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EPA REGION VIII
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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| IN THE MATTER OF:<br><br>RICHARDSON FLAT TAILINGS<br><br>United Park City Mines Company<br>Respondent<br><br>Proceeding Under Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (42 U.S.C. Sections 9604, 9622(a), 9622(d)(3)). | U.S. EPA Docket No. CERCLA-8-2000-19 |

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

## I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and United Park City Mines Company ("Respondent"). The Consent Order concerns the preparation of, performance of, and reimbursement for all associated costs incurred by EPA in connection with a focused remedial investigation and feasibility study ("RI/FS") for the Richardson Flat Tailings Site (the "Site"), located near Park City, Utah.

## II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the EPA Region 8 Director of the Superfund Remedial Response Program, Office of Ecosystem Protection and Remediation (the "Director") by EPA Delegation No. 14-14-C.

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by

EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Director to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms.

## III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon EPA and shall be binding upon Respondent, its agents, successors, assigns, officers, directors and principals. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent or of the facility or Site shall alter Respondent's responsibilities under this Consent Order.

5. The Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

## IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and the Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site or facility, by conducting a focused remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility, by conducting a focused feasibility study; and (c) to recover RI/FS response and oversight costs incurred by EPA with respect to this Consent Order.

7. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS, with the exception of the focused baseline risk assessment to be performed by EPA, and for a record of decision that is consistent with CERCLA and the National

Contingency Plan ("NCP"), 40 C.F.R. Part 300. The activities conducted under this Consent Order shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

## V. FINDINGS OF FACT

8. The Richardson Flats Site (CERCLIS ID # UTD980952840) is located approximately three and one-half miles northeast of Park City, in Summit County, Utah. The Site is a former mine tailings impoundment and covers approximately 160 acres immediately southeast of the junction of U.S. Highway 40 and Utah Highway 248. The tailings pile is adjacent to Silver Creek, a tributary to the Weber River. Some wetlands are positioned between the tailings pile embankment and Silver Creek.

9. Tailings were first placed at the Site prior to 1950. Tailings disposal continued intermittently through 1982 with several modifications and enlargements of the pile occurring. Since 1982, the Site has been inactive, although the Respondent has taken various actions intended to mitigate any potential impacts on human health and the environment including fencing the Site and covering the tailings pile with clean soil.

10. Sampling conducted by EPA has revealed the presence of heavy metals, including arsenic, cadmium, lead, and zinc, in tailings at the Site, as well as in surface water within the south diversion ditch on the Site, and in some shallow ground water wells. These results are documented in various EPA investigations, including the "Analytical Results Report for Richardson Flat Tailings" dated October 25, 1985 and the "Final Report" regarding removal assessment dated February 19, 1993.

11. The primary contaminant migration pathways for the Site, include, but are not limited to: (1) release to surface water and discharge to Silver Creek; (2) release to ground water and discharge of that ground water to Silver Creek or local wells; and (3) direct contact with tailings, contaminated soils, or contaminated sediments.

12. The Site was originally proposed for inclusion on the National Priorities List ("NPL") on June 24, 1988. Due to scoring issues and comments received from Respondent and others during the public comment period, the Site was removed from NPL consideration in February 1991. Using the revised Hazard Ranking System (Update 12), the Site was re-proposed for the NPL on February 7, 1992. No final action has been taken with regard to this proposed listing.

13. The Respondent, United Park City Mines Company, is the owner of the Site.

## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

14. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

15. Wastes and constituents thereof at the Site, identified in paragraph 10 are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

16. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

17. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

18. Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

19. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. Section 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. Sections 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. Section 9622(a).

## VII. NOTICE

20. By providing a copy of this Consent Order to the State, EPA is notifying the State of Utah that this Consent Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Consent Order.

## VIII. WORK TO BE PERFORMED

21. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. The Respondent has notified EPA that it intends to use the following personnel in carrying out such work: Kerry C. Gee, Resource Management Consultants, Inc., under the direction of James Fricke, and HDR Engineering, Inc., under the direction of Kenneth Napp. EPA hereby approves Respondent's use of the foregoing personnel and consultants in performing the work called for herein. In the event that Respondent desires to use different or additional personnel during the course of the RI/FS, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories

to be used in carrying out such work. The qualifications of any new or additional persons undertaking the work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Consent Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person(s)' technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Consent Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent.

22. Respondent shall conduct activities and submit deliverables as provided by the attached Statement of Work for Focused Remedial Investigation/Feasibility Study (the "SOW") and Workplan (the "Workplan"), which are incorporated by reference, for the development of the RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA"(OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, and guidances referenced in the Workplan, as may be amended or modified by EPA. The general activities that Respondent is required to perform are identified in the SOW and are described more fully in the Workplan. The tasks that Respondent must perform are described more fully in the Workplan and guidances. Deliverables identified in the SOW and Workplan shall be submitted to EPA as provided therein. All work performed under this Consent Order shall be in accordance with the schedules therein, and in full accordance with the standards, specifications, and other requirements of the Workplan and sampling and analysis plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time. For the purpose of this Consent Order, day means calendar day unless otherwise noted in the Consent Order.

23. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Respondent must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

24. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: sampling and analysis plan, draft focused remedial investigation report, treatability testing work plan (if required) and sampling and analysis plan, and draft focused feasibility study report. While awaiting EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities which

may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

25. Upon receipt of the draft focused FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.

26. For all remaining deliverables not enumerated above in paragraph 22, Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

27. In the event that Respondent amends or revises a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondent for its costs; and/or seek any other appropriate relief.

28. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondent shall incorporate and integrate information supplied by EPA into the final RI/FS report.

29. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent(s)' deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

30. Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

(a) The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to

ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the focused remedial investigation and feasibility study. Respondent shall provide all relevant information, including information under the categories noted in paragraph 30(a) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

## IX. EPA'S FOCUSED BASELINE RISK ASSESSMENT

31. EPA will perform the focused baseline risk assessment. The focused baseline risk assessment will be a streamlined human health/ecological risk assessment taking into account the existing conditions at the Site, the proposed future land use and existing information. Respondent shall support EPA in the effort by providing various information to EPA as outlined above. The major components of the focused baseline risk assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

32. EPA will provide, after review of the Respondent's site characterization summary, sufficient information concerning the baseline risks such that the Respondent can begin drafting the focused feasibility study report and the Memorandum on Remedial Action Objectives. This information will normally be in the form of two or more focused baseline risk assessment memoranda prepared by EPA. One memorandum will generally include a list of the chemicals of concern for human health and ecological effects and the corresponding toxicity values. Another should list the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the focused baseline risk assessment. The public, including the Respondent, may comment on these memoranda. However, the Agency is obligated to respond only to significant comments that are submitted during the formal public comment period.

33. EPA will make good faith efforts to provide a draft focused baseline risk assessment to Respondent no later than ninety (90) days after EPA acceptance of the focused RI report as final. After EPA responds to any significant comments from the Respondent, EPA will release the focused baseline risk assessment to the public at the same time it releases the final RI report. Both reports will be put into the administrative record for the Site. EPA will respond to all significant comments on the memoranda or the focused baseline risk assessment that are resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

## X. MODIFICATION OF THE WORKPLAN

34. If at any time during the RI/FS process, Respondent identifies a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within 20 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables.

35. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and the state immediately. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Workplan, EPA shall modify or amend the Workplan in writing accordingly. Respondent shall perform the tasks set forth in the Workplan as modified or amended.

36. EPA may determine that, in addition to tasks defined in the initially approved Workplan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the Workplan for this RI/FS. EPA may require that the Respondent perform this work in addition to those required by the initially approved Workplan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondent shall confirm its willingness to perform the additional work in writing to EPA within seven (7) days of receipt of the EPA request or Respondent shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Workplan or written Workplan supplement. EPA reserves the right to conduct the additional work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

## XI. QUALITY ASSURANCE

37. Respondent shall assure that work performed, samples taken and analyses conducted conform to the requirements of the Workplan, the QAPP and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures.

## XII. FINAL RI/FS, PROPOSED, PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

38. EPA retains the responsibility for the release to the public of the RI/FS report. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

39. EPA shall provide Respondent with the final RI/FS report, proposed plan and record of decision.

40. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondent must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent may establish a community information repository at or near the Site, to house one copy of the administrative record.

## XIII. PROGRESS REPORTS AND MEETINGS

41. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

42. In addition to the deliverables set forth in this Consent Order, Respondent shall provide to EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Consent Order during that month, (2) include all results of sampling and tests and all other data received by the Respondent, (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for RI/FS completion and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

43. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's

behalf, during implementation of this Consent Order, shall be submitted to EPA in the subsequent monthly progress report as described in Section XII of this Order. EPA will make available to the Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

44. Respondent will orally notify EPA at least 15 days prior to conducting significant field events as described in the Workplan or sampling and analysis plan. At EPA's oral or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondent in implementing this Consent Order. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

45. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor pursuant to this order; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order, subject to a claim of privilege asserted in accordance with paragraph 46 below. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans. Whenever reasonably possible, EPA shall notify Respondent orally or in writing at least seven (7) days prior to entering the Site to perform any of its inspection activities.

46. The Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. Section 2.20., provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. Section 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring. In addition, Respondent may assert that documents, records or other information

are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged. Respondent shall retain all records and documents that they claim to be privileged until any such dispute has been resolved in Respondent's favor.

47. Except with regard to the objections already presented in comments filed by Respondent, in entering into this Order, Respondent waives any objections to any data gathered, generated, or evaluated under the terms of this Consent Order by EPA, the state, or Respondent in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any EPA-approved work plans or sampling and analysis plans. If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

48. If the Site, or the off-site area that is to be used for access or is within the scope of the RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order, Respondent will obtain, or use its best efforts to obtain, Site access agreements from the present owner(s) within sixty (60) days of the effective date of this Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and the Respondent or its authorized representatives, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for the Respondent, perform those tasks or activities with EPA contractors, or terminate the Consent Order in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Consent Order, Respondent shall perform all other activities not requiring access to that site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent additionally shall

integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, Respondent agrees to indemnify the U.S. Government as specified in Section XXVI of this Order. Respondent also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondent pursuant to this paragraph.

## XV. DESIGNATED PROJECT COORDINATORS

49. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent and EPA designate in writing:

(a) Three copies of documents to be submitted to EPA should be sent to:

Jim Christiansen
Richardson Flat Tailings Project
Coordinator,
Superfund Remedial Section, 8EPR-SR
US EPA, Region VIII,
999 18th Street, Denver, CO, 80202-2466.

(b) Two copies of documents to be submitted to the State should be sent to:

Muhammad A. Slam
State of Utah Department of Environmental Quality
Division of Environmental Response & Remediation
168 North 1950 West, 1st Floor
Salt Lake City, Utah 84116

(c) One copy of documents to be submitted to the Respondent should be sent to:

Kerry C. Gee
Vice President
United Park City Mines Company
P.O. Box 1450
Park City, Utah 84060

And

Kevin R. Murray
LeBoeuf, Lamb, Green & MacRae
136 South Main, Suite 1000
Salt Lake City, Utah 84101

50. On or before the effective date of this Consent Order, EPA and the Respondent shall each designate their own Project

Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the state, and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

51. EPA and the Respondent each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

52. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the National Contingency Plan, to halt any work required by this Consent Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

53. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the Workplan.

## XVI. OTHER APPLICABLE LAWS

54. Respondent shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with Section 121 of CERCLA.

## XVII. RECORD PRESERVATION

55. All records and documents in EPA's and Respondent's possession that relate in any way to the Site shall be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondent shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Respondent shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Respondent shall, at no cost to EPA, give EPA the documents or copies of the documents.

## XVIII. DISPUTE RESOLUTION

56. Any disputes concerning activities or deliverables required under this Consent Order, excluding the baseline risk assessment, for which dispute resolution has been expressly provided for, shall be resolved as follows: If the Respondent objects to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondent shall notify EPA's Project Coordinator in writing of its objections within 14 days of receipt of the disapproval notice or requirement. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent certified mail, return receipt requested. EPA and the Respondent then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondent may request a determination by the Director. The Director's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If the Respondent does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

57. Respondent is not relieved of its obligations to perform and conduct activities and submit deliverables on the schedule set forth in the Workplan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Consent Order.

## XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES

58. For each day that the Respondent fails to complete a deliverable in a timely manner or fails to produce a deliverable of acceptable quality, or otherwise fails to perform in accordance with the requirements of this Consent Order, Respondent shall be liable for stipulated penalties. EPA may, in its sole discretion, impose a lesser penalty than those set forth below for minor violations. Any reduction in the stipulated penalty imposed shall be solely at EPA's discretion and shall not be subject to dispute resolution. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondent is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.

59. Respondent shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C.

Section 3717. Respondent shall further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

60. Respondent shall make all payments by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

61. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Enforcement Specialist
Richardson Flat Tailings Site
U.S. EPA Region 8
Suite 300 (8ENF-T)
999 18th Street
Denver, CO 80202-2466

62. For the following major deliverables, stipulated penalties shall accrue in the amount of $250 per day, per violation, for the first seven days of noncompliance; $500 per day, per violation, for the 8th through 14th day of noncompliance; $1,000 per day, per violation, for the 15th day through the 30th day; and $2,000 per day per violation for all violations lasting beyond 30 days.

1) An original and any revised sampling and analysis plan.

2) An original and any revised focused remedial investigation report.

3) An original and any revised treatability testing work plan, if required.

4) An original and any revised treatability study sampling and analysis plan, if required.

5) An original and any revised focused feasibility study report.

63. For the following interim deliverables, stipulated penalties shall accrue in the amount of $250 per day, per violation, for the first week of noncompliance; $500 per day, per violation, for the 8th through 14th day of noncompliance; $1,000 per day, per violation, for the 15th day through the 30th day of noncompliance; and $2,000 per day per violation for all violations lasting beyond 30 days.

1) Technical memorandum on modeling of site characteristics, if required.

2) Summary of RI data,

3) Identification of candidate technologies memorandum.

4) Treatability testing statement of work, if required.

5) Treatability study evaluation report, if required.

6) Memorandum on remedial action objectives.

7) Memoranda on development, screening, and detailed comparative analysis of alternatives.

64. For the monthly progress reports, stipulated penalties shall accrue in the amount of $250 per day, per violation, for the first week of noncompliance; $500 per day, per violation, for the 8th through 14th day of noncompliance; $1,000 per day, per violation, for the 15th day through the 30th day; and $2,000 per day, per violation, for all violations lasting beyond 30 days.

65. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVIII herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

66. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require re-submission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

67. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Consent Order, including but not limited to conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Consent Order.

68. If Respondent submits any major or interim deliverable to EPA early or on time, EPA will make good faith efforts to provide formal comments no later than one calendar month from the due date of the deliverable.

## XX. FORCE MAJEURE

69. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondent and of any entity controlled by Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that the Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order or the financial difficulty of Respondent to perform such work.

70. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the Remedial Project Manager or, in his or her absence, the Director, within 48 hours of when the Respondent knew or should have known that the event might cause a delay. Within five business days thereafter, Respondent shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a

delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

71. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to Section XXVII of this Consent Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

72. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondent on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XVIII of this Consent Order. In any such proceeding, to qualify for a force majeure defense, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of paragraph 70.

73. Should Respondent carry the burden set forth in paragraph 72, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

## XXI. REIMBURSEMENT OF PAST COSTS

74. To date, EPA has incurred costs in responding to the release of hazardous substances at and from the Site (Past Costs). EPA and Respondent are in the process reviewing these Past Costs and will use their best efforts to resolve outstanding issues. The parties intend to embody any agreement regarding payment of Past Costs in a separate administrative order and to include to the extent possible other potentially responsible parties for the Site.

## XXII. REIMBURSEMENT OF RI/FS RESPONSE AND OVERSIGHT COSTS

75. Following the issuance of this Consent Order, EPA shall submit to the Respondent on a periodic basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this RI/FS. Response costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondent's implementation of the requirements of this Consent Order and activities performed by the government as part of the RI/FS and community relations, including any costs incurred while

obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, Site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, costs of performing the focused baseline risk assessment, and costs of redoing any of Respondent's tasks. Any necessary summaries, including, but not limited to EPA's SCORE$ Report or such other summary as certified by EPA, shall serve as basis for payment demands.

76. Respondent shall, within 60 days of receipt of each accounting, remit a certified or cashier's check for the amount of all uncontested costs. Interest shall accrue from the later of: the date payment of a specified amount is demanded in writing; or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA. Respondent reserves and retains the right to pursue claims against other "persons" as defined in Section 101(21) of CERCLA for contribution or indemnity for these costs.

77. Respondent shall make payment by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

78. At the time of payment, Respondent shall send notice that such payment has been made to:

Enforcement Specialist,
Richardson Flat Tailings Site
U.S. EPA Region 8
Suite 300 (8ENF-T)
999 18th Street
Denver, CO 80202-2466

79. Copies of the transmittal letter and check should be sent simultaneously to the EPA Project Coordinator.

80. If Respondent disputes any costs due to accounting errors, the inclusion of costs outside the scope of this Consent Order, or that such costs are inconsistent with the NCP, Respondent shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error, the inclusion of costs outside the scope of this Consent Order, or inconsistency with the NCP.

## XXIII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

81. EPA reserves the right to bring an action against the Respondent under section 107 of CERCLA for recovery of all response costs including oversight costs, incurred by the United States at the Site that are not reimbursed by the Respondent, any costs incurred in the event that EPA performs the RI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site.

82. EPA reserves the right to bring an action against Respondent to enforce the RI/FS response and oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed pursuant to Section XIX of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. Section 9609.

83. Except as expressly provided in this Consent Order, each party reserves all rights and defenses it may have. Respondent specifically reserves its rights and defenses regarding liability or responsibility in any proceedings regarding this Site other than proceedings to enforce this Consent Order. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

84. Following satisfaction of the requirements of this Consent Order, Respondent shall have resolved its liability to EPA for the work performed by Respondent pursuant to this Consent Order. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this Site, Past Costs, or activities arising pursuant to Section 121(c) of CERCLA.

## XXIV. DISCLAIMER

85. By signing this Consent Order and taking actions under this Consent Order, the Respondent does not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondent in this Consent Order, as well as EPA's findings of Fact and Conclusions of Law set forth in this Consent Order, shall not be considered an admission of liability and is not admissible in evidence against the Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondent retains its rights to assert claims against other potentially responsible parties at the Site. However, the Respondent agrees not to contest the validity or terms of this Consent Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

## XXV. OTHER CLAIMS

86. In entering into this Consent Order, Respondent waives any right to seek reimbursement under section 106(b) of CERCLA. Respondent also waives any right to present a claim under section 111 or 112 of CERCLA. This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA. Respondent further waives all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

87. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site. Nothing contained in this Consent Order shall affect any right, claim, interest or cause of action of any party hereto with respect to third parties.

88. Respondent shall bear its own costs and attorneys fees.

89. The parties agree that the Respondent is entitled, upon EPA approval of Respondent's certification that all requirements of this Consent have been satisfied, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Order. The "matters addressed" in this Consent Order include the performance of a RI/FS for the tailings impoundment at this Site. The "matters addressed" in this Consent Order do not include payment of Past Costs, the performance of any remedial action or cleanup action determined to be necessary at the tailings impoundment, or payment of any response costs resulting therefrom.

## XXVI. INSURANCE AND INDEMNIFICATION

90. (a) Prior to commencement of any work under this Consent Order, Respondent shall secure or ensure that its contractors or subcontractors secure, and shall maintain in force for the duration of this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of $ 1.0 million dollars, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of $1.0 million per occurrence, and Umbrella Liability Insurance in the amount of $2 million per occurrence.

(b) Respondent shall also secure or ensure that its contractors or subcontractors also secure, and maintain in force for the duration of this Consent Order the following:

i. Professional Errors and Omissions Insurance in the amount of $1,000,000.00 per occurrence; and

ii. Pollution Liability Insurance in the amount of $1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of this Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondent, in furtherance of this Consent Order.

(d) If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Consent Order, and annually thereafter on the anniversary of the effective date of this Consent Order, Respondent shall provide to EPA certificates of such insurance and a copy of each insurance policy.

91. At least 7 days prior to commencing any work under this Consent Order, Respondent shall certify to EPA that the required insurance has been obtained by that contractor.

92. The Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Consent Order.

## XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

93. The effective date of this Consent Order shall be the date it is signed by EPA.

94. This Consent Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing. Project Coordinators do not have the authority to sign amendments to the Consent Order.

95. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order.

## XXVIII. TERMINATION AND SATISFACTION

96. This Consent Order shall terminate when the Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondent's obligation to comply with Sections XVII, XXIII, and XXV of this Consent Order.

97. The certification referred to in the preceding paragraph shall be signed by a responsible official representing the Respondent. The representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

[SEE NEXT PAGE FOR SIGNATURES]

AGREED TO:

United Park City Mines

BY: Hank Bell, President DATE: 9/27/00
(Respondent) Title

AGREED TO AND ORDERED:

U.S. Environmental Protection Agency Region 8

BY: Dale Vodehnal DATE: 9/28/2000
Dale Vodehnal, Director
Superfund Remedial Response Program
Office of Ecosystem Protection and Remediation

STATEMENT OF WORK
FOR
FOCUSED REMEDIAL INVESTIGATION/FEASIBILITY STUDY
RICHARDSON FLAT TAILINGS SITE
SUMMIT COUNTY, UTAH
UT980952840

## INTRODUCTION

United Park City Mines Company ("United Park") submits this Statement of Work ("SOW") to perform a focused remedial investigation/feasibility study at the Richardson Flat Tailings Site, located in Summit County, Utah (the "Site"). In support of this SOW, United Park has prepared a Focused Remedial Investigation/Feasibility Study Work Plan (the "Focused RI/FS Work Plan"), which is attached hereto as Exhibit A and incorporated by reference to this SOW. At the request of United States Environmental Protection Agency ("EPA") Region 8, this SOW has been prepared based on and in conformance with EPA's July 2, 1991 Model Statement of Work for PRP-Conducted Remedial Investigations and Feasibility Studies (EPA's "Model SOW"). This work is being conducted in full cooperation with both the EPA and the Utah Department of Environmental Quality (UDEQ).

As described in Section 1.0 of the Focused RI/FS Work Plan, United Park is the current owner of a large parcel of property (the "Property"), comprising approximately 700 acres, located in Summit County, Utah. Figure 1.0 of the Focused RI/FS Work Plan shows the general geographic location of the Property. A historic mine tailings impoundment, consisting of a large, geometrically closed basin formed by an earth embankment and a series of perimeter containment dikes, covers approximately 160 acres of the Property and is sometimes referred to as "Richardson Flat" or simply the "Site." The tailings impoundment resulted from decades of mining and milling silver-laden ore in the area around Park City known as the Park City Mining District. The Site is depicted in Figure 2.0 of the Focused RI/FS Work Plan.

The Site has remained unused since mining and milling operations ceased in 1982. Over the past fifteen years, EPA Region 8, the Utah Department of Environmental Quality ("UDEQ") and United Park have been investigating the Site in order to characterize the Site and determine potential adverse impacts to human health and the environment associated with the Site. At the same time, United Park has been implementing a series of remedial measures at the Site intended to mitigate any potential adverse impacts on human health and the environment.

The objectives of this focused remedial investigation/feasibility study ("RI/FS") are to further investigate the nature and extent of contamination at the Site, to supplement the

investigation efforts performed at the Site to date, to collect sufficient data to support EPA's risk assessment and analysis, and, if necessary, develop and evaluate potential additional remedial alternatives to support final Site closure. The focused RI and FS are interactive and may be conducted concurrently so that the additional data collected in the focused RI influences the development of additional remedial alternatives in the FS, which in turn affects the data needs and the scope of treatability studies, if any are required.

United Park will conduct this focused RI/FS (except for the focused risk assessment component and any community involvement activities which will be conducted by the EPA and UDEQ) and will produce a draft RI/FS report that are in accordance with this SOW, and to the extent appropriate for the Site, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance that EPA uses in conducting a RI/FS (a list of the primary guidance is attached), as well as any additional requirements in the administrative order. United Park will furnish all necessary personnel, materials, and services needed, or incidental to, performing the focused RI/FS, except as otherwise specified in the administrative order.

At the completion of the focused RI/FS, EPA in consultation with UDEQ will be responsible for the selection of a site remedy and will document this selection in a Record of Decision (ROD). The remedial action alternative selected by EPA in consultation with UDEQ will meet the cleanup standards specified in CERCLA Section 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element, as appropriate for the Site. The final focused RI/FS report, as adopted by EPA in consultation with UDEQ and EPA's focused risk assessment will, with the administrative record, form the basis for the selection of the Site's final closure remedy and will provide the information necessary to support the development of the ROD.

As specified in CERCLA Section 104(a)(1), as amended by SARA, EPA will provide oversight of United Park's activities throughout the focused RI/FS. United Park will support EPA's initiation and conduct of activities related to the implementation of oversight activities.

TASK 1 - SCOPING

As described in Section 3 of the Focused RI/FS Work Plan, since the 1970s, numerous environmental investigations have been conducted relating to the Site. The reports and data from these prior investigations are very useful in determining the scope of additional investigative activities needed to bring final closure to the Site. From 1985 to 1988 and from 1992 to 1993, the EPA conducted and reported on investigations at the Site. Based on previous and current environmental studies and existing Site conditions, United Park has developed a conceptual model of the Site. As described in Section 4 of the Focused RI/FS Work Plan, the Preliminary Site Model will be used to scope and evaluate the need for supplemental remedial investigation work (as described in Section 5 of the Focused RI/FS Work Plan) to assist in the development of further remedial measures to support final Site closure. United Park will develop a Preliminary Site Model in coordination with EPA and UDEQ.

As described in the Focused RI/FS Work Plan, the Site is similar in construction and characteristics to other tailings impoundment's found throughout Utah and other Rocky Mountain States. The tailings on this Site are non-reactive and were derived from ore bodies contained in carbonate host rocks. Soil, surface water, and groundwater media will be addressed in both the additional investigative work and in the evaluation of further remedial measures as part of the RI/FS work to be performed pursuant to this SOW. Recent and past investigations show that the tailings are underlain by native high-clay-content soils, sitting within an enclosure constituting a large, geometrically closed impoundment, covered with a vegetated soil cover. There is a surface water diversion ditch system that surrounds the impounded tailings. Because the characteristics of the Site are similar to other tailings impoundment's in the Rocky Mountain region, much is known about such sites generally and about the effectiveness of such an impoundment's construction. Such information will also be very useful in determining the scope of additional investigative activities needed to bring final closure to the Site.

When scoping the specific aspects of a project, United Park will meet with EPA and UDEQ to discuss all project planning decisions and special concerns associated with the Site. As a function of the project planning process, United Park will perform the activities described below to the extent they have not already been performed.

a. Site Background and Site Visit

The respondent will gather and analyze the existing site background information and will conduct a site visit to assist in planning the scope of the RI/FS. The respondent will also

collect and analyze existing data and document the need for additional data. Before planning RI/FS activities, all existing site data will be thoroughly compiled and reviewed by the respondent. Specifically, this will include presently available data relating to the varieties and quantities of hazardous substances at the site, and past disposal practices. This will also include results from any previous sampling events that may have been conducted. This information will be utilized in determining additional data needed to characterize the site, better define potential applicable or relevant and appropriate requirements (ARARs), and develop a range of preliminarily identified remedial alternatives.

The respondent will also conduct a site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination, as well as potential exposure pathways and receptors at the site. This information will be utilized to better scope the project and to determine the extent of additional data necessary to characterize the site, better define potential ARARs, and narrow the range of preliminarily identified remedial alternatives.

Consistent with EPA's Model SOW, United Park has gathered and analyzed the existing Site background information and has conducted numerous Site visits to assist in scoping its focused RI/FS. The results of these efforts are reported in Sections 2, 3 and 4 of the Focused RI/FS Work Plan. This information was utilized in determining additional data needed to characterize the Site, and will assist to better define potential ARARs and develop a range of preliminarily identified additional remedial alternatives. The results of these efforts are reported in Sections 5 and 7 of the Focused RI/FS Work Plan. In addition, United Park has conducted site visits with personnel from the EPA and UDEQ. The Site work completed from 1985 to 1993 by EPA and UDEQ has provided a great deal of background information on the Site. There is a good deal of institutional knowledge about the Site.

b. Project Planning

Once the respondent has collected and analyzed existing data and conducted a site visit, the specific project scope will be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols.

As described in the Focused RI/FS Work Plan, United Park has been implementing a series of remedial measures at the Site intended to mitigate any potential adverse impacts on human health and the environment. As the result of previous Site operations and United Park's remedial efforts, United Park believes that key elements are already in place to support final Site closure. These closure elements include:

- Installation of multiple monitoring wells to monitor groundwater conditions in and around the Site
- Construction of a large, earth embankment and a series of containment dikes to contain the tailings
- Construction of a diversion ditch system surrounding the impoundment to collect and redirect surface and ground water
- Placement of a vegetated clay soil cover to isolate the tailings, to prevent tailings from becoming wind-borne, and to minimize the infiltration of water to the tailings
- Installation of a security fence to limit Site access

Based on the data collected from and the remedial measures that have already been implemented at the Site to date, and in consideration of remedial measures implemented at similar tailings impoundment sites throughout Utah and other Rocky Mountain States, United Park believes that final Site closure can be achieved without the implementation of further remedial measures.

However, United Park recognizes that EPA has concerns about Site conditions that the agency believes must be addressed through additional Site characterization and possibly through the implementation of additional remedial measures. Therefore, United Park agrees to further investigate the nature and extent of contamination at the Site to supplement the investigation efforts performed at the Site to date and confirm that the measures implemented at the Site to date are adequate to support final closure of the Site. If necessary, based on the findings of these efforts, United Park will also develop and evaluate potential additional remedial alternatives to support a final closure of the Site that is protective of human health and the environment, and consistent with contemplated future land use of the Site. United Park proposes to use the data derived from the Focused RI/FS (together with a focused risk assessment to be performed by EPA) to determine whether any further remedial measures are needed to support final Site closure. If and to the extent further remedial measures are required, United Park believes that any appropriate final remedy for the Site should be consistent with and incorporate, to the maximum extent practicable, all elements of the existing Site closure.

If remedial actions involving treatment have been identified by the respondent or EPA, treatability studies will be required except where the respondent can demonstrate to EPA's satisfaction that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) will be planned to occur concurrently with site characterization activities.

As previously described in this SOW and in the Focused RI/FS Work Plan, United Park will develop and evaluate potential additional remedial alternatives to support a final closure of the Site that is protective of human health and the environment, and consistent with contemplated future land use of the Site. As described in Section 7.0 of the Focused RI/FS Work Plan, a preliminary list of such additional remedial measures may include:

- Improving and maintaining the main embankment stability and integrity
- Improving and maintaining the soil cover
- Improving and maintaining the surface drainage
- Improving and maintaining the diversion ditches
- Excavating tailings located outside of the impoundment, placing the same within the impoundment, and placement of additional cover
- Establishing appropriate institutional controls to prevent unacceptable exposure risk

At this time, such preliminary additional remedial measures would not involve treatment of hazardous wastes or substances. Consequently, it is unlikely that treatability studies would need to be performed as part of the evaluation and selection of final additional remedial measures to support final closure of the Site. However, if new information comes to light as a result of United Park's focused RI/FS efforts, or if circumstances change, then United Park will evaluate the need for and conduct, as necessary, treatability tests in accordance with the NCP and as approved by EPA.

The respondent will conduct a preliminary identification of potential state and federal ARARs (chemical-specific, location-specific and action-specific) to assist in the refinement of remedial action objectives, and the initial identification of further remedial alternatives and ARARs associated with particular actions. ARARs identification will continue as site conditions, contaminants, and remedial action alternatives are better defined.

As described in Sections 6.0 and 7.0 of the Focused RI/FS Work Plan, evaluation of any further remedial alternatives to support the final Site closure will include an assessment of the feasibility and overall effectiveness of such measures based on the requirements of CERCLA and the NCP. This will include a focused risk assessment (to be performed by EPA) that is based on possible future land use scenarios. At the outset of the focused feasibility study, ARARs for the final Site closure will be preliminarily identified. Since the range of possible future land uses will be set out early in the process, the proposed ARARs will be focused on a narrow range of remedial measures to support final Site closure. ARARs identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

c. Scoping Deliverables -- Focused RI/FS Work Plan, Sampling and Analysis Plan, and Health and Safety Plan.

According to EPA's Model SOW, at the conclusion of the project planning phase, the respondent will submit a RI/FS work plan, a sampling and analysis plan ("SAP"), and a site health and safety plan ("HASP"). The SAP provides a mechanism for planning field activities and consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP). The FSP will define the sampling and data-gathering methods that will be used on the project. The QAPP will describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired data quality objectives ("DQOs"). The HASP will be prepared in conformance with the respondent's health and safety program, and in compliance with OSHA regulations and protocols. The RI/FS work plan and SAP must be reviewed and approved by EPA prior to the initiation of field activities. United Park and EPA will coordinate comments so that the SAP will include sampling and field procedures to be followed by EPA oversight contractors. This portion of the SAP will include procedures for EPA oversight sampling for both scheduled and unscheduled sampling events.

The Focused RI/FS Work Plan is attached to this SOW and will be deemed approved upon EPA's signature of the AOC. The Work Plan provides additional detail to the tasks set forth in this SOW where available. The Sampling and Analysis Plan, and Health and Safety Plan will be submitted to the agencies within 60 days of EPA's signing of the AOC.

The SAP will most likely be delivered initially addressing only certain specific aspects of the RI/FS. If additional data gathering needs for specific aspects of the RI/FS are identified, the SAP will be supplemented with the additional data gathering criteria.

As previously indicated in this SOW, United Park has prepared a Focused RI/FS Work Plan, attached hereto as Exhibit A. Within sixty (60) days of the effective date of the AOC, United Park will also prepare a SAP (which includes a FSP and QAPP) and HASP prior to conducting any supplemental fieldwork at the Site. Consistent with EPA's Model SOW, the Focused RI/FS Work Plan and SAP will be reviewed and approved by EPA prior to the initiation of field activities.

TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA and UDEQ. Although implementation of the community relations plan is the responsibility of EPA and UDEQ, United Park may assist by providing information regarding

the Site's history, participating in public meetings, or by assisting in the preparation of fact sheets for distribution to the general public. United Park may establish a community information repository, at or near the Site, to house one copy of the administrative record. The extent of United Park's involvement in community relations activities is left to the discretion of the agencies. United Park's community relations responsibilities, if any, will be specified in the community relations plan. All community relations activities conducted by United Park will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

a. Field Investigation

During this phase, the Focused RI/FS Work Plan, SAP, and HASP are implemented. As set forth in Section 5 of the Focused RI/FS Work Plan, the supplemental field investigation will include the gathering of additional data to further define site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. United Park, in accordance with the Focused RI/FS Work Plan and SAP will perform these activities. United Park will initiate field support activities following approval of the Focused RI/FS Work Plan and SAP. Field support activities may include obtaining access to the site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors, as appropriate. United Park will notify EPA and UDEQ at least two weeks prior to initiating field support activities, so that EPA may adequately schedule oversight tasks. United Park will also notify EPA and UDEQ in writing upon completion of field support activities. United Park shall complete initial fieldwork within seventeen (17) months of EPA approval or modification of the SAP.

b. Data Analysis

In accordance with the Focused RI/FS Work Plan, United Park will analyze and evaluate the existing and any newly-collected data to describe: (1) site physical and biological characteristics, (2) contaminant source characteristics, (3) nature and extent of contamination and (4) contaminant fate and transport. The RI data will be presented in a format (i.e., computer disc or equivalent) to facilitate EPA's preparation of the focused risk assessment. United Park shall agree to discuss and then collect any data gaps identified by the EPA that need to be filled in order to complete the focused risk assessment. (See "Guidance for Data Usability in Risk Assessment - OSWER Directive # 9285.7- 05 - October 1990.) Additionally, the data will be used in combination with the focused risk assessment to facilitate the implementation of any additional remedial measures that are deemed necessary for the Site through the Feasibility Study that follows.

c. Data Management Procedures

Information gathered during the supplemental Site characterization work will be consistently documented and adequately recorded by United Park in well-maintained field logs and laboratory reports. Field logs will be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports will document sample custody, analytical responsibility, analytical results, nonconformity events, corrective measures and/or data deficiencies, and adherence to prescribed protocols. United Park will provide EPA with analytical data within forty-five (45) days of each sampling activity, in an electronic format showing the location, medium, and results. United Park will notify EPA when all pertinent data to be used in the Remedial Investigation report has been provided to EPA.

d. Remedial Investigation Report Deliverable

After completing the supplemental field sampling and analysis, a draft RI Report will be prepared and submitted by United Park to EPA and UDEQ for review and approval. This report will be submitted to EPA within seventy-five (75) days of United Park's notification to EPA that all data has been provided. The draft RI report will contain a Site characterization summary that will provide EPA with a preliminary reference for developing the focused risk assessment. The Site characterization summary will also be used by United Park to assist in confirming that the measures implemented at the Site to date are adequate to support final closure of the Site, and in evaluating the development and screening of further remedial alternatives and the refinement and identification of ARARs. The draft RI report shall summarize and evaluate results of past and recent field activities to characterize the Site, sources of contamination and the fate and transport of contaminants. United Park will refer to the RI/FS Guidance for an outline of the report format and contents. Following receipt of comments by EPA and, United Park will prepare and submit a final RI report within thirty (30) days, which satisfactorily addresses EPA and UDEQ comments.

TASK 4 - TREATABILITY STUDIES

As described earlier in this SOW and in Section 7.0 of the Work Plan, United Park will develop, evaluate and recommend, as necessary, potential additional remedial alternatives to support a final closure of the Site that will be protective of human health and the environment, and consistent with the contemplated future land use of the Site. At this time, such additional remedial measures would not involve treatment of hazardous wastes or substances. Consequently, it is unlikely that treatability studies would need to be performed as part of the evaluation and selection of final additional remedial measures to support final closure of the Site. However, if new information comes to light as a result of United Park's focused RI/FS efforts, or

if circumstances change, then United Park will evaluate the need for and conduct, as necessary, treatability tests in accordance with the NCP and EPA's Model SOW and as approved by EPA. If such tests are necessary, the following deliverables will apply:

1. Identification of Candidate Technologies Memorandum.

2. Treatability Testing Statement of Work.

3. Treatability Testing Work Plan.

4. Treatability Study Sampling and Analysis Plan.

5. Treatability Study Site Health and Safety Plan.

6. Treatability Study Evaluation Report.

Because it is unclear whether or not treatability studies are necessary it is not appropriate to include timeframes at this time. These will be addressed when it is known whether or not treatability studies are necessary.

TASK 5 - DEVELOPMENT, SCREENING, AND ANALYSIS OF FURTHER REMEDIAL ALTERNATIVES

As described in Section 7.0 of the Focused RI/FS Work Plan and previously in Task 1.b of this SOW, United Park believes that final Site closure can be achieved without the implementation of further remedial measures. However, United Park recognizes that EPA has concerns about Site conditions that the agency believes must be addressed through additional Site characterization and possibly through the implementation of additional remedial measures. Therefore, United Park agrees to further investigate the nature and extent of contamination at the Site to supplement the investigation efforts performed at the Site to date and confirm that the measures implemented at the Site to date are adequate to support final closure. United Park notes that it is currently considering long-term, non-residential land uses at the Site and the Property. While the Property outside the impoundment is already suitable for development, the Property is not currently being used for any productive purpose. United Park is considering developing the area outside of the actual impoundment for non-residential, recreational uses. United Park is also considering non-residential uses, consistent with the soil cover and any appropriate institutional controls, for the southern area of the tailings impoundment area itself.

Based on the findings of these additional investigation and evaluation efforts, United Park proposes to use the data derived from the Focused RI/FS (together with a focused risk assessment to be performed by EPA) to facilitate the determination of whether any further remedial measures are needed to support final Site closure. If necessary, as part of the focused feasibility study, United Park will develop appropriate remedial action objectives, and develop and evaluate potential additional remedial alternatives, to support a final closure of the Site that is protective of human health and the environment, taking into consideration the low-toxicity volume of the on-Site tailings materials, as well as remedial measures implemented at similar tailings impoundment sites throughout Utah and the Rocky Mountain States. If and to the extent further remedial measures are required, United Park believes that any appropriate final remedy for the Site should be consistent with and incorporate, to the maximum extent practicable, all elements of the existing Site closure, and with contemplated future land use of the Site.

United Park will develop and evaluate a range of appropriate further remedial alternatives to support final Site closure, concurrent with the RI Site characterization task. Based on EPA's focused risk assessment, United Park will review, and if necessary and appropriate for the Site: 1) modify the site-specific remedial action objectives; 2) develop general response actions for each medium of interest to satisfy the remedial action objectives; 3) identify areas or volumes of media to which general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives; 4) identify, screen and document technologies, if any, applicable to each general response action to eliminate those that cannot be implemented at the site; and 5) assemble and document further alternative remedial measures. Such remedial measures may include, for example, removal, treatment and containment of the on-Site tailings materials, as well as a "no-action" alternative. Within thirty (30) days of receipt of EPA's baseline risk assessment, United Park will submit a memorandum detailing Remedial Action Objectives.

United Park will conduct a detailed analysis of additional remedial alternatives to support final closure of the Site, which will consist of an analysis against a set of nine evaluation criteria to ensure that the selected additional remedial measures will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARS; will be cost-effective; will utilized permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element (if appropriate). The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: criteria 8 and 9 may not be complete until comments on

the proposed plan are received. State and community concerns expressed during the RI/FS process will be considered as they are submitted or otherwise expressed.)

Within ninety (90) days of EPA's approval of the Memorandum detailing the development, screening, and analysis of alternatives, United Park will submit a draft FS report to EPA for review and approval. Once United Park has addressed EPA's comments, the final FS report may be bound with the final RI report. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA and documents the development and analysis of further remedial alternatives to support final closure of the Site. United Park will refer to the RI/FS Guidance for an outline of the report format and the required report content, as appropriate for the Site.

## REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process:

The (revised) National Contingency Plan

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, " U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3

"A Compendium of Superfund Field Operations Methods," Two Volumes, U.S. EPA,. Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

"EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, EPA-330/9-78-001-R.

"Data Quality Objectives for Remedial Response Activities, " U.S. EPA, ffice of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for Preparing Quality Assurance Project Plans," U.S. EPA, Office of Research and Development, Cincinnati, OH, QAMS-004/80, December 29,1980.

"Interim Guidelines and Specifications for Quality Assurance Project Plans," U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the EPA Contract Laboratory," U.S. EPA, Sample Management Office, August 1982.

Interim Guidance with Applicable or Relevant and Appropriate Requirements,' U.S. EPA, OFFICE of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual," Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites," U.S." U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on Superfund Decision Documents," U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.-02

"Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part A), EPA/540/1-89/002

"Risk Assessment Guidance for Superfund - Volume II Environmental Evaluation Manual," March 1989, EPA/540/1-89/ 001

"Guidance for Data Usability in Risk Assessment," October, 1990, EPA/540/G-90/008

"Performance of Risk Assessments in Remedial Investigation/Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs),"August 28, 1990, OSWER Directive No.9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions," April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employed in Field Activities," U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim Guidance on Administrative Records for Selection of CERCLA Response Actions," U.S. EPA, Office of Waste Programs Enforcement, March 1,1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook," U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9230.0#3B.

"Community Relations During Enforcement Activities And Development of the Administrative Record," U.S. EPA, Office of Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1a.