.42 Water Study. “Water Study” shall mean either of the two studies required in Section 6.1. Surface and groundwater will be investigated as appropriate, as determined jointly by USEPA and NNEPA. The purpose of the Water Study is to determine if the groundwater or surface waters have been affected by the AUM and, if so, whether the affected waters pose an unacceptable risk to human health or the environment. The Phase 2 RSE Trustee shall, as appropriate, conduct field investigations, collect data, and conduct a baseline risk assessment. The field investigations shall determine the nature and extent of mine-waste-related contamination in surface water and groundwater, potential and current pathways for human or ecological exposure, and potential for future migration. Results of the Water Study may be used to support the development and evaluation of effective response alternatives if it is determined that further response action is needed.

1.43 Work. “Work” shall mean all actions necessary to perform any one or more of the following, depending upon the context: (a) Removal Site Evaluations at the 30 RSE Sites and associated public participation, pursuant to Section 4.3; (b) EE/CAs and Removal Actions at the sixteen (16) Priority Orphan Sites listed on Appendix A and associated public participation, pursuant to Section 5.1; (c) the two (2) Water Studies to be performed by the Phase 2 RSE Trust,

pursuant to Sections 6.1 and 6.3; and (d) the NRD Pre-Assessment Project(s) to be performed by NNEPA, pursuant to Section 7.1.

1.44 Undefined Terms. Terms not specifically defined in this Section shall have the same meaning, if any, given to them by CERCLA and the NCP.

ARTICLE 2: ESTABLISHMENT OF PHASE 2 ENVIRONMENTAL RESPONSE TRUSTS

2.1 Phase 2 ERTs. The Parties agree to establish through separate ERT agreements or amendments to existing ERT agreements one or two Environmental Response Trusts to perform portions of the Work, as provided below and in Article 3. Specifically, the Parties agree to establish:

- a) a Phase 2 RSE Trust to perform RSEs at thirty (30) Orphan AUMs, pursuant to Section 4.3, and to perform two (2) Water Studies, pursuant to Sections 6.1 and 6.3; and
- b) a Phase 2 Priority Orphan Trust to perform EE/CAs and Removal Actions at the sixteen (16) Orphan AUMs listed on Appendix A, pursuant to Section 5.1. The Phase 2 Priority Orphan Trust may be established by: (i) expanding the scope of the Phase 1 RSE Trust; (ii) expanding the scope of the Phase 2 RSE Trust; or (iii) establishing a new ERT.

2.2 Selection of Trustees. The trustees for the ERTs specified in Section 2.1 shall be selected by the Navajo Nation with the approval and concurrence of the United States. The Parties recognize and agree that any trustee who is selected shall act as an independent fiduciary with duties owed to both USEPA and NNEPA as co-beneficiaries of the ERT. Each trustee must have previous experience either as a trustee (not necessarily of an ERT) or as some other type of fiduciary, with a demonstrated understanding of the legal, financial, and ethical obligations incumbent upon a trustee managing a trust with multiple beneficiaries. The Parties agree that the Phase 2 RSE Trust shall not be created by expanding the scope of the Phase I RSE Trust, and that

the Phase I RSE Trustee shall not be considered a candidate for the position of trustee of the Phase 2 RSE Trust.

2.3 Timing for Phase 2 RSE Trust Agreement.

(a). The Parties shall endeavor to complete a final draft of the Phase 2 RSE trust agreement, ready to be submitted for approval, by December 30, 2016.

(b). The Parties recognize that the Phase 2 RSE trust agreement must be negotiated with the selected trustee applicant before it can be finalized and submitted for approval by authorized decision-makers for the Parties. The Parties shall begin discussing a process for selecting the Phase 2 RSE Trustee immediately upon commencing drafting of the Phase 2 RSE trust agreement, and shall endeavor to select the Phase 2 RSE Trustee by November 30, 2016, in time to have a final draft of the Phase 2 RSE trust agreement submitted for approval pursuant to Section 2.3(a).

2.4 Timing for Phase 2 Priority Orphan Trust Agreement.

(a). The Parties shall decide among the three options listed in Section 2.1(b) for the Phase 2 Priority Orphan Trust within one year of the execution of the Phase 2 RSE Trust Agreement, and shall evaluate the performances of the Phase 1 RSE Trustee and Phase 2 RSE Trustee as part of the decision-making process. If the Parties cannot reach mutual agreement on expanding the scope of the Phase 1 RSE Trust or the Phase 2 RSE Trust, then the Parties hereby agree that they shall proceed to establish a new ERT as the Phase 2 Priority Orphan Trust. The Parties further agree that if the option of the new ERT is triggered by this default provision, the Phase 1 RSE Trustee and the Phase 2 RSE Trustee shall not be considered as candidates for the position of trustee of the Phase 2 Priority Orphan Trust.

(b). The Parties shall endeavor to execute the Phase 2 Priority Orphan Trust Agreement (to include the Phase 2 Priority Orphan Trustee) by the time the last Phase 1 RSE is deemed complete pursuant to the Phase 1 RSE Trust Agreement. The Parties shall track the work of the Phase 1 RSE Trust with this deadline in mind and shall begin work to draft the Phase 2 Priority Orphan Trust Agreement (or amendment to an existing ERT agreement) accordingly. For

planning purposes only, it is estimated that the last Phase 1 RSE will be completed and approved by June 1, 2018.

2.5 Incorporation by Reference. Each trust agreement (or amendment to trust agreement) establishing the ERTs under this Article shall be deemed incorporated into this Agreement once it is executed by the Parties and the relevant Trustee. In the event of a conflict between this Agreement and an ERT agreement, this Agreement shall control.

2.6 Purposes. The exclusive purposes and functions of the ERTs established under this Article are to manage, administer, fund and perform the Work and reimburse Future Oversight Costs and Administrative Costs in compliance with this Agreement, the relevant ERT agreement, and all applicable laws, regulations, and guidance, including but not limited to the National Contingency Plan; and to receive, hold, and use Trust Assets for the above purposes.

2.7 Beneficiaries. The Navajo Nation, and the United States on behalf of USEPA, shall each be a beneficiary of each ERT established under this Section.

2.8 Performance of the Work. Each Trustee shall be responsible for arranging for and managing the performance of the Work required by this Agreement through and until notification by USEPA and NNEPA, after mutual consultation, that the Work is complete.

2.9 Accounting. Each Trustee shall use Trust Assets (including any interest earned thereon) to implement the Work, pay Future Oversight Costs, and pay Administrative Costs, after receiving approval, where applicable, by NNEPA and USEPA of deliverables (including but not limited to Scopes of Work and budgets) required under the relevant ERT agreement. The Trustee shall expend Trust Assets consistently with approved budgets, approved schedules, approved Scopes of Work, and approved work plans.

2.10 USEPA Special Account. USEPA shall establish an AUM Future Oversight Costs Special Account(s) to accept payments from the Phase 2 RSE Trust and the Phase 2 Priority Orphan Trust for Future Oversight Costs pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

ARTICLE 3: FUNDING

3.1 In General. The United States agrees to fund 100% of: (a) the costs incurred by the Phase 2 RSE Trust to perform the Work required by Articles 4 and 6, provided such costs are necessary and consistent with the National Contingency Plan, together with the costs incurred by the Phase 2 RSE Trust in paying Administrative Costs and Future Oversight Costs; (b) the costs incurred by the Phase 2 Priority Orphan Trust to perform the Work required by Article 5, provided such costs are necessary and consistent with the National Contingency Plan, together with the costs incurred by the Phase 2 Priority Orphan Trust in paying Administrative Costs and Future Oversight Costs; (c) the Estimated Costs, not to exceed \$800,000, of the NRD Pre-Assessment Work required by Article 7, provided such costs are consistent with applicable regulations; and (d) reimbursement of Navajo Nation EPA Future Response Costs. Funding shall be provided in the manner described in this Article.

3.2 Phase 2 RSE Trust Funding.

(a). As soon as reasonably practicable following execution of the first addendum provided for in Section 4.1 and receipt by the United States of payment instructions from the Phase 2 RSE Trustee, the United States shall cause to be deposited into the Phase 2 RSE Trust 100% of the Estimated Costs to perform the RSE Work required for the AUMs listed in the first addendum.

(b). As soon as reasonably practicable following execution of each subsequent addendum provided for in Section 4.1, the United States shall cause to be deposited into the Phase 2 RSE Trust 75% of the Estimated Costs to perform the RSE Work required for the AUMs listed in each such subsequent addendum.

(c). The United States shall determine the Estimated Costs referenced in subsections (a) and (b) and provide the Navajo Nation with the determination. If the Navajo Nation has any concerns or objections regarding any such estimate, it shall provide such concerns or objections to the United States in writing, with a detailed explanation of its objections. The United States will consider the Navajo Nation's objections in good faith and make any revisions it believes to be appropriate, and inform the Navajo Nation of the result of its further consideration. If the

Navajo Nation continues to object to the calculation of Estimated Costs such that the Parties are unable to agree on Estimated Costs, the matter shall be referred to the Dispute Resolution process outlined in Article 10. The Parties shall document their agreement as to Estimated Costs in each addendum.

(d). The Parties agree to incorporate the following provisions of this paragraph into the Phase 2 RSE Trust Agreement. The Phase 2 RSE Trust shall invest its assets in conservative instruments that will provide interest and increase the value of the Trust Assets. When the balance of the Phase 2 RSE Trust account decreases to a certain level, to be negotiated with the trustee and finalized as part of the Phase 2 RSE Trust Agreement (for example, when the trustee believes it has funds available that would cover only the next 18-24 months of work), the trustee shall send a request for additional funds to the Navajo Nation EPA. This request shall be supported by sufficient documentation to allow for review of the Phase 2 RSE Trust's current funds and projected expenditures during the relevant period of time and to ensure that the costs will be incurred in a manner consistent with the National Contingency Plan. Such funds shall be requested if needed to complete any of the Work to be performed by the Phase 2 RSE Trust pursuant to Article 4 of this Agreement, together with associated Administrative Costs and Future Oversight Costs. The Navajo Nation EPA shall have ninety (90) days to review a funding request, and shall raise any objections within that period. As soon as reasonably practicable following the close of the 90-day period or the resolution of any objections, the Navajo Nation EPA shall provide the requested funds to the Phase 2 RSE Trust.

(e). The Navajo Nation will seek reimbursement from the United States for Navajo Nation EPA Future Response Costs. When the Navajo Nation provides to the United States appropriate documentation from the Phase 2 RSE Trust showing that the costs have been incurred in a manner consistent with the National Contingency Plan, the United States shall reimburse such amounts, pursuant to the cost reimbursement procedures in Section 3.6, and such reimbursement need not be limited to the total amount of Estimated Costs. The Navajo Nation shall submit no more than one (1) request for reimbursement per twelve (12) months for amounts paid by NNEPA to the Phase 2 RSE Trust.

(f). When the Phase 2 RSE Trust has completed its work, as part of its orderly dissolution, it shall return to NNEPA any unused funding received from NNEPA. The Navajo Nation may then submit a final demand for reimbursement to the United States for Navajo Nation EPA Future Response Costs paid to the Phase 2 RSE Trust.

(g). Sections 3.2(d) and (e) include within their scope the funding provisions for the Water Studies in Section 3.4, below.

(h). The United States may reduce the amount of any payment(s) under this Section 3.2 by any amount transferred to the Phase 2 RSE Trust pursuant to operation of Section 3.5(b).

3.3 Phase 2 Priority Orphan Trust Funding.

(a). The execution of the Phase 2 Priority Orphan Trust Agreement and receipt by the United States of payment instructions from the Phase 2 Priority Orphan Trustee shall be conditions precedent to any payment by the United States for Work called for in Article 5. As Article 5 sets forth, USEPA, after consultation with NNEPA, shall determine whether it is appropriate to perform EE/CAs at the Priority Orphan Sites. As USEPA makes those determinations, the Parties will attempt to reach agreement on the Estimated Costs for the EE/CAs. The Parties will execute one or more addenda reflecting their agreement on the Estimated Costs for the EE/CAs. As soon as reasonably practicable following the execution of each such addendum, the United States shall cause to be deposited into the Phase 2 Priority Orphan Trust 100% of the Estimated Costs agreed-upon in each addendum; provided, however, that any funds remaining in the Phase 1 RSE Trust upon its dissolution shall be transferred by NNEPA to the Phase 2 Priority Orphan Trust for the performance of any EE/CAs, and the United States will reduce the Estimated Costs by the amount of those funds before making any payments for the EE/CAs. If the Parties agree to expand the scope of the Phase 1 RSE Trust pursuant to Section 2.1(b), such that the Phase 1 RSE Trust Agreement is revised to not require dissolution of that trust, any funds remaining in the Phase 1 RSE Trust at the completion of work required by the Phase 1 RSE Trust Agreement shall be used for the performance of the EE/CAs.

(b). Any funds remaining in the Phase 2 Priority Orphan Trust after completion of the EE/CAs shall be used for subsequent Removal Actions. Following finalization of each Response Action decision, pursuant to Section 5.3, the United States shall determine the Estimated Costs of the selected Removal Action. The Parties will execute one or more addenda reflecting their agreement on the Estimated Costs for each selected Removal Action. As soon as reasonably practicable following the execution of each such addendum, the United States shall cause to be deposited into the Phase 2 Priority Orphan Trust 75% of the Estimated Costs to perform each Removal Action. The Parties agree to cooperate to minimize the number of addenda needed, to include delaying execution of an addendum by up to sixty (60) days, in order to minimize the number of payments being made into the trust.

(c). The United States shall determine the Estimated Costs referenced in subsections (a) and (b) and provide the Navajo Nation with the determination. If the Navajo Nation has any concerns or objections regarding any such estimate, it shall provide such concerns or objections to the United States in writing, with a detailed explanation of its objections. The United States will consider the Navajo Nation's objections in good faith and make any revisions it believes to be appropriate, and inform the Navajo Nation of the result of its further consideration. If the Navajo Nation continues to object to the calculation of Estimated Costs such that the Parties are unable to agree on Estimated Costs, the matter shall be referred to the Dispute Resolution process outlined in Article 10. The Parties shall document their agreement as to Estimated Costs in each addendum.

(d). The Parties agree to incorporate the following provisions into the Phase 2 Priority Orphan Trust Agreement. The Phase 2 Priority Orphan Trust shall invest its assets in conservative instruments that will provide interest and increase the value of the Trust Assets. When the balance of the Phase 2 Priority Orphan Trust account decreases to a certain level, to be negotiated with the trustee and finalized as part of the Phase 2 RSE Trust Agreement (for example, when the trustee believes it has funds available that would cover only the next 18-24 months of work), the trustee shall send a request for additional funds to the Navajo Nation EPA. This request shall be supported by sufficient documentation to allow for review of the Phase 2 Priority Orphan

Trust's current funds and projected expenditures during the relevant period of time and to ensure that the costs will be incurred in a manner consistent with the National Contingency Plan. Such funds shall be requested if needed to complete any of the Work to be performed by the Priority Orphan Trust pursuant to Article 5 of this Agreement, together with associated Administrative Costs and Future Oversight Costs. The Navajo Nation EPA shall have ninety (90) days to review a funding request, and shall raise any objections within that period. As soon as reasonably practicable following the close of the 90-day period or the resolution of any objections, the Navajo Nation EPA shall provide the requested funds to the Phase 2 Priority Orphan Trust.

(e). The Navajo Nation will seek reimbursement from the United States for Navajo Nation EPA Future Response Costs. When the Navajo Nation provides to the United States appropriate documentation from the Phase 2 Priority Orphan Trust showing that the costs have been incurred in a manner consistent with the National Contingency Plan, the United States shall reimburse such amounts pursuant to the cost reimbursement procedures in Section 3.6, and such reimbursement need not be limited to the total amount of Estimated Costs. The Navajo Nation shall submit no more than one (1) request for reimbursement per twelve (12) months for amounts paid by NNEPA to the Phase 2 Priority Orphan Trust.

(f). When the Phase 2 Priority Orphan Trust has completed its work, as part of its orderly dissolution, it shall return to NNEPA any unused funding received from NNEPA. The Navajo Nation may then submit a final demand for reimbursement to the United States for Navajo Nation EPA Future Response Costs paid to the Phase 2 Priority Orphan Trust.

(g). The United States may reduce the amount of any payment(s) under this Section 3.3 by any amount transferred to the Phase 2 Priority Orphan Trust pursuant to operation of Section 3.5(b).

3.4 Water Studies Funding.

(a). As soon as reasonably practicable following execution of the first addendum provided for in Section 4.1, and receipt by the United States of payment instructions from the Phase 2 RSE Trustee, the United States shall cause to be deposited into the Phase 2 RSE

Trust 100% of the Estimated Costs to perform the Water Study at the AUM referenced in Section 6.1(a) (Claim 28).

(b). As soon as reasonably practicable following execution of the addendum that includes the mine referenced in Section 6.1(b) (AUM to be identified), the United States shall cause to be deposited into the Phase 2 RSE Trust 100% of the Estimated Costs to perform the Water Study at that AUM.

(c). The United States shall determine the Estimated Costs referenced in subsections (a) and (b) and provide the Navajo Nation with the determination. If the Navajo Nation has any concerns or objections regarding any such estimate, it shall provide such concerns or objections to the United States in writing, with a detailed explanation of its objections. The United States will consider the Navajo Nation's objections in good faith and make any revisions it believes to be appropriate, and inform the Navajo Nation of the result of its further consideration. If the Navajo Nation continues to object to the calculation of Estimated Costs such that the Parties are unable to agree on Estimated Costs, the matter shall be referred to the Dispute Resolution process outlined in Article 10. The Parties shall document their agreement as to Estimated Costs in each addendum.

(d). As set forth in Section 3.2(g), the funding provisions of Section 3.2(d) and (e) shall apply to the Water Studies.

3.5 NRD Pre-Assessment Project Funding.

(a). As soon as reasonably practicable following the agreement of the Parties as to an NRD Pre-Assessment Project(s) pursuant to Section 7.1, receipt by the United States of payment instructions from the Navajo Nation, and the execution of an addendum reflecting the agreement of the Parties as to the project(s) and the Estimated Costs thereof, the United States shall provide funding to the Navajo Nation in the amount of the agreed-upon Estimated Costs to perform the project(s), up to a maximum of eight hundred thousand dollars (\$800,000). If funds remain after completion of the project(s), the Navajo Nation may apply such funds to further NRD pre-assessment work pursuant to 43 C.F.R. §§ 11.20-11.25 at any of the Orphan AUMs.

(b). If the Navajo Nation fails to commence work on the project(s) within twelve (12) months of receipt of the funding, then the Navajo Nation shall transfer the funds provided under Section 3.5(a) to the Phase 2 Priority Orphan Trust or, if that trust has not yet been established, to the Phase 2 RSE Trust.

3.6 Cost Reimbursement Procedures.

(a). The United States shall have ninety (90) days to review a demand for reimbursement from the Navajo Nation (the “review period”). If the United States has any good faith objection to the costs for which reimbursement is requested, it must raise such objection by the end of the review period. A good faith objection is one that is based on any of the following grounds: the costs were not necessary or consistent with the National Contingency Plan, failed to comply with any other applicable law or regulation, or exceeded the scope of this Agreement or relevant ERT agreement. The United States and the Navajo Nation will then enter into informal negotiations in an effort to resolve any dispute.

(b). Any costs to which the United States does not object shall be paid to NNEPA as soon as reasonably practicable following the close of the review period. Costs to which the United States objects but which it ultimately agrees to pay shall be paid as soon as reasonably practicable after that agreement. Interest shall begin to accrue on the 76th day following the United States’ deadline to raise objections or the close of negotiations as to disputed costs.

(c). If the Parties are unable to resolve a cost dispute through informal negotiations, the Parties shall attempt to resolve their dispute through the Dispute Resolution process outlined in Article 10.

3.7 Use of Funds. All funds provided by the United States to an ERT pursuant to this Agreement shall be used solely for the performance of the Work, for the payment of Future Oversight Costs, and for the payment of Administrative Costs.

3.8 Availability of Funds. Payments to be made by the United States pursuant to this Agreement are subject to the availability of funds appropriated for such purpose. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United

States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

ARTICLE 4: WORK TO BE PERFORMED BY PHASE 2 RSE TRUST

4.1 Identification of AUMs.

(a). The United States shall identify thirty (30) Orphan AUMs at which RSEs shall be performed by the Phase 2 RSE Trust. These RSE Sites shall be in addition to the sixteen (16) Orphan AUMs for which RSEs are required to be performed under the Phase 1 Settlement Agreement.

(b). The United States shall endeavor to identify the RSE Sites on a geographic basis, that is, the United States shall endeavor to identify a group of Orphan AUMs in a particular area (for example, a Navajo Chapter, or a concentrated mining district that cuts across Chapter boundaries). As soon as the United States has identified several Orphan AUMs in a particular area, the United States shall inform the Navajo Nation, and the Parties shall execute an addendum to this Agreement identifying those AUMs pursuant to subsection (c). Notwithstanding the foregoing, however, if either USEPA or NNEPA identifies an Orphan AUM(s) which it believes, from an environmental, health, or other standpoint, warrants an RSE being performed as part of this Agreement despite the absence of a group of nearby identified Orphan AUMs, the Parties shall consider having an RSE performed at such Orphan AUM and, if the Parties agree, they shall include that Orphan AUM in an addendum to this Agreement. This process shall repeat until thirty (30) Orphan AUMs have been identified and added to this Agreement.

(c). Each addendum shall consist of a minimum of eight (8) AUMs except for the final addendum, which may contain fewer.

(d). Execution of the first addendum shall be contingent upon the completed hiring of the first Remedial Project Manager, pursuant to Section 4.4(b). Execution of the second addendum shall be contingent upon the completed hiring of the second RPM, pursuant to Section 4.4(b).

4.2 Timing. The United States shall endeavor to identify the first eight (8) RSE Sites by December 30, 2016.

4.3 Scope of Work. Once an addendum listing RSE Sites is added to this Agreement pursuant to Section 4.1, the Phase 2 RSE Trustee shall arrange for RSEs to be performed at those RSE Sites. The Trustee shall perform all actions necessary to complete an RSE at each of the RSE Sites. The Trustee shall develop Scopes of Work for the Sites under the oversight of USEPA and NNEPA, as provided in Section 4.4. The Parties recognize that identifying appropriate Scopes of Work depends on the specific characteristics of each Site, but agree that the Scopes of Work used for (A) the Black Jack and Mac Mine Sites, (B) the Mariano Lake Mine Site, (C) the Ruby Mine Sites, and (D) the RSEs conducted pursuant to the Phase 1 Settlement Agreement are potential models, although they are in no way binding on the Parties or the Phase 2 RSE Trustee. The Phase 2 RSE Trustee shall submit draft SOWs to NNEPA and USEPA for review, comment and approval. NNEPA and USEPA shall not approve any draft SOW that is inconsistent with this Agreement.

4.4 Oversight.

(a). Oversight of the Phase 2 RSE Trust shall be performed jointly by NNEPA and USEPA Region 9. Consistent with the oversight framework created in the Phase 1 RSE Trust Agreement, the Phase 2 RSE Trustee shall be required in the Phase 2 RSE Trust Agreement to submit all deliverables to both NNEPA and USEPA Region 9. The Agencies shall coordinate and collaborate in reviewing deliverables from the Phase 2 RSE Trust and shall send either send a joint set of comments and revisions or a joint approval to the Phase 2 RSE Trustee. If the former, the Trustee shall submit a revised deliverable to both Agencies for review. The process shall repeat until NNEPA and USEPA Region 9 jointly approve the deliverable. Neither Agency shall communicate revisions or approvals to the Trustee ex parte.

(b). NNEPA shall hire two (2) new Remedial Project Managers as part of its oversight of the Phase 2 RSE Trust and the Phase 2 Priority Orphan Trust: NNEPA will endeavor to hire one RPM within six (6) months of the Effective Date of this Agreement, and the second RPM within eighteen (18) months of the Effective Date of this Agreement. The Navajo Nation

shall send a letter to the United States with notice of each hiring, including the name of the new RPM.

4.5 General Requirements. All Work under this Article shall be conducted in accordance with the provisions of this Agreement, the Phase 2 RSE Trust Agreement, CERCLA, the NCP, and relevant USEPA guidance. The Trustee shall not commence any Work except in conformance with the terms of this Agreement, the Phase 2 RSE Trust Agreement, and any approved SOW. The Trustee shall not commence implementation of work plans developed pursuant to approved SOWs without the prior written approval of NNEPA and USEPA. The process by which the Trustee shall obtain the approval of the NNEPA and USEPA will be described in the Phase 2 RSE Trust Agreement.

4.6 Public Participation. The Parties recognize that public participation, particularly the involvement, participation and education of the communities located near the RSE Sites, is an essential element of environmental investigation and remediation processes. The Parties agree that the Phase 2 RSE Trust Agreement shall provide that the Phase 2 RSE Trustee, in consultation with NNEPA and USEPA, shall undertake all reasonable and practical efforts to maximize public participation and outreach as part of the Work, and shall use Navajo speakers as fully as possible in these efforts.

ARTICLE 5: WORK TO BE PERFORMED BY PHASE 2 PRIORITY ORPHAN TRUST

5.1 Duties of Phase 2 Priority Orphan Trust. The Phase 2 Priority Orphan Trust shall perform all actions necessary to complete EE/CAs and Removal Actions at the sixteen (16) Priority Orphan Sites listed on Appendix A, as determined to be appropriate by USEPA after consultation with NNEPA. Work on the EE/CAs and Removal Actions shall proceed in accordance with the normal CERCLA process. Nothing in this Settlement Agreement limits the Trustee's obligations to comply with the requirements of all applicable federal, state, and tribal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). Consistent with those provisions, Removal Actions shall comply with

Navajo applicable or relevant and appropriate requirements to the extent practicable considering the exigencies of the situation.

5.2 EE/CAs. Final decisions regarding alternatives to be analyzed in the EE/CAs shall be made jointly by USEPA Region 9 and NNEPA. Oversight of the EE/CAs shall proceed pursuant to the oversight structure set forth in Section 4.4(a). The Parties agree that the EE/CAs shall consider Navajo traditional and cultural uses when evaluating risks and shall evaluate a broad range of options, including but not limited to both on-reservation and off-reservation disposal.

5.3 Removal Actions. Response Action decisions, which will determine what type of Removal Action will be performed, shall be made by USEPA after consultation with NNEPA. Oversight of any Removal Actions shall proceed pursuant to the oversight structure set forth in Section 4.4(a).

5.4 Timing.

(a). Once an RSE for a particular Priority Orphan Site or group of Priority Orphan Sites is complete and has been jointly approved by USEPA and NNEPA, USEPA, after consultation with NNEPA, will determine whether it is appropriate to prepare an EE/CA or EE/CAs for that Priority Orphan Site or group of Priority Orphan Sites. If USEPA determines that it is appropriate to prepare an EE/CA or EE/CAs, it will direct the Phase 2 Priority Orphan Trustee to prepare the EE/CA or EE/CAs.

(b). The Parties agree to incorporate into the Phase 2 Priority Orphan Trust Agreement provisions that require the Phase 2 Priority Orphan Trustee to propose alternatives to be considered in the EE/CA(s) within thirty (30) days of USEPA's notice to commence work on the EE/CA(s). Further, pursuant to the oversight structure set forth in Section 4.4(a), USEPA and NNEPA shall approve or propose revisions to the Phase 2 Priority Orphan Trustee's proposed alternatives within thirty (30) days of receipt.

(c). Once the EE/CA for a particular Priority Orphan Site or group of Priority Orphan Sites is complete, USEPA, after consultation with NNEPA, will select a Removal Action for that Priority Orphan Site or group of Priority Orphan Sites.

5.5 Oversight. Oversight of the Phase 2 Priority Orphan Trust shall be performed jointly by NNEPA and USEPA Region 9. Consistent with the oversight framework created in the Phase 1 RSE Trust Agreement, the Phase 2 Priority Orphan Trustee shall be required in the Phase 2 Priority Orphan Trust Agreement to submit all deliverables to both NNEPA and USEPA Region 9. The Agencies shall coordinate and collaborate in reviewing deliverables from the Phase 2 Priority Orphan Trust and shall send either send a joint set of comments and revisions or a joint approval to the Phase 2 Priority Orphan Trustee. If the former, the Trustee shall submit a revised deliverable to both Agencies for review. The process shall repeat until NNEPA and USEPA Region 9 jointly approve the deliverable. Neither Agency shall communicate revisions or approvals to the Trustee ex parte.

5.6 General Requirements. All Work under this Article shall be conducted in accordance with the provisions of this Agreement, the Phase 2 Priority Orphan Trust Agreement, CERCLA, the NCP, and relevant USEPA guidance. The Trustee shall not commence any Work except in conformance with the terms of this Agreement, the Phase 2 Priority Orphan Trust Agreement, and any approved SOW. The Trustee shall not commence implementation of work plans developed pursuant to approved SOWs without the prior written approval of NNEPA and USEPA. The process by which the Trustee shall obtain the approval of the NNEPA and USEPA will be described in the Phase 2 Priority Orphan Trust Agreement.

5.7 Public Participation. The Parties recognize that public participation, particularly the involvement, participation and education of the communities located near the Priority Orphan Sites, is an essential element of environmental investigation and remediation processes. The Phase 2 Priority Orphan Trustee, in consultation with NNEPA and USEPA, shall undertake all reasonable and practical efforts to maximize public participation and outreach as part of the Work, and shall use Navajo speakers as fully as possible in these efforts.

ARTICLE 6: WATER STUDIES

6.1 Scope. Two (2) Water Studies shall be performed pursuant to this Agreement. These Water Studies shall take place at Orphan AUMs representing two of the four categories of mine

claims that the Parties have agreed are appropriate for investigation. The two AUMs that shall be investigated pursuant to this Article 6 are the following:

(a) Claim 28 (Mine IDs 78 and 79) (an example of a surface mine); and

(b) An Orphan AUM to be identified in the future that is an example of an underground mine that is above groundwater. The Parties agree that possible candidates include Smith Lake District AUMs, AUMs in the Saytah Wash area near the Carrizo Mountains, Monument Valley AUMs, and, depending on the outcome of the Cove Wash watershed investigation that is currently in process, an AUM in the Cove area.

6.2 Identification of Second AUM. USEPA shall recommend an appropriate Orphan AUM for the category listed in Section 6.1(b). If Navajo Nation EPA concurs, the AUM shall be added to this Agreement in the first addendum to be executed pursuant to Section 4.1 following NNEPA's concurrence.

6.3 Who Performs. The two (2) Water Studies identified in Section 6.1 shall be conducted by the Phase 2 RSE Trust. The Parties agree that the Phase 2 RSE Trustee shall be required under the Phase 2 RSE Trust Agreement to submit a separate scope of work for each Water Study, and that each scope of work shall account for any removal site evaluation performed or to be performed at the respective AUM.

6.4 Funding. The Water Study at Claim 28 will be included in the first addendum to this Agreement. If at that time an appropriate Orphan AUM has not been identified under Section 6.2, the Phase 2 RSE Trust shall proceed with Work under the first addendum regardless and shall commence Work on the second Water Study once an appropriate Orphan AUM is identified pursuant to Section 6.2 and added to this Agreement via a later-in-time addendum. Funding for the Water Studies shall be provided pursuant to Section 3.4.

6.5 Timing. The Phase 2 RSE Trust Agreement shall require work to begin on each Water Study promptly once USEPA, NNEPA, and the Phase 2 RSE Trustee have received and considered all relevant information obtained from any removal site evaluation at the respective Orphan AUMs identified in Section 6.1.

ARTICLE 7: NRD PRE-ASSESSMENT WORK

7.1 Scope. The Navajo Nation shall perform one or more natural resource damage pre-assessment projects pursuant to 43 C.F.R. §§ 11.20-11.25 (“Part 11, Subpart B regulations”) and all other applicable laws and regulations. The Navajo Nation shall propose in writing to the United States one or more such projects for approval, subject to the funding cap provided for in Section 3.5. The Navajo Nation shall include with its proposal the Estimated Costs to complete such project(s), and may request the United States’ assistance in developing the Estimated Costs. The Navajo Nation shall also include a proposed understanding of what it means to “commence” the project(s), with reference to Sections 7.2 and 3.5(b) of this Agreement. Upon receipt of the Navajo Nation’s proposal, the United States shall review the proposal for consistency with the Part 11, Subpart B regulations. If the United States concludes that one or more of the proposed projects might be inconsistent with the Part 11, Subpart B regulations, the United States shall make its objections known to the Navajo Nation within ninety (90) days and the Parties shall attempt to resolve those objections or select a different project. If the United States does not object or respond to the Navajo Nation’s proposal within ninety (90) days, the project(s) shall be deemed approved. The United States shall further notify the Navajo Nation, within ninety (90) days of receipt of the proposal, of any concerns or objections to the Estimated Cost of the project(s). Should the United States have such concerns or objections, the Parties shall cooperatively refine the Estimated Cost to address any concerns. The Parties agree that the United States’ payment obligations in Section 3.5(a) and Section 7.2 are contingent upon reaching agreement on the Estimated Costs for the project(s).

7.2 Timing. As soon as reasonably practical after the project or projects are approved and the Parties have agreed upon the Estimated Costs, and after receipt by the United States of payment instructions from the Navajo Nation, the United States shall provide funding to the Navajo Nation, pursuant to Section 3.5, in the amount of the agreed-upon Estimated Costs to perform the projects. The Navajo Nation shall commence work on the project(s) within twelve (12) months of receipt of the funding.

7.3 Expiration. Article 7 and Section 3.5 of this Agreement shall be deemed null and void should the United States not receive the written proposal described in Section 7.1 from the Navajo Nation within 24 months of the Effective Date.

ARTICLE 8: SITE ACCESS

8.1 NNEPA Authority and Practice. NNEPA has the authority to access and to authorize access to all AUMs in accordance with Navajo Nation CERCLA, 4 N.N.C. § 2301 (“NNCERCLA”). NNEPA has developed best practices regarding site access to facilitate cooperation with local land users. These best practices consist of the following:

(a). Before a site is first accessed, an NNEPA employee or contractor will determine whether any Navajo individuals have an interest in the area. This determination may be made by visiting the site to ascertain whether there are any Navajos living within the vicinity; by talking with local residents to determine if the area is part of someone’s customary use rights area; by checking local records to determine whether someone has a grazing permit or home site lease in the vicinity of the site; or by some combination of these options. It is preferred that any communications with local residents include a Navajo speaker.

(b). Any individual who has an interest in land in the vicinity of an AUM or resides on allotted lands in the vicinity of an AUM will be notified of the nature of the work anticipated and informed of what access will be necessary to complete the work. Depending upon the particular circumstances, individuals may sign access agreements.

(c). It has been the practice of NNDOJ to prepare a letter for signature by the Director of NNEPA authorizing the entity performing the work to act as NNEPA’s “agent” in accordance with NNCERCLA, thus providing such entity with the access rights provided to NNEPA by NNCERCLA.

8.2 Trustee Duties. It shall be the responsibility of the Phase 2 RSE Trustee and the Phase 2 Priority Orphan Trustee to follow the best practices described in Section 8.1 in order to secure appropriate access to any given AUM that is the subject of this Agreement. The trustees shall work

closely with NNEPA and NNDOJ in securing any access agreements deemed appropriate under the circumstances.

8.3 NNEPA and NNDOJ Agreement. NNEPA and NNDOJ shall support and facilitate the trustees' efforts to arrange access to the AUMs pursuant to Section 8.2. NNEPA and NNDOJ shall provide, as expeditiously as possible, any necessary support and information needed to make determinations regarding potential local interest in an AUM subject to this Agreement, as well as to secure access agreements when appropriate.

8.4 USEPA Assistance. Consistent with Section 8.2 of this Agreement, the Phase 2 RSE Trustee and the Phase 2 Priority Orphan Trustee shall immediately notify USEPA and NNEPA if, after using best efforts, he or she is unable to obtain necessary access agreements in areas which NNEPA does not have the authority to access or to authorize access. For purposes of this paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. The Phase 2 RSE Trustee and the Phase 2 Priority Orphan Trustee shall describe in writing the efforts to obtain access. USEPA may then assist either trustee in gaining access to the extent necessary to effectuate the Work, using such means as USEPA deems appropriate. All costs and attorneys' fees incurred by the United States in obtaining such access that are not inconsistent with the NCP shall be considered reimbursable Future Oversight Costs. Notwithstanding any provision of this Agreement, USEPA retains all of its access authorities and rights, as well as all of its rights to require land use and water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

ARTICLE 9: RELEASES AND EFFECT OF AGREEMENT

9.1 Covenant Not to Sue for All AUMs. The Navajo Nation shall not assert before January 1, 2018 (by way of the commencement of an action or in any other fashion) any claim, cause of action, suit or demand of any kind whatsoever, in law or in equity, under CERCLA, against the United States relating to any of the approximately 523 AUMs, including, but not limited to, claims under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613. This covenant shall not

preclude the Navajo Nation from pursuing claims relating to the enforcement of the terms of this Agreement.

9.2 Releases and Covenants Not to Sue for Work. Effective as soon as a payment required by Article 3 for a particular portion of the Work has been made in full and deposited into the appropriate ERT or other account, as provided for in this Agreement, the Navajo Nation forever releases, discharges, covenants, and agrees not to assert (by way of the commencement of an action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever, in law or in equity, including, but not limited to, claims under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, that the Navajo Nation may have had, may now have, or hereafter may have, against the United States relating to the portion of the Work (including applicable Administrative Costs and Future Oversight Costs) associated with the payment made. The Parties agree that releases pursuant to this Section 9.2 do not include any release for claims relating to the enforcement of the terms of this Agreement, for Excluded Matters, or for reimbursement of Navajo Nation EPA Future Response Costs.

9.3 Releases and Covenants Not to Sue for Reimbursement of Navajo Nation EPA Future Response Costs. Effective upon receipt by the Navajo Nation of any and each payment by the United States reimbursing Navajo Nation EPA Future Response Costs, the Navajo Nation forever releases, discharges, covenants, and agrees not to assert (by way of the commencement of an action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever, in law or in equity, including, but not limited to, claims under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, that the Navajo Nation may have had, may now have, or hereafter may have against the United States relating to the portion of Navajo Nation EPA Future Response Costs associated with the payment made. Within thirty (30) days of receiving any reimbursement of Navajo Nation EPA Future Response Costs, the Navajo Nation shall send a letter to the United States acknowledging receipt of said payment.

9.4 Protection Against Claims.

(a). The Parties acknowledge and agree that the payments and obligations provided for in this Agreement represent a full and final settlement of disputed claims for Covered

Matters and that the settlement represents a fair, reasonable, and equitable resolution of Covered Matters.

(b). With regard to any claims for costs, damages, or other claims against the United States for Covered Matters under or addressed in this Agreement, the Parties agree that the United States is entitled to contribution protection consistent with Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, whether by statute or common law, extinguishing the United States' liability to persons not party to this Agreement. Any rights the United States may have to obtain contribution or otherwise recover costs or damages for Covered Matters from persons not party to this Agreement are preserved.

(c). The Navajo Nation agrees that when all payments for Work and associated Administrative Costs and Future Oversight Costs have been made in full, the United States will have resolved any liability that it may have to the Navajo Nation for Covered Matters, with the exception of Navajo Nation EPA Future Response Costs. The Navajo Nation agrees that when the United States pays the final demand for reimbursement of Navajo Nation EPA Future Response Costs (*see* Sections 3.2(f) and 3.3(f)), the United States will have resolved any liability that it may have to the Navajo Nation for Navajo Nation EPA Future Response Costs.

9.5 No Admission. This Agreement was negotiated and executed by the Parties in good faith and at arm's length and is a fair and equitable resolution of claims. This Agreement shall not constitute or be construed as an admission of liability by either Party, nor is it an admission or denial of any factual allegations or an admission of any violation of law, rule, regulation, or policy by either Party.

9.6 Good Faith Efforts. The Parties agree to exercise good faith, due diligence, and their best efforts to execute all necessary documents to effectuate this Agreement and to join in and support, as may be appropriate, such legal or informal proceedings as necessary to implement all terms of this Agreement.

ARTICLE 10: DISPUTE RESOLUTION

10.1 Navajo Fundamental Law. Given that all Work contemplated by this Agreement will be carried out pursuant to written agreements, scopes of work, and work plans and that oversight will be provided in a coordinated and collaborative manner between USEPA and NNEPA, the Parties are hopeful that there will be very limited areas of disagreement between them. Nevertheless, disputes can always arise. Therefore, the Parties agree that it is important to establish a dispute resolution process as part of this Agreement. The purpose of this Article is to establish a process to talk through any dispute before resorting to other methods. In that regard the Navajo Nation, with the invaluable assistance of former Navajo Nation Supreme Court Chief Justice Robert Yazzie and former Director of the Navajo Abandoned Mines Program Perry Charley, is providing the following discussion of Navajo Fundamental Law which it believes should inform any such discussions.

(a). If one conceives of the notion of problem-solving as a circle, or sun with four stages, the process begins on the eastern side of the circle and might be labeled in Navajo as “nitsahakees” or “thinking.” Thinking is key and it takes a long time. It goes on and on. Perhaps it has no beginning and no end. In this process of thinking about remediating the uranium contamination left over from past uranium mining on Navajo Lands it is almost impossible to identify a beginning. The Navajo paradigm and the four stages within it are imbedded with one another. No one stage can exist without the other. Regardless, Navajo problem-solving begins with thinking. This Agreement has required a great deal of thinking. Thinking is examining root causes of a problem and its nature and consequences. Before we can decide on a solution (“nahat’a” or planning) we must understand the problem. If we have done our job well, there will be few disagreements.

(b). After “thinking” comes “nahat’a” or “planning.” Planning may be visualized as the southern-most point of the circle. Inside the circle is the milieu of life. For the Navajo this means many things, including the sacred elements (air,

water, fire and earth/pollen), the sacred mountains, and “Nayee” (things that get in the way of a good life).

(c). After “planning” comes “Iina” or the life that implements the planning. Implementation may be seen as the western-most point of the circle. Again, this takes time and interacts with the forces visualized as being inside the circle. Obstacles emerge and interfere with the implementation. Insights arise and help the implementation. But, if the thinking continues and the planning continues, this leads to hopeful and positive results.

(d). After “implementation” comes “sihasin,” which means many things including “results.” “Results” appear at the northern-most point of the circle. Results follow thinking, planning, and implementation. For the Navajo Nation the desired “results” here mean the complete remediation of all uranium contamination left over from past uranium mining on Navajo lands. The Navajo Nation understands the difficulties and challenges faced in achieving that goal. Still, the goal is worth the effort.

It is often difficult to keep focus on the nested nature of the four aspects discussed here. Each aspect is re-evaluated by discussion of what has worked and what has failed.

10.2 Alternative Dispute Resolution. The Parties agree to follow a “talking things out” approach to dispute resolution. If the Parties fail to resolve any dispute through the above method, the Parties shall attempt to resolve their dispute through formal non-binding alternative dispute resolution.

ARTICLE 11: REPRESENTATIVE AUTHORITY

11.1 United States. The United States is executing this Agreement on behalf of the federal government, including all of its departments, agencies and instrumentalities.

11.2 Both Parties. The individuals signing this Agreement on behalf of each Party hereby certify that they are authorized to bind their respective Party to this Agreement.

ARTICLE 12: MISCELLANEOUS

12.1 Binding and Final Agreement. This document, including those documents incorporated by reference and the addenda to be periodically added to this Agreement as provided herein, embodies the entire terms and conditions of this Agreement, and each Party acknowledges that it has not relied upon any warranties, representations, or promises except those set forth expressly in this Agreement. This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing executed by an authorized representative of each of the Parties.

12.2 Preservation of Defenses. Nothing in this Agreement shall be construed as a waiver of sovereign immunity or of any legal defense.

12.3 Binding on Successors and Assigns. This Agreement shall be binding upon and for the benefit of the Parties, as well as their successors, representatives, and assigns.

12.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

12.5 Governing Law. This Agreement shall be governed by and construed under the laws of the United States.

12.6 Headings. The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

12.7 Notices to Parties.

For the United States:

Chief, Environmental Defense Section
United States Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ # 90-11-6-19983

For the Navajo Nation:

Assistant Attorney General
Natural Resources Unit
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Re: Abandoned Uranium Mines

IN WITNESS WHEREOF, the Parties enter into this Agreement.

THE NAVAJO NATION:

By: _____
ETHEL BILLIE BRANCH
Navajo Nation Attorney General

Dated: _____

THE UNITED STATES OF AMERICA:

By: _____
JOHN C. CRUDEN
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Dated: _____

APPENDIX A

Priority Orphan Sites

1. Occurrence B (AUM ID # 296)
2. Eunice Becenti (AUM ID # 313)
3. Section 26 (Desidero Group) (AUM ID # 1011, 1012, 1035)
4. Standing Rock (AUM ID # 1006)
5. Charles Keith (AUM ID # 225)
6. Harvey Blackwater No. 3 (AUM ID # 239)
7. Mitten No. 3 (AUM ID # 260)
8. Alongo Mines (AUM ID # 2)
9. Barton 3 (AUM ID # 220)
10. NA-0904 (AUM ID # 59)
11. NA-0928 (AUM ID # 63)
12. Oak 124, Oak 125 (AUM ID # 486)
13. Tsosie 1 (AUM ID # 55)
14. Hoskie Tso No. 1 (AUM ID # 852)
15. Boyd Tisi No. 2 Western (AUM ID # 135)
16. Claim 28 (AUM ID # 78, 79)

PHASE 2 SETTLEMENT AGREEMENT

BY AND AMONG

THE UNITED STATES OF AMERICA

AND

THE NAVAJO NATION:

ADDENDUM 1

WHEREAS, on July 13, 2016, the Navajo Nation and the United States (collectively, the “Parties”) executed the Phase 2 Settlement Agreement (the “Agreement”);

WHEREAS, the Agreement sets forth a series of steps to implement the Agreement, including the development and execution of a series of addenda;

WHEREAS, this document (“Addendum 1”) is the first such addendum;

WHEREAS, pursuant to Sections 4.1(a) and (b) of the Agreement, the United States has identified a group of thirteen Orphan abandoned uranium mines (“AUMs”) in a particular geographic area and has shared this list of Orphan AUMs with the Navajo Nation;

WHEREAS, this Addendum 1 complies with Section 4.1(c) of the Agreement in that it consists of thirteen Orphan AUMs which shall be deemed “RSE Sites” as defined in the Agreement;

WHEREAS, Sections 6.1 and 6.4 of the Agreement require that funding for the Water Study at Claim 28 shall be included in this Addendum 1;

WHEREAS, pursuant to Section 4.1(d) of the Agreement, execution of this Addendum 1 is contingent upon the completed hiring of a Remedial Project Manager (*see* Section 4.4(b) of the Agreement), and the Parties agree that the Navajo Nation has satisfied this requirement;

WHEREAS, the Parties have completed the process outlined in Sections 3.2(c) and 3.4(c) of the Agreement and have agreed upon the Estimated Costs for the Work which is the subject of this Addendum 1 (i.e., RSEs at the thirteen RSE Sites and the Water Study at Claim 28); and

WHEREAS, Sections 3.2(a), and 3.4(a) of the Agreement obligate the United States, following receipt of payment instructions from the Phase 2 RSE Trustee, to deposit into the Phase 2 RSE Trust 100% of the Estimated Costs for the Work which is the subject of this Addendum 1;

THEREFORE, the Parties hereby agree as follows.

1. This Addendum 1 shall be incorporated into the Agreement, and all defined terms used in this Addendum 1 shall have the same meaning given them in the Agreement.
2. The Parties agree that the following thirteen AUMs shall be the first thirteen of the thirty RSE Sites to be identified pursuant to Article 4 of the Agreement:

Mine Claim, All Site IDs	Mine Name	Surface Area Acres	Underground Area Acres	Chapter	Latitude (N)	Longitude (W)
131	Alyce Tolino No. 1 & 3	34.8	0.0	Coalmine Mesa	35.8754301255	-111.377491296
384	Black Hair No. 4	2.9	0.0	Cameron	35.8126992549	-111.436811568
120, 229	Charles Huskon No. 19	14.6	0.0	Coalmine Mesa	35.9088811943	-111.398200950
129	Elwood Canyon No. 1	11.9	0.0	Coalmine Mesa	35.8798817401	-111.373325467
160	Jack Daniels No. 1	30.6	0.0	Coalmine Mesa	35.9063982705	-111.400455557
544	Jack Daniels No. 4	12.5	0.0	Coalmine Mesa	35.9042631539	-111.400559367
545	Jack Daniels No. 5	15.3	0.0	Coalmine Mesa	35.9056668329	-111.403234633
127	Lemuel Littleman No. 2	10.9	0.0	Coalmine Mesa	35.8813166366	-111.384726294
543	Lemuel Littleman No. 3	12.3	0.0	Cameron	35.8545449987	-111.398900592
125	Max Johnson No. 1	24.2	0.0	Coalmine Mesa	35.8798602520	-111.390328097
128	Max Johnson No. 10	16.8	0.0	Coalmine Mesa	35.8750467031	-111.389724255
132	Yazzie No. 101	9.4	0.0	Coalmine Mesa	35.8752007506	-111.370790816
134	Yazzie No. 312	32.7	0.0	Coalmine Mesa	35.8717116677	-111.372051412

3. The Parties agree that the Estimated Cost for Removal Site Evaluations, including associated Future Oversight Costs, at the thirteen RSE Sites is \$5,766,668.

4. The Parties agree that the Estimated Cost for Phases 1 and 2 of the Water Study at Claim 28, including associated Future Oversight Costs, is \$753,250. The Parties recognize

the decision regarding whether to proceed with future phases of the Water Study at Claim 28 is contingent upon the findings of Phases 1 and 2, and therefore agree to defer the determination of Estimated Costs for future phases of the Water Study at Claim 28 until it is determined whether proceeding with future phases is warranted.

5. The Parties agree that the Estimated Cost for Administrative Costs is \$2,043,943.

6. The Parties agree that upon receipt by the Phase 2 RSE Trust of \$8,563,861, the United States will have fulfilled its obligations under the following provisions of the Agreement as follows: A) Section 3.2(a) in full; B) Section 3.2(c) in part; C) Section 3.4(a) in full if no further phases of the Water Study at Claim 28 are ordered, otherwise only in part; and D) Sections 3.4(c) and 6.4 in full with respect to the Water Study at Claim 28 if no further phases are ordered, otherwise only in part (and in any event not with respect to the second Water Study, *see* Agreement Section 3.4(b)).

7. Nothing in this Addendum 1 constitutes a waiver of any provision of the Agreement.

8. This Addendum 1 may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties approve this Addendum 1 to the Phase 2 Settlement Agreement.

THE NAVAJO NATION:

By:  _____
ETHEL BILLIE BRANCH
Navajo Nation Attorney General

Dated: 09-11-2017 _____

THE UNITED STATES OF AMERICA:

By: _____
JEFFREY H. WOOD
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Dated: _____

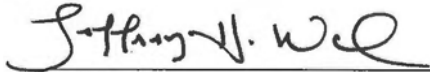
IN WITNESS WHEREOF, the Parties approve this Addendum 1 to the Phase 2 Settlement Agreement.

THE NAVAJO NATION:

By: _____
ETHEL BILLIE BRANCH
Navajo Nation Attorney General

Dated: _____

THE UNITED STATES OF AMERICA:

By:  _____
JEFFREY H. WOOD
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Dated: 9/12/17

PHASE 2 SETTLEMENT AGREEMENT

BY AND AMONG

THE UNITED STATES OF AMERICA

AND

THE NAVAJO NATION:

ADDENDUM 2

WHEREAS, on July 13, 2016, the Navajo Nation and the United States (collectively, the “Parties”) executed the Phase 2 Settlement Agreement (the “Agreement”);

WHEREAS, the Agreement sets forth a series of steps to implement the Agreement, including the development and execution of a series of addenda to identify the thirty (30) Orphan abandoned uranium mines (“AUMS”) and the two (2) water studies to be addressed by the Phase 2 Removal Site Evaluation (“RSE”) Trust that was established by the Agreement;

WHEREAS, the Parties executed Addendum 1, effective September 12, 2017, which identified the first thirteen (13) Orphan AUMs and the first water study to be addressed by the Phase 2 RSE Trust;

WHEREAS, pursuant to Section 4.1(a) and (b) of the Agreement and consistent with Section 4.1(c), the United States has identified the remaining seventeen (17) Orphan AUMs, which are in two (2) geographic areas in neighboring Navajo Agencies, and has shared this list of Orphan AUMs with the Navajo Nation;

WHEREAS, pursuant to Sections 6.1(b) and 6.2 of the Agreement, the United States Environmental Protection Agency has recommended and the Navajo Nation Environmental Protection Agency has concurred in the selection of George Simpson 1 Incline/Saytah Site (Mine IDs 624 and 625)¹ as an example of an underground mine that is above groundwater where the second Water Study will be performed by the Phase 2 RSE Trust;

WHEREAS, this Addendum 2 includes these seventeen (17) remaining Orphan AUMs and second Water Study;

WHEREAS, pursuant to Section 4.1(d) of the Agreement, execution of this Addendum 2 is contingent upon the completed hiring of a second Remedial Project Manager (*see* Section 4.4(b) of the Agreement), and the Parties agree that the Navajo Nation has satisfied this requirement;

WHEREAS, the Parties have completed the process outlined in Sections 3.2(c) and 3.4(c) of the Agreement and have agreed upon the Estimated Costs for the Work which is the subject of this Addendum 2 (i.e., RSEs at the seventeen (17) Orphan AUMs and the Water Study at George Simpson 1 Incline/Saytah, identified in the table below); and

¹ *See infra* n.2

WHEREAS, Sections 3.2(b) and 3.4(b) of the Agreement obligate the United States, following receipt of payment instructions from the Phase 2 RSE Trustee, to deposit into the Phase 2 RSE Trust 75% of the Estimated Costs for the RSE Work that is the subject of this Addendum 2 and 100% of the Estimated Costs for the Water Study at George Simpson 1 Incline/Saytah;

THEREFORE, the Parties hereby agree as follows.

1. This Addendum 2 shall be incorporated into the Agreement, and all defined terms used in this Addendum 2 shall have the same meaning given them in the Agreement.

2. The Parties agree that the following seventeen (17) AUMs shall be the remaining AUMs out of the thirty RSE Sites to be identified pursuant to Article 4 of the Agreement. In this regard, the Parties agree that each AUM listed below with more than one mine claim number and mine name shall be considered as one AUM for purposes of this Addendum, due to additional information obtained in the twelve years since issuance of the August 2007 Navajo Nation AUM Screening Assessment Report and Atlas (the source of the mine claim numbers and names)²:

Mine Claim, All Site IDs	Mine Name	Surface Area Acres	Underground Area Acres	Chapter	Latitude (UTM - N)	Longitude (UTM - E)
403, 83	Arrowhead No. 1/2	4.1	0	Tselani	4008310.07	603889.37
405	Black Mountain Vase	9.6	0	Tselani	4006455.4	602773.34
404	Blk022	2.9	0	Tselani	4009154.83	604351.99

² USEPA, 2007. Abandoned Uranium Mines and the Navajo Nation. Navajo Nation AUM Screening Assessment Report and Atlas with Geospatial Data. Prepared for U.S. Environmental Protection Agency, Region 9 through an Interagency Agreement with U.S. Army Corps of Engineers. Prepared by TerraSpectra Geomatics in cooperation with Navajo Nation Environmental Protection Agency and Navajo Abandoned Mine Lands Reclamation Program. August.

406	Blk029	2.9	0	Black Mesa	4014181.74	601916.41
82, 805	Claim 3/4	15.7	0	Tselani	4008200.01	602714.71
804, 81, 807	Claim 6/7/10	22.9	0	Tselani/Tachee/Blue Gap	4007783.76	601624.2
806	Claim 16	2.9	0	Black Mesa/Tselani	4011045.56	601615.58
80	Claim 35	3.7	0	Tachee/Blue Gap	4011536.5	598259.96
84	Edward Steve No. 1	1.2	0	Tselani	4009623.67	604425.38
85	Etsitty No. 1	5.4	0	Black Mesa	4016376.1	603427.1
87	Frank Todecheenie No. 1	6.7	0	Black Mesa	4018649.37	604711.33
88, 800	Kasewood Bahe No. 1/Thomas Begay No. 1	5.8	0	Black Mesa	4018386.64	604921.98
86	Sam Charley No. 1	3.2	0	Black Mesa	4018249.5	604552.83
62	Silentman 1	3.7	0	Teec Nos Pos	4086030.18	651265.67
56	Grover Cleveland 1	2.3	0	Sweetwater	4083029.47	652913.23
67	NA-0924	4.2	0	Sweetwater/Teec Nos Pos	4084629.91	652171.37
626	Last Chance	1.4	0	Sweetwater	4081773.67	651786.69

3. The Parties agree that the Water Study shall be conducted at George Simpson 1 Incline/Saytah, as further identified below.

Mine Claim, All Site IDs	Mine Name	Surface Area Acres	Under ground Area Acres	Chapter	Latitude (UTM - N)	Longitude (UTM - E)
624, 625	Saytah/George Simpson 1 Incline	14.3	1.1	Sweetwater/Teec Nos Pos	4082222.58	652047.39

4. The Parties agree that the Estimated Cost for RSEs, including associated Future Oversight Costs, at the seventeen (17) RSE Sites is \$10,405,000. The Parties agree that the Estimated Cost for Administrative Costs associated with the seventeen (17) RSE Sites is \$1,104,000.

5. The Parties agree that the Estimated Cost for Stages 1 and 2 of the Water Study at George Simpson 1 Incline/Saytah, including associated Future Oversight Costs, is \$2,516,637. The Parties agree that the Estimated Cost for Administrative Costs associated with Stages 1 and 2 of the Water Study at George Simpson 1 Incline/Saytah is \$736,000. The Parties recognize the decision regarding whether to proceed with future stages of the Water Study at George Simpson 1 Incline/Saytah is contingent upon the findings of Stages 1 and 2, and therefore agree to defer the determination of Estimated Costs for future stages of the Water Study at George Simpson 1 Incline/Saytah until it is determined whether proceeding with future stages is warranted.

6. The Parties agree that upon receipt by the Phase 2 RSE Trust of \$11,884,387, which represents 75% of Estimated Costs for the RSE Work (including Future Oversight Costs and Administrative Costs) that is the subject of this Addendum 2 plus 100% of the Estimated Costs for Stages 1 and 2 of the Water Study at George Simpson 1 Incline/Saytah (including Future Oversight Costs and Administrative Costs), the United States will have fulfilled its obligations under the following provisions of the Agreement: A) Section 3.2(b) in full; B) Section 3.2(c) in full; C) Section 3.4(b) in full if no further stages of the Water Study at George Simpson 1 Incline/Saytah are ordered, otherwise only in part; and D) Sections 3.4(c) and 6.4 in full with respect to the Water Study at George Simpson 1 Incline/Saytah if no further stages are ordered, otherwise only in part.

7. Nothing in this Addendum 2 constitutes a waiver of any provision of the Agreement.

8. This Addendum 2 may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties approve this Addendum 2 to the Phase 2 Settlement Agreement.

THE NAVAJO NATION:

By: _____
DOREEN NANIBAH MCPAUL
Attorney General

Dated: _____

THE UNITED STATES OF AMERICA:

By: _____
BRIAN H. LYNK
Trial Attorney
United States Department of Justice
Environmental Defense Section

Dated: _____

PHASE 2 SETTLEMENT AGREEMENT

BY AND AMONG

THE UNITED STATES OF AMERICA

AND

THE NAVAJO NATION:

ADDENDUM 3

WHEREAS, on July 13, 2016, the Navajo Nation and the United States (collectively, the “Parties”) executed the Phase 2 Settlement Agreement (the “Agreement”);

WHEREAS, the Agreement sets forth a series of steps to implement the Agreement, including the development and execution of a series of addenda to identify the thirty (30) Orphan abandoned uranium mines (“AUMS”) and the two (2) water studies to be addressed by the Phase 2 Removal Site Evaluation (“RSE”) Trust that was established by the Agreement;

WHEREAS, the Agreement refers to the thirty (30) Orphan AUMs to be identified by the Parties through subsequent addenda to the Agreement as “RSE Sites” and alternatively (as clarified by a letter signed and countersigned contemporaneously with this Addendum 3) as “Phase 2 AUMs”;

WHEREAS, the Parties executed Addendum 1, effective September 12, 2017, which identified the first thirteen (13) RSE Sites and the first water study to be addressed by the Phase 2 RSE Trust;

WHEREAS, the Parties executed Addendum 2, effective February 14, 2020, which identified an additional seventeen (17) RSE Sites, which are in two (2) geographic areas in neighboring Navajo Agencies, and the second water study to be addressed by the Phase 2 RSE Trust;

WHEREAS, sometime after execution of Addendum 2, the Parties discovered that three (3) of the Orphan AUMs listed on Addendum 1 actually constituted one (1) Orphan AUM, thus reducing the total number of RSE Sites that the Parties have listed pursuant to the Agreement from thirty (30) to twenty-eight (28);

WHEREAS, the Parties also discovered that there were only two (2) known Orphan AUMs remaining in the Tse Tah area (which is one of the geographic areas mentioned above as subject to the Agreement) that are not already being addressed under a settlement agreement or administrative order;

WHEREAS, the Parties agree that the two (2) known Orphan AUMS remaining in the Tse Tah area should be listed as RSE Sites by this Addendum 3 in order to increase the total number of RSE Sites listed pursuant to this Agreement to thirty (30);

WHEREAS, the Agreement provides for the creation of a Phase 2 Priority Orphan Trust to prepare Engineering Evaluation/Cost Analyses (“EE/CAs”) and conduct Removal Actions at the sixteen (16) Orphan AUMs for which RSEs were performed under the Phase 1 Settlement and Trust Agreements, as appropriate, and for the transfer of Funding to the Phase 2 Priority Orphan Trust, pursuant to Section 3.3 of the Agreement;

WHEREAS, the Agreement provides in addition in Subsection 2.1(b)(ii) that the Phase 2 Priority Orphan Trust may be created as an expansion of the Phase 2 RSE Trust;

WHEREAS, in accordance with Subsection 2.1(b) of the Phase 2 Settlement Agreement, the Parties agreed to expand the scope of the Phase 2 RSE Trust to include the Phase 2 Priority Orphan Trust, with this expanded trust to be called the Phase 2 Expanded Trust;

WHEREAS, the Parties have in addition agreed that the baseline risk assessment performed as part of each of the two (2) Water Studies defined in Section 1.42 of the Agreement and provided for in Section 6.1 of the Agreement shall include a soils and sediments exposure pathway in addition to the surface and groundwater pathways already referenced;

WHEREAS, the Parties have completed the process outlined in Sections 3.2(c) and 3.4(c) of the Agreement and have agreed upon the Estimated Costs for the Work that is the subject of this Addendum 3 (i.e., RSEs at the two (2) Orphan AUMs identified in the table below, and the addition of a soils and sediments exposure pathway to the Water Study baseline risk assessments);

WHEREAS, Section 3.2(b) of the Agreement obligates the United States to deposit into the Phase 2 RSE Trust 75% of the Estimated Costs for the RSE Work that is the subject of this Addendum 3; and

WHEREAS, Section 3.4(a)-(b) obligates the United States to deposit into the Phase 2 RSE Trust 100% of the Estimated Costs for the Water Study Work that is the subject of this Addendum 3;

THEREFORE, the Parties hereby agree as follows.

1. This Addendum 3 shall be incorporated into the Agreement, and all defined terms used in this Addendum 3 shall have the same meaning given them in the Agreement.

2. The Parties agree that the three (3) Jack Daniels Orphan AUMs listed on Addendum 1, that is, Jack Daniels Nos. 1, 4, and 5 (Mine IDs 160, 544, and 545), in fact constitute one (1) single Orphan AUM rather than three (3) separate Orphan AUMs. The list in Addendum 1 shall be amended accordingly, as follows:

Mine Claim, All Site IDs	Mine Name	Surface Area Acres	Underground Area Acres	Chapter	Latitude (N)	Longitude (W)
160, <u>544</u> , <u>545</u>	Jack Daniels Nos. <u>1</u> , <u>4</u> , and <u>5</u>	30.6	0.0	Coalmine Mesa	35.90570	-111.40123
544	Jack Daniels No. <u>4</u>	12.5	0.0	Coalmine Mesa	35.9042631539	-111.400559367
545	Jack Daniels No. <u>5</u>	15.3	0.0	Coalmine Mesa	35.9042631539	-111.403234633

3. The Parties agree that, pursuant to Section 4.1 of the Agreement, the following two (2) Orphan AUMs shall be added by this Addendum 3 to the list of RSE Sites subject to the Agreement:

Mine Claim, All Site IDs	Mine Name	Surface Area Acres	Underground Area Acres	Chapter	Latitude (N)	Longitude (W)
Mine ID 58, Claim ID NAUM- 0387	NA-0926	5.0	0.0	Sweet Water	36.89534	-109.30551
Mine ID 284, Claim ID NAUM- 0190	John Kee 4	43.7	0.0	Tecnospos	36.96325	-109.31856

4. The Parties agree that the Estimated Cost for conducting RSEs at these two (2) RSE Sites, including associated Future Oversight Costs and Administrative Costs, is \$1,450,000 total (\$725,000 each).

5. The Parties agree that a soils and sediments exposure pathway shall be included as part of the baseline risk assessment required for each of the two (2) Water Studies conducted under the Agreement.

6. The Parties agree that the Estimated Cost for adding a soils and sediments exposure pathway to the baseline risk assessment required for each of the two (2) Water Studies is \$20,000 total (\$10,000 for each Water Study).

7. The Parties agree that upon receipt by the Phase 2 Expanded Trust of \$1,087,500, which represents 75% of the Estimated Costs for the additional RSE Work (including Future Oversight Costs and Administrative Costs) required for the RSE Sites listed on this Addendum 3, plus \$20,000, which represents 100% of the Estimated Costs for adding a soils and sediments exposure pathway to the baseline risk assessments for the Water Studies, the United States will have fulfilled its obligations under the following provisions of the Agreement: A) Section 3.2(b) in full; B) Section 3.2(c) in full; C) Section 3.4(a)-(b) in full if no further stages of either Water Study are ordered, otherwise only in relevant part; and D) Sections 3.4(c) and 6.4 in full if no further stages of either Water Study are ordered, otherwise only in relevant part.

8. As soon as reasonably practicable following execution of this Addendum 3, the United States shall cause to be deposited into the Phase 2 RSE Trust the sum of \$1,107,500. The Parties agree that this Addendum 3 shall be the final Addendum to the Agreement pertaining to the list of RSE Sites to be identified pursuant to Section 4.1 of the Agreement and the associated Estimated Costs, including associated Future Oversight Costs and Administrative Costs, for conducting RSEs at the RSE Sites.

9. Nothing in this Addendum 3 constitutes a waiver of any provision of the Agreement.

10. This Addendum 3 may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties approve this Addendum 3 to the Phase 2 Settlement Agreement.

THE NAVAJO NATION:

By: *Doreen N. McPaul*
DOREEN NANIBAA MCPAUL
Attorney General

Dated: 2/9/2022

THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

By: *Brian H. Lynk*
BRIAN H. LYNK
Trial Attorney
Environmental Defense Section
United States Department of Justice

Dated: February 9, 2022



U.S. Department of Justice

Environment and Natural Resources Division

DJ # 90-11-6-19983

*Environmental Defense Section
P.O. Box 7611
Washington, DC 20044*

*Telephone (202) 514-6187
Facsimile (202) 514-8865
brian.lynk@usdoj.gov*

February 9, 2022

Via Electronic Mail

Doreen Nanibaa McPaul
Attorney General
Navajo Nation Department of Justice
PO Box 2010
Window Rock, AZ 86515

Re: Letter Agreement Clarifying and Amending Certain Terms in the Phase 2
Settlement Agreement

Dear Ms. McPaul:

I write with respect to the Phase 2 Settlement Agreement (“Settlement Agreement”) by and among the United States of America and the Navajo Nation (collectively, the “Parties”). Specifically, in accordance with the Parties’ recent discussions, I write to document the Parties’ mutual understanding and agreement (as reflected by my signature and your countersignature on this letter) regarding the following provisions:

1. Based on the Parties’ experience with implementation of the Phase 1 and Phase 2 RSE Trust Agreements, and as indicated in the definition of “RSE Site” in the Settlement Agreement, the Parties have determined that the term “AUMs” should include not only the actual mine site but also the geographically proximate areas where Waste Material (as that term is defined in the Settlement Agreement) associated with the mine site has been deposited, stored, disposed of, placed, or otherwise come to be located. The Parties therefore agree that the definition of “AUMs” in Section 1.4 of the Settlement Agreement shall be clarified by adding the underlined language to that definition, as follows:

1.4 AUMs. “AUMs” shall mean abandoned uranium mines located on Navajo Lands. The term includes the mine site and the geographically proximate areas where Waste Material associated with the mine has been deposited, stored, disposed of, placed, or otherwise come to be located.

2. In addition, the Parties have noticed an inadvertent error in the definition of “Covered Matters” in the Settlement Agreement, namely, the omission of a reference to Section 3.4, which provides for reimbursement of Navajo Nation EPA Future Response Costs incurred for performance of the water studies. The Parties therefore agree that Section 1.7 of the Settlement

Agreement shall be amended by adding the underlined language and deleting the language that is stricken out, as follows:

1.7 **Covered Matters.** “Covered Matters” shall mean any and all claims that were, that could have been, that could now be, or that could hereafter be asserted by the Navajo Nation against the United States, that arise out of or in connection with: (1) the Work; (2) Future Oversight Costs incurred by USEPA and NNEPA with respect to the Work; (3) Administrative Costs; and (4) any claims for cost recovery or reimbursement of Navajo Nation EPA Future Response Costs pursuant to Sections 3.2, ~~and 3.3, and 3.4~~ of this Agreement.

3. Similarly, the Parties have noticed an inadvertent error in the definition of “Navajo Nation EPA Future Response Costs” in the Settlement Agreement, namely, the omission of a reference to reimbursements to the Navajo Nation from the United States. The definition also omits a reference to payments and reimbursements under Section 3.4. The Parties therefore agree that Section 1.1.18 shall be amended by adding the underlined language and deleting the language that is stricken out, as follows:

1.18 **Navajo Nation EPA Future Response Costs.** “Navajo Nation EPA Future Response Costs” shall mean any funds provided by the Navajo Nation EPA to the Phase 2 RSE Trust and/or the Phase 2 Priority Orphan Trust pursuant to Sections 3.2, ~~and 3.3, and 3.4~~ of this Agreement, less any reimbursement to the Navajo Nation from the United States pursuant to those same sections, and any reimbursement to the Navajo Nation EPA from the Phase 2 RSE Trust or Phase 2 Priority Orphan Trust to the Navajo Nation EPA pursuant to those same sections Sections 3.2(f) or 3.3(f), respectively.

4. Further, since the Phase 2 Expanded Trust Agreement covers both Engineering Evaluation/Cost Analyses (“EE/CAs”) and Removal Actions for the AUMs addressed in the Phase 1 Settlement and Trust Agreements and RSEs for the AUMs listed in Addenda 1, 2 and 3 to the Phase 2 Settlement Agreement, and since it is necessary to distinguish them in certain instances in the Phase 2 Expanded Trust Agreement from each other, the Parties find it will be clearer to refer to these different groups of AUMs by specific terms. Therefore, the following definitions shall be added to Article 12 (Miscellaneous) of the Settlement Agreement, under a new Section 12.8:

12.8 **Additional Definitions.** For the purposes of this Agreement, these additional terms shall be defined as follows:

(a). **Phase 1 AUM.** “Phase 1 AUM” shall mean any of the sixteen (16) AUMs listed on Appendix A to the Phase 1 Settlement Agreement.

(b). **Phase 2 AUM.** “Phase 2 AUM” shall mean any of the thirty (30) AUMs listed on the following Addenda to the Phase 2 Settlement Agreement: Addendum 1, dated September 12, 2017, with the list of AUMs therein revised as provided in Addendum 3; Addendum 2, dated February 14, 2020; and Addendum 3, signed in February 2022.

5. Also, as explained in Paragraph 1 of the Letter Agreement dated December 20, 2019 Clarifying Certain Terms in the Phase 2 Settlement Agreement, “a risk assessment is part of the CERCLA process and must be performed at some point during the period that begins with initiation of an RSE and ends with completion of an Engineering Evaluation/Cost Analysis.” Paragraph 4 of that Letter Agreement provides that the RSEs performed for the Phase 2 AUMs will include risk assessments. The RSEs performed for the Phase 1 AUMs did not include risk assessments. Therefore, in further clarification, the Parties agree that the EE/CAs performed for the Phase 1 AUMs pursuant to Sections 2.1 and 5.1 of the Settlement Agreement shall include risk assessments.

6. Finally, neither USEPA nor NNEPA wishes to be subject to a hard deadline for their joint decision on whether to approve or require revisions to the Trustee’s list of alternatives in the EE/CA. The Parties also noticed that the Settlement Agreement does not specify how a dispute between the Agencies as to the list of alternatives would be resolved. The Parties therefore agree that Section 5.4(b) of the Settlement Agreement shall be amended by adding the underlined language and deleting the language that is stricken out, as follows:

5.4 Timing

(b). The Parties agree to incorporate into the Phase 2 Priority Orphan Trust Agreement provisions that require the Phase 2 Priority Orphan Trustee to propose alternatives to be considered in the EE/CA(s) within thirty (30) days of USEPA’s notice to commence work on the EE/CA(s). Further, pursuant to the oversight structure set forth in Section 4.4(a), as soon as possible after receipt of the EE/CA work plan from the Trustee, USEPA and NNEPA shall endeavor to reach a joint decision whether to approve or propose revisions to the Phase 2 Priority Orphan Trustee’s proposed alternatives. If a dispute arises between the Agencies on this issue, they will attempt to resolve it within thirty (30) days of receipt of the EE/CA work plan by following the “talking things out” approach to dispute resolution described in Section 10.1 of this Agreement. If the Agencies fail to resolve their dispute through that method, they will attempt to resolve it through formal non-binding alternative dispute resolution pursuant to Section 10.2 of this Agreement.

This Letter Agreement shall be deemed effective on the date that it has been signed by representatives of both Parties. This Letter Agreement may be executed in counterpart originals.

IT IS SO AGREED:

[SIGNATURES ON THE FOLLOWING PAGE]

FOR THE UNITED STATES OF AMERICA:

Todd Kim
Assistant Attorney General
Environment and Natural Resources Division

Date: February 9, 2022

By: *Brian H. Lynk*
Brian H. Lynk
Trial Attorney
Environmental Defense Section
U.S. Department of Justice

FOR THE NAVAJO NATION:

Date: 2/9/2022

Doreen N. McPaul
Doreen Nanibaa McPaul
Attorney General
Navajo Nation Department of Justice

PHASE 2 SETTLEMENT AGREEMENT

BY AND AMONG

THE UNITED STATES OF AMERICA

AND

THE NAVAJO NATION:

ADDENDUM 4

WHEREAS, on April 8, 2015, the Navajo Nation and the United States (collectively, the “Parties”) entered into a settlement agreement (“Phase 1 Settlement Agreement”) that provided for Removal Site Evaluations (“RSEs”) to be conducted at sixteen (16) abandoned uranium mines (“AUMs”) located on Navajo Lands and listed in Appendix A to the Phase 1 Settlement Agreement (“Phase 1 AUMs”);

WHEREAS, the Phase 1 AUMs were Orphan AUMs (that is, AUMs for which viable non-federal potentially responsible parties had not been identified) that the Parties agreed were a high priority for clean-up;

WHEREAS, on July 13, 2016, the Parties executed the Phase 2 Settlement Agreement (“Phase 2 Settlement Agreement” or “Agreement”), which provides, among other things, for: (a) RSEs to be conducted at an additional thirty (30) Orphan AUMs, as they are identified by the United States pursuant to the terms of Article 4 of the Agreement; (b) two (2) Water Studies to be conducted at two (2) Orphan AUMs, as specified in Sections 6.1 and 6.2 of the Agreement; and (c) Engineering Evaluations and Cost Analyses (“EE/CAs”) to be prepared and Removal Actions to be conducted, as appropriate, at the Phase 1 AUMs, pursuant to Article 5 of the Agreement;

WHEREAS, the Agreement provides for the creation of a Phase 2 RSE Trust to conduct the thirty (30) RSEs and two (2) Water Studies and a Phase 2 Priority Orphan Trust to prepare EE/CAs and conduct Removal Actions at the sixteen (16) Orphan AUMs for which RSEs were performed under the Phase 1 Settlement and Trust Agreements, as appropriate;

WHEREAS, the Agreement provides in addition in Subsection 2.1(b)(ii) that the Phase 2 Priority Orphan Trust may be created as an expansion of the Phase 2 RSE Trust;

WHEREAS, in accordance with Subsection 2.1(b)(ii) of the Agreement, the Parties agreed to expand the scope of the Phase 2 RSE Trust to include the Phase 2 Priority Orphan Trust, with this expanded trust to be called the Phase 2 Expanded Trust;

WHEREAS, the Phase 2 Settlement Agreement sets forth several steps to implement the Agreement, including the development and execution of a series of addenda to identify: the additional thirty (30) Orphan AUMS (“Phase 2 AUMs” or “RSE Sites”), pursuant to Section 4.1 of the Agreement; a second Water Study, in addition to the Water Study identified in Section 6.1 of the Agreement, pursuant to Section 6.2 of the Agreement; the Estimated Costs for conducting EE/CAs at the Phase 1 AUMs for which EE/CAs have been determined to be appropriate, pursuant to Section 3.3(a) of the Agreement; and the Estimated Costs for conducting Removal Actions at the Phase 1 AUMs for which Removal Actions have been determined to be appropriate, pursuant to Section 3.3(b) of the Agreement;

WHEREAS, the Parties executed Addendum 1, effective September 12, 2017, which identified the first thirteen (13) RSE Sites to be addressed under the Phase 2 Settlement, the Estimated Costs for the RSEs, and the Estimated Cost for the first Water Study;

WHEREAS, the Parties executed Addendum 2, effective February 14, 2020, which identified an additional seventeen (17) RSE Sites to be addressed under the Phase 2 Settlement, the Estimated Costs for those RSEs, and the location of the second Water Study and its Estimated Cost;

WHEREAS, the Parties executed Addendum 3, effective February 9, 2022, which corrected and updated the list of thirty (30) RSE Sites to be addressed under the Phase 2 Settlement and supplemented the Estimated Costs for the RSEs and Water Studies;

WHEREAS, in accordance with Sections 5.1 and 5.4(a) of the Phase 2 Settlement Agreement, the Parties have agreed on the list of Phase 1 AUMs for which it is appropriate to prepare EE/CAs, as documented in this Addendum 4;

WHEREAS, pursuant to Section 3.3(a) of the Agreement, the Parties have agreed upon the Estimated Costs for the EE/CAs, as documented in this Addendum 4;

WHEREAS, Section 3.3(a) of the Agreement obligates the United States to deposit into the Phase 2 Expanded Trust 100% of the Estimated Costs for the EE/CAs that are the subject of this Addendum 4;

WHEREAS, the Agreement provides in addition in Subsection 3.3(a) that any funds remaining in the Phase 1 RSE Trust upon its dissolution shall be transferred by Navajo Nation EPA to what is now the Phase 2 Expanded Trust, for the performance of any EE/CAs;

WHEREAS, the Agreement provides in Subsection 3.3(a) that the United States will reduce the Estimated Costs by the amount of those funds before making any payments for the EE/CAs;

WHEREAS, the Phase 1 Trust Agreement provides in Section 4.4.6, as amended by Paragraph 4 of the Fourth Letter Agreement Amending the Phase 1 Trust Agreement, dated May 6, 2019, that the Navajo Nation EPA Future Oversight Costs remaining from the Phase 1 RSE Trust shall be transferred by Navajo Nation EPA to what is now the Phase 2 Expanded Trust, for the performance of the EE/CAs;

WHEREAS, the Phase 2 Expanded Trust Agreement provides in addition in Subsection 2.1.5(d) that the United States will reduce the Estimated Costs by the amount of those funds before making any payments for the EE/CAs; and

WHEREAS, in accordance with Section 4.1 of the Statement of Work to the Phase 2 Expanded Trust Agreement, the Trustee may group AUMs together for purposes of performing the Work and one deliverable may cover a group of these AUMs, with the approval of the Navajo Nation EPA and the United States EPA. Deliverables and other requirements specified in the Statement of Work for individual AUMs are satisfied by providing the deliverable and complying with the requirements for an AUM grouping that has been approved by the Navajo Nation EPA and the United States EPA.

THEREFORE, the Parties hereby agree as follows.

1. This Addendum 4 shall be incorporated into the Phase 2 Settlement Agreement, and all defined terms used in this Addendum 4 shall have the same meaning given to them in the Agreement.

2. The Parties agree that it is appropriate to prepare EE/CAs at all the Phase 1 AUMs except Hoskie Tso No. 1 (AUM ID 852). The list of the fifteen (15) Phase 1 AUMs for which EE/CAs will be prepared is the following:

AUM ID	AUM Name	AUM Region, Chapter
78, 79	Claim 28	Central (Blue Gap)
296	Occurrence B	Central (Chinle)
313	Eunice Becenti	Eastern (Church Rock)
1006	Standing Rock	Eastern (Nahodishgish)
1011, 1012, 1035	Section 26 (Desidero Group)	Eastern (Baca/Prewitt)
225	Charles Keith	North Central (Oljato)
239	Harvey Blackwater No. 3	North Central (Kayenta)

260	Mitten No. 3	North Central (Oljato)
2	Alongo Mines	Northern (Red Valley)
55	Tsosie 1	Northern (Sweetwater/Teec Nos Pos)
59	NA-0904	Northern (Sweetwater)
63	NA-0928	Northern (Teec Nos Pos)
220	Barton 3	Northern (Red Mesa)
486	Oak124, Oak125	Northern (Red Valley)
135	Boyd Tisi No. 2	Western (Coalmine Canyon)

3. The Parties agree that the Phase 2 Expanded Trust will prepare EE/CAs that address each of these fifteen (15) Phase 1 AUMs. Some EE/CAs may address individual AUMs, while others may address multiple AUMs. Pursuant to the Statement of Work to the Phase 2 Expanded Trust Agreement, the Navajo Nation EPA and the United States EPA must approve any AUM groupings before a combined EE/CA can be submitted.

4. The Parties agree that the Estimated Costs for conducting EE/CAs at these fifteen (15) Phase 1 AUMs, including associated Future Oversight Costs and Administrative Costs, is \$4,917,847.85 in total.¹

5. The Parties agree that the total cost of \$4,917,847.85 for the EE/CAs will be reduced by \$411,594.09, which represents the funds transferred to the Navajo Nation EPA from the Phase 1 RSE Trust upon its dissolution.

¹ The Estimated Costs figure represents the sum of the Estimated Costs to complete each of the fifteen (15) Phase 1 AUMs, which vary in amount.

6. The Parties agree that as soon as reasonably practicable following execution of this Addendum 4, making best efforts to do so within 90 days, the Navajo Nation EPA will cause to be deposited into the Phase 2 Expanded Trust the sum of \$411,594.09.

7. The Parties agree that the total cost of \$4,917,847.85 for the EE/CAs will be further reduced by \$102,862.78, which represents the leftover Navajo Nation EPA Future Oversight Cost funds from the Phase 1 RSE Trust.

8. The Parties agree that as soon as reasonably practicable following execution of this Addendum 4, making best efforts to do so within 90 days, the Navajo Nation EPA will cause to be deposited into the Phase 2 Expanded Trust the sum of \$102,862.78.

9. The Parties agree that upon receipt by the Phase 2 Expanded Trust of \$4,403,390.98, which represents the total Estimated Costs for the EE/CAs less the amounts to be transferred to the Phase 2 Expanded Trust from the Phase 1 RSE Trust via the Navajo Nation EPA, the United States will have fulfilled its obligations under Section 3.3(a) and (c) of the Agreement in full.

10. As soon as reasonably practicable following execution of this Addendum 4, the United States shall cause to be deposited into the Phase 2 Expanded Trust the sum of \$4,403,390.98.

11. The Parties agree that the Phase 2 Expanded Trust will be required to track the actual costs for preparing each EE/CA separately from the actual costs of preparing each RSE.

12. Nothing in this Addendum 4 constitutes a waiver of any provision of the Agreement.

13. This Addendum 4 may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties approve this Addendum 4 to the Phase 2 Settlement Agreement.

THE NAVAJO NATION:

By: _____
ETHEL B. BRANCH
Attorney General

Dated: _____

THE UNITED STATES OF AMERICA:

Todd Kim
Assistant Attorney General
Environment and Natural Resources Division

By: _____
BRIAN H. LYNK
Trial Attorney
Environmental Defense Section
United States Department of Justice

Dated: _____