

MEMORANDUM OF AGREEMENT

BETWEEN

THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OF
THE COMMONWEALTH OF MASSACHUSETTS,
ACTING BY AND THROUGH ITS DEPARTMENT OF ENVIRONMENTAL
PROTECTION

AND

THE UNITED STATES,
ACTING BY AND THROUGH
THE FISH AND WILDLIFE SERVICE OF THE UNITED STATES DEPARTMENT
OF THE INTERIOR

REGARDING
NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION
AND OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES
FOR THE
BLACKBURN & UNION PRIVILEGES CERCLA SITE,
also referred to by MassDEP RTN 4-3000603
LOCATED IN WALPOLE, MASSACHUSETTS

I. INTRODUCTION AND PURPOSE

- A. This Memorandum of Agreement (hereinafter, "Agreement" or "MOA") is made by and between the Executive Office of Energy and Environmental Affairs ("EEA") of the Commonwealth of Massachusetts ("the Commonwealth") acting by and through the Massachusetts Department of Environmental Protection ("MassDEP") and the United States, acting by and through the Fish and Wildlife Service of the United States Department of the Interior ("DOI"). The Secretaries of EEA and DOI through their respective representatives, as appropriate, are collectively referred to hereinafter as "Trustees." MassDEP and the Fish and Wildlife Service are referred to hereinafter as "Parties." This Agreement is entered into in recognition of the common interests of the Trustees in the assessment and restoration of the natural resources and associated services that have been injured, destroyed or lost as a result of releases of hazardous substances at the Blackburn & Union Privileges CERCLA (as defined below) Site, also referred to by MassDEP Release Tracking Number ("RTN") 4-3000603, located in Walpole, Massachusetts ("the Site").

- B. The Trustees agree that the scope of their coordination and cooperation regarding natural resource damage assessment and restoration under this Agreement includes, to the extent deemed appropriate by the Trustees, any and all hazardous substances including mixtures containing, in part, hazardous substances, under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended, 42 U.S.C., §9601, et seq., (together with their sources) and, with respect to the Commonwealth only, oil and/or hazardous material (together with their sources) pursuant to section 5 of chapter 21E of Massachusetts General Laws (“OHM”).
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- C. The activities of the Trustees covered under this Agreement include, but are not limited to: 1) assessing and pursuing natural resource damages for injury to, destruction of, or loss of natural resources and associated services associated with the Site; 2) planning, designing, implementing, overseeing and monitoring of actions to restore, replace or acquire the equivalent of those natural resources and services; 3) coordinating with response, remedial or corrective actions carried out by or under the direction of other federal or State agencies related to the Site; and, 4) conducting public outreach and information sharing related to any of the above activities of the Trustees related to the Site.
- D. It is the express desire of the Trustees to achieve appropriate and meaningful restoration of the environment to compensate the public as expeditiously as possible. This Agreement provides a framework for the Trustees to conduct natural resource damage assessment activities, manage any natural resource damage recoveries, and ensure that appropriate and meaningful restoration is accomplished in a timely manner.

II. AUTHORITY

- A. The Trustees enter into this Agreement in accordance with the natural resource damage provisions under Section 107(f) of CERCLA, 42 U.S.C. §9607(f), and other applicable federal and State law and authority (hereinafter “other applicable law”) including, but not limited to, the National Oil and Hazardous Substances Contingency Plan (hereinafter “NCP”), as amended, 40 C.F.R. Part 300, and, to the extent appropriate and elected for use by the Trustees, the Natural Resource Damage Assessment Regulations, as amended, at 43 C.F.R. Part 11. EEA enters into this agreement under the further authority of Section 5(a) of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, chapter 21E of Massachusetts General Laws, M.G.L. c. 21E, as amended (“Chapter 21E”) and section 2A of chapter 21A of Massachusetts General Laws, as amended (“Chapter 21A, §2A”).

- B. This Agreement is intended to cover natural resources as defined under Section 101(16) of CERCLA, as amended, 42 U.S.C. 9601(16), and as used in Chapter 21E and Chapter 21A, §2A; belonging to or managed by, controlled by, or appertaining to the Trustees under CERCLA and the NCP, or with respect to the State, only, in connection with Chapter 21E and Chapter 21A, §2A, at the Site.

III. TRUSTEESHIP

- A. Pursuant to Section 107(f)(2)(A) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(A); Executive Order No. 12580 (January 23, 1987); and Subpart G of the NCP, 40 C.F.R. part 300.600, the Secretary of the United States Department of the Interior has been designated as a Federal natural resource trustee for purposes of CERCLA, and otherwise have statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances at the Site.
- B. The Secretary of the Interior has designated the Regional Director, United States Fish and Wildlife Service, Region 5, to act as the Authorized Official, and has delegated to the Regional Director authority to act as natural resource trustee under CERCLA for natural resource damages and restoration activities related to the Site.
- C. Pursuant to Section 107(f)(2)(B) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(B); Section 300.605 of Subpart G of the NCP, 40 CFR § 300.605; and M.G.L. Chapter 21A, §2A; the Governor of Massachusetts has designated the Secretary of EEA as natural resource Trustee. Within EEA, MassDEP administers the Natural Resource Damages Program and Natural Resource Damages Trust.

IV. ESTABLISHMENT OF TRUSTEE COUNCIL

- A. Purpose: The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently address their respective natural resource concerns and responsibilities under applicable law. Accordingly, the Trustees, as specified in Section III, hereby agree to establish the Blackburn & Union Privileges Site Trustee Council (hereinafter, "Trustee Council").
- B. Composition of the Trustee Council:
 - I. The Trustee Council shall consist of one voting member for each Trustee, as specified in Section III. Each Trustee, as specified in Section III, shall designate, by written notification to all the other Trustees, one primary voting representative to the Trustee Council

and one alternate representative to act in the absence of the primary voting representative.

2. In addition, the United States Department of Justice, the Massachusetts Office of the Attorney General, and in-house counsel for each of the Trustees specified in Section III, may each provide one representative to serve in a legal/consultative role, who shall not be a member of the Trustee Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Council.
3. Effective upon receipt of written notification to all other Trustees, each Trustee may change the designated primary, alternate and/or legal representatives.
4. Other representatives of each voting Trustee Council member may attend meetings and participate in the deliberations of the Trustee Council.
5. Trustee Council Chairperson. A representative of the Lead Administrative Trustee ("LAT"), as designated in Section V below, will serve as the initial Chairperson for Trustee Council meetings. The Trustee Council Chairperson will be selected by a Resolution of the Trustee Council and the person, and their duties, can be changed by Resolution of the Trustee Council. The Trustees may agree to reassign or rotate the position of Chairperson as they deem appropriate. The Chairperson, with the assistance of the LAT, if the Chairperson is not a representative of the LAT, will be responsible for organizing and scheduling meetings, preparing proposed agendas, identifying in the agendas any issues to be voted upon at the proposed meeting, distributing agendas to the designated primary, alternate and legal representatives at least three (3) days in advance of meeting, barring any unforeseen and unavoidable circumstances, and presiding over convened meetings.

- C. Other Trustees. Any other natural resource trustee, who is not a Party to this Agreement, not one of the Trustees specified in Section III, and not, therefore, a voting member of the Trustee Council, and who has an interest with respect to any natural resource impacted or affected by the Site or related assessment and/or restoration activities shall not be precluded from participating in the natural resource damage assessment ("NRDA") activities or any other natural resource activities under this agreement. Other trustees may include, and may not be limited to, tribal governments; other federal agencies; other affected departments of the Commonwealth; or affected trustee agencies from other States. These other trustees may be added as Parties to this Agreement by Resolution of the Trustee Council, as deemed necessary and appropriate under applicable law by the Parties to this Agreement.

- D. **Advisors and Consultants:** As determined to be appropriate by the voting Trustees, or as required by applicable law, the voting Trustees will coordinate with, and seek the advisory participation of, appropriate federal and State agencies and departments, private parties, and the public.
- E. **Communications.** No later than twenty (20) working days after the execution of this MOA by all of the Trustees, as specified in Section III, each Trustees will notify the other Trustees in writing of the names, addresses, e-mail addresses, telephone and facsimile numbers of the Trustee's primary, alternate and legal representatives to the Trustee Council.
- F. **Meetings.** Any Party may, upon reasonable notice through the Trustee Council Chairperson or the LAT, call a meeting of the Trustee Council to be conducted either in person, by telephone call or virtually by e-mail or web based communications, subject to applicable law. Members of the Trustee Council may invite their respective staff members and/or legal representatives to attend. Members of the Trustee Council may also invite representatives of public, private or non-profit entities, representatives of other agencies or members of the public to its meetings unless the Trustee Council determines, in compliance with applicable law, that the subject of the meeting is privileged or that public disclosure of the Trustee Council's deliberations would prejudice the effectiveness of the Trustee Council and the Trustees' execution of their responsibilities under applicable law.
- G. **Duties, Objectives and Authority.** In accordance with applicable law, the Trustees hereby authorize the Trustee Council to carry out the following duties:
1. To undertake appropriate injury characterization, damages assessment, and restoration activities at, arising from or related to the Site, including without limitation:
 - a. Carrying out studies, preparing reports and collecting information as the Trustee Council determines to be necessary and relevant to the NRDA;
 - b. Identifying, evaluating, and selecting a range of restoration alternatives for restoration, replacement, and/or acquisition of the equivalent natural resources;
 - c. Developing a plan/s for the restoration of injured natural resources, and implementing, monitoring, overseeing, and stewarding of restoration activities; and
 - d. If unanimously deemed necessary by the Trustee Council, designating a Restoration Coordinator who is not a member of the Trustee Council but whose work shall be directed exclusively by the Trustee Council. Any costs associated with the Restoration Coordinator must be commensurate with the complexity and size of

both the recovery of damages for injuries to natural resources and the collective restoration projects.

2. To share information with and consult with each other as is determined to be appropriate and consistent with this Agreement.
3. To participate in, and to coordinate activities undertaken pursuant to this Agreement with response, removal, remedial, corrective, or other actions carried out under the authority of EPA, MassDEP, or other federal and State agencies in accordance with applicable law, as appropriate.
4. To support the Trustees' efforts to cooperatively identify, have restoration undertaken by, or recover damages for injuries to natural resources from, potentially responsible parties (PRPs).
5. To request individual Trustees to enter into contracts, intergovernmental agreements or other lawful agreements, on behalf of the Trustee Council, to provide technical or other services necessary to assist the Trustee Council in achieving the objectives set forth in Section IV.G.
6. To coordinate and/or carry out such other action as may be necessary and appropriate to achieve the purposes and objectives of this Agreement and to address the natural resource damage concerns and responsibilities of the Trustees.
7. To develop appropriate mechanisms to encourage and solicit public participation and involvement in a manner consistent with applicable law and regulation, including, as necessary, designating a Trustee to assume lead responsibility for such public affairs as the Council shall deem necessary and appropriate.
8. To facilitate the development of joint Trustee negotiation, settlement and/or litigation positions for recommendation to authorized Trustee officials and other decision makers.
9. To establish cost accounting protocols, standards, or procedures and cost reimbursement guidelines; including a level of detail and a reporting schedule commensurate with the complexity and size of the recovery of damages for injuries to natural resources and of individual projects selected by the Trustee Council; as are needed to further the purpose of this Agreement.
10. To fairly and reasonably allocate the efforts, costs and expenses of carrying out the objectives of this Agreement among the Trustees and make the best use of the resources, knowledge and expertise of the Trustees in order to accomplish the purpose and objectives of this Agreement in a cost efficient and timely manner.
11. To support individual Trustees or project proponents seeking grants and donations to be applied to the restoration of natural resources related to injuries arising from the Site to the extent permitted by law and in keeping with the mandates, policies and goals of the Trustee Council.

H. Decision Making.

1. The members of the Trustee Council shall have equal authority and all decisions under this Agreement shall be by unanimous agreement of all voting members of the Trustee Council, except as specifically provided in Section IV.H.2., below.
 2. The Trustees understand and acknowledge that each Trustee's duties and interests, although overlapping, may be sufficiently different that a Trustee may wish to bound or limit its involvement in certain aspects of the natural resource damage assessment and restoration ("NRDAR") process. In recognition thereof, to avoid delaying the work of the Trustee Council as a whole, and to maximize the efficiency of Trustee NRDAR activities, a Trustee may limit its involvement in aspects of the NRDAR process, including any aspect of the damage assessment, restoration planning, restoration implementation, oversight and monitoring activities, or any other specific decision or decisions of the Trustee Council, by notifying the Trustee Council primary, alternate and legal representatives in writing, and in a timely manner, of those NRDAR activities or decisions for which the Trustee would like to limit or end its participation. Any notification may likewise be withdrawn or terminated by the Trustee who issued it, by notifying the Trustee Council primary, alternate and legal representatives in writing of the withdrawal or termination.
 3. Where a Trustee has notified the Trustee Council of its intent to bound or limit its involvement in Trustee Council actions and decisions as described in and pursuant to Section IV.H.2., the Trustee, unless and until it withdraws or terminates its notification pursuant to Section IV.H.2., shall abstain from such actions and decisions, in which case the Trustee Council's actions and decisions shall be deemed unanimous, notwithstanding the abstention.
 4. The Trustee Council members will conduct extensive good faith discussions directed toward obtaining unanimous agreement. In the event unanimous agreement cannot be reached, the dispute resolution procedures in Section IV.I., below, will govern.
- I. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Trustees involved in the dispute and the consensus of the Trustee Council as a whole. The Trustees agree that deliberations will focus upon the Trustees' mutual goals of the timely and appropriate recovery of natural resource damages from the PRPs and the timely and appropriate restoration of injured natural resources, rather than upon independent control or trusteeship over the affected natural resources and proposed restoration activities. If consensus still cannot be reached after

good faith discussions, the matter shall be elevated to the next management level with each Trustee's agency for decision or further instructions. If consensus still cannot be reached, the matter shall be further elevated to the named Trustees who may expressly delegate their decision-making authority to a senior supervisory level designee for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved. In the event of irreconcilable disputes, the disposition of funds recovered from PRPs shall be governed by Section XIII.F., below.

V. LEAD ADMINISTRATIVE TRUSTEE

The Trustee Council shall by resolution designate a Lead Administrative Trustee ("LAT"). The Trustees agree that the LAT shall serve primarily in an administrative capacity, shall act only under the direction of and as authorized by the Trustee Council, and designation of a Trustee as LAT shall not provide that Trustee with independent decision-making authority or otherwise expand that Trustee's authority beyond that held by each Trustee, individually. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. The Trustee Council may delegate any of the LAT's duties to another Trustee or change the LAT's duties with the unanimous approval of the Trustee Council. The duties of the LAT shall include the following, to the extent deemed necessary and appropriate by the Trustee Council:

- A. Serving as a central point of contact for communications among and to the members of the Trustee Council;
- B. Seeking and obtaining approval from the Trustee Council for the Council's binding decisions;
- C. Organizing and scheduling Trustee Council meetings and preparing proposed agendas for those meetings and the recording of all actions taken at such meetings;
- D. Coordinating the natural resource damages assessment and restoration process;
- E. Providing written reports on assessment and restoration activities as such activities are described in Section IV.G.1., including any significant deviations from approved plans, scopes of work or budgets, with a frequency and level of detail as established by the Trustee Council and commensurate with the complexity and size of the recovery of damages for injuries to natural resources and/or of individual assessments or projects selected;

- F. Maintaining financial records of and monitoring all deposits, disbursements, and expenditures of settlement funds under the authority of the Trustee Council; and providing financial reports and supporting financial records of Trustee accounts and restoration planning and implementation activities as established by the Trustee Council pursuant to Section IV.G.9.;
- G. Maintaining the Trustee Council's administrative record in a manner that allows the public to track the restoration planning and implementation process in a thorough and transparent manner ;
- H. Preparing and issuing, from time to time, public notices and reports on the work of the Trustee Council; and
- I. Such other duties as are unanimously agreed upon and directed by the Trustee Council.

VI. FUNDING

- A. Except as provided in Section VI.B.:
 - 1. PRP Funding. To the extent provided by law, each Trustee agrees to cooperate in the administration of any private funding source or sources, except for funds for the reimbursement of documented damage assessment costs that may become available to the Trustees from the PRPs for use to address injury or restoration related to the Site. Such funds shall be administered through the Trustee Council in accord with the terms established pursuant to this Agreement.
 - 2. Trustee Agency Funds. Each Trustee also agrees to coordinate with the other Trustees regarding the expenditure of any funds by the Trustee that are or may become available to the Trustee for use to address injury or restoration related to the Site - except for funds for the reimbursement of documented damage assessment costs or documented upfront funding for anticipated future assessment or oversight costs.
 - 3. Activities Conducted or Paid for by PRPs. The Trustee Council may enter into an agreement with the PRPs in which the PRPs agree to fund and/or conduct NRDA activities. Such agreements shall specify the terms of the activity, monetary disbursement, and the PRPs' participation. Any such Trustee Council/PRP agreement shall be consistent with this Section VI.
- B. The following funds, to the extent recovered by or available for the use of an individual Trustee, are excluded from the agreements in Section VI.A.1. and 2., unless that Trustee decides otherwise; provided, however, that the Trustees nonetheless agree and commit to inform and consult with

each other, as appropriate, on expenditures of such funds, except for those described in Section VI.B.1., in order to work cooperatively, be cost efficient and avoid duplicating, overlapping or conflicting actions:

1. funds for future administrative costs for trustee activities;
 2. funds which that individual Trustee recovers based upon a claim arising from injury to resources at or related to the Site for which no other Trustee is legally authorized to bring a claim; and
 3. funds which that individual Trustee recovers based on claims made jointly with one or more other Trustees which recovered funds have been allocated to that individual Trustee pursuant to an allocation agreement.
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VII. COST ACCOUNTING AND REIMBURSEMENT

The Trustees shall establish and adopt damage assessment and restoration cost accounting and reimbursement guidelines including a level of detail and a reporting schedule commensurate with the complexity and size of the recovery of damages for injuries to natural resources and/or of individual projects selected by the Trustee Council. These guidelines shall insure that recovered damages are spent only on reasonable and adequately documented costs. Each Trustee shall ensure that appropriate and reasonable practices for cost documentation, cost accounting, cost reimbursement, and expenditures are followed, in accord with applicable law and including a level of detail and a reporting schedule commensurate with the complexity and size of the recovery of damages for injuries to natural resources and/or of individual projects selected by the Trustee Council.

VIII. JOINT PURPOSE AND OVERLAPPING AUTHORITIES

The Trustees recognize that each of them has trusteeship, through their respective natural resource trustee delegations under CERCLA and other applicable federal and State law, over natural resources affected by the release of hazardous substances at the Site, and further recognize that the scopes of some of their respective trusteeships overlap.

IX. USE OF NATURAL RESOURCE DAMAGE RECOVERIES

- A. The Trustees agree that any natural resource damage recoveries, with the exception of recoveries to reimburse past damage assessment costs and funds excluded pursuant to Section VI.B., obtained or received by the Trustees, individually or collectively, and any interest earned thereon, to the extent permitted by law, shall be jointly used to restore, replace, rehabilitate and/or acquire the equivalent of the natural resources which have been injured, destroyed, or lost as a result of releases of hazardous substances or OHM at the Site.

- B. To the extent permitted by law, the Trustees agree that all natural resource damage recoveries, with the exception of recoveries to reimburse past damage assessment costs and funds excluded pursuant to Section VI.B., obtained or received by the Trustees, either as a result of judgment or settlement in whole or in part of natural resource damage claims brought against PRPs for the Site, shall be deposited in an interest bearing account, unless otherwise determined by the Trustee Council, to be disbursed only for the purposes described in this Agreement and in accordance with the provisions of this Agreement. The Trustees shall establish additional standards and procedures governing the joint use of all natural resource damages received by the Trustees, with the exception of recoveries to reimburse past damage assessment costs and funds excluded pursuant to Section VI.B., including measures to manage efficiently the amount spent on restoration planning and administrative costs.
- C. The Trustees agree that expenditures from the account should be managed in such a way to maximize restoration benefits achieved.

X. PUBLIC PARTICIPATION.

The Trustees agree that, to the extent consistent with the effective administration, negotiation, settlement and/or litigation of their claims, and in accordance with Section XIII and applicable federal and State law, they will endeavor to provide the public reasonable notice of, and invite public participation in, the NRDA activities related to the Site at appropriate times and via appropriate means.

XI. COORDINATION AND NOTIFICATION.

- A. The Trustees recognize and agree that their interests in the development and recovery of claims for natural resource damages associated with the Site are related and have agreed to coordinate the development, negotiation and, if necessary, litigation of their claims and damages that arise out of the Site. Towards that end, the Trustees agree to notify and consult with each other concerning activities, events or decisions that may affect the NRDAR process or the recovery of natural resource damages for injuries to natural resources and associated services at the Site. The Trustees intend by this Agreement to communicate with each other about, among other things, the following:
 - 1. Plans, proposals or actions related to damage assessment and/or restoration activities.
 - 2. Response, removal, remedial or corrective actions that any Trustee is involved with in regard to the Site.
 - 3. Developments in negotiations or litigation with any PRPs.

4. Any communications any Party may have with any PRP concerning the settlement or other resolution of any Party's claim for natural resource damages at or related to the Site.

B. The Trustees shall provide information to each other concerning such matters in advance when possible, and as promptly as practicable if advance notice is not possible (meaning not later than within ten (10) days of such activities, events or decisions to the extent reasonably possible), with the goal of enabling other Trustees to comment on any issues they deem significant. Whenever possible, the Trustees agree to communicate with each other in advance of communications described in paragraph XI.A.4., above. The Trustees further agree to provide to each other copies of any agreements or other documents reflecting settlement or disposition of claims, including quasi-public claims, involving or related to natural resource injuries arising from or related to the Site, provided such documents are not privileged. Failure to provide the above information and communication may result in a Party's withdrawal from or termination of this Agreement in accordance with Section XIII.F.

XII. CONFIDENTIALITY

- A. As a result of the release of hazardous substances and, with respect to the Commonwealth only, OHM, at and from the Site, the Trustees have potential claims for damages and anticipate possible litigation with PRPs. In furtherance of their common interests, the Parties to this Agreement have been meeting and will continue to meet to discuss matters of common interest, including the possibility of litigation by the Parties against PRPs.
- B. The Trustees recognize that, in order to effectively and efficiently negotiate or litigate their claims, their counsel, employees and consultants may, at each Party's discretion, exchange documents and information including draft reports, analyses, opinions, conclusions and advice prepared in anticipation of litigation, as part of settlement negotiations, and/or subject to attorney-client privilege, attorney work product privilege, law enforcement privilege or other forms of privilege. The Trustees therefore hereby agree as follows:
1. Except as provided by law or otherwise provided herein, the Trustees shall treat all designated privileged documents generated, and designated privileged communications by, between or among the Trustees as privileged attorney-client communications, attorney work product, law enforcement or protected by other applicable privileges (or a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable federal and State law.

2. A “designated privileged document” is one identified on its cover page or elsewhere as subject to one or more privileges or forms of immunity. A “designated privileged communication” is one which occurs with an expectation of confidentiality and includes, but is not limited to, communications between the Trustees’ attorneys or their staff, agents, representatives, experts and/or consultants in anticipation of litigation or in furtherance of settlement negotiations, in the seeking or giving of legal advice, and/or in the context of law enforcement actions and/or pre-decisional government deliberations.
3. The transmittal of a designated privileged document to, or a designated privileged communication between or among, any of the Trustees (and their counsel, staff, agents, representatives, experts and/or consultants) does not waive, or imply waiver, of any privilege or right which the transmitting Trustee may assert with respect to that document or communication.
4. Prior to sharing any privileged information with, or distributing any privileged information to, any other trustees, as described in Section XI.B. of this Agreement, or any consultants or advisors to the Trustee Council, as described in Section IV. D of this Agreement, the Parties to this Agreement will require those other trustees, advisors or consultants, to agree to the confidentiality provisions as set forth in this Agreement.
5. Designated privileged documents shall be held and maintained in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege.
6. Unless otherwise specifically provided, the Trustees shall each be entitled to assert any applicable privilege with respect to any document or communication jointly transmitted, prepared or funded by the Trustees. Each Party shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared or funded solely by that Party.
7. If a subpoena, discovery request, or other request in any form, for a privileged document, record, information or communication that is not publicly available is received by any Party, a copy of the subpoena or request will be immediately forwarded to counsel for the Party or Trustees to which the privilege applies and to the government representative(s) who originally generated the

document or communication that is the subject of the request. The Party who receives such a request shall make a good faith effort to provide a draft of the Party's intended response to such request not less than ten (10) days prior to the date that the Party intends to issue its response. To the extent that applicable law or procedure may require a response more promptly than is consistent with the above temporal requirement, the Trustees agree to act in good faith to meet any such requirements and to provide as much advance notice as is practicable.

8. Only by specific written agreement among the Trustees or pursuant to Court Order shall disclosure of a privileged document or communication be made public or disclosed to a party-opponent or non-party. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications. However, nothing herein in any way affects or limits the authority of any Party to waive any privilege and release any documents, information, analysis, opinion, conclusion or advice that are subject to privileges held exclusively by that Party.
9. Sharing Information with the Public. The Trustees agree that, to the extent consistent with the effective and efficient negotiation, settlement and/or litigation of their claims, public dissemination of final data, studies and plans related to injuries arising from the Site and restoration planning for the Site is in the best interests of the public and of the Trustees. Such final data, studies and plans shall be made available to the public upon request, to the extent consistent with the foregoing confidentiality provisions. In addition, the Trustees shall establish and maintain a publicly available administrative record, which shall comply with the National Environmental Policy Act of 1969, 42 U.S.C. §4321 *et seq.* ("NEPA") and any other applicable federal and State law, and which shall be located in the vicinity of the Site and the community that has been impacted by the natural resource injuries and losses arising from the Site.
10. Compliance with Federal and State Law. In the event that any provision of Section XII of this Agreement conflicts with federal or State law, including the Freedom of Information Act, 5 U.S.C. §552, and the Massachusetts Public Records Law, M.G.L. c. 66, §10, the federal or State law will, of course, control and each Trustee will comply with the applicable law.

C. Notwithstanding any other provision of this Agreement, each Trustee reserves the right to provide information or any document related to the Site and the natural resource damage assessment and restoration process to

the public if such Trustee determines that such information or document (1) is already lawfully in the public domain, (2) requires disclosure pursuant to the Freedom of Information Act, 5 U.S.C. §552, the Massachusetts Public Records Law, M.G.L. c. 66, §10, or other federal or State law, or (3) should be disclosed in order to protect public health, welfare or the environment.

XIII. GENERAL PROVISIONS

A. Reservations.

1. Nothing in this Agreement is intended to be or shall be construed to be an admission by the Trustees in any dispute or action between the Trustees or between the Trustees and a third party. Nothing in this Agreement is intended or shall be construed as a waiver by the Trustees of any claims or defenses in any legal action, or of any other rights or remedies.
2. Neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any legal responsibility under federal, State or other applicable law to protect, restore, or enhance any natural resources associated with the Site over which any Party or non-Party asserts trusteeship, standing or jurisdiction. Furthermore, neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any liability for damage or injury (which may be shown to have occurred by the NRDA activities performed under this Agreement) to any natural resources associated with the Site over which any other Party or non-Party asserts trusteeship, standing or jurisdiction.
3. Nothing in this Agreement is meant to imply, or operate in a manner, that any natural resource trustee with an interest in the Site, whether a Party to this Agreement or not, is in any way abrogating or ceding any natural resource trustee responsibility or authority over natural resources associated with the Site.
4. Nothing in this Agreement shall be construed as a waiver of, or foreclosing the exercise of, any rights, powers, remedies or privileges of the individual Trustees now or hereafter existing at law or in equity, by statute or otherwise.
5. Nothing in this Agreement is intended to conflict with existing directives or policies of any Trustee. If the terms of this Agreement are found to be inconsistent with existing directives or policies of any Trustee, those portions of this Agreement that are determined to be inconsistent shall be identified by the affected Trustee. Within thirty (30) days of notice of the inconsistency, the

Trustees shall discuss the inconsistency and determine whether it is possible, appropriate and necessary to amend this Agreement as the Trustees determine appropriate.

B. Limitations of Authority.

1. No Party is authorized to enter into any settlement on behalf of any other Party.
2. No Trustee is authorized to represent another Trustee in any litigation that may be commenced by another Trustee.

C. Third Parties. This Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Trustees who have executed this Agreement or who are not Parties to this Agreement.

D. Execution and Effective Date. This Agreement shall become effective when executed by all of the Trustees who are Parties to this Agreement, that is, the date on which the last signature is obtained. This Agreement can be executed in one or more counterparts, each of which will be considered an original document.

E. Amendment.

1. This Agreement may be amended by agreement of the Trustees if it is determined that an amendment is necessary to accomplish the objectives of this Agreement, or it is necessary to modify the objectives of this Agreement, consistent with the requirements of CERCLA, Chapter 21E, any amendments to either, or other applicable federal law or State common or statutory law.
2. Any amendment of this Agreement shall be effective only if it is in writing and executed by all Parties to this Agreement.

F. Termination.

1. Duration. This Agreement shall be in effect from its effective date until the Trustee Council determines that the restoration plan or plans implemented under this Agreement have been completed, unless terminated before that time or extended beyond that time by written agreement of all Parties to this Agreement.
2. Withdrawal from this Agreement.
 - a. Right to Withdraw. Any Party may withdraw from this Agreement upon thirty (30) days' written notice to all other Parties, or as otherwise provided herein.
 - b. Withdrawal Due to Dispute. Any Party may withdraw from this Agreement, but only after efforts have been made to resolve any dispute in accordance with Sections IV. H and I of this Agreement, if applicable. Such withdrawal shall only be effective upon providing the Trustee Council thirty (30) days' written notice that

- due to an irreconcilable dispute one or more Trustees no longer will be participating in the Trustee Council.
- c. Withdrawal Due to Differing Duties and Interests. The Parties understand and acknowledge that at some point a Trustee may determine that it is no longer necessary to participate in the Trustee Council in order to fulfill its duty and that, perhaps, continuing to participate will not further the Trustees' interests. In that event, a Party may withdraw from the Agreement by providing the Trustee Council thirty (30) days' written notice that the Party no longer will be participating in the Trustee Council.
 - d. Effect of Withdrawal on Remaining Parties; Withdrawing Party(ies). In the event of the withdrawal of one or more Parties from this Agreement, and provided that at least two (2) Parties to this Agreement remain, as to the remaining Parties this Agreement shall remain in full force and effect; as to the withdrawing Party or Parties, its or their further obligations under this Agreement shall be as specified in Section XIII.F.2.g., below.
 - e. Disposition of Unobligated Recoveries Upon Withdrawal or Termination. In the event that one or more Parties to this Agreement withdraws or if this Agreement is terminated, the disposition of any unobligated or de-obligated (as defined, below) recoveries described in Section VI.A.1., but not funds included in this Agreement by a Trustee pursuant to Section VI.B., and any interest earned thereon, except for documented and reimbursable assessment and restoration planning costs, shall be determined by further agreement of the Trustees or, if an Agreement cannot be reached, upon application by a Party to this Agreement to the United States District Court (D. Mass.) for allocation of such recoveries and interest by the Court. For purposes of this section XIII.F.2., "de-obligated funds" shall mean any formerly obligated recoveries which the Trustees agree are no longer necessary for the project for which they were obligated (e.g., in the event of that project being modified, canceled, funded from other sources, or completed under budget). In making a fair and reasonable allocation of these monies among the Trustees, the Trustees will request that the Court consider primarily the need to achieve, to the maximum extent practicable, the natural resource objectives of this Agreement as set

forth in Section I, and further consider the overlapping jurisdictions of the federal and State Trustees.

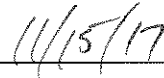
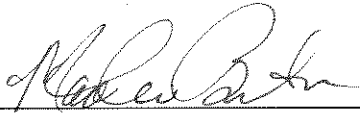
- f. Use of Unobligated Recoveries. In any event, the Trustees further expressly agree that any such unobligated or de-obligated recoveries described in Sections VI.A. but not funds included in this Agreement by a Trustee pursuant to Section VI.B., and any interest earned thereon, shall be expended in accordance with the terms of the governing settlement agreement, as entered into under then applicable State and federal law, pursuant to which such funds were obtained.
- g. Obligations Following Withdrawal or Termination. Following withdrawal for any reason from this Agreement or termination of this Agreement, the Party or Parties that withdrew, or all Parties in case of termination, shall thereafter have no further obligations under this Agreement except for the following:
 - i. obligations under Section XI., to continue to coordinate activities to the greatest extent practicable;
 - ii. obligations under Section XII., to maintain confidentiality, and
 - iii. obligations under Section XIII.F.2.f., to expend any unobligated or de-obligated recoveries described therein (which are allocated to such Trustee as a result of such withdrawal or termination), as provided therein.
- h. No Obligation with respect to Returned Section VI.B. Funds. Upon withdrawal of a Party who included any funds in this Agreement pursuant to Section VI. B., any such unobligated or de-obligated funds shall be promptly returned to that Party who shall have no further obligation under this Agreement with respect to such funds.

G. Federal Natural Resource Damage Regulations. It is the intention of the Trustees to be guided by the DOI's natural resource damage assessment regulations, as amended, 43 C.F.R. Part 11, in matters relating to the Site.

H. Anti-Deficiency. Nothing in this Agreement shall be construed as obligating any of the Trustees to expend any funds in excess of appropriations or other amounts authorized by law.

**TRUSTEE MOA
for the
BLACKBURN & UNION PRIVILEGES SITE
in
Walpole, Massachusetts**

FOR THE COMMONWEALTH OF MASSACHUSETTS




Matthew A. Beaton, Secretary
Massachusetts Executive Office of
Energy and Environmental Affairs

Date

TRUSTEE MOA
for the
BLACKBURN & UNION PRIVILEGES SITE
in
Walpole, Massachusetts

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR:



AUG 18 2017

Wendi Weber, Regional Director
Region 5
U.S. Fish and Wildlife Service
U.S. Department of the Interior

Date