**CERCLA Financial Assurance Sample Financial Test Documents for Use in Connection with Settlements**

**NOTE: A PRP/Settling Defendant may demonstrate its ability to pay for and/or perform cleanup work required by a settlement agreement by passing one of two financial tests, referred to below as “Alternative 1” or “Alternative 2.” To demonstrate compliance with either financial test, the PRP/Settling Defendant will be required by the relevant settlement agreement to submit certain documents and information to EPA. The submissions may be worded as follows, except that instructions in brackets should be replaced with the relevant information and the brackets deleted. For both financial test alternatives (Alternative 1 and Alternative 2), the samples that follow include a Sample CFO Letter and a Sample CPA Report: a PRP/Settling Defendant using financial test Alternative 1 should utilize “Sample CFO Letter (for Test Alternative 1)” and “Sample CPA Report (for Test Alternative 1),” while a PRP/Settling Defendant using financial test Alternative 2 should utilize “Sample CFO Letter (for Test Alternative 2)” and “Sample CPA Report (for Test Alternative 2).” Case teams should make sure that provisions in the financial test documents that follow are consistent with relevant settlement provisions. For each site/facility covered by this financial test and referenced below, case teams should elicit the following information from the PRP/Settling Defendant, both initially and over time: EPA or state site/facility/spill identification number, site or facility name, and address; and the basis for the liability or obligation (i.e., CERCLA; RCRA Subtitle C closure, post-closure, and/or corrective action; RCRA Subtitle D; etc.).**

[Remainder of page left blank intentionally.]

**CERCLA Financial Assurance Financial Test:
Sample CFO Letter (for Test Alternative 1)**

[**To be printed on PRP/Settling Defendant’s letterhead**]

[**Insert date**]

U.S. Environmental Protection Agency Region [**insert number**]

c/o [**insert appropriate Regional official such as “Superfund Division Director”**]

[**Insert address**]
[**Insert contact information**]

Dear [**insert EPA recipient identified above**]:

I am the chief financial officer of [**insert name of PRP/Settling Defendant**] (the “Company”). This letter is in support of the Company’s use of a financial test to demonstrate financial assurance for the obligations of the Company under that certain [**insert as appropriate:** “Consent Decree,” “Administrative Settlement Agreement and Order on Consent,” or “Settlement Agreement”] dated [**insert date**], [**insert as appropriate:** civil action number for consent decrees or EPA docket number for administrative agreements] (hereinafter, the “Settlement Agreement”), between the Company and the U.S. Environmental Protection Agency (EPA), for the [**insert site name [operable unit]**] (“Site”), entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This letter confirms the Company’s satisfaction of certain financial criteria, as set forth more fully below, that makes the Company eligible to utilize the financial test as financial assurance under the Settlement Agreement.

[*Fill out the following paragraphs regarding CERCLA settlements and unilateral orders, RCRA facilities, TSCA facilities, SDWA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement, order, or RCRA/TSCA/SDWA facility obligations that belong in a particular paragraph, write “None” in the space indicated. For each settlement, order, and site/facility, include identifying information (civil action/docket number, site/facility/spill identification number, etc.) and the financial assurance dollar amount associated with such settlement, order, and/or site/facility.*]

1. The dollar amount of financial assurance required by Paragraph [**insert applicable paragraph number**] of the Settlement Agreement and covered by the Company’s use of the financial test is $[**insert dollar amount**].

2. The Company is a signatory or respondent to the following CERCLA settlements (other than the Settlement Agreement) or unilateral administrative orders, respectively, under which the Company is providing financial assurance to EPA through the use of a financial test. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to $[**insert dollar amount**], and is shown for each such settlement or order as follows: [**insert information as necessary**].

3. The Company is the owner and/or operator of the following facilities for which the Company has demonstrated financial assurance to EPA, states, and/or other regulators in the United States through the use of a test equivalent or substantially equivalent to the test certified herein, including but not limited to hazardous waste Treatment, Storage, and Disposal (TSD) facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill (MSWLF) facilities under 40 CFR part 258, Underground Injection Control (UIC) facilities under 40 CFR part 144, Underground Storage Tank (UST) facilities under 40 CFR part 280, and Polychlorinated Biphenyl (PCB) storage facilities under 40 CFR part 761. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to $[**insert dollar amount**], and is shown for each such facility as follows: [**insert information as necessary**].

4. The Company guarantees to EPA, states, and/or other regulators in the United States the CERCLA settlement or unilateral administrative order obligations and/or the MSWLF, TSD, UIC, UST, PCB, and/or other facility obligations of the following guaranteed parties: [**insert information as necessary**]. The total dollar amount of such CERCLA settlement or order obligations and regulated facility obligations so guaranteed is equal, in the aggregate, to $[**insert dollar amount**], and is shown for each such settlement, order, and/or facility as follows: [**insert information as necessary**].

5. The Company [**insert** “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission for the Company’s latest fiscal year.

6. The Company’s fiscal year ends on [**insert month and day**]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company’s independently audited, year-end financial statements for its latest completed fiscal year, ended [**insert date**], and further certify as follows:

 A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals $[**insert dollar amount**].

 \*B. Company’s total liabilities equal: $[**insert dollar amount**].

 \*C. Company’s tangible net worth equals: $[**insert dollar amount**].

 \*D. Company’s net worth equals: $[**insert dollar amount**].

 \*E. Company’s current assets equal: $[**insert dollar amount**].

 \*F. Company’s current liabilities equal: $[**insert dollar amount**].

 G. Company’s net working capital [line E minus line F] equals: $[**insert dollar amount**].

 \*H. Sum of Company’s net income plus depreciation, depletion, and amortization equals: $[**insert dollar amount**].

 \*I. Company’s total assets in the United States equal (required only if less than 90% of Company’s assets are located in the United States): $[**insert dollar amount**].

 J. Is line C at least $10 million? (Yes/No): [**insert yes or no**].

 K. Is line C at least 6 times line A? (Yes/No): [**insert yes or no**].

 L. Is line G at least 6 times line A? (Yes/No): [**insert yes or no**].

 \*M. Are at least 90% of Company’s assets located in the United States? (Yes/No): [**insert yes or no**]. If “No,” complete line N.

 N. Is line I at least 6 times line A? (Yes/No): [**insert yes or no**].

 O. Is line B divided by line D less than 2.0? (Yes/No): [**insert yes or no**].

 P. Is line H divided by line B greater than 0.1? (Yes/No): [**insert yes or no**].

 Q. Is line E divided by line F greater than 1.5? (Yes/No): [**insert yes or no**].

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

By [signature]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact information: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERCLA Financial Assurance Financial Test:
Sample CFO Letter (for Test Alternative 2)**

[**To be printed on PRP/Settling Defendant’s letterhead**]

[**Insert date**]

U.S. Environmental Protection Agency Region [**insert number**]

c/o [**insert appropriate Regional official such as “Superfund Division Director”**]

[**Insert address**]
[**Insert contact information**]

Dear [**insert EPA recipient identified above**]:

I am the chief financial officer of [**insert name of PRP/Settling Defendant**] (the “Company”). This letter is in support of the Company’s use of a financial test to demonstrate financial assurance for the obligations of the Company under that certain [**insert as appropriate:** “Consent Decree,” “Administrative Settlement Agreement and Order on Consent,” or “Settlement Agreement”] dated [**insert date**], [**insert as appropriate:** civil action number for consent decrees or EPA docket number for administrative agreements], between the Company and the U.S. Environmental Protection Agency (EPA), for the [**insert site name [operable unit]**] Site (hereinafter, the “Settlement Agreement”), entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This letter confirms the Company’s satisfaction of certain financial criteria, as set forth more fully below, that makes the Company eligible to utilize the financial test as financial assurance under the Settlement Agreement.

[*Fill out the following paragraphs regarding CERCLA settlements and unilateral orders, RCRA facilities, TSCA facilities, SDWA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement, order, or RCRA/TSCA/SDWA facility obligations that belong in a particular paragraph, write “None” in the space indicated. For each settlement, order, and site/facility, include identifying information (civil action/docket number, site/facility/spill identification number, etc.) and the financial assurance dollar amount associated with such settlement, order, and/or site/facility.*]

1. The dollar amount of financial assurance required by Paragraph [**insert applicable paragraph number**] of the Settlement Agreement and covered by the Company’s use of the financial test $[**insert dollar amount**].

2. The Company is a signatory or respondent to the following CERCLA settlements (other than the Settlement Agreement) or unilateral administrative orders, respectively, under which the Company is providing financial assurance to EPA through the use of a financial test. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to $[**insert dollar amount**], and is shown for each such settlement or order as follows: [**insert information as necessary**].

3. The Company is the owner and/or operator of the following facilities for which the Company has demonstrated financial assurance to EPA, states, and/or other regulators in the United States through the use of a test equivalent or substantially equivalent to the test certified herein, including but not limited to hazardous waste Treatment, Storage, and Disposal (TSD) facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill (MSWLF) facilities under 40 CFR part 258, Underground Injection Control (UIC) facilities under 40 CFR part 144, Underground Storage Tank (UST) facilities under 40 CFR part 280, and Polychlorinated Biphenyl (PCB) storage facilities under 40 CFR part 761. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to $[**insert dollar amount**], and is shown for each such facility as follows: [**insert information as necessary**].

4. The Company guarantees to EPA, states, and/or other regulators in the United States the CERCLA settlement or unilateral administrative order obligations and/or the MSWLF, TSD, UIC, UST, PCB, and/or other facility obligations of the following guaranteed parties: [**insert information as necessary**]. The total dollar amount of such CERCLA settlement or order obligations and regulated facility obligations so guaranteed is equal, in the aggregate, to $[**insert dollar amount**], and is shown for each such settlement, order, and/or facility as follows: **[insert information as necessary]**.

5. The Company [**insert** “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission for the Company’s latest fiscal year.

6. The Company’s fiscal year ends on [**insert month and day**]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company’s independently audited, year-end financial statements for its latest completed fiscal year, ended [**insert date**], and further certify as follows:

 A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals $[**insert dollar amount**].

 B. The current rating of the Company’s senior unsecured debt is [**insert as appropriate either:** [AAA, AA, A, or BBB] as issued by Standard and Poor’s or [Aaa, Aa, A or Baa] as issued by Moody’s Investor Services].

 \*C. Company’s tangible net worth equals: $[**insert dollar amount**].

 \*D. Company’s total assets in the United States equal (required only if less than 90% of Company’s assets are located in the United States.): $[**insert dollar amount**].

 E. Is line C at least 6 times line A? (Yes/No): [**insert yes or no**].

 F. Is line C at least $10 million? (Yes/No): [**insert yes or no**].

 G. Are at least 90% of Company’s assets located in the United States? (Yes/No): [**insert yes or no**]. If “No,” complete line H.

 H. Is line D at least 6 times line A? (Yes/No): [**insert yes or no**].

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

By [signature]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact information: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERCLA Financial Assurance Financial Test:
Sample CPA Report (for Test Alternative 1)**

[**To be printed on CPA’s letterhead**]

**Independent Accountants’ Report
on Applying Agreed-Upon Procedures**

To the Board of Directors and Management of [**insert name of PRP/Settling Defendant**]:

We have performed the procedures outlined below, which were agreed to by [**insert name of PRP/Settling Defendant**] (the “Company”), to assist the Company in confirming selected financial data contained in the attached letter from [**insert name of CFO**], the Company’s Chief Financial Officer, dated [**insert date**], to [**insert EPA recipient (Region, name, and title)**] (the “CFO Letter”). We have been advised by the Company that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency (EPA) in support of the Company’s use of a financial test to demonstrate financial assurance for the Company’s obligations under that certain [**insert as appropriate:** “Consent Decree,” “Administrative Settlement Agreement and Order on Consent,” or “Settlement Agreement”] dated [**insert date**], [**insert as appropriate:** civil action number for consent decrees or EPA docket number for administrative agreements], between the Company and EPA, for the [**insert site name [operable unit]**] Site (hereinafter, the “Settlement Agreement”), entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. The procedures outlined below were performed solely to assist the Company in complying with the financial assurance requirements contained in the Settlement Agreement.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and our associated findings are as follows:

1. We confirm that we have audited the consolidated financial statements of the Company as of and for the fiscal year ended [**insert date**] in accordance with United States generally accepted accounting principles (such audited, consolidated financial statements, the “Audited Financials”). Our report dated [**insert date**], with respect thereto, is included in the Company’s [**insert year**] Annual Report on Form 10-K.

2. Using data set forth in the Audited Financials, we calculated the amount of the Company’s total liabilities as of [**insert date**] as $[**insert dollar amount**], by [adding total current liabilities of $[**insert dollar amount**] to total non-current liabilities of $[**insert dollar amount**]]. We compared the amount of the Company’s total liabilities as so calculated with the amount set forth in Line 6(B) of the CFO Letter (“Total Liabilities”), and found such amounts to be in agreement.

3. Using data set forth in the Audited Financials, we calculated the amount of the Company’s tangible net worth as of [**insert date**] as $[**insert dollar amount**], by [subtracting the amount of net intangible assets of $[**insert dollar amount**] from the amount of total stockholders’ equity of $[**insert dollar amount**]]. We compared the amount of the Company’s tangible net worth as so calculated with the amount set forth in Line 6(C) of the CFO Letter (“Tangible Net Worth”), and found such amounts to be in agreement.

4. We compared the amount of the Company’s net worth as of [**insert date**], as defined and set forth in the Audited Financials and as calculated therein as $[**insert dollar amount**], with the amount set forth in Line 6(D) of the CFO Letter (“Net Worth”), and found such amounts to be in agreement.

5. We compared the amount of the Company’s total current assets as of [**insert date**], as defined and set forth in the Audited Financials and as calculated therein as $[**insert dollar amount**], with the amount set forth in Line 6(E) of the CFO Letter (“Current Assets”), and found such amounts to be in agreement.

6. We compared the amount of the Company’s total current liabilities as of [**insert date**], as defined and set forth in the Audited Financials and as calculated therein as $[**insert dollar amount**], with the amount set forth in Line 6(F) of the CFO Letter (“Current Liabilities”), and found such amounts to be in agreement.

7. Using data set forth in the Audited Financials, we calculated the amount of the Company’s net working capital as of [**insert date**] as $[**insert dollar amount**], by [subtracting total current liabilities of $[**insert dollar amount**] from total current assets of $[**insert dollar amount**]]. We compared the amount of the Company’s net working capital as so calculated with the amount set forth in Line 6(G) of the CFO Letter (“Net Working Capital”), and found such amounts to be in agreement.

8. Using data set forth in the Audited Financials, we calculated the sum of the Company’s net income plus depreciation, depletion, and amortization as of [**insert date**] as $[**insert dollar amount**], by [adding depreciation, depletion, and amortization of property and intangibles of $[**insert dollar amount**] to net income of $[**insert dollar amount**]]. We compared the sum of the Company’s net income plus depreciation, depletion, and amortization as so calculated with the amount set forth in Line 6(H) of the CFO Letter (“Net Income Plus Depreciation, Depletion, and Amortization”), and found such amounts to be in agreement.

9. [**Insert either:** “We compared the amount of the Company’s total assets located in the United States as of [**insert date**] of $[**insert dollar amount**] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) with the amount set forth in Line 6(I) of the CFO Letter, and found such amounts to be in agreement[.]” or “We calculated the percentage of Company assets located in the United States as of [**insert date**] by dividing the amount of the Company’s total assets located in the United States of $[**insert dollar amount**] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) by the amount of the Company’s total assets as defined and set forth in the Audited Financials, and found such percentage to be greater than 90%.”]

10. Our calculation of the amount of the Company’s tangible net worth (as set forth in Line 3 above) is [**insert either:** “greater than or equal to” or “less than”] $10 million.

11. The dollar amount identified in Line 6(A) of the CFO Letter is hereinafter referred to as the “Financial Assurance Amount.” Our calculation of the amount of the Company’s tangible net worth (as set forth in Line 3 above) is [**insert either:** “greater than or equal to” or “less than”] an amount calculated as six times the Financial Assurance Amount.

12. Our calculation of the amount of the Company’s net working capital (as set forth in Line 7 above) is [**insert either:** “greater than or equal to” or “less than”] an amount calculated as six times the Financial Assurance Amount.

13. [**Include and complete Line 13 only if less than 90% of Company’s assets are located in the United States**] Our calculation of the amount of the Company’s total assets located in the United States (as set forth in Line 9 above) is [**insert either:** “greater than or equal to” or “less than”] an amount calculated as six times the Financial Assurance Amount.

14. Our calculation of the amount of the Company’s total liabilities (as set forth in Line 2 above) divided by our calculation of the amount of the Company’s net worth (as set forth in Line 4 above) is [**insert either:** “greater than or equal to” or “less than”] 2.0.

15. Our calculation of the sum of the Company’s net income plus depreciation, depletion, and amortization (as set forth in Line 8 above) divided by our calculation of the amount of the Company’s total liabilities (as set forth in Line 2 above) is [**insert either:** “greater than” or “less than or equal to”] 0.1.

16. Our calculation of the amount of the Company’s total current assets (as set forth in Line 5 above) divided by our calculation of the amount of the Company’s total current liabilities (as set forth in Line 6 above) is [**insert either:** “greater than” or “less than or equal to”] 1.5.

[Remainder of page left blank intentionally.]

The foregoing agreed-upon procedures do not constitute an audit of the Company’s financial statements or any part thereof, the objective of which is the expression of opinion on the financial statements or a part thereof. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and Management of the Company and is not intended to be and should not be used by anyone other than these specified parties; *provided, however*, that we acknowledge and agree that the Company may provide this report to EPA in support of the Company’s financial assurance demonstration under the Settlement Agreement.

By [signature]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact information: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **CERCLA Financial Assurance Financial Test:
Sample CPA Report (for Test Alternative 2)**

[**To be printed on CPA’s letterhead**]

**Independent Accountants’ Report
on Applying Agreed-Upon Procedures**

To the Board of Directors and Management of [**insert name of PRP/Settling Defendant**]:

We have performed the procedures outlined below, which were agreed to by [**insert name of PRP/Settling Defendant**] (the “Company”), to assist the Company in confirming selected financial data contained in the attached letter from [**insert name of CFO**], the Company’s Chief Financial Officer, dated [**insert date**], to [**insert EPA recipient (Region, name, and title)**] (the “CFO Letter”). We have been advised by the Company that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency (EPA) in support of the Company’s use of a financial test to demonstrate financial assurance for the Company’s obligations under that certain [**insert as appropriate:** “Consent Decree,” “Administrative Settlement Agreement and Order on Consent,” or “Settlement Agreement”] dated [**insert date**], [**insert as appropriate:** civil action number for consent decrees or EPA docket number for administrative agreements], between the Company and EPA, for the [**insert site name [operable unit]**] Site (hereinafter, the “Settlement Agreement”), entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. The procedures outlined below were performed solely to assist the Company in complying with the financial assurance requirements contained in the Settlement Agreement.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures we performed and our associated findings are as follows:

1. We confirm that we have audited the consolidated financial statements of the Company as of and for the fiscal year ended [**insert date**] in accordance with United States generally accepted accounting principles (such audited, consolidated financial statements, the “Audited Financials”). Our report dated [**insert date**], with respect thereto, is included in the Company’s [**insert year**] Annual Report on Form 10-K.

2. Using data set forth in the Audited Financials, we calculated the amount of the Company’s tangible net worth as of [**insert date**] as $[**insert dollar amount**], by [subtracting the amount of net intangible assets of $[**insert dollar amount**] from the amount of total stockholders’ equity of $[**insert dollar amount**]]. We compared the amount of the Company’s tangible net worth as so calculated with the amount set forth in Line 6(C) of the CFO Letter (“Tangible Net Worth”), and found such amounts to be in agreement.

3. [**Insert either:** “We compared the amount of the Company’s total assets located in the United States as of [**insert date**] of $[**insert dollar amount**] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) with the amount set forth in Line 6(D) of the CFO Letter, and found such amounts to be in agreement[.]” or “We calculated the percentage of Company assets located in the United States as of [December 31, 20\_\_] by dividing the amount of the Company’s total assets located in the United States of $[**insert dollar amount**] (as such amount was derived by the Company from its underlying accounting records that support the Audited Financials and notified to us in writing) by the amount of the Company’s total assets as defined and set forth in the Audited Financials, and found such percentage to be greater than 90%.”]

4. Our calculation of the amount of the Company’s tangible net worth (as set forth in Line 2 above) is [**insert either:** “greater than or equal to” or “less than”] $10 million.

5. The dollar amount identified in Line 6(A) of the CFO Letter is hereinafter referred to as the “Financial Assurance Amount.” Our calculation of the amount of the Company’s tangible net worth (as set forth in Line 2 above) is [**insert either:** “greater than or equal to” or “less than”] an amount calculated as six times the Financial Assurance Amount.

6. **[Include and complete Line 6 only if less than 90% of Company’s assets are located in the United States]** Our calculation of the amount of the Company’s total assets located in the United States (as set forth in Line 3 above) is [**insert either:** “greater than or equal to” or “less than”] an amount calculated as six times the Financial Assurance Amount.

[Remainder of page left blank intentionally.]

The foregoing agreed-upon procedures do not constitute an audit of the Company’s financial statements or any part thereof, the objective of which is the expression of opinion on the financial statements or a part thereof. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and Management of the Company and is not intended to be and should not be used by anyone other than these specified parties; *provided, however*, that we acknowledge and agree that the Company may provide this report to EPA in support of the Company’s financial assurance demonstration under the Settlement Agreement.

By [signature]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact information: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **Sample Standby Funding Commitment**

[**To be printed on PRP/Settling Defendant’s letterhead**]

[**Insert date**]

U.S. Environmental Protection Agency Region [**insert number**]

c/o [**insert appropriate Regional official such as “Superfund Division Director”**]

[**Insert address**]
[**Insert contact information**]

Re: Standby Funding Commitment

Dear [**insert EPA recipient identified above**]:

[**Insert name of PRP/Settling Defendant**] (the “Company”) hereby establishes this Irrevocable Standby Funding Commitment in favor of the United States Environmental Protection Agency (EPA) in the amount of $[**insert dollar amount**] (the “Financial Assurance Amount”). The Financial Assurance Amount is equal to the financial assurance the Company has agreed to establish and maintain pursuant to Paragraph [**insert applicable paragraph number**] of that certain [**insert as appropriate:** “Consent Decree,” “Administrative Settlement Agreement and Order on Consent,” or “Settlement Agreement”] dated [**insert date**], [**insert as appropriate:** civil action number for consent decrees or EPA docket number for administrative agreements], between the Company and EPA, for the [**insert site name [operable unit]**] Site (hereinafter, the “Settlement Agreement”), entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675, as further described in the letter dated [**insert date**], from the Company’s Chief Financial Officer, [**insert name**], to EPA. The Company is establishing this Irrevocable Standby Funding Commitment in consideration of the mutual promises and covenants contained in the Settlement Agreement.

Pursuant to this Irrevocable Standby Funding Commitment, upon the occurrence of any “Work Takeover” by EPA under Paragraph [**insert applicable paragraph number**] of the Settlement Agreement and at the request and direction of an authorized representative of EPA upon the Company’s failure to remedy to EPA’s satisfaction the circumstances giving rise to EPA’s implementation of such Work Takeover, the Company agrees to pay to or at the direction of EPA an amount up to but not exceeding the Financial Assurance Amount in immediately available funds and without setoff, counterclaim, or condition of any kind. Amounts drawn under the immediately preceding sentence shall be paid as set forth in the Settlement Agreement to continue and complete the “Work.” This Irrevocable Standby Funding Commitment shall continue in full force and effect until the earlier to occur of (a) the termination of the Settlement Agreement in accordance with its terms and (b) the establishment by the Company of alternative financial assurance consistent with and as permitted by the Settlement Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

By [signature]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact information: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of [**insert state**]

County of [**insert county**]

On this [**insert date**], before me personally came [**insert name of Company’s signatory**] to me known, who, being by me duly sworn, did depose and say that she/he is [**insert title**] of [**insert name of Company**], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature of Notary Public]