

**SETTLEMENT AGREEMENT FOR CERTAIN CLAIMS AND COST-SHARING
ARRANGEMENT**

Between

Wyeth LLC, f/k/a Wyeth (“Wyeth”), a Delaware limited liability company, in the person of its Assistant General Counsel for Pfizer Inc., on behalf of Wyeth, Merrill E. Fliederbaum
and

The Port of Tacoma (the “Port”), a municipal corporation under the laws of Washington, in the person of its Chief Executive Officer, John Wolfe

are hereinafter jointly referred to as the **“Parties.”**

WHEREAS

- a) On June 13, 2016, the Port (plaintiff) sued Sound Mattress & Felt Company (defendant and hereinafter referred to as, **“Sound Mattress”**), Wyeth (defendant), and several John Does (defendant) in the Superior Court of the State of Washington for the County of Pierce, Case Number 16-2-086379-9, before the Honorable Stanley J. Rumbaugh (the **“Dispute”**), alleging, among others, that Wyeth has succeeded to certain liabilities attributed to a company called Washington Steel Products, Inc. related to alleged environmental contamination located at 1940 East 11th Street in Tacoma, Washington (the **“Property”**), which is part of the facility identified by the Washington Department of Ecology (**“Ecology”**) as the Sound Mattress & Felt Co. Site, Facility Site ID No. 1232087, Cleanup Site ID No. 1615 (**“Site”**);
- b) In the Dispute, the Port brought claims against Sound Mattress and Wyeth under Washington’s Model Toxics Control Act, RCW 70.105D.010 et seq. (**“MTCA”**) asserting demands for, among others, (i) the reimbursement of remedial action costs and expenses incurred in relation to the reported presence of hazardous substances at the Site and (ii) future remedial action costs and expenses it will incur in relation to remediating hazardous substances at the Site;
- c) The Port also brought contractual claims for damages against Sound Mattress based on the October 27, 2006 Purchase and Sales Agreement whereby Sound Mattress sold the Property to the Port;
- d) On August 31, 2016, Sound Mattress brought contribution claims against the Port and Wyeth;

- e) Sound Mattress has reached a separate cash-out Settlement Agreement with the Port (“**Sound Mattress Settlement**”);
- f) The Parties agree that an amicable resolution of all claims raised in connection with the Dispute is advisable; and
- g) The Parties agree that this Partial Settlement and Interim Cost-Sharing Agreement (“**Settlement Agreement**”) and any related negotiations do neither directly nor indirectly entail an admission of any liability whatsoever.

Now, therefore, for the purposes of settling the matters described herein and staying the Dispute as agreed to below, and in consideration of the agreements, covenants, and conditions herein contained, the adequacy and sufficiency of which are hereby expressly acknowledged and agreed by the signatories hereto, the Parties enter into this Settlement Agreement, effective as of the date of the last signature to be affixed hereto (the “**Effective Date**”), and agree as follows:

1. INTERPRETATION

- 1.1. The Recitals above shall form an integral and substantive part of this Settlement Agreement.

2. SETTLEMENT PAYMENT

- 2.1. Wyeth agrees to pay the Port a lump-sum amount of \$1,500,000 (“**Lump-sum Payment**”). In exchange for the amicable settlement of the Port’s specific claims for past costs incurred prior to November 28, 2017, including attorneys’ fees, as asserted in the amount of \$2,955,725 in its November 29, 2017 mediation brief (“**Past Costs**”), the Port shall credit the all-inclusive total amount of \$1,000,000 from the Lump-sum Payment to the Port’s Past Costs. With this credit, the Port hereby irrevocably and unconditionally waives, releases, and covenants not to sue and forever discharges Wyeth from and against any and all claims, counterclaims, suits, actions, rights, demands, losses, costs, damages, liabilities and causes of action of every nature and description, at law or in equity, known or unknown, relating to its Past Costs. The Port’s crediting of this \$1,000,000 to Past Costs is not, and shall not be construed to be, an equitable allocation of the Parties’ liability for remedial action costs under MTCA or any other state or federal statute or regulation.

2.2. Upon the grant of the stay discussed in Section 4, Wyeth shall, within forty-five (45) days, make the payment stated in Clause 2.1 of this Settlement Agreement by bank transfer in favor of the Port of Tacoma into the bank account held in the latter's name at Bank of America.

2.3. Following the payment of the Lump-Sum Payment by Wyeth, the Port shall promptly notify Wyeth of receipt of the payment.

3. PAYMENT OF FUTURE COSTS

3.1. The Parties agree that \$500,000 of Wyeth's Lump-sum Payment described in Clause 2.1 will be credited toward Wyeth's ultimate responsibility for remedial action costs, including costs to implement the remedy selected by Ecology for the Site. The Port's crediting of this \$500,000 to future costs is not, and shall not be construed to be, an equitable allocation of the Parties' liability for remedial action costs under MTCA.

3.2. The Parties agree that costs for additional investigation to develop a Draft Cleanup Action Plan ("DCAP") shall be paid 85% by Wyeth and 15% by the Port up to \$800,000; provided, however, that to the extent such investigation and development of the DCAP exceeds \$800,000, the costs in excess of \$800,000 will be paid 50% by Wyeth and 50% by the Port. Costs subject to the preceding sentence shall include all necessary costs of investigation and development of the DCAP, such as for contractors, vendors, utilities, and Ecology costs, and not the Parties' internal costs, personnel costs, or attorney fees. The payments discussed in this Clause 3.2 may or may not be the final equitable allocation of the Parties' liabilities for remedial action costs under MTCA.

3.3. In consideration of terms contained within this Settlement Agreement, the Port agrees to take on responsibility for performing all investigation and remediation activities on the Site contemplated in this Settlement Agreement, including, but not limited to, all proposals, reports, negotiations, discussions, and agreements with the Ecology or the United States Environmental Protection Agency. The Port also agrees that any activities it carries out on or related to the Site will be performed in accordance with MTCA and its associated regulations and to the satisfaction of the Ecology or the United States Environmental Protection Agency.

- 3.4. The Parties agree to pursue the most cost-effective cleanup option that is compliant with MTCA and Ecology regulations that considers the industrial use of the property.
- 3.5. This Settlement Agreement is subject to the outline of work (“**OOW**”) attached hereto as Exhibit A for future work at the site to obtain DCAP approval. The parties agree to work in good faith and cooperatively to satisfy all Ecology requirements and comments on any Work Plans or Feasibility Study documents created according to and consistent with the OOW. The Work Plan(s) or Feasibility Study documents that detail the future work at the site will include, at a minimum, an SVE program or similarly effective source abatement technology at a comparable cost for source removal and demonstration piloting while additional Site studies are undertaken.
- 3.6. Until Ecology has approved a DCAP, the Port agrees to produce or otherwise make available to Wyeth all information and documents concerning the work required to finish investigating, characterizing, and preparing a DCAP for the Site, including, but not limited to, making the Port’s consultants available to Wyeth for joint discussions with the Port concerning the work being done pursuant to this Agreement at the Site.
- 3.7. The Port agrees to permit Wyeth to, at its own expense, participate in all non-privileged proceedings related to the Site, including meetings, and further agrees to provide Wyeth, for its review and comment, with drafts of all submissions it makes to Ecology or any other governmental agency in connection with the work outlined in the Work Plans or Feasibility Study documents discussed in Clause 3.5 at the Site. The Port shall provide Wyeth each and every deliverable it plans to provide to Ecology, and give Wyeth not less than fifteen (15) calendar days to comment and/or revise the deliverable. If the Parties cannot reach agreement on provisions within a deliverable, Wyeth or the Port shall be entitled to make its disagreement known to Ecology by submitting its own deliverable to Ecology.
- 3.8. The Port agrees to indemnify, defend, and hold Wyeth harmless for any and all liability, costs, or damages resulting from the Port’s negligence or willful misconduct arising out of or relating to the performance of work on the Site.
- 3.9. The Port shall arrange for its consultant(s) and/or contractor(s) to copy their invoices to Wyeth for cost-sharing concurrently with their submission of invoices to the Port. If Wyeth has no objection

to the invoice, Wyeth shall mail payment for said invoice by check payable to the Port within forty-five (45) calendar days of receipt pursuant to the appropriate percentage share detailed in Clause 3.2. If Wyeth disputes any portion of the invoice, including but not limited to actions carried out, timeliness, or amount, it shall notify the Port of its objection within ten (10) calendar days of receipt. Upon receipt of an objection from Wyeth, the Port and Wyeth will engage in dispute resolution pursuant to Section 6 of this Settlement Agreement.

3.10. The Parties agree to use their best efforts to ensure that the Port and Wyeth shall be signatories to an Ecology Agreed Order to perform the work outlined in the OOW.

4. STAY OF LITIGATION

4.1. This Settlement Agreement is conditioned upon the court entering an order to stay the Dispute until, at a minimum, the DCAP is finalized. During the pendency of the stay and standstill period, there will be no discovery, or dispositive motion practice. If the litigation stay expires, the Parties will be allowed to schedule and take depositions of the expert witnesses they previously disclosed in this matter. Neither the Port nor Wyeth will seek additional discovery prior to trial by motion or otherwise, nor will either of them seek to change their expert witness disclosures, unless the expert should be unavailable, such as due to death or incapacity. The Parties agree that the mediator can be called upon to support the stay/standstill request as needed (e.g., via declaration or other statement).

4.2. If and once the stay in litigation is achieved, Wyeth agrees not to object to a claim bar order regarding the Sound Mattress Settlement.

5. NO ADMISSION

5.1. This Settlement Agreement is entered into in order to partially settle the Dispute and stay any and all the claims related to the Dispute. Nothing in this Settlement Agreement or any related negotiations shall be represented, construed, or used in evidence as an admission of any fact, responsibility, fault, or liability whatsoever. Further, neither this Settlement Agreement nor any related negotiations shall be offered or received in evidence in any proceedings except for the purpose of enforcing this Settlement Agreement.

5.2. This Settlement Agreement is given in compromise of disputed claims and to avoid litigation, and the payment herein is not to be construed as an admission of liability on the part of any of the Parties and each denies any liability to the other and to any other party and with respect to the Property, the Site, the surrounding area, and all claims associated with the Dispute. The Parties also reserve all rights, claims, and defenses not settled or stayed in this Settlement Agreement.

6. DISPUTE RESOLUTION

6.1. Disputes shall be raised by written notice. The Parties agree to appoint designated representatives to attempt in good faith to resolve disputes under this Agreement, other than the disputes contemplated in Clause 3.7 above. If the Parties are unable to resolve the dispute within fifteen (15) calendar days of receipt of the first written notice, then, at the request of either Party, the Parties' discussions shall be elevated to their respective counsels, who shall attempt to resolve the dispute in good faith. If, after an additional thirty (30) calendar days, the dispute is not resolved, the Parties shall have the right to utilize a Mediator (at shared cost of 50% for each party, less attorney fees and costs, which shall be allocated as provided in Clause 9.1, below) to attempt further resolution. This dispute resolution process shall not be utilized for disputes contemplated in Clause 3.7, above, or Clause 10.4, below, or for disputes involving technical issues (e.g., issues involving the interpretation of Data, the contents of deliverables, whether a well or a test pit is a more appropriate means of investigation, etc.), which shall be resolved through communications with Ecology if the Parties cannot reach agreement on their own.

6.2. During the time that a dispute is subject to good faith discussions under this Section, the Parties shall continue to comply with all terms and provisions of this Settlement Agreement.

6.3. This Section applies only to disputes that arise between the Parties with respect to matters addressed under this Settlement Agreement and does not apply to any other claim or litigation by either Party against the other.

7. NO ASSIGNMENTS OR OTHER CLAIMS

- 7.1. The Port represents and warrants that it has not made any assignment, and will not make any assignment, of any payment, or right to payment, chose in action, right of action, or any right of any kind whatsoever, embodied in or derived from any matter that is the subject of this Settlement Agreement, and no other person or entity of any kind has been assigned by the Port any interest in, or lien against, any demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, costs, expenses, losses, or claims, arising out of or in connection with any such matter.
- 7.2. Each Party warrants that it has not assigned or caused or suffered to be assigned or otherwise transferred or disposed of any claim which would otherwise be settled, released, or waived hereunder.
- 7.3. Each Party warrants to the other Party that, as of the date of this Settlement Agreement, no proceedings (other than the Dispute) arising out of or connected with all claims related to the Dispute have been commenced, are pending or, to the best of its knowledge, are contemplated against the other Party.

8. ENTIRE AGREEMENT

- 8.1. This Settlement Agreement constitutes the entire agreement between the Parties relating to its subject matter, and supersedes and extinguishes any prior undertakings, representations, warranties, conditions, and arrangements of any nature, whether in writing or oral, relating to that subject matter.
- 8.2. Each Party represents and warrants that it has conducted such inquiries and taken such advice as it considers necessary in order to enter into this Settlement Agreement and that, in doing so, it has not relied on anything said or done, or not said or not done, by or on behalf of the other Party except to the extent that it is set out expressly in this Settlement Agreement. In particular, each Party acknowledges and agrees that it was not induced to enter into this Settlement Agreement by any representation or statement made by the other Party, and that it has not relied on any such representation or statement. The Parties further acknowledge and agree that they have not entered into this Settlement Agreement as a result of any duress and/or coercion. Each Party also accepts that the other Party or their affiliates may have information relevant to the Dispute or this

Settlement Agreement that they have not disclosed and that neither the existence, where applicable, of such information nor any statement or representation made by the other Party gives any grounds to vitiate this Settlement Agreement, nor, without prejudice to Clause 7.1 above, to claim damages or to seek any other relief.

9. COSTS AND EXPENSES

9.1. Legal and advisory expenses incurred by the Parties as part of implementation of this Settlement Agreement, and from activities carried out during the time period from the date of mediation, January 17, 2018, until the conclusion of the period covered by this Settlement Agreement shall be borne by the Party by which they were incurred, including the costs and expenses borne for the technical advice and assistance, and shall not be subject to the cost sharing set forth in Paragraph 3.2 above, provided further that the prevailing party in any dispute which progresses through mediation as described in Clause 6.1 above or which proceeds to court pursuant to Clause 16.1, below, shall be entitled to recover its fees and costs from the non-prevailing party or as allocated by the mediator/Court. Nothing in this paragraph constitutes a waiver of the Parties' right to seek contribution for any costs outside of those costs covered by this Settlement Agreement and that are otherwise compensable under RCW 70.105D.080.

10. CONFIDENTIALITY

10.1. No Party shall disclose to any third party the existence or terms of this Settlement Agreement or any negotiation relating to this Settlement Agreement except to the extent that:

1. Disclosure is required by law, by a direction or order of a court or tribunal or governmental agency or regulatory body, or pursuant to bank regulations, stock exchange regulations, or for the purpose of pursuing or defending court proceedings;
2. Disclosure is necessary to enable or facilitate the enforcement of this Settlement Agreement, including, but not limited to, in communications with Ecology, or the case of disclosure to potential purchasers or transferees of the Site or of part of the Site; or
3. The information in question was, on the date of this Settlement Agreement, already in the public domain or later comes into the public domain through no fault of any Party.

4. Nothing in this Agreement shall prevent the Port from promptly and fully complying with the law, including without limitation, the Washington Public Records Act, Chapter 42.56 RCW, provided, however, that the Port shall provide Wyeth ten (10) days' advance notice if the Port intends to release any information regarding this Agreement to allow Wyeth the opportunity to seek injunctive relief to prevent any such release of records. The Parties further agree that the Port may make this Agreement a part of the public record in conjunction with the Port Commission's consideration of approving and authorizing Port personnel to sign this Agreement.

11. NOTICES

11.1. The Parties agree that any notice connected with the execution and performance of this Settlement Agreement shall be sent:

- a) if addressed to Wyeth, to:
Steven F. Kemp
Senior Director
Care of Pfizer Inc.
Route 206
North Peapack, New Jersey 07977
SOM-PPK-LLA-403
With copy to:
Merrill E. Fliederbaum
Pfizer Inc.
235 East 42nd Street
New York, New York 10017
- b) if addressed to the Port to Tacoma, to:
Rob Healy
Port of Tacoma
One Sitcum Plaza
Tacoma, Washington 98421;
Carolyn Lake

Goodstein Law Group
501 So. G Street
Tacoma, Washington 98405; and
Mark Nadler
The Nadler Law Group
720 Third Ave., Suite 1400
Seattle, Washington 98104

or to the different address that may be communicated by one party to the other in compliance with the provisions indicated above, and it shall be deemed as duly given: (i) upon delivery, if by hand; (ii) the date of sending, if given by e-mail transmission and a confirming copy is mailed within 2 (two) days by first class mail; (iii) the same day of mailing for the party by whom notice has been given or the day of its receipt for the party to whom notice has to be addressed, if mailed by certified mail, return receipt requested, or by certified e-mail.

12. AUTHORITY AND CAPACITY

12.1. The Parties represent and warrant to each other that they have the capacity and authority to enter into and perform this Settlement Agreement, that each of those who execute this Settlement Agreement on their behalf is duly authorized to do so, and that this Settlement Agreement gives rise to legal, valid, binding, and enforceable obligations on each Party.

13. NO WAIVER

13.1. No failure to exercise, nor any delay in exercising, any right or remedy under this Settlement Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

14. AGREEMENT MODIFICATIONS

14.1. No variation, waiver, or other amendment of this Settlement Agreement shall be effective or enforceable unless made in writing and signed by or on behalf of all of the Parties.

15. SEVERABILITY

15.1. In the event of invalidity or ineffectiveness of any Clause of this Settlement Agreement, or portions thereof, the remaining portion of this Settlement Agreement shall not be affected thereby and the Parties agree to negotiate in good faith to replace the relevant provision, or portions thereof, with other valid and effective agreements having substantially the same effect, having regard to the subject matter and purposes of this Settlement Agreement.

16. CHOICE OF LAW AND VENUE

16.1. The Parties agree that disputes arising out of this Agreement that the Parties are unable to resolve through the procedure described in Clause 6.1 shall be decided under the law of the State of Washington, the exclusive venue for such disputes shall be in the Pierce County Superior Court, Washington, and the dispute shall be raised in the lawsuit defined above as the Dispute if such case is still active when the dispute arises.

Wyeth

By: _____

Merrill E. Fliederbaum

Assistant General Counsel for Pfizer Inc., on behalf of Wyeth

The Port of Tacoma

By: _____

John Wolfe

CEO of the Port of Tacoma