

**YOSEMITE SLOUGH SUPERFUND SITE
MEDIATION AGREEMENT**

This Mediation Agreement ("Agreement") is made between and among certain entities and groups of entities that have been identified as potentially responsible parties ("PRPs") at the Yosemite Slough Superfund Site (the "Site") whose authorized representatives have executed this Agreement (hereinafter referred to as "Participant(s)").

WHEREAS, in December 2013, the United States Environmental Protection Agency, Region IX ("EPA") issued a final Engineering Evaluation/Cost Analysis ("EE/CA") that includes a proposed remedy for a cleanup project at the Site.

WHEREAS, on March 17, 2014, EPA issued an Action Memorandum based on the EE/CA that confirms and describes EPA's selected non-time critical removal action for the Site (the "Action Memo").

WHEREAS, certain PRPs have incurred administrative and technical costs and costs of response which they assert are recoverable pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.* in relation to the Site.

WHEREAS, the Participants seek an efficient and mutually beneficial resolution of potential claims associated with the Site through mediation with a third-party neutral mediator jointly selected by the Participants.

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site, the Participants wish to:

- (i) develop and conduct a non-judicial, non-binding, negotiated or alternative dispute resolution-based, fair and reasonable process for equitably allocating potential liabilities associated with the Site;
- (ii) cooperate among themselves in this effort; and
- (iii) negotiate in good faith with the assistance of an allocation and mediation neutral (the "Mediator") an agreement(s) equitably allocating potential liabilities associated with the Site for the purpose of reaching a future settlement(s) with EPA regarding implementation of actions described in the Action Memo.

This allocation and mediation process is termed "the Mediation" in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the Participants and the Mediator agree as follows:

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I. PARTICIPATION

A. Participant Group. The Participants hereby organize and constitute themselves as the Yosemite Slough Mediation Group (hereinafter the "YSMG"). Each entity or group of entities whose authorized representative has executed this Agreement is a Participant in the Mediation and a member of the YSMG. Exhibit A to this Agreement shall constitute a list of official contact persons for each Participant, and notice to the respective contact persons shall be deemed notice to the Participant(s) that he or she represents. Participant representatives in the process, as necessary and appropriate during the course of the mediation, may include the following: appropriate client representatives and/or counsel for each of the non-federal Participants, and for the United States, appropriate representatives of the Department of Justice and its client agency. Exhibit B to this Agreement shall constitute a list of each PRP in a group of entities that are participating as a single Participant (a "Group Participant"). For purposes of this Agreement, the Group Participant associated with the former Bay Area Drum site is referred to herein as the BAD Group.

B. Participation by the United States. The Participants acknowledge that the United States is participating in this Agreement on behalf of the Defense Logistics Agency. By entering into this Agreement, the United States does not compromise, release, or settle any claims or potential claims of EPA, any other federal entity, or any natural resource trustee as against the Participants or any other parties, even on an interim basis. Any action taken by the United States under this Agreement shall not be deemed to extend to, bind, or be endorsed by EPA or any other federal entity, nor shall such action or this Agreement bind or limit EPA or any other federal entity with regard to any right, claim, duty, action, or determination relating to the Site, any potential source areas, or any person or entity (including the Participants) identified as a potentially responsible party with respect to the Site. This Agreement shall not prejudice or limit the United States, the State of California, or the City and County of San Francisco from taking any legally appropriate action, to enforce federal or state law to protect public health, safety, or welfare, or the environment.

C. Withdrawal. Any Participant may withdraw from all participation in this Agreement upon written notice to all other Participants and the Mediator, which shall be effective as of the date the notice is postmarked or dated if by email. In the event that a member of a Group Participant withdraws from participation in this Agreement, the representative of the Group Participant shall provide written notice to all other Participants and the Mediator of the withdrawal, which shall be effective as of the date the notice is postmarked or dated if by email. Any Participant shall after such withdrawal remain subject to the confidentiality provisions of this Agreement. Any Participant that withdraws from participation in this Agreement shall (1) return to the other Participants or the Mediator, as appropriate, all confidential documents (and all copies of such documents) received from the other Participants or the Mediator during the Mediation, and (2) remain obligated to pay its share of Shared Costs pursuant to this Agreement through the date the Notice of Withdrawal is provided to the other Participants.

D. Cooperation in the Mediation. The Participants agree to cooperate in the orderly process of the mediation. In the case of a Group Participant, its representative represents that each PRP in such group has agreed to cooperate in responding to requests for information by

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the Mediator and that the Group Participant will make all good faith efforts to ensure the cooperation of each of its members. No member of any Group Participant shall be entitled to receive documents, writings, oral summaries of discussions, or any other information generated under this Agreement unless it has signed the agreement regarding their responsibilities for cooperation, confidentiality, tolling, and standstill attached hereto as Exhibit C. If any Participant does not respond to the Mediator's request to that Participant in a timely fashion, the Mediator may, at his discretion, after first providing two weeks written notice to the Participant, proceed without input from that Participant. Any Participant so situated may withdraw from the mediation pursuant to Section I.C.

E. Additional Parties. The Participants may, in writing by consensus of the Participants, approve the entry into this Agreement of additional PRPs as Participants after the Effective Date of this Agreement.

II. SELECTION OF THE MEDIATOR, MEDIATION PROCESS, AND PAYMENT OF COSTS

A. Allocated Costs. The Mediator shall allocate only the following costs related to the Site (collectively, "Site Costs"): (a) a Participant's documented past costs that were incurred in a manner consistent with the National Contingency Plan, 40 C.F.R. Part 300, and are recoverable as a necessary cost of response under 42 U.S.C. § 9607 and/or § 9613; (b) a Participant's documented costs related to performance of pre-design investigation(s) and/or engineering design required by the EE/CA pursuant to an administrative order by EPA; (c) EPA past costs, and; (d) future response costs to implement the Action Memo. The Mediator shall not allocate costs arising from upland source control work that is the responsibility of individual PRPs, and shall not allocate natural resource damage liabilities or assessment costs.

B. Mediator. The Participants have selected Matthew Low as the Mediator.

1. Authority. The Participants, their counsel, and the Mediator understand that the Mediator has no authority to decide the claims or any issues in any related potential litigation or administrative action and that the Mediator is not acting as an advocate or attorney for any Participant.

2. Time. The Mediator shall ensure that each Participant shall have a reasonable amount of time during the mediation process to present its position with respect to the issues in mediation and to provide a response to other Participants' positions.

3. Conduct. The purpose of the Mediation shall be to assist the Participants in reaching their own agreement(s), and the Mediator shall conduct the Mediation in a fair and neutral manner to facilitate the resolution of this matter between and amongst the Participants. The Mediator shall work for the benefit of the Participants and shall be guided by the provisions of this Agreement.

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C. **Mediation Process.** The process for conducting the Mediation is set forth herein.

1. **Establishment of a Document Repository.** The Mediator shall establish a data sharing site that will serve as a document repository for shared information (the "Document Repository"). The documents stored in the Document Repository (hereinafter "Repository Documents") shall include: (a) available CERCLA 104(e) responses related to the Site or any potential source areas; (b) EPA source investigation/PRP search materials; (c) technical information, including but not limited to materials relating to EPA's EE/CA and materials relating to the Yosemite Slough wetlands restoration project adjacent to the Site; (d) the Participants' non-confidential submissions to the Mediator; (e) all non-confidential communications from and reports by the Mediator; (f) information associated with the nomination of entities or sources of COCs as Additional Allocation Entities; and (g) any other documents deemed by the Mediator to be necessary for conduct of the mediation process. Documents submitted to the Document Repository shall be in PDF format, unless an alternative format is authorized by the Mediator. Each Participant shall make good faith efforts to provide the Mediator with all Repository Documents in its possession, unless a review of the documents in the Document Repository indicates that submission of a document would be duplicative. Placement of documents in the Document Repository shall not constitute a waiver of any privileges or protections that any Participant may have with respect to such documents or the subject matter thereof.

2. **Identification of PRPs and Potential Sources.**

- a. In conducting the non-binding allocation, the Mediator shall consider the following entities and sources (hereinafter "Allocation Entities"):
 - i. Participants;
 - ii. Entities that have received General Notice Letters from EPA identifying them as PRPs at the Site ("GNL Recipients") that opt not to participate in the Mediation either as a Participant or a member of a Group Participant, and;
 - iii. Entities identified pursuant to Section II.C.2.c.
- b. The Participants recognize that the categories of Participants and GNL Recipients may not include all those with responsibility for the chemicals of concern ("COCs") at the Site identified in the EE/CA. Specifically, several Participants have identified three potential additional categories:
 - i. "Orphans" (as that term is defined in EPA's "Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals" issued June 3, 1996 and EPA's

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- September 30, 1997, policy statement entitled "Addendum to the 'Interim CERCLA Settlement Policy' Issued on December 5, 1984") at the Site;
- ii. Viable non-participating entities that meet the definition of a PRP at the Site under CERCLA but are not GNL Recipients, and;
 - iii. Other sources of the COCs at the Site that are not linked to any specific entity that may have contributed to the COCs at the Site.

The Participants recognize that contributions to the COCs at the Site by potential additional categories may be considered both in developing an allocation recommendation and in developing a settlement proposal for submission to EPA. The Participants also recognize that EPA may, in its sole discretion, consider a proposal that would reduce the aggregate amount of payments that would be required of Participants under a future settlement.

- c. In light of Section II.C.2.b, the Mediator, in his sole discretion, with the advice of the Participants, may identify additional entities (hereinafter "Additional Allocation Entities") which he believes should be considered in his conduct of the non-binding allocation. Considerations to be taken into account by the Mediator in identifying such Additional Allocation Entities may include, but is not limited to: the potential size of an entity's allocation share; the feasibility of developing a credible allocation for such entity, and; the likelihood that EPA will give any weight to an allocation for such entity. Participants shall have an opportunity to nominate entities or sources of COCs for consideration by the Mediator in identifying Additional Allocation Entities, and at the time of the nomination to provide the Mediator with documents and relevant information associated with those entities or sources. Such information shall be placed in the Document Repository where it will be available to all Participants.

3. Mediation Process Framework. The Mediator shall conduct activities under this Agreement within the parameters of the following process framework.

(a) The Allocation Phase.

- i. Participants shall have an opportunity to submit position papers to the Mediator, including (A) legal, technical and equitable arguments they wish the Mediator to consider in making his allocation recommendations, (B) proposed

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factors for the Mediator to consider in conducting the non-binding allocation, and (C) information on operations at or with respect to with any Allocation Entity or alleged source of contamination. Copies of all such position papers shall be placed in the Repository and made available to all Participants to review.

- ii. The Mediator may, in his sole discretion, submit additional inquiries to any Participant or any entity that is listed in Exhibit B.
- iii. The Mediator may, in his sole discretion, recommend a cash-out threshold for any Allocation Entity.
- iv. At the end of the Allocation Phase, the Mediator shall issue a Preliminary Allocation Recommendation ("PAR"), which shall be based upon his analysis of the information provided by the Participants and his application of legal, technical and equitable allocation factors to that information. The PAR shall include a single recommended allocation percentage for each Allocation Entity and include an explanation of the methodology, technical findings or assumptions, legal precedents, equitable adjustments, and facts relied on by the Mediator to calculate or otherwise generate the recommended allocation percentages. The PAR shall include an explanation of the weight given to various allocation factors and discuss how they were applied in the Mediator's analysis. The PAR shall disclose to the Participants such information as determined by the Mediator to be in the best interests of achieving an agreement among Participants.
- v. The PAR also shall include two additional non-binding allocations of Site Costs that shall be alternatives to the recommended allocation of Site Costs to all of the Allocation Entities pursuant to Section II.C.3.a.iv. In the first alternative allocation, the shares in the recommended allocation allocated to Allocation Entities that are not Participants shall be distributed to the Participants so that there is an alternate aggregate allocation percentage for the Participants that adds up to 100%. In the second alternative allocation, the shares in the recommended allocation allocated to Additional Allocation Entities shall be distributed to all GNL Recipients so that there is

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- an alternate aggregate allocation percentage for the GNL recipients that adds up to 100%.
- vi. The Participants shall have an opportunity to comment on the PAR.

(b) The Mediation Phase.

- i. During the Mediation Phase the Mediator will convene and facilitate negotiations of the Participants to obtain a consensus on an equitable allocation of Site Costs, taking into account, as appropriate, any legal relationships among the Participants required for future negotiations with EPA. The starting point for the negotiations will be the PAR and any comments on the PAR submitted by Participants. At the inception of the Mediation Phase, the Mediator may provide Participants with suggested changes to the PAR.
- ii. During the Mediation Phase, any Participant can request that the mediator provide additional explanation on the basis of the recommendations in the PAR. In the case of an allocation percentage recommended in the PAR for a Group Participant associated with a single source, if any other Participant that also is associated with such single source is not satisfied with the Mediator's explanation in the PAR of how the recommended share of such Group Participant was calculated or otherwise generated, the Participant may request that the Mediator provide additional details on the manner by which the Group Participant share was calculated, including further detail on any allocation percentages that may have been generated for any of the individual PRPs comprising the Group Participant. The Mediator shall disclose such requested information or allocation percentages to the requesting Participant in a confidential communication and only as necessary for that Participant to gain a full and fair understanding of the basis for the Mediator's recommendations with respect to that Participant and the Group Participant.
- iii. If so requested by a Group Participant, during the Mediation Phase the Mediator shall perform an intra-Participant allocation of the share allocated to the Participant in the PAR between and amongst the entities PRPs that collectively constitute that Group Participant.

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The Mediator shall provide an opportunity for the entities PRPs that collectively constitute that Group Participant to provide comments on how the intra-Participant allocation should be conducted; after considering those comments, the Mediator shall determine the method of any such intra-Participant allocation. Unless agreed otherwise by the entities PRPs that collectively constitute that Group Participant, all of the information shared during the performance of such an intra-Participant allocation as well as the Mediator's resulting intra-Participant allocation recommendations shall be shared only with the entities PRPs that collectively constitute that Group Participant.

- iv. During the Mediation Phase, any Participant may request that the Mediator, or may on its own, reach out to any non-participating GNL Recipient and/or any viable Additional Allocation Entity for the purpose of having them join the negotiations, provided that all Participants comply with Section III of this Agreement regarding Confidentiality.

4. Schedule. Within 30 days of the Effective Date of this Agreement, the Mediator shall set a date and convene a meeting of Participants to discuss the allocation process and schedule, preliminary views on legal, technical and equitable allocation factors that may be relevant to the Yosemite Slough allocation, information likely to be available to support consideration and application of such allocation factors, procedural issues that may arise over the course of the allocation process, and the Mediator's preliminary suggestions on what should be addressed in the Participants position papers. Within 15 days of such meeting, the Mediator shall issue his preliminary recommendation on allocation factors to be considered in conducting the Allocation Phase, guidance to the Participants on content of the position papers, and the schedule for the Allocation Phase and Mediation Phase. It is anticipated that the schedule may include dates(s) or timing provisions for:

- (a) the Participants' submissions of information to the Document Repository;
- (b) the Participants' advice and recommendations for Additional Allocation Entities;
- (c) the Mediator's identification of Additional Allocation Entities;
- (d) the Participants' submission of position papers;
- (e) Participants' comments on position papers;
- (f) the Mediator's requests to Participants for additional information or clarification;
- (g) the Participants' responses to the Mediator's request for additional information or clarification;
- (h) the circulation by the Mediator of the PAR;
- (i) submission by Participants of comments on the PAR, and;
- (j) the Mediation Phase.

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5. **Meetings.** During the Mediation Phase, the Mediator may hold private sessions with one or more Participants and/or face-to-face joint sessions with all or any number of Participants to obtain information from Participants and/or assist the Participants in trying to find a mutually acceptable solution. The Mediator may hold sessions and discussions with the Participants on the phone, in person, or via email. Any Participant may request that the Mediator excuse the other Participants from a session to discuss or share confidential information with the Mediator. The Mediator may request that representatives of Participants for any meeting be other than counsel (such as an official representative of a Participant or its insurance carrier).

6. **Ex Parte Communications.** During the Allocation Phase, except for communications and meetings either (a) initiated by the Mediator pursuant to Section II.C.3.a.ii, (b) in response to a request by a Participant or member of a Group Participant, which shall be noted in the Document Repository, to share or discuss confidential information with the Mediator, or (c) relating to logistical issues, in which case all Participants shall be copied, no Participant shall directly or indirectly communicate with the Mediator *ex parte* concerning any matters that are the subject of this Agreement. During the Mediation Phase, any Participant may communicate with the Mediator *ex parte* concerning any matters that are the subject of this Agreement or otherwise.

D. Payment of Costs

1. **Shared Costs.** Without creating any precedent for determining appropriate shares of Site Costs pursuant to any future agreement among the Participants, the Participants shall divide the cost of the Mediation process ("Shared Costs") as follows: The Participant known as the BAD Group shall pay 66.67% of the Shared Costs and the other Participants shall each pay an equal per capita share of the remaining 33.33% of Shared Costs, provided there are 12 or fewer other Participants. For each additional Participant beyond 12 other Participants, the additional Participant share shall be distributed pro rata (based on the above percentages) between the BAD Group and the aggregate of all other Participants so as to effect a reduction in the per capita share of all Participants. In the event that, pursuant to Section II.C.3.b.iii, the Mediator performs an intra-Participant allocation of the share allocated to a Group Participant in the PAR between and amongst the PRPs that collectively constitute that Group Participant, the costs of any such intra-Participant mediation activities shall be borne solely by that Group Participant and not any of the other Participants. The Participants may, in writing by consensus of the Participants, make arrangements for a Participant to pay less than a full per capita share of Shared Costs. The Participants and the Mediator shall make best efforts to keep the cost of the Mediation process fair and reasonable. In the event that the Allocator believes that the Shared Costs will increase to exceed \$150,000, the Allocator shall propose a budget for additional Mediation services and the Participants shall decide in accordance with Section V.I how to fund such additional Mediation services. To that end, Mediation sessions shall be held in locations as may be appropriate to achieve that goal and accommodate the Participants. In the event that the Mediator believes that the Shared Costs will increase to exceed \$150,000 the Mediator shall propose a budget for additional Mediation services and the Participants shall decide in accordance with Section V.I how to fund such additional Mediation services. Shared Costs shall include the following:

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a. The Mediator shall be compensated at \$289 per hour for allocation, mediation, and preparatory time. These fees shall not include the time required to travel to or from individual or joint meetings unless actual mediation and facilitation services are being performed during such travel.

b. Costs incurred by the Mediator associated with establishing and maintaining the Document Repository, copying costs, and other administrative costs.

c. Costs associated with technical consultants deemed necessary by the Mediator for completion of the mediation/allocation process, but only with prior consensus approval of the YSMG in writing.

d. Required and necessary travel expenses of the Mediator for lodging and subsistence if supported by actual receipts. Upon request, the United States will furnish the Mediator with the current government per diem and subsistence reimbursement and mileage rates. If necessary, the United States agrees to make best efforts, as are appropriate and legal, to assist the Mediator to obtain government rates for travel expenses. Government rates shall apply unless after best efforts by the Mediator and the United States such rates are unavailable. If government rates are not available the Mediator shall attempt to obtain transportation and lodging at the lowest reasonably available cost.

2. Invoices. The Mediator shall provide to each Participant a monthly invoice of Shared Costs, including a detailed description of all fees and expenses of the Mediator and the amount owed by each Participant. Each Participant shall take action to ensure the expeditious payment of such invoices. The non-governmental entities intend to establish a fund to be administered by the Mediator and to deposit anticipated contributions in advance into the fund and authorize the Mediator to withdraw from the fund the non-governmental entities' share of a monthly invoice thirty days following the receipt of that invoice by the Participants, unless any Participant objects and notifies the Mediator of its objection.

3. Participant Costs. Each Participant shall be independently responsible for its own fees and costs associated with the mediation process, including its respective share of Shared Costs, its own attorneys' fees and costs, or any expert fees and costs that a Participant deems necessary for its participation in the mediation.

4. Obligations of the United States. Any requirement for the payment or obligation of funds by the United States shall be subject to the availability of appropriated funds legally available for such purpose, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, and 1511-1519. The United States' participation in this Agreement and its obligation for payment of the fees and expenses of the Mediator pursuant to Section II.C.2 shall not be effective until the execution of the funding agreement (Form OBD 47 - Request, Authorization and Contract for Services of Expert Witness, Litigative Consultant, or ADR Neutral) by the United States.

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5. **Obligations of the State of California.** Any requirement for the payment or obligation of funds by the State of California government participants shall be subject to the availability of appropriated funds legally available for such purpose, and no provision of this Agreement shall be interpreted to require obligation or payment of funds unless provided for in the California Budget Act of the current year and/or any subsequent years covered under this Agreement. (See California Gov't. Code Section 13335 et. seq.) If the Budget Act in effect at the time does not appropriate sufficient funds, this Agreement shall be of no further force and effect against the State of California government participants. In this event, the State shall have no liability to pay any funds or to furnish any other considerations under this Agreement.

6. **Obligations of the City and County of San Francisco.** This Agreement is subject to the budget and fiscal provisions of the City and County of San Francisco's ("City") Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. This section controls against any and all other provisions of this agreement.

7. **Removal of Participant by Mediator** – The Mediator shall have authority to remove any Participant from this Agreement that fails to meet its financial obligations to the Mediator pursuant to Section II.C.2 on any three (3) occasions. Any such removal shall be effective as of the date of postmark of a mailed notice to the removed Participant and all other Participants by the Mediator, or the date of a similar e-mailed notice by the Mediator, whichever is earlier. Upon the removal of a Participant, the remaining Participants shall be responsible to the Mediator for any unmet financial obligations to the Mediator of the removed Participant - each remaining Participant responsible for an equal share of such unmet obligations. Any Participant so removed shall remain subject to the confidentiality provisions of this Agreement. Any Participant removed from participation in this Agreement shall (1) return to the other Participants or the Mediator all confidential documents (and all copies of such documents) received from the other Participant(s) or the Mediator during the Mediation, (2) remain obligated to pay its share of Shared Costs pursuant to this Agreement through the date the notice of removal is provided to the removed Participant, and (3) have no right to any credit or refund of any amount paid pursuant to this Agreement.

III. CONFIDENTIALITY

A. **Confidentiality of Mediation.** To promote frank and productive discussion, the Participants and the Mediator agree that the Mediation shall be confidential. ("A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication" (5 U.S.C. § 574, subd. (b).))

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B. Authority. The Mediation, including all dispute resolution communications, is confidential pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571 *et seq.*, Cal. Evid. Code § 1115 *et seq.*, and all other applicable federal and state authorities. The Mediation process shall be treated as compromise negotiations under Rule 408 of the Federal Rules of Evidence, Cal. Evid. Code §1115 *et seq.*, and applicable state law.

C. Communications. All oral and written communications with or between the Participants, or by or to the Mediator, prepared or disclosed for purposes of the Mediation, including documents or information related to the Mediation, shall be confidential, and shall not be disclosed to third persons by the Mediator or any Participant, its elected and appointed officials, representatives, employees, agents, or other persons associated with the Participants, except as provided elsewhere in this Agreement or with the consent of all Participants, or as required by law to be made public. ("All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential." (Cal. Evid. Code § 1119, subd. (c).))

D. Mediator.

1. The Mediator shall not disclose to any Participant information conveyed to him in confidence by another Participant, unless authorized to do so by that Participant or as required by law. ("[The Mediator] in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral" (5 U.S.C. § 574, subd. (a).))

2. The Mediator shall, prior to or simultaneous with the final billing sent to the Participants, (1) destroy all notes taken and written records regarding the mediation, and (2) cause the Document Repository to cease operations and destroy all documents in the Document Repository, and also shall provide a certification that such actions have occurred, which shall be a condition precedent to final payment of the Mediator by the Participants. Notwithstanding the above, if a Participant requests the return of written records that it had provided to the Mediator, the Mediator shall return the original and all copies of the requested materials to that Participant. Mediation sessions shall not be recorded verbatim and no formal minutes or transcripts shall be maintained.

3. The Mediator shall not be deemed a "necessary or indispensable" party, as defined in Rule 19 of the Federal Rules of Civil Procedure and any analogous state law, in any pending or future judicial, administrative or arbitral action related to matters discussed in the Mediation. No Participant shall subpoena or otherwise seek from the Mediator any information provided to him by another Participant that relates to the Mediation. In no event shall the Mediator voluntarily testify on behalf of a Participant, or participate as a consultant or expert, in any pending or future judicial, administrative, or arbitral action related to matters discussed in the Mediation.

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E. Statements and Documents. Participation in the Mediation, including attendance at meetings, statements made and documents prepared or furnished by any Participant for the purposes of the Mediation shall not be construed as an admission of liability or against interest. Where a Participant references, discusses, or produces documents or information during settlement negotiations, doing so will not render otherwise discoverable documents or information confidential, privileged, non-discoverable, or inadmissible.

F. Binding Effect. The Participants, including any withdrawn or removed Participant, and the Mediator shall remain bound by these confidentiality provisions following termination of or withdrawal or removal from this Agreement. Any unauthorized or inadvertent disclosure of confidential communications shall not result in a waiver of the confidentiality of such communications.

G. Mediation Agreement. The Participants agree that this Agreement is not confidential.

IV. TOLLING, STANDSTILL, RESERVATIONS OF RIGHTS

A. Subject to Section I.B., the Participants agree that the running of any statute of limitations with respect to claims between Participants and/or with respect to any claimed costs or expenses arising from the Site shall be tolled as of the Effective Date of this Agreement until the termination of this Agreement pursuant to the termination provisions herein or, with respect to any claims by or against a Participant that withdraws or is removed from the Agreement pursuant to Sections I.C, I.D or II.C.8 of this Agreement, thirty (30) consecutive calendar days following the date of withdrawal or removal of that Participant (the "Tolling Period"). The Participants agree that the Tolling Period shall not be included in calculating the application of any statute of limitations or in the consideration of any defense or avoidance based on laches, estoppel, or any other principle concerning the timeliness of commencing a civil action applicable to a claim for cost recovery of or contribution to recoverable response costs associated with the Site. Any tolling agreement by the United States is on behalf of the Defense Logistics Agency only and shall be limited to one year from the Effective Date, unless extended by the United States in writing.

B. The Participants agree that until expiration or termination of this Agreement no Participant shall pursue against any other Participant any claims or causes of action under any statute or common law, or any request for documents or other information under any statute or common law, relating to the matters this Agreement is designed to resolve. Notwithstanding the foregoing, except for claims initiated by EPA or a natural resources trustee, this standstill provision shall not be applicable to any claims or causes of action by or against any Participant that has withdrawn or been removed from this Agreement or to any third-party claims, cross-claims or any other claim by a Participant against another Participant if a civil suit seeking a determination of liability or responsibility for environmental conditions at or arising from the Site is initiated against one or more Participants by a person or entity not a Party to this Agreement. This standstill provision shall automatically terminate thirty (30) consecutive calendar days after the issuance by EPA of a CERCLA Section 106 order, or a letter or demand that compels initiation of remedial action at the Site.

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C. Nothing contained in this Agreement shall waive, release or otherwise affect in any way any right, claim, defense, interest, or cause of action that any Participant may have with respect to any other person, entity or agency that is not a Participant.

D. Except as set forth in this Section IV, nothing contained in this Agreement shall be construed to limit the authority of the United States, the State of California, and the City and County of San Francisco, to undertake any action pursuant to applicable law or regulation. This Agreement in no way affects or relieves any Participant of its responsibility to comply with any federal, state, or local law or regulation. Nothing in this Agreement alters the rights and/or liabilities of the Participants with respect to any potential future litigation or administrative action.

V. MISCELLANEOUS PROVISIONS

A. **Denial of Liability.** This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense nor an estoppel against any Participant by Participants as among themselves or by any other person not a Participant. However, nothing in this Section is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of this Agreement against any party to this Agreement.

B. **Insurance.** The Participants do not intend hereby to make any Agreement that will prejudice any Participant with respect to its insurers and, by entering into this Agreement, anticipate that the actions taken pursuant to this Agreement will benefit such insurers.

C. **Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of the Participants. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Participant without the prior written consent of each Participant.

D. **Relationship of Participants.** Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Participants. No Participant or its representative shall act or be deemed to act as legal counsel or a representative of any other Participant, unless expressly retained by such Participant for such purpose. The Participants do not intend to waive, and nothing herein shall be deemed to constitute a waiver of, any joint defense privilege that may exist between the Participants.

E. **Representation.** The Participants recognize and agree that counsel for the various Participants will participate in activities of the YSMG as representatives of their clients only. These activities of said counsel do not constitute any legal representation for, or establish any separate fiduciary relationship with, any Participant, other than their respective clients.

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F. Waiver of Conflict of Interest. Services rendered to the YSMG by counsel of a Participant, whether compensated or not, shall not be grounds for disqualifying the counsel in any matter relating to the Site or in any subsequent litigation, claim, or action between parties who were or are Participants.

G. Government Counsel.

1. United States. It is explicitly recognized that the trial attorneys for the United States Department of Justice do not have the authority to compromise the claims of the United States, and are authorized solely to negotiate the terms, and recommend approval, of proposed compromises on behalf of the United States. Therefore the attorneys for the United States do not have the ultimate authority to agree to the terms of any proposed agreement or settlement. That authority is vested with the Assistant Attorney General of the Environment and Natural Resources Division and/or, as appropriate, the Deputy or Associate Attorney General of the United States and, for certain appellate matters, the Solicitor General of the United States. However, if the allocation results in an agreement between the Participants on the equitable allocation of site costs, the attorneys for the United States will promptly make appropriate recommendations within the government concerning settlement.

2. State of California. It is explicitly recognized that the attorneys for the State of California government Participants do not have the authority to compromise the claims of, and are authorized solely to negotiate the terms, and recommend approval, of proposed compromises on behalf of their respective government entities. Therefore, the attorneys for the State of California do not have the ultimate authority to agree to the terms of any proposed agreement or settlement. That authority is vested with the appropriate management, or appointed bodies, of their respective government entities. However, if the allocation results in an agreement between the Participants on the equitable allocation of site costs, the attorneys for the State of California Government Participants will promptly make appropriate recommendations within their respective government entities concerning settlement.

3. City and County of San Francisco. It is explicitly recognized that the attorneys for the City do not have the authority to compromise the claims of, and are authorized solely to negotiate the terms, and recommend approval, of proposed compromises on behalf of the City. Therefore, the attorneys for the City do not have the ultimate authority to agree to the terms of any proposed agreement or settlement. That authority is vested with the City's Board of Supervisors and Mayor. However, if the allocation results in an agreement between the Participants on the equitable allocation of site costs, the City's attorneys will promptly make appropriate recommendations to the necessary city entities concerning settlement.

H. Effective Date. Each Participant that executes the Agreement shall provide a copy of its executed agreement to the Mediator. The date on which the Mediator signs the Agreement shall be the Effective Date of the Agreement. In signing the Agreement and establishing the Effective Date of the Agreement, the Mediator will take notice of government parties whose authorized representatives have indicated that they have recommended that such parties sign the Agreement, but whose signatures have been delayed by the requirement to obtain

Yosemite Slough Superfund Site Mediation Agreement

approvals from administrative, legislative or regulatory committees or counsels which meet only sporadically. In such a case, the Mediator will, subject to such government participant's agreement to adhere to the requirements of Section III, invite such government parties to participate as Participants in the Allocation Phase.

I. Amendments. This Agreement may be amended only in writing by consensus of the Participants. Such amendment shall become effective upon written confirmation by all Participants.

J. Survival of Provisions. The following provisions shall survive termination of this Agreement: Section II.C's provisions regarding the Participants' responsibility to pay any outstanding invoices provided by the Mediator in accordance with Section II.C of this Agreement, and the confidentiality provisions set forth in Section III of this Agreement.

K. Nonwaiver. Except as provided in Section IV [Tolling, Standstill, Reservation of Rights], nothing in this Agreement shall be construed to waive any rights, claims or privileges which any Participant shall have against any other Participant or any other person or entity.

L. Entire Agreement. This Agreement constitutes the entire understanding of the Participants with respect to its subject matter. Each Participant is, and intends to be, contractually bound by this Agreement.

M. Termination. This Agreement shall terminate one (1) year following the Effective Date of this Agreement, or at such earlier time upon the final execution of any settlement reached by and amongst the Participants, or at such other time by consensus of the Participants, in writing.

N. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

Each of the undersigned representatives of each Participant to the Mediation represents that the representative is authorized to execute and bind that Participant to this Mediation Agreement. By signature below, each representative acknowledges that the representative has read, understands, and agrees to this Mediation Agreement.

Yosemite Slough Superfund Site Mediation Agreement

We agree to abide by the terms and conditions of this Mediation Agreement and indicate our assent by signing this document below.

Date: _____ Party: _____

By: _____
[Signature]

Name/Title: _____

Yosemite Slough Superfund Site Mediation Agreement

I have received executed signature pages of this Agreement from what I believe to be an adequate number of PRPs to undertake effective future settlement negotiations with EPA, and I agree to abide by the terms and conditions of this Mediation Agreement and indicate my assent by signing this document below.

MEDIATOR:

Date: _____

_____ Matthew Low

Yosemite Slough Superfund Site Mediation Agreement

EXHIBIT A

**Official Participant Contacts
(as of November 11, 2014)**

The following individuals shall serve as official contact persons for the Participant identified as being represented by the contact. Notice to the respective contact persons shall be deemed notice to the Participant(s) that he or she represents.

Participant: Akzo Nobel Paints, LLC

Participant's Official Contact:

William D. Wick, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612
(510) 465-5750/Fax: (510) 465-5697
Email: bwick@ww-envlaw.com
Cell: (510) 292-5319

Participant: Bay Area Drum Group

Participant's Official Contact:

Nicholas W. van Aelstyn, Esq.
Beveridge & Diamond, P.C.
456 Montgomery St. Suite 1800
San Francisco, CA 94104
T (415) 262-4008
F (415) 262-4040
NvanAelstyn@bdlaw.com

Participant: California Department of Parks

Participant's Official Contact:

Kathryn Tobias, Esq.
Senior Staff Counsel
California State Parks
1416 9th Street, P.O. Box 942896
Sacramento, CA 94296-0001
916-651-8772 Office
916-997-4335 Blackberry
ktobias@parks.ca.gov

Participant: California State Lands Commission

Participant's Official Contact:

David Alderson, Esq.
Deputy Attorney General
Land Law Section
California Department of Justice
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

Shari Posner, Esq.
Deputy Attorney General
Land Law Section
California Department of Justice
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

Yosemite Slough Superfund Site Mediation Agreement

EXHIBIT A

**Official Participant Contacts
(as of November 11, 2014)**

(510) 622-2243

David.Alderson@doj.ca.gov

Participant: Coca-Cola Refreshments USA, Inc.

Participant's Official Contact:

Buzz Hines, Esq.

Farella Braun + Martel LLP

Russ Building

235 Montgomery Street

San Francisco, CA 94104

(415) 954-4935

rhines@fbm.com

(510) 622-2203

Shari.Posner@doj.ca.gov

Participant: Exxon Mobil Corporation

Participant's Official Contact:

Ramon L. Echevarria II, Esq.

Counsel, Environmental & Safety Law

Exxon Mobil Corporation

800 Bell Street / Suite 18411

Houston, TX 77002

(713) 656-4486

ramon.l.echevarria@exxonmobil.com

Participant: Alfonso and Martha Picazo

Participant's Official Contact:

Victor M. Marquez, Esq.

The Marquez Law Group

20 California Street, 7th Floor

San Francisco, 94111

(415) 848-8971 office

(415) 314-7831 cell

victormarquezesq@aol.com

Participant: Redding Petroleum

Participant's Official Contact:

Dan Costa, Esq.

THE COSTA LAW FIRM

2489 Sunrise Blvd., Ste. A

Gold River, CA 95670

(916) 400-2734

dpc@costalaw.net

Yosemite Slough Superfund Site Mediation Agreement
EXHIBIT A

Official Participant Contacts
(as of November 11, 2014)

Participant: RWD Associates

Participant's Official Contact:

Rebecca Couch Barnhardt, Esq.
Jeffer Mangels Butler & Mitchell LLP
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Los Angeles, California 90067
(310) 201-3566
RCB@JMBM.com

Jon Welner, Esq.
Jeffer Mangels Butler & Mitchell LLP
Two Embarcadero Center, 5th Floor
San Francisco, California 94111
(415) 984-9656
JWelner@JMBM.com

Participant: City and County of San Francisco

Participant's Official Contact:

Elaine M. O'Neil, Esq.
Deputy City Attorney
City and County of San Francisco
1390 Market Street, 7th Floor
San Francisco, CA 94102
Tel: 415-554-3881
Fax: 415-554-3985
elaine.oneil@sfgov.org

Participant: The Sherwin-Williams Company

Participant's Official Contact:

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Associate General Counsel
The Sherwin-Williams Company
101 Prospect Street
Cleveland, OH 44115
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allen.j.danzig@sherwin.com

Robert W.K. Farrell, Esq.
Lewis Brisbois Bisgaard & Smith LLP
333 Bush Street, Suite 1100
San Francisco CA 94104
(415) 438-6685
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Participant: US Defense Logistics Agency

Participant's Official Contact:

Mark A. Rigau, Esq.
Senior Trial Counsel
U.S. DOJ, Environment and Natural Res. Div.
301 Howard St., Suite 1050
San Francisco, CA 94105
(415) 744-6491
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Jim Thomas, Esq.
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5851 F Avenue
Hill Air Force Base, UT 84056-5713
(801) 775-6597
jim.thomas@dla.mil

EXHIBIT C

Group Participant Cooperation Agreement

This Cooperation Agreement ("Agreement") is made in consideration for the right of the undersigned, certain entities that have been identified as potentially responsible parties ("PRPs") at the Yosemite Slough Superfund Site (the "Site") that are members of a Group Participant, to receive documents, writings, oral summaries of discussions, or other information generated during the process of reaching a fair and equitable allocation of potential liabilities associated with the Site (the "Mediation") conducted pursuant to the Yosemite Slough Superfund Site Mediation Agreement, effective October __, 2014 ("Mediation Agreement").

THE UNDERSIGNED HEREBY AGREES AS FOLLOWS:

1. Confidentiality of Mediation: The undersigned agrees that the Mediation is confidential pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571 *et seq.*, Cal. Evid. Code § 1115 *et seq.*, and all other applicable federal and state authorities. The undersigned agrees that the Mediation shall be treated as compromise negotiations under Rule 408 of the Federal Rules of Evidence, Cal. Evid. Code § 1115 *et seq.*, and applicable state law.
2. Confidentiality of Communications: The undersigned agrees that all oral and written communications with or between the Participants in the Mediation, or by or to the Mediator, prepared or disclosed for purposes of the Mediation, including documents or information related to the Mediation, shall be confidential, and shall not be disclosed to third persons by the undersigned, their elected and appointed officials, representatives, employees, agents, or other persons associated with the undersigned, except as otherwise provided in the Mediation Agreement or as required by law to be made public.
3. Agreement: The undersigned agrees that this Agreement is not confidential.
4. Mediator: The undersigned agrees that the Mediator shall not be deemed a "necessary or indispensable" party, as defined in Rule 19 of the Federal Rules of Civil Procedure and any equivalent state law, in any pending or future judicial, administrative or arbitral action related to matters discussed in the Mediation. The undersigned agrees that it shall not subpoena or otherwise seek from the Mediator any information that relates to the Mediation, except as provided for in the Mediation Agreement.
5. Binding Effect: The undersigned agrees that it shall remain bound by these confidentiality provisions following termination of or withdrawal or removal from the Mediation Agreement, and that any unauthorized or inadvertent disclosure of dispute resolution communications shall not result in a waiver of the confidentiality of such communications.
6. Cooperation in Mediation: The undersigned agrees to cooperate in the orderly process of the Mediation, including by responding to any requests for information by the Mediator.
7. Tolling: The undersigned agrees that the running of any statute of limitations with respect to claims between the undersigned and any Participant in the Mediation and/or with respect to any claimed costs or expenses arising from the Site shall be tolled as of the Effective Date of the

EXHIBIT C

Group Participant Cooperation Agreement

Mediation Agreement until the termination of the Mediation Agreement pursuant to the termination provisions therein, or, with respect to any claims by the undersigned against a Participant that withdraws or is removed from the Agreement pursuant to Sections I.C, I.D or II.C.8 of the Mediation Agreement, thirty (30) consecutive calendar days following the date of withdrawal or removal of that Participant (the "Tolling Period"). The undersigned agrees that the Tolling Period shall not be included in calculating the application of any statute of limitations or in the consideration of any defense or avoidance based on laches, estoppel, or any other principle concerning the timeliness of commencing a civil action applicable to a claim for cost recovery of or contribution to recoverable response costs associated with the Site.

8. Standstill: The undersigned agrees that until expiration or termination of the Mediation Agreement it shall not pursue against any Participant in the Mediation any claims or causes of action under any statute or common law, or any request for documents or other information under any statute or common law, relating to the matters the Mediation Agreement is designed to resolve. Notwithstanding the foregoing, except for claims initiated by EPA or a natural resources trustee, this standstill provision shall not be applicable to any claims or causes of action against any Participant that has withdrawn or been removed from the Mediation Agreement or to any third-party claims, cross-claims or any other claim by the undersigned against any Participant if a civil suit seeking a determination of liability or responsibility for environmental conditions at or arising from the Site is initiated against the undersigned by a person or entity not a Party to the Mediation Agreement. This standstill provision shall automatically terminate thirty (30) consecutive calendar days after the issuance by EPA of a CERCLA Section 106 order or formal demand that compels initiation of remedial action at the Site.

9. Reservation of Rights: Nothing contained in this Agreement shall waive, release or otherwise affect in any way any right, claim, defense, interest, or cause of action that the undersigned may have with respect to any other person, entity or agency that is not a Participant under the Mediation Agreement.

The representative of the undersigned signing below represents that he or she is authorized to execute and bind the undersigned to this Agreement, and that he or she has read, understands, and agrees to this Cooperation Agreement.

Date: _____

Party: _____

By: _____
[Signature]

Name/Title: _____