NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

Anaconda Copper Mine Site

Lyon County, Nevada

Atlantic Richfield Company

Respondent

**INTERIM ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR: (i) REMEDIAL DESIGN / REMEDIAL ACTION, (ii) SITE-WIDE REMEDIAL INVESTIGATION / FEASIBILITY STUDY, AND (iii) FLUID MANAGEMENT**

Proceeding under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607, and Chapters 445A, 445B, 459, and 519A of the Nevada Revised Statutes



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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Interim Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the Nevada Division of Environmental Protection (the "Division") and Atlantic Richfield Company ("Respondent"). This Settlement provides for: (a) Respondent's design and performance of the remedial action embodied in the Interim Record of Decision ("ROD-1") executed by the Division, the United States Environmental Protection Agency ("EPA"), and the United States Bureau of Land Management ("BLM") on July 24, 2017 (the "Remedial Action") for certain portions of the Anaconda Copper Mine Site generally located in Lyon County, Nevada (the "Site"); (b) performance of remedial investigations and feasibility studies (including risk assessments) ("RI/FS") for other portions of the Site; (c) interim operation and maintenance of the Site's fluid management system ("FMS"); (d) payment of certain response costs incurred by the Division; (e) implementation of interim measures reasonably necessary to prolong the life of, and maintain sufficient capacity in, the FMS prior to the selection and completion of the remedial action within other portions of the Site; and (f) the Division's ability to require other interim measures determined to be necessary to address contaminant migration or prevent exposure to Site-related contaminants and to ensure CERCLA Protectiveness.

2. The Division is exercising its jurisdiction over this matter pursuant to Section 105(h) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605(h); the National Priorities List Deferral Agreement entered between EPA and the Division ("Deferral Agreement"); and all legally applicable sections of Nevada Revised Statutes ("NRS") Chapters 445A, 445B, 459, and 519A and CERCLA, 42 U.S.C. §§ 9601 *et seq.*

3. Respondent has consented to the Division's jurisdiction under each authority lawfully exercised by the Division, including all applicable sections of the NRS and CERCLA, Section 105(h) of CERCLA, 42 U.S.C. § 9605(h), and the Deferral Agreement, over Respondent regarding the content of this Settlement and its jurisdiction to enter such agreements. Respondent shall not challenge the terms of this Settlement or the Division's jurisdiction to enter and enforce this Settlement; however, Respondent does not waive its right to challenge the Division's interpretation of any terms or conditions of this Settlement through Dispute Resolution in Section XVIII (Dispute Resolution).

4. EPA has not listed the Site on the National Priorities List ("NPL"), and it is deferring the lead agency role at the Site under the Deferral Agreement. The Division has sufficient capabilities, resources, expertise, and authorities to ensure that a CERCLA-Protective cleanup is conducted at the Site and to coordinate with EPA, the BLM, the Yerington Paiute Tribe ("YPT") and Walker River Paiute Tribe ("WRPT") (collectively, the "Tribes"), other interested agencies, and the public on different phases of implementation of the cleanup.

5. The Division and Respondent previously entered into a Framework for Agreement for Orphan Share Funding and Remedy Implementation, dated June 13, 2017 (the "Framework Agreement"), which establishes a framework and key terms under which Respondent will voluntarily assume costs attributable to a now insolvent former owner and operator of the Site, and perform and fund a substantial portion of the Remedial Action, the RI/FS, and other response



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actions at the Site. To the extent that this Settlement conflicts with the terms of the Framework Agreement, this Settlement will control any rights or obligations of the Parties related to the Site.

6. Consistent with the Deferral Agreement, selection and implementation of a final remedy that will provide CERCLA Protectiveness will be the guiding principle for remedy decisions at the Site, including any decisions made by the Division based on the RI/FS. The Division and Respondent intend that the Remedial Action, the RI/FS, and other response actions performed under Division-lead oversight at the Site should proceed on a site-wide, holistic basis, rather than as one operable unit at a time, to take full advantage of the efficiencies derived from fewer mobilizations, to allow for the prioritization of respons e actions that best address the most significant Site risks in a timely fashion, and to maximize theutilization of resources, including on-site materials, in the implementation of the Remedial Action and other response actions.

7. Respondent has undertaken past response actions at the Site pur suant to administrative orders issued by or entered into with the Divisi on and EPA. Any such prior orders issued by or entered into with the Division are hereby terminat ed, as of the Effective Date, and the Division releases Respondent fro m all obligations and responsib ilities arising therefrom. Respondent is separately negotiating the termination of and rel ease from any such prior orders issued by or entered into with EPA.

8. Because EPA is deferring listing the Site on the NPL while the Division oversees response actions at the Site, the Division has notified EPA as well as the United States Department of Interior, the Tribes, and the Nevada Department of Wildlife of this Settlement.

9. The Division and Respondent recognize that this Settlement has been negotiated in good faith and that Respondent's entry into, and the actions undertaken by Respondent in accordance with, this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. The Division and Respondent agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

10. Notwithstanding the foregoing, the Division acknowledges that Respondent asserts it is entitled to statutory and other legal defenses to joint and several liability for performance of response actions and payment of response costs incurred or to be incurred with respect to certain operable units, structures, areas, and features at the Site. By entering into this Settlement and agreeing to perform and/or fund response actions called for under this Settlement, Respondent does not waive, and the Division does not contest the availability of, these defenses. Respondent's agreement to perform and/or fund response actions under this Settlement shall in no way alter Respondent's defenses or result in Respondent being liable for any response actions or response costs for which it would not otherwise be liable under CERCLA or Nevada law as a result of its past ownership of or activities at or relating to the Site.

## II. PARTIES BOUND

11. This Settlement is binding upon the Division and upon Respondent and their respective successors and assigns as long as it remains in effect. Any change in Respondent's ownership or corporate status including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's or the Division's responsibilities and obligations under this Settlement.

12. In the event that (i) either the Division or EPA terminates the Deferral Agreement, and (ii) EPA orders, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, or otherwise requires that Respondent perform any response actions at the Site, either Party may immediately and unilaterally terminate this Settlement by providing written notice to the other Party. The Division shall not terminate the Deferral Agreement unless it first determines and provides written notification to Respondent that: (a) adequate funding provided by Respondent for completion of the Remedial Action has become unavailable prior to Certification of Remedial Action Completion pursuant to Paragraph 172; (b) Respondent materially fails to perform any Work required by this Settlement, in a CERCLA Protective manner, or otherwise in compliance with applicable federal and state law, and the Division and Respondent cannot reach resolution on a dispute or Respondent is not responsive to the Division's enforcement action; (c) there has been a material change in conditions or circumstances such that the Division's authorities and programs are no longer sufficient to manage the Site; (d) the Remedial Action is unreasonably delayed; (e) performance of the Remedial Action is inconsistent with the Deferral Agreement; or (f) EPA is in material breach of the Deferral Agreement. As to the conditions in items (a), (b), (d), and (e) in the prior sentence, the Division shall provide Respondent an opportunity to cure the condition within 30 days of notice to Respondent before terminating the Deferral Agreement.

13. The Division's and Respondent's undersigned representatives each certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind the Division and Respondent to this Settlement.

14. Respondent shall provide a copy of this Settlement to its Supervising Contractor(s) (as defined in Paragraph 15.zz) and direct its Supervising Contractor(s) to perform all Work, and require all Work performed by any subcontractors to be, in conformity with the terms of this Settlement. Respondent or its Supervising Contractor(s) shall provide written notice of this Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

## III. DEFINITIONS

15. Unless otherwise expressly provided herein, terms used in this Settlement that are defined in CERCLA, the NRS, or in regulations promulgated under CERCLA or the NRS shall have the meaning assigned to them in CERCLA, the NRS, or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:



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a. "Affected Property" shall mean all real property at the Site and any other real property where the Division determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the Remedial Action or the RI/FS.

b. "Anaconda Copper Mine Site Special Account" shall mean the interest bearing special account established and maintained by or on behalf of the Division for the purpose of conducting or financing future response actions at or in connection with the Site. The account may be named something other than the "Anaconda Copper Mine Site Special Account."

c. "ARAR" shall mean applicable or relevant and appropriate requirements, as defined in Section 121(d) of CERCLA, 42 U.S.C. § 9621(d), and as identified in the ROD-1 or in any amendment thereto or explanation of significant difference therefrom.

d. "Arimetco Facilities" shall mean the facilities constructed and/or operated by Arimetco Inc. at the Site, including the heap leach pads ("HLPs"), the FMS, and the solvent extraction / electrowinning ("SX/EW") processing plant, located within and comprising OU-8.

e. "BLM" means the U.S. Department of Interior Bureau of Land Management and its successor departments, agencies, or instrumentalities.

f. "CEM" shall mean a Certified Environmental Manager certified by the State of Nevada under Nevada Administrative Code ("NAC") § 459.972 or § 459.9724.

g. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

h. "CERCLA Protective" or "CERCLA Protectiveness" shall mean the level of protectiveness of human health and the environment provided by a response action that is consistent with the applicable requirements of CERCLA, including: a risk level for carcinogens between $10^{-4}$ and $10^{-6}$; a hazard index for non-carcinogens less than or equal to 1; compliance with federal ARARs and state ARARs under the Division's state authorities, unless an ARARs waiver is justified; reasonable progress towards achievement with, and/or compliance with, the Performance Standards for the selected Remedial Action; and lack of demonstrated exposure to Site-related hazardous substances by human or ecological receptors at levels that pose unacceptable risk.

i. "Closure Management Unit" or "CMU" shall mean one of ten defined areas of the Site within or for which surface features, waste material characteristics, geochemical conditions, geotechnical conditions, location, proximity to other surface features, spatial considerations, and other factors are such that the effectiveness, implementability, timeliness, and cost-effectiveness of performing remedial actions within that CMU and in coordination with remedial actions performed in other adjacent or nearby CMUs can be maximized. CMUs may include portions of more than one Operable Unit. A Site map depicting the CMUs is attached as Appendix A. The specific boundaries and/or number of CMUs may be adjusted pursuant to Paragraph 54 (Modification of RD/RA SOW or Related Deliverables) and Section XXIX (Modification) as the RI/FS and RD/RA activities advance and as Site needs dictate to

accommodate remedial alternative efficiencies, regulatory requirements, changes in land ownership, design considerations, or other factors.

j. "Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of businessof the next working day.

k. "Deferral Agreement" shall mean the National Priorities List Deferral Agreement entered into between the Division and EPA for the Site on February 5, 2018, and describing, among other things: (i) the terms by which EPA has agreed to defer listing of the Site on the NPL in accordance with Section 105(h) of CERCLA, 42 U.S.C. § 9605(h), while the Division completes and/or oversees necessary investigations and response actions at the Site, (ii) the steps the Division will take to ensure that adequate response actions are completed at the Site, and (iii) the conditions under which EPA or the Division may terminate the Deferral Agreement or separately require further response actions at the Site.

l. "Deliverable" shall mean, without limitation, any work plan, report, progress report, plan data, document, information, or submittal, which Respondent is required to submit to the Division under the terms of this Settlement or other document further defined by the Division as a Deliverable.

m. "Division O&M Costs" shall mean response costs incurred by the Division not inconsistent with the NCP in performing O&M measures at the Site to maintain the effectiveness of the Remedial Action.

n. "Division RD/RA Costs" shall mean 7.8% of the third-party contractor costs charged to and paid by Respondent for performing Remedial Action-related Response Activities within or related to OU-8, including designing and performing the Remedial Action, which the Division shall pay to Respondent as reimbursement in accordance with Paragraph 113 (Payments for Division RD/RA Costs). Division RD/RA Costs shall not include any percentage of: internal costs (*e.g.*, personnel costs, oversight costs, indirect costs, and overhead) incurred by Respondent in designing or performing the Remedial Action; any Future Response Costs paid by Respondent under this Settlement; costs for performing any Remedial Action-related Response Activities not directly or indirectly associated with OU-8 (as determined in accordance with Paragraph 113); costs incurred by Respondent in implementing the FMS Work Plan; or any costs of any type paid by any Party prior to the Effective Date.

o. "Effective Date" shall mean the effective date of this Settlement as provided in Section XXXIII.

p. "Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottombarriers, immobilization processes, and vertical barriers.

q. "EPA" shall mean the United States Environmental Protection Age ncy and its successor departments, agencies, or instrumentalities.

r. "EPA Administrative Order for RI/FS" shall mean the Administrative Order for Remedial Investigation and Feasibility Study, CERCLA Docket No. 9-2007-0005, issued by EPA to Respondent on January 12, 2007, with respect to the Site.

s. "FMS" shall mean the fluid management system currently being used to collect, convey, store, evaporate, and otherwise manage the heap leaching drain down fluids associated with the Arimetco Facilities in OU-8 and any new equipment or facilities constructed or installed to manage drain down fluids associated with the Arimetco Facilities as part of the Remedial Action for the purpose of collecting, conveying, storing, evaporating, and otherwise managing the heap leaching drain down fluids.

t. "FMS Work Plan" shall mean the Arimetco Heap Leach Fluid Management System Operation and Maintenance Plan, dated June 2017, which describes the activities Respondent must perform to operate and service the FMS during the performance of the RI/FS and the Remedial Action, as set forth in Appendix D to this Set tlement, and any modifications to the FMS Work Plan made in accordance with this Settlement.

u. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the Division incurs not inconsistent with the NCP after the Effective Date in reviewing or developing plans, reports, and other Deliverables pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XII (Property Requirements) (including, but not limited to, costs and attorneys' fees and any monies paid to secure access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XVI (Emergency Response and Notificationof Releases), Paragraph 141 (Work Takeover), and Paragraph 72 (Community Involvement; Technical Assistance for Tribes and Eligible Community Organization). Future Response Costs shall not include Division O&M Costs or Division RD/RA Costs.

v. "Heap Leach Pad" or "HLP" shall mean any one of five heap leach pads constructed and operated by Arimetco Inc. to beneficiate leach-grade copper ore using a leachate process involving the application of a sulfuric acid solution to the ore piles, collection of the pregnant leachate solution, and solvent extraction of the leached copper. The five HLPs are: Phase I/II Heap Leach Pad, Phase III South Heap Leach Pad, Phase III-4X Heap Leach Pad, Phase IV Slot Heap Leach Pad, and Phase IV VLT Heap Leach Pad.

w. "Institutional Controls" or "ICs" shall mean Proprietary Contrds and State or local laws, regulations, ordinances, zoning restrictio ns, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference wit h, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

x. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

y. "Mine Site Boundary" shall mean the boundary delineating the portion of the Site where active mining took place, consisting of approximately 3,468.50 acres of disturbed land currently owned by Singatse Peak Services LLC ("SPS"), Weed Heights Development L.L.C. and members of the Tibbals family, and BLM, as depicted on the map attached as Appendix A.

z. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

aa. "Non-Settling Owner" shall mean any person or entity, other than Respondent, that owns or controls any Affected Property, including SPS, Quaterra Resources, Inc., Weed Heights Development L.L.C. and members of the Tibbals family, Desert Pearl Farms LLC, BLM, and other individual owners of property located within or immediately adjacent to the Mine Site Boundary. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by a Non-Settling Owner.

bb. "Operable Unit" or "OU" shall mean certain discrete areas or tasks within the Site as determined by similarities in the location or hazardous substances present, as defined in the EPA Administrative Order for RI/FS, and as may be further defined in the RI/FS SOW. The Operable Units are generally described as follows: Site-Wide Groundwater OU-1, Pit Lake OU-2, Process Area OU-3, Evaporation Ponds OU-4a, Sulfide Tailings OU-4b, Waste Rock Areas OU-5, Oxide Tailings OU-6, Wabuska Drain OU-7, and Arimetco Facilities OU-8.

cc. "Operation and Maintenance" or "O&M" shall mean measures and activities performed at the Site after the Remedial Action has achieved the remedial action objectives and remediation goals stated in the ROD-1 and is determined to be operational and functional, as required to maintain the effectiveness of the Remedial Action and as specified in the Operation and Maintenance Plan approved or developed by the Division pursuant to Section VIII (Work to be Performed) and the RD/RA SOW, and maintenance, monitoring, and enforcement of Institutional Controls.

dd. "Owner Respondent" shall mean Atlantic Richfield Company with respect to any Affected Property that it owns. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.

ee. "Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

ff. "Parties" shall mean the Division and Respondent.

gg. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the RD/RA SOW and the RD/RA Work Plan and any modified standards established pursuant to this Settlement.

hh. "Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

ii. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

jj. "Interim Record of Decision" or "ROD-1" shall mean the "Interim Record of Decision, Anaconda Mine Site, Arimetco Facilities Operable Unit 8, Heap Leach Pads and Fluids Management System," signed on July 24, 2017, by the Regional Administrator, EPA Region 9 or his/her delegate, the Division's Administrator, and the State of Nevada Director for BLM, and all attachments thereto. The ROD-1 is attached as Appendix E.

kk. "Interim Record of Decision Boundary" or "ROD-1 Boundary" shall mean the boundary delineating the portion of the Site where Response Activities will be performed in implementing the Remedial Action selected in the ROD-1. Generally speaking, this means the portion of the Site comprised of CMU's 2, 4, 5, 6, and 7, as depicted on Appendix A.

ll. "Remedial Action" or "RA" shall mean the remedial action selected in the ROD-1 and as further described in the RD/RA SOW, including all activities Respondent is required to perform under this Settlement to implement the ROD-1 within the ROD-1 Boundary, in accordance with the RD/RA SOW, the final Remedial Design, the approved RD/RA Work Plan, and other plans approved by the Division, including implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, O&M, and the activities required under Section XIV (Record Retention). For purposes of this Settlement, the Remedial Action shall not include, and Respondent is not agreeing hereunder to perform, any response action outside the ROD-1 Boundary or that otherwise fundamentally increases the basic features of the selected Remedial Action, as described in the RD/RA SOW, with respect to scope, performance, or cost. The Remedial Action, as defined in this Settlement, does not include all actions that may be required to complete the permanent remedy for the Site and to prevent or minimize releases of hazardous substances so that they do not migrate or cause substantial danger to present or future public health or welfare or the environment. The Division and Respondent anticipate that such additional actions will be identified and selected in one or more future records of decision and implemented pursuant to one or more future administratively or judicially approved settlements.

mm. "Remedial Action Construction" shall mean those physical, on-Site activities (except for Operation and Maintenance) to be undertaken by Respondent to construct and implement the Remedial Action as set forth in the ROD-1, RD/RA SOW, the RD/RA Work Plan, and the Remedial Design to achieve the Performance Standards. Remedial Action Construction shall be considered complete when it is determined that the Remedial Action

systems are functioning properly and as designed and, based on such a determination, upon Certification of Completion of Remedial Action Construction, as set forth in Paragraph 171.

nn. "Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan" shall mean the document developed pursuant to Paragraph 53 (Performance of Work in Accordance with RD/RA SOW) and approved by the Division, and any modifications thereto.

oo. "Remedial Design" or "RD" shall mean those activities to be undertaken by Respondent to develop the final plans and specifications for the Remedial Action pursuant to the RD/RA Work Plan.

pp. "Remedial Investigation / Feasibility Study" or "RI/FS" shall mean the remedial investigations and feasibility studies performed by Respondent for the Site in accordance with the RI/FS SOW, any Division-approved RI/FS work plan(s), and as described Paragraph 57 (Performance of Work in Accordance with the RI/FS SOW).

qq. "Respondent" shall mean Atlantic Richfield Company.

rr. "Response Activities" shall mean the response actions anticipated by this Settlement as set forth in Section VIII (Work to be Performed).

ss. "Scope of the Remedy" is defined in Paragraph 54.a below.

tt. "Section" shall mean a portion of this Settlement identified by a Roman numeral.

uu. "Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

vv. "Site" shall mean the Anaconda Copper Mine Site as described in the National Priority List ("NPL") listing proposed rule (81 Fed. Reg. 62428, Sept. 9, 2016), encompassing approximately 3,468 acres, located at 102 Birch Drive, near Yerington, Nevada in Lyon County, as depicted generally on the map attached as Appendix A, including areas where hazardous substances, pollutants, or contaminants released at or from the Anaconda Copper Mine Site have migrated or otherwise come to be located within the State of Nevada. The Site includes portions of Township 13N, Range 25E, Sections 5, 8, 9, 16, 17, 20, and 21 (Mount Diablo Baseline and Meridian) on the Mason Valley and Yerington USGS minute quadrangles. The geographic coordinates of the Site are 38E 59' 53.06" North latitude and 119E 11' 57.46" West longitude.

ww. "State" shall mean the State of Nevada, including, as appropriate, its agencies, departments, political subdivisions, agents, and employees.

xx. "Statement of Work for RD/RA" or "RD/RA SOW" shall mean the document describing the activities Respondent must perform to implement the Remedial

Design, Remedial Action, and O&M at the Site, as set forth in Appendix C to this Settlement, and any modifications to the RD/RA SOW made in accordance with this Settlement.

yy. "Statement of Work for RI/FS" or "RI/FS SOW" shall mean the document describing the activities Respondent must perform to develop the RI/FS for the Site, as set forth in Appendix B to this Settlement, and any modifications to the RI/FS SOW made in accordance with this Settlement.

zz. "Supervising Contractor(s)" shall mean the principal contractor(s) retained by Respondent to supervise and direct the implementation of the Work under this Settlement.

aaa. "Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

bbb. "Tribes" shall mean the Yerington Paiute Tribe and the Walker River Paiute Tribe.

ccc. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

ddd. "Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous material," "hazardous substance," or "hazardous waste" under NRS §§ 459.428, 429, 430, and 7024.

eee. "Work" shall mean all activities and obligations that Respondent is required to perform under this Settlement, except those required by Section XIV (Record Retention). Except for the Remedial Action, the Work shall not include performance of any removal action, as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or of any remedial action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), selected in a record of decision or otherwise required by the Division or by EPA based on the findings of the RI/FS. Work also shall not include Operation and Maintenance activities, which, as set forth in Paragraph 172.d, shall be performed by the Division.

## IV. FINDINGS OF FACT

16. The Site is a former copper mine and extraction facility located in the Mason Valley, in Lyon County, Nevada. The Site is located approximately one mile west of the City of Yerington, directly off of Highway 95. Approximately fifty percent of the Site is privately owned by SPS, and the rest is land within the jurisdiction, custody, and control of the BLM. The Site occupies 3,468.50 acres of disturbed land in a rural area, bordered to the north by residential acreage and open fields of alfalfa and onions, and to the east by Highway 95, which separates the Site from the city of Yerington, Nevada. To the south continues BLM range land, and to the west and southwest the Singatse mountains.



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17. Facilities associated with mining and mineral processing operations at the Site include an open-pit mine, mill buildings, tailing piles, and waste fluid ponds. There is also an adjacent residential settlement known as Weed Heights. A network of leach vats, heap leaching pads, fluid conveyance pipelines, and evaporation ponds remains throughout the Site, in addition to a lead working shop, a welding shop, a maintenance shop, two warehouses, an electro-winning plant, and an office building.

18. Large scale mining operations began at the Site in approximately 1918, originally known as the Empire Nevada Mine. Anaconda Copper Mining Company ("Anaconda") leased the Site and conducted exploration activities from 1941 to 1951. Anaconda acquired the Site in 1952 and conducted open-pit mining and mineral processing operations from 1953 to 1978, using vat leaching and cementation (oxide ore), milling and flotation (sulfide ore), and heap leaching (low-grade oxide ore) processes. Under a contract entered into between Anaconda and the United States in March 1953 (effective November 10, 1951), Anaconda was required to proceed as expeditiously as possible with the development of the mine for the mining and treatment of copper oxide ore to satisfy Anaconda's contractually specified copper production and delivery obligations to the United States. Anaconda ceased mining operations at the Site in June 1978. Anaconda merged with an Atlantic Richfield Company subsidiary in 1977 (renamed The Anaconda Company), which was merged into Atlantic Richfield Company in 1981.

19. During its operations, Anaconda removed approximately 360 million tons of ore and debris from the open pit mine, much of which now remains in tailings or leach heap piles. Anaconda beneficiated copper ores from the mine by two separate methods depending on the ore type. The mined ore contained copper oxides in the upper portion of the open pit and copper sulfides in a lower portion of the open pit. During on-Site milling operations, a copper precipitate was produced from the oxide ore, and a copper concentrate was produced from the sulfide ore. In the first of two processing methods for the oxide ore, the operator placed the copper oxide ore in leaching vats and leached out copper with sulfuric acid. The copper precipitated out after passing over iron scraps. The second process, which started in 1965, used dilute sulfuric acid spread over the top of low grade oxide ore piles from which copper would leach out with the resulting acidic solution, with the copper again precipitated out after passing over iron scraps. Anaconda utilized this dump leaching method for over 10 years at the W-3 dump at the Site. To facilitate leaching operations, Anaconda produced its own sulfuric acid at the Site at a rate of over 400 tons per day. To process the copper sulfide ore, Anaconda crushed the ore and produced copper concentrate by flotation, with lime (calcium oxide) added to maintain an alkaline pH. The resulting copper concentrate would be shipped off-Site for final processing.

20. Byproducts of the milling operation were wet gangue from the sulfide ore and wet tailings and iron- and sulfate-rich acid brine from the oxide ore. Anaconda left gangue and tailings at the Site in large dumps and ponds. Anaconda evaporated the acid brine in large evaporation ponds, some of which were equipped with asphalt liners, while others were unlined. Aerial photographs taken in August 1977 indicated that the disposal ponds occupied approximately 1,377 acres. The evaporation ponds and tailings piles may have leached contaminants into the groundwater.

21. In 1982, Atlantic Richfield Company sold its interests in the private lands within the Site to Don Tibbals, who formed Copper Tek Corp ("Copper Tek"). Copper Tek constructed a

portion of what would later become the Phase I heap leach pad and a small solvent extraction/electrowinning ("SX/EW") processing plant. Copper Tek reprocessed oxide ore vat leach tailings and low-grade oxide ore using heap leaching and SX/EW processes.

22. Tibbals sold Copper Tek and all of his interests at the Site, with the exception of the Weed Heights community and associated sewer system, an approximately 40-acre parcel on the eastern side of the Site, and rights to Burch Drive, to Arimetco Inc. ("Arimetco"), a subsidiary of Arimetco International, Inc., in 1989. Arimetco constructed and operated the Arimetco Facilities, including heap leaching operations at the Site using existing ore stockpiles and additional mined material brought to the Site from the nearby MacArthur Pit from 1989 to 1999. Arimetco filed for bankruptcy in 1997, ceased mining and leaching operations in 1998, and ended all mineral processing operations at the Site in 1999.

23. Arimetco constructed five heap leach pads at the Site in four phases covering approximately 250 acres. Arimetco used a more concentrated sulfuric acid leaching and SX/EW recovery process to extract high-purity copper from copper oxide ore stockpiles and vat leach tailings remaining from Anaconda's operations as well as ore that Arimetco brought to the Site from the nearby MacArthur Pit. Records indicate that multiple large volume spills and releases of acid leaching solutions, pregnant leachate solutions, and other process liquids occurred during Arimetco's operations. Arimetco filed for bankruptcy in 1997 and ceased all leaching and processing operations in November 1999.

24. In 1999, EPA began an evaluation of the Site to determine the effectiveness of the existing pump-back system (installed by Respondent in 1985 under an administrative order issued by the Division) in preventing off-Site migration of contaminated groundwater and to determine whether any domestic wells had been impacted by the Site. EPA collected groundwater samples from on-Site monitoring wells, from the Wabuska Drain, and from nearby residential and community wells, including the wells of the Yerington Paiute Tribe. In November 1999, the Division collected additional samples. Analysis showed that concentrations of arsenic, cadmium, and nickel in groundwater monitoring wells on and immediately downgradient of the Site exceeded drinking water maximum contaminant levels ("MCLs").

25. In January 2000, the Division began managing the former Arimetco FMS to prevent drain-down fluids from overflowing the FMS ponds. At that time there were an estimated 90 million gallons of solution remaining in the heap leach pads and FMS.

26. In October 2000, EPA conducted an Expanded Site Inspection at the Site, which consisted of collecting groundwater samples from six monitoring wells on and around the Site, and samples of standing water from a below ground cellar, pregnant leachate solution, tailings and leachate salts. These samples again confirmed elevated metals concentrations. The groundwater monitoring well samples revealed levels above the regulatory limits for drinking water of arsenic, beryllium, cadmium, chromium, lead, and selenium. EPA concluded from this study that heavy metals exist in source materials at the Site and have contaminated groundwater.

27. In December 2000, EPA initially proposed adding the Site to the NPL. The State did not support listing at that time, preferring instead to work with the potentially responsible parties to manage the Site in a manner that might avoid the need for federal support. To facilitate

an alternative to listing, EPA, the Division, and BLM entered into a 2002 memorandum of understanding ("MOU"), which provided interagency coordination and positioned the Division as the lead agency. The United States sought to obtain funding for the Site through the Arimetco 1998 bankruptcy case, but it was not successful.

28. In October 2002, Respondent entered into an administrative order on consent with the Division. As part of the work required under that consent order, Respondent operated the Arimetco FMS, monitored water quality in domestic wells north of the Mine Site Boundary, and performed other response actions at the Site. Respondent also began providing bottled water to certain residents living north of the Site, including owners of impacted domestic wells and residents living on the YPT reservation.

29. In 2003, the agencies became concerned about radiological contamination in soil and groundwater at the Site. In 2004, the Division and EPA began discussions about the effectiveness of the MOU process and the complexity of the radiologic concerns. In December 2004, the Division requested that EPA formally assume the lead role for oversight of CERCLA response actions at the Site. On December 20, 2004, EPA accepted the lead role.

30. On March 31, 2005, EPA issued to Respondent a unilateral administrative order (CERCLA Docket No. 9-2005-0011), which incorporated the requirements of the Division's October 2002 administrative order on consent, including operation and maintenance of the Arimetco FMS, and the earlier 1985 administrative order issued by the Division, which required operation of an active pump-back interceptor system and associated evaporation system, among other response actions. The 2005 order also required that Respondent maintain Site security, evaluate and address radiological contaminants for Site workers, implement ambient air monitoring for radiological contaminants, implement a radiological survey, continue to operate the pumpback system, perform groundwater monitoring, perform domestic well monitoring, provide bottled water to residents, and perform other Site investigations.

31. Early in April 2006, the United States Fish and Wildlife Service reported observing a dead bird near standing fluids on the sulfide tailings during the course of a natural resource damage assessment. In considering whether the bird mortality resulted from the ingestion of the fluid, which appeared to be the result of precipitation that had dissolved existing residues from past mining activities, EPA obtained and analyzed fluid samples from five areas of standing fluids on the north end of the Site. The sampling areas included the Arimetco pregnant solution collection ditch adjacent to the Vat Leach Heap Leach Pad. Based on preliminary analytical results, the Arimetco fluid exhibited a pH of 2.7, uranium at 8,900 µg/1, and elevated metals at approximately the same magnitude as seen in EPA's October 2000 sampling of similar pregnant solutions. Fluids with such low pH and elevated metals may be acutely toxic to wildlife. Additionally, the elevated uranium concentrations could pose a threat to public health or welfare or the environment. In 2007 and 2008, EPA became aware of additional bird casualties at the Site.

32. In 2006, EPA completed a removal action to address a damaged Arimetco heap leach drain-down evaporation pond, and conducted a removal assessment of the remaining Arimetco heap leach drain-down ponds from July through August 2007. EPA also conducted a remedial investigation of the ponds and heap leach pads in September through October 2007. Samples from sediment below the ponds contained metals (copper, iron, and lead) and total

petroleum hydrocarbons ("TPH") at concentrations exceeding industrial or residential soil preliminary remediation goals ("PRGs"). Samples from heap leach drain-down solutions exhibited pH and specific conductance values ranging from 1.9 to 2.8 and 31,000 to 45,000 micromhos per centimeter, respectively. Metals, specifically aluminum, antimony, arsenic, beryllium, boron, cadmium, chromium, copper, iron, lead, manganese, mercury, thallium and zinc exceeded primary or secondary drinking water MCLs. Radiological measurements from the heap leach drain-down solutions generally exceeded the MCL for thorium isotopes 228, 230, and 232; uranium isotopes 234, 235, 238; and gross alpha particles. TPH (as diesel and kerosene) in the same samples ranged from 750 to 2,100 μg/L. In August 2007 and from August through October 2008, EPA conducted additional removal actions to close inactive drain-down ponds and repair the active drain-down ponds for the Arimetco heap drain-down system, as well as conduct a removal of high TPH soils.

33. EPA estimated that over 3,000 acres of tailings and HLPs with potentially high concentrations of metals remain at the Site, and that the abandoned process fluids emanating from the tailings have a low pH and contain excessive quantities of arsenic, cadmium, chromium, copper, and iron. Also present are radionuclides, including uranium, thorium, and radium.

34. On January 12, 2007, EPA issued another unilateral order to Respondent (CERCLA Docket No. 9-2007-0005), directing it to conduct a RI/FS for remedial options for all parts of the Site except the above-ground Arimetco Facilities (OU-8). Respondent has been conducting RI/FS work at the Site since that time. EPA performed the RI/FS for OU-8 and issued the final OU-8 Feasibility Study report in October 2016. The Division also completed a conceptual closure plan for OU-8. Respondent has performed site characterization work in all other OUs identified in the 2007 order, and RI activities are complete or nearly complete for several of the OUs, including OU-1 (Site-wide Groundwater), OU-3 (Process Areas), OU-4a (Evaporation Ponds), and OU-7 (Wabuska Drain). Based on extensive monitoring, modeling, and other analysis, Respondent has determined that the downgradient extent of mine-impacted groundwater is located near the Sunset Hills, south of Campbell Lane. In a January 5, 2017 memo, EPA generally concurred with Respondent's estimates of the potential extent of mine-impacted groundwater using multiple lines of evidence, but noted that "the extent of mine-impacted groundwater is best conceptualized as a zone rather than a fine line due to many factors including the size of the site, age and complexity of the contaminant releases, and complexities of subsurface contaminant transport and fate."

35. In April 2009, EPA and Respondent executed an administrative order on consent (CERCLA Docket No. 09-2009-0010), requiring that Respondent continue to operate, maintain, and repair the Arimetco FMS, subject to certain cost limitations. EPA and Respondent also entered subsequent administrative consent orders in 2008, 2011, and 2013 providing for reimbursement of EPA's response costs.

36. In April 2011, SPS, a subsidiary of Quaterra Resources, Inc., purchased certain assets of Arimetco through a proceeding in the United States Bankruptcy Court in Tucson, Arizona, including approximately 1,800 acres of the Site, additional lands outside the Mine Site Boundary, unpatented mining claims on BLM land, and associated structures, facilities, personal property, and material stockpiles. SPS is currently conducting drilling and other mineral exploration work at and in areas surrounding the Site. SPS represents that it is a bona fide prospective purchaser as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Site, and thus

qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(l), with respect to the Site. On October 5, 2009 and November 6, 2009, the Division and EPA each provided to SPS a "Reasonable Steps" letter specifying "reasonable steps" to be taken by SPS for the purpose of complying with the requirements of Section 101(40)(D) of CERCLA, 42 U.S.C. § 9601(40)(D), and NRS § 459.930.

37. In February 2012, the volume of fluid reporting to the leak detector in the Vat Leach Tailings ("VLT") Pond, increased dramatically, indicating that a leak existed in the top liner. EPA completed a VLT pond liner replacement project in October 2012, using partial funding provided by SPS (under a 2012 administrative order on consent, CERCLA Docket No. 9-2012-07) and Respondent.

38. Salts precipitating from the process fluids emanating from the tailings HLPs contain elevated metals concentrations and are filling in available space within the fluid pond system. Precipitate accumulation in the fluid management ponds associated with the heap leach system reduces the fluid storage capacity from the system, thereby reducing the available space for fluids to accumulate and evaporate. In 2013, the Division supervised the construction of two new evaporation ponds to provide additional capacity for drain-down solutions and storm events, with partial funding provided by Respondent.

39. In October 2013, a settlement agreement was reached to resolve claims asserted in the class action lawsuit *Roeder et al. v. Atlantic Richfield Company et al.*, D. Nev., Case No. 3-11-cv-00105-RCJ-WGC, involving alleged groundwater impacts associated with the Site. Among other things, the *Roeder* settlement provided that Respondent would fund the City of Yerington's extension of municipal water service to then-existing residences located within that part of the settlement class area that was also within the City's projected future service area. Under the terms of the settlement agreement, domestic well owners who connected to the City of Yerington's municipal water system could elect to either abandon their well or apply for a state permit to authorize withdrawals of groundwater for outdoor use only (landscape watering). Each property owner who received a connection to the City Water System executed and recorded an environmental covenant either prohibiting future domestic use of groundwater altogether or limiting it to outdoor irrigation purposes. Construction of the expanded water system began in the fall of 2014 and the construction of new mains and service connections was essentially completed in June 2016. Well abandonments and system testing were completed as of August 1, 2016. The water system is functional, and domestic wells for all participating property owners have been abandoned or disconnected from the residences within the expansion area. A relatively small number of domestic wells located within the area of mine-impacted groundwater were not disconnected or converted to outdoor irrigation use only in 2016. Since mid-2016, Respondent has executed agreements with additional property owners providing for the permanent discontinuation of another 12 wells for indoor domestic use.

40. On December 22, 2015, EPA notified Nevada's governor that EPA intended to propose adding the Site to the NPL because of concerns about the condition and functioning of the Arimetco FMS and the possibility that overflows from the FMS ponds could occur and adversely affect groundwater quality at and downgradient of the Site. NPL listing would provide access to federal funding for performing the OU-8 remedial action. EPA acknowledged that, after proposing the Site to the NPL, it could defer final listing at the request of the State pursuant to

Section 105(h) of CERCLA, 42 U.S.C. 9605(h). EPA generally must defer final listing at the request of the State if the State or another party under an agreement with or order from the State provides for the long-term protection of human health and the environment in compliance with a State program that governs the response action. EPA requested a written statement indicating the State's concurrence and support or non-support for listing.

41. On March 29, 2016, Governor Sandoval concurred with EPA's proposal to add the Site to the NPL, but conditioned the State's concurrence on several considerations, including preservation of an alternative under which a source of public-private funding for the OU-8 remedy would be secured, the State would provide lead oversight for Site response actions, and NPL listing would be deferred. The Governor's letter emphasized that the public is not being exposed to Site contaminants, including groundwater contamination. The Governor stated that the Division and EPA had assured him, based on all available information, that the Site has caused no impacts to agricultural land or the products grown on land north of the Mine Site Boundary.

42. On September 9, 2016, EPA published a proposed rule in the Federal Register (81 Fed. Reg. 62428) providing for the addition of the Site to the NPL. EPA stated in its support narrative that NPL listing is necessary because the Site needs comprehensive cleanup to close the former Arimetco heap leach pads and ponds, address contaminated ground water which has traveled off-Site, and close the former Anaconda process areas.

43. On November 7, 2016, the Division informed EPA, in its comments to the NPL listing proposal, that the Division was in discussions with Respondent over potential deferral of the Site to State oversight and agreement by Respondent to voluntarily fund necessary work related to the Arimetco orphan share. The Division further stated that it and Respondent had reached general consensus on funding sources and work commitments to address the overall Site including the Arimetco orphan share, provided that an acceptable deferral agreement and other terms could be negotiated with EPA. The Division asked that EPA honor its commitment to work with the State related to the conditions in the Governor's March 29, 2016 letter and in particular to give fair consideration to a deferral agreement given recent developments.

44. After initial discussions in December 2016 and January 2017 between EPA, the Division, BLM, and Respondent, and after reviewing with governmental and tribal representatives, EPA decided in February 2017 to postpone listing of the Site on the NPL until at least June 2017 while all parties evaluated deferral options for a private funding solution. Beginning in February 2017, the Division and Respondent started to develop a proposal for deferral of the Site from NPL listing. The Division conducted outreach with community stakeholders, including Lyon County, the City of Yerington, the YPT, the WRPT, and interested citizens. The Division and Respondent have entered agreements that satisfy criteria for deferral of the Site as described in EPA's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (OSWER Dir. 9375.6-11). On July 31, 2017, the Division formally requested EPA deferral of the Site under Section 105(h) of CERCLA, 42 U.S.C. § 9605(h). The Division and EPA finalized and executed the Deferral Agreement on February 5, 2018.

45. The administrative record supporting this action is available for review at the Division's offices, located at 901 South Stewart Street, Carson City, Nevada 89701. EPA also

maintains a copy of the administrative record at the EPA Region 9 Records Center, located at 95 Hawthorne Street, San Francisco, California 94105.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

46. Based on the Findings of Fact set forth above, and the administrative record, the Division has determined that:

a. The Anaconda Copper Mine Site is a "facility" as defined by NAC §§ 445A.3452 and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site includes "hazardous substances" as defined by NAC § 445A.3454 and Secti on 101(14) of CERCLA, 42 U.S.C. § 9601(14), and "pollutants" as defined in NRS § 445A.400.

c. Respondent is a "person" as defined by NRS §§ 445A.390, 459.445 and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. The conditions described in Paragraphs 20 – 38 of the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), an unlawful discharge of a pollutant as defined by NRS § 445A.465, an unlawful release of a hazardous substance requiring notification, assessment, and remedial action as defined by NAC§§ 445A.347, 445A.226 to 445A.22755.

f. As a result of these violations, NRS § 445A.675 authorizes the Administrator to take enforcement action against Respondent which includes, but is not limited to, issuing a compliance order under NRS 445A.690 and commence a civil action pursuant to NRS §§ 445A.695 or 445A.700.

g. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a). Such actions, if carried out consistent with this Settlement, will be considered consistent with the NCP, as provided in 40 CFR § 300.700(c)(3)(ii) of the NCP.

h. The Division has determined that Respondent is qualified to conduct the RI/FS, the Remedial Action, and other response actions required by this Settlement and will carry out the Work properly and promptly if Respondent complies with the terms of this Settlement.

## VI. SETTLEMENT AGREEMENT AND ORDER

47. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondent shall

comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

## VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

48. **Project Coordinators**.

a. Respondent's Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondent's Project Coordinator may not be an attorney representing Respondent in this matter and may not act as a Supervising Contractor. Respondent's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work. Notice or communication relating to this Settlement from the Division to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

b. Respondent has designated, and the Division has approved the selection of, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement:

Jack Oman
Project Manager
Remediation Management Services Company,
an affiliate of Atlantic Richfield Company
4 Centerpointe Drive
LaPalma, California 90623-1066
Tel: (657) 529-4581
Fax: (714) 670-5195 fax
jack.oman@bp.com

The Division retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 48.a. If the Division disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify the Division of that person's name, title, contact information, and qualifications within 14 days following the Division's disapproval.

c. The Division has designated Jeryl Gardner of the Bureau of Corrective Actions as its Project Coordinator and Jeff Collins as its Alternate Project Coordinator. The Division will notify Respondent of a change of its designated Project Coordinator or Alternate Project Coordinator. Communications between Respondent and the Division, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the Division Project Coordinator in accordance with Section X (Submission and Approval of Deliverables), or, if the Project Coordinator is unavailable, to the Alternate Project Coordinator.

d. The Division's Project Coordinator shall be responsible for overseeing Respondent's performance of the Work and shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, the Division's Project Coordinator shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when s/he determines

that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the Division's Project Coordinator from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

e. **EPA Participation**. The Division's Project Coordinator will schedule meetings (including by telephone conference) with EPA to review semi-annual and annual reports during construction of the Remedial Action, and at least annually during the first five years after Certification of Completion of Remedial Action Construction (as described in Paragraph 171), and in conjunction with each Periodic Review performed under Section IX, to provide updates on the status and progression of the Work. BLM representatives may also be included in these meetings. If requested by the Division's Project Coordinator, Respondent's Project Coordinator shall participate in such meetings.

49. **Supervising Contractors**.

a. Respondent's proposed Supervising Contractor(s) must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), or equivalent system deemed acceptable by the Division. Respondent shall demonstrate that the proposed Supervising Contractor(s) also satisfies(y) the certification requirements for environmental managers or specialists in the management of hazardous waste under NAC §§ 459.972, 9721, or 9724.

b. Respondent shall notify the Division in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out major Work tasks. If, after the commencement of Work, Respondent retains additional contractors or subcontractors, Respondent shall notify the Division of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of Work by such additional contractors or subcontractors. The Division retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If the Division disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify the Division of that contractor's or subcontractor's name, title, contact information, and qualifications within 21 days after the Division's disapproval.

c. Respondent has selected, and the Division has approved the selection of, the following initial Supervising Contractors for carrying out the Work:

Copper Environmental Consulting (lead contractor)/ Broadbent & Associates Inc. (subcontractor)/ AECOM (subcontractor)
Attn: Randy Miller, Broadbent & Associates Inc.
5450 Louie Lane, Suite 101
Reno, Nevada 89511
Tel: (775) 322-7969

Fax: (775)322-7956
rlmiller@broadbentinc.com

Wood (formerly Amec Foster Wheeler)
Attn: Craig L. Weber, P.E.
2000 S. Colorado Blvd.
Suite 2-1000
Denver, CO 80222, USA
Tel: (303) 630 0771
Cell: (303) 549 7834
craig.weber@woodplc.com

50. If Respondent seeks to change its Project Coordinator or a Supervising Contractor, it shall, at least 14 days before the change occurs, designate, and notify the Division of the names title, contact information, and qualifications of the proposed Project Coordinator or Supervising Contractor, whose qualifications shall be subject to the Division's review for verification based on objective assessment criteria (*e.g.,* experience, capacity, technical expertise) and absence of a conflict of interest with respect to the project.

51. The Division shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator or Supervising Contractor, as applicable. If the Division issues a notice of disapproval, Respondent shall, within 30 days, submit to the Division a list of supplemental proposed Project Coordinators or Supervising Contractors, as applicable, including a description of the qualifications of each. The Division shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed Project Coordinator or Supervising Contractor. Respondent may select any coordinator/contractor covered by an authorization to proceed and shall, within 30 days, notify the Division of Respondent's selection.

## VIII. WORK TO BE PERFORMED

52. For any regulation or guidance referenced in this Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from the Division of the modification, amendment, or replacement.

### A. PERFORMANCE OF THE REMEDIAL DESIGN AND REMEDIAL ACTION

53. **Performance of Work in Accordance with RD/RA SOW.**Respondent shall: (a) develop the Remedial Design; (b) perform the Remedial Action; and (c) monitor the effectiveness of the Remedial Action prior to commencement of Operation and Maintenance; all in accordance with the RD/RA SOW and all Division-approved, conditionally approved, or modified Deliverables as required by the RD/RA SOW, including, without limitation, the RD/RA Work Plan. All Deliverables required to be submitted for approval under this Settlement or RD/RA

SOW shall be subject to approval by the Division in accordance with Section X (Submission and Approval of Deliverables).

54. **Modification of RD/RA SOW or Related Deliverables**.

a. If the Division determines that it is necessary to modify the Work specified in the RD/RA SOW and/or in Deliverables developed under the RD/RA SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy, as set forth in Section 1.3 of the RD/RA SOW, then the Division may notify Respondent of such modification. The Division may not make a material modification to the RD/RA SOW without Respondent's written agreement. If Respondent objects to a modification, either because it is not consistent with the Scope of the Remedy, is a material modification to the RD/RA SOW that the Division attempts to implement without Respondent's written consent, or for other valid reasons, Respondent may, within 30 days after the Division's notification, seek dispute resolution under Section XVIII. For the purpose of this Settlement, determining the nature and extent of the contamination at or from the Site shall be part of the RI/FS described in Section VIII.B and the RI/FS SOW, and evaluation of remedial alternatives for groundwater occurring both within and outside of the Mine Site Boundary shall be part of the FS. The Scope of the Remedy shall be limited to Response Activities within the ROD-1 Boundary to address conditions in CMUs 2, 4, 5, 6, and 7, as depicted on Appendix A. A modification to the RD/RA SOW shallbe considered material if it implements a ROD-1 amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii).

b. The RD/RA SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by the Division; or (2) if Respondent invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Settlement, and Respondent shall implement all Work required by such modification. Respondent shall incorporate the modification into the Deliverable required under the RD/RA SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit the Division's authority to require performance of further response actions as otherwise provided in this Settlement.

55. **Annual Summary of RD/RA Activities**. After the final Remedial Design is approved, Respondent shall by May 1 of each year submit to the Division an "Annual Summary of RD/RA Activities" which shall: (a) describe the Response Activities undertaken to implement the Remedial Action during the previous year; (b) include a summary of all results of any sampling and tests and any other data received or generated by Respondent or its contractors or agents in the previous year in implementing the Remedial Action, unless such results have already been reported to the Division in another form; (c) identify all work plans, plans and other Deliverables required by this Settlement that were completed and submitted during the previous year; (d) during Remedial Action Construction, describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next year, and provide other information relating to the progress of the Remedial Action Work, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work,

and a description of efforts made to mitigate those delays or anticipated delays; (e) include an estimate of the costs to be incurred during the next year to implement and perform Remedial Action activities, (f) include any modifications to the RD/RA Work Plan or other schedules that Respondent has proposed to the Division or that have been approved by the Division; and (g) describe any activities undertaken in support of the community relations plan during the previous period, and any activities to be undertaken in the next period. Respondent shall submit these annual reports until notified of Certification of Remedial Action Completion pursuant to Paragraph 172. The Division may provide a copy of the Annual Summary of RD/RA Activities to EPA.

56. Nothing in this Settlement, the RD/RA SOW, or any Deliverable required under the RD/RA SOW constitutes a warranty or representation of any kind by the Division that compliance with the work requirements set forth in the RD/RA SOW or related Deliverable will achieve the Performance Standards.

### B. PERFORMANCE OF THE RI/FS

57. **Performance of Work in Accordance with RI/FS SOW.** Respondent shall complete the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached RI/FS SOW, CERCLA, the applicable sections of the NCP, and applicable guidance selected by the Division, which may include the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at https://semspub.epa.gov/src/document/11/128301, "Guidance for Data Usability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the RI/FS SOW. For each OU for which a Remedial Investigation is not already complete as of the Effective Date, the Remedial Investigation shall consist of collecting data or analyzing existing data to characterize Site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. For each grouping of CMUs identified in the RI/FS SOW, the FS shall determine and evaluate alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e). The RI/FS Work, as specified in the RI/FS SOW shall include, in addition to any other required Site characterization, interim monitoring of groundwater conditions inside and outside the Mine Site Boundary while the Remedial Action is being implemented.

58. All written documents prepared by Respondent pursuant to this Settlement shall be submitted by Respondent in accordance with Section X (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such

submittals will be reviewed and approved by the Division in accordance with Section X (Submission and Approval of Deliverables). Respondent shall implement all Division approved, conditionally approved, or modified Deliverables.

59. Upon receipt of a draft Feasibility Study Report ("FS Report"), the Division 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 and will evaluate the cost, implementability, and long-term effectiveness of any proposed ICs for that alternative.

60. The Division may provide copies of the following RI/FS Deliverables to EPA's RPM: the draft and final RI Report(s), and the draft and final FS Report(s). The Division may solicit input from EPA on each such RI/FS Deliverable. The Division will give due consideration to any input provided by EPA in its determination of whether the Deliverable should be approved, modified, or disapproved under Section X. The Division shall handle any input provided by EPA on the Deliverable as provided in Paragraph 85 (Division Review of Major Deliverables). Unless specifically endorsed by the Division, Respondent shall not be required under this Settlement to modify any RI/FS Deliverable or perform any Response Activity in response to comments or directions provided solely by EPA as a result of this process. EPA's concurrence will not be required for the Division to approve any RI/FS Deliverable, and EPA does not have independent authority under this Settlement to reject or require modification of any RI/FS Deliverable.

61. **Modification of an RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the Division's Project Coordinator within 30 days after identification. The Division, in its discretion, will determine whether the additional data will be collected by Respondent and whether it will be incorporated into Deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the Division's Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that the Division determines that the unanticipated or changed circumstances warrant changes in a RI or FS Work Plan, the Division shall modify the Work Plan in writing accordingly or direct Respondent in writing to modify and submit the modified Work Plan to the Division for approval. Respondent shall perform the RI or FS Work Plan as modified, subject to the right to invoke dispute resolution pursuant to Section XVIII (Dispute Resolution) if the modification(s) constitute(s) a material change to the Work described in the RI/FS SOW. A modification shall be considered material if it materially increases the time or cost required to perform the RI/FS.

c. The Division may determine that, in addition to tasks defined in an initially approved RI or FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Subject to Paragraph 61.d below, Respondent shall perform these response actions in addition to those required by an initially approved RI or FS Work Plan, including any approved modifications, if the Division determines that such actions are necessary for a thorough RI/FS and not materially inconsistent with the RI/FS SOW and so notifies Respondent in writing.

d. Respondent shall confirm its willingness to perform the additional work in writing to the Division within 14 days after receipt of the Division's written request. If Respondent objects to any modification determined by the Division to be necessary pursuant to this Paragraph, including an objection that the modification is materially inconsistent with the RI/FS SOW, Respondent may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The RI/FS SOW and/or RI or FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional work according to the standards, specifications, and schedule set forth or approved by the Division in a written modification to an RI or FS Work Plan or written Work Plan supplement. The Division reserves the right to conduct the work itself, to seek reimbursement from Respondent for the costs incurred in performing the work, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit the Division's authority to require performance of further response actions at the Site, provided that Respondent, by entering into this Settlement, is not agreeing to perform such further response actions.

62. **Annual RI/FS Data Summary Report**. Respondent shall prepare and submit to the Division, by June 1 of each year until completion of the RI/FS, an annual data summary report and database update containing all results of sampling, tests, modeling, and other data (including raw data) generated by Respondent, or on Respondent's behalf, in performing the RI/FS during the prior year and not previously submitted to Division. The Division may provide a copy of the Annual Summary of RI/FS Data Summary Report to EPA.

### C. PERFORMANCE OF FMS INTERIM MEASURES AND OPERATION AND MAINTENANCE FOR THE REMEDIAL ACTION

63. **Performance of Work in Accordance with FMS Work Plan and Operation and Maintenance.**

a. Attached to this Settlement as Appendix D is the FMS Work Plan. Respondent shall continue to implement the activities described in the FMS Work Plan, as needed to contain and evaporate heap leach pad drain-down fluids and to prevent such fluids from escaping containment, during Remedial Action Construction or until the occurrence of the condition(s) in Paragraph 63.b. To the extent not addressed by the FMS Work Plan, Respondent also shall perform any Work necessary to ensure the elements of the Remedial Action are inspected, operated, and maintained as required for the Remedial Action to be operational and functional and to ensure that Performance Standards are met, during and following Remedial Action Construction and until the occurrence of the condition(s) in Paragraph 63.b.

b. Respondent's Work obligations with respect to the FMS and any constructed elements of the Remedial Action will terminate upon the earliest of the following conditions to occur:



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(1) For each of the five HLPs re-graded and covered as part of the Remedial Action (Phase I/II, Phase III South, Phase III 4X, Phase IV Slot, and Phase IV VLT), Respondent's Work obligations with respect to the contiguous HLP cover, any associated drain-down evaporation pond(s), any appurtenant equipment, including pipelines, pumps, sumps, liners, ditches, power supply, and bird deterrents, used in connection with the operation of the pond(s), and any appurtenant stormwater management features (including ditches, pipelines, ponds, and best management practices), shall terminate 30 days after: (i) Respondent submits to the Division and the Division approves as-built drawings and a certification of substantial completion of construction for the HLP cover signed by a professional engineer, and (ii) the mean annual average flow rate for drain-down fluid flow rate exiting the HLP and entering the drain-down pond(s), based on four quarters of monitoring results, is less than or equal to 1.5 gallons per minute (gpm); or

(2) For any other components of the FMS or any other constructed elements of the Remedial Action, Respondent's Work obligations shall terminate upon the earlier of the following: (i) when the Division determines that the Remedial Action has achieved the Performance Standards, as described in Paragraph 172 (Certification of Remedial Action Completion); or (ii) after 10 years following Certification of Completion of Remedial Action Construction under Paragraph 171.

c. Upon the occurrence of the condition(s) listed in sub-Paragraph 63.b, the Division shall assume responsibility for performing and funding any work required for the ongoing operation and maintenance of the FMS component(s) or other constructed elements of the Remedial Action addressed by such condition, the costs of which shall be considered Division O&M Costs for the purpose of Section XVII (Payment of Response Costs). In addition, as set forth in sub-Paragraphs 63.b and 172.d, immediately upon Certification of Remedial Action Completion under Paragraph 172, or after 10 years following Certification of Completion of Remedial Action Construction under Paragraph 171, whichever occurs earlier, the Division shall assume responsibility for performing and funding all other Operation and Maintenance activities required to maintain the effectiveness of the completed Remedial Action, the costs of which shall be considered Division O&M Costs for the purpose of Section XVII (Payment of Response Costs).

64. Respondent's obligations with respect to the FMS shall include the repair and replacement of existing FMS equipment and components, including, without limitation, ponds, pond liners, ditches, pipelines, pumps, power supply, and bird deterrence equipment, as needed to ensure the continued effective functioning of the FMS during Remedial Action Construction or until the conditions stated in sub-Paragraph 63.b have been met. As to the repair or replacement of any individual FMS component: if the cost of such repair or replacement is less than $100,000, Respondent shall be solely responsible for payment; if the cost of such repair or replacement is equal to or greater than $100,000, than the costs shall be allocated between and paid jointly by the Division and Respondent in accordance with Paragraph 113 (Payments for Division RD/RA Costs), and the Division's share of such costs shall be considered Division O&M Costs for the purpose of Section XVII (Payment of Response Costs). For purposes of this Paragraph, "repair or

replacement" refers only to work required to repair or replace FMS components existing as of the Effective Date, as needed to ensure the continued functioning of the FMS.

65. During Remedial Action Construction, and as described in the RD/RA SOW, Respondent shall, in addition to the FMS-related and other Work described in this Section, implement interim measures approved by the Division to prolong the life of, and maintain sufficient capacity in, the FMS so as to prevent overflows, including construction of new evaporation ponds and drain-down fluid conveyance equipment, if needed, until a Site-wide remedy is constructed or until the conditions in sub-Paragraph 63.b have been met. As long as the new evaporation ponds or other such facilities are part of the Remedial Action and will continue to be used for managing drain-down fluids following Certification of Completion of Remedial Action Construction, the associated capital construction costs shall be allocated between and paid jointly by the Division and Respondent in accordance with Paragraph 113 (Payments for Division RD/RA Costs), and the Division's share of such costs shall be considered Division RD/RA Costs for the purpose of Section XVII (Payment of Response Costs). If such interim measures are not considered part of the Remedial Action and will not continue to be used following Certification of Completion of Remedial Action Construction under Paragraph 171 (*e.g.*, a new temporary pond), Respondent shall be solely responsible for payment of the associated capital construction costs.

66. **Modification of FMS Work Plan**.

a. If the Division determines that it is necessary to modify the Work specified in the FMS Work Plan in order to achieve and/or maintain the functioning and integrity of the FMS, and such modification is consistent with the scope of the Work described in the FMS Work Plan, then the Division may notify Respondent of such modification.

b. Respondent shall confirm its willingness to perform the FMS Work Plan as modified within 10 days after receiving notice of the modification from the Division. If Respondent objects to any modification determined by the Division to be necessary pursuant to this Paragraph, Respondent may invoke dispute resolution pursuant to Section XVIII (Dispute Resolution).

c. The FMS Work Plan shall be modified: (1) in accordance with the modification issued by the Division; or (2) if Respondent invokes Dispute Resolution, in accordance with the final resolution of the dispute.

d. Respondent shall complete the modified Work according to the standards, specifications, and schedule set forth or approved by the Division in a written modification to the FMS Work Plan. The Division reserves the right to conduct the Work itself, to seek reimbursement from Respondent for the costs incurred in performing the Work, and/or to seek any other appropriate relief.

e. Nothing in this Paragraph shall be construed to limit the Division's authority to require performance of further response actions as otherwise provided in this Settlement.

## D. GROUNDWATER INTERIM MEASURES

67. If the Division determines, based on information obtained through implementation of the RI/FS and consideration of the factors specified in Paragraph 68 below, that releases of hazardous substances from the Site to groundwater pose an imminent and substantial endangerment to human health, welfare, or the environment, the Division may notify Respondent in writing of the measure(s) ("Groundwater Interim Measures") the Division has determined need to be developed and implemented by the Respondent to mitigate the imminent and substantial endangerment. If deemed appropriate by the Division, the implementation of such Groundwater Interim Measures may be deferred pending collection by the Respondent of additional data or information requested by the Division. Upon receiving such notice, the Division and the Respondent shall promptly confer whether and to what extent such Groundwater Interim Measures are required.

68. The following factors, among others, shall be considered by the Division in determining whether any Groundwater Interim Measures should be required:

a. the estimated risk reduction in comparison to the time to develop and implement final remedies for Site releases to groundwater;

b. actual or potential exposure of hazardous substances to humans at concentrations that may pose acute or chronic health effects;

c. groundwater monitoring data, groundwater contaminant plume stability and trend analysis, and rate of groundwater contaminant migration;

d. actual or potential contamination of additional drinking water wells or drinking water supplies or sensitive environments;

e. background concentrations of contaminants;

f. the presence of other anthropogenic sources or anthropogenic activities to groundwater contamination; and

g. the effectiveness, cost, and implementability of the Groundwater Interim Measures being considered.

69. Any requirement by the Division regarding a Groundwater Interim Measure that is the subject of Division notification pursuant to Paragraph 67 shall contain a schedule for Respondent to submit to the Division a Work Plan for the development and implementation of the Groundwater Interim Measure(s) ("Groundwater Interim Measure(s) Work Plan") as identified in such notification. Each Groundwater Interim Measure(s) Work Plan is subject to approval by the Division, and each Groundwater Interim Measure(s) Work Plan shall address, as appropriate and without limitation, (a) objectives of the Groundwater Interim Measure(s); (b) technical approach; (c) engineering design and planning (including Division approval of all design plans and specifications); (d) schedule for development and implementation of the Groundwater Interim Measure; (e) qualifications of personnel performing the development or implementation of the Groundwater Interim Measure(s), including Contractor personnel; (f) health and safety planning;

(g) data collection quality assurance, strategy, management, and analysis; (h) construction quality assurance, including inspection activities, sampling requirements, documentation and certification of construction consistent with Division-approved designs; (i) operation and maintenance of the Groundwater Interim Measures; (j) document/data submittals for Division approval; and (k) regular progress reporting during the development and implementation of the Groundwater Interim Measures.

70. Groundwater Interim Measures, which may include enhanced Institutional Controls, shall, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any long term solution at the Site. The Division shall not require, and Respondent shall not be obligated to perform, active groundwater remediation as a Groundwater Interim Measure under this Section VIII.D. Groundwater Interim Measures that may be selected by the Division include, subject to an evaluation of water rights and hydrological considerations: (a) additional source control measures within the Mine Site Boundary; (b) changes to agricultural practices outside the Mine Site Boundary, including irrigation improvements, movement or elimination of irrigation pumping wells, reduced pumping rates, and ditch lining; (c) delivery of bottled water; (d) domestic or municipal well-head treatment; and (e) additional disconnections of domestic wells and further extensions of City Water System service.

71. A Division decision regarding a Groundwater Interim Measures Work Plan and any Work undertaken by Respondent pursuant thereto shall be governed by the other provisions of this Settlement, including without limitation, the provisions of Section XVIII (Dispute Resolution). In the case of a dispute related to Groundwater Interim Measures, the time frames outlined in Section XVIII (Dispute Resolution) shall be shortened by one-half of the time allowed. In the event the Respondent fails to perform the Groundwater Interim Measures pursuant to this Settlement, the Division may perform the Groundwater Interim Measures pursuant to Paragraph 141 (Work Takeover) of Section XXII (Reservation of Rights by the Division).

### E. OTHER REQUIREMENTS

72. **Community Involvement; Technical Assistance for Tribes and Eligible Community Organization**

a. If requested by the Division, Respondent shall conduct community involvement activities under the Division's oversight as provided for in, and in accordance with, the Community Involvement and Participation Plan. The Division will prepare a draft of the Community Involvement and Participation Plan within 90 days after the Deferral Agreement is executed. The public will have 30 days to review the Community Involvement and Participation Plan and provide comments. The Division will prepare a final Community Involvement and Participation Plan 45 days afterthe public review and comment period closes. The Community Involvement and Participation Plan will be, upon its completion, incorporated into this Settlement under Section XXXI (Integration /Appendices). Costs incurred by the Division in implementing the Community Involvement and Participation Plan constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs).

b. In order to ensure that members of the YPT, WRPT, and members of the surrounding community are able to acquire assistance to interpret information with regard to the

performance of the Work and implementation decisions at relevant portions of the Site during the performance of the RI/FS and the Remedial Action, the Division shall provide resources or direct technical assistance to the YPT, WRPT, and a community organization that meets EPA eligibility requirements for a Technical Assistance Grant at 40 CFR Part 35 Subpart M. As will be set forth in the forthcoming Community Involvement and Participation Plan, the Division will follow the process described at 40 CFR part 35 Subpart M in selecting an eligible community organization to receive such technical assistance. Costs incurred by the Division in providing such resources and technical assistance constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs), provided that Respondent's reimbursement obligation under this sub-Paragraph for all technical assistance provided to the YPT shall be limited to $100,000, to the WRPT shall be limited to $50,000, and to the community shall be limited to $50,000. The Division may request that Respondent consent to increase the reimbursement limitations to account for reasonable additional costs incurred by the Division in providing technical assistance to the YPT, WRPT, and the selected community organization in accordance with the Community Involvement and Participation Plan, which consent shall not be unreasonably withheld. The Division shall separately track, account for, and bill for its Future Response Costs relating to the provision of technical assistance to the YPT, WRPT, and the community organization under this sub-Paragraph. The reimbursement limitations for technical assistance shall no longer apply once a future record of decision is issued for additional remedial action at the Site outside of the ROD-1 Boundary and beyond what is selected in the ROD-1 and further described in the RD/RA SOW.

73. **Off-Site Shipments**

a. Respondent may ship Waste Material from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the Division's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent shall also notify the state environmental official referenced above and the Division's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the RD/RA SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes

that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

74. **Meetings**. In addition to any meetings with EPA's RPM pursuant to Paragraph 48.e (EPA Participation), Respondent shall make presentations at, and participate in, meetings at the request of the Division during the preparation of the RI/FS, the preparation of the RD/RA Work Plan, and the performance of the Remedial Action. The Division shall coordinate and may require Respondent's participation in meetings with EPA. In addition to discussion of the technical aspects of the RI/FS and the Remedial Action, topics will include anticipated problems or new issues. Meetings will be scheduled at the Division's discretion.

75. **Progress Reports**. In addition to the other Deliverables set forth in this Settlement, Respondent shall submit written quarterly progress reports to the Division by the 10th day of the following months: January, April, and July; and submit a written annual progress report that is due on the last Friday of October. At a minimum, these progress reports shall:

a. Describe the actions that have been taken to comply with this Settlement, including RD/RA, RI/FS, and FMS Work;

b. Describe Work planned for the next reporting period with schedules relating such Work to the overall project schedule for RI/FS completion and Remedial Action completion;

c. Describe any activities and conclusions relating to Respondent's evaluation of the need for interim measures, if any, to address contaminant migration or prevent exposure to Site-related contaminants and to ensure CERCLA Protectiveness; and

d. Describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

e. The Annual Progress Report may incorporate by reference (without repeating or revising) the information included in the Annual Summary of RD/RA Activities submitted in accordance with Paragraph 55 and the Annual RI/FS Data Summary Report submitted in accordance with Paragraph 62.

## IX. REMEDY REVIEW

76. **Periodic Review**.

a. Respondent shall conduct studies and investigations requested by the Division and reasonably necessary to support the Division's reviews of whether the Remedial Action is CERCLA Protective. The Division shall conduct such periodic reviews in general accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations.

b. No later than 4 years after the Effective Date, Respondent shall prepare and submit to the Division for approval a Periodic Review Support Plan, which shall identify the studies and investigations that Respondent will conduct for this purpose. Respondent shall

develop the plan in accordance with EPA's *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances identified by the Division.

c. In conducting any such periodic review, the Division may notify, consult with, and solicit input from EPA. The Division shall give due consideration to any input provided by EPA in its determination of whether the Remedial Action is CERCLA Protective, and the Division shall use its best efforts to resolve any disagreements between itself and EPA as to such determination.

d. In addition to the periodic review process described above, the Division shall consult at least annually with EPA following Certification of Remedial Action Completion under Paragraph 172 to discuss the Division's progress in overseeing and implementing the RI/FS and Remedial Action at the Site. Such consultation may include, without limitation, a review of Deliverables required by the Deferral Agreement and other key Deliverables required by this Settlement, performance schedules, achievement of Performance Standards and other milestones required by this Settlement and by the Deferral Agreement, data quality assurance and control, Respondent's cooperativeness, and participation of the affected community. Respondent shall provide the Division with documents and other information reasonably requested by the Division to facilitate such consultation with EPA, and the Division may require Respondent's participation in consultation meetings with EPA.

e. Notwithstanding the foregoing, EPA's concurrence will not be required for the Division to determine that the Remedial Action is CERCLA Protective, and EPA shall not have independent authority under this Settlement to reject or require further response actions.

77. **Division Selection of Further Response Actions**. With respect to any portions of the Site outside of the ROD-1 Boundary and not addressed by the Remedial Action, the Division may select further response actions as necessary to protect human health and the environment in accordance with the requirements of CERCLA, the NCP, and Nevada law. With respect to the OUs and CMUs addressed by the Remedial Action, if the Division determines, at any time, that the Remedial Action is not CERCLA Protective, the Division may select further response actions for such portions of the Site in accordance with the requirements of CERCLA, the NCP, and Nevada law. The Division may provide EPA with an opportunity to review and comment on any proposed selected further response action for the OUs and CMUs addressed by the Remedial Action; but, unless specifically endorsed by the Division, Respondent shall not be required under this Settlement to perform any studies, investigations, or additional response actions required solely by EPA as a result of this process.

78. **Opportunity to Comment**. Respondent and, if required by Section 117 of CERCLA, 42 U.S.C. § 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by the Division as a result of the review conducted pursuant to this Section and to submit written comments for the record during the comment period.

79. **Respondent's Obligation to Perform Further Response Actions**. If the Division selects further response actions within the ROD-1 Boundary pursuant to this Section, the Division may require Respondent to perform such further response actions, but only to the extent that the

reopener conditions in Paragraphs 137 and 138 (Pre- and Post-Certification Reservations) are satisfied. Respondent may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute (a) the Division's determination that the reopener conditions of Paragraphs 137 and 138 are satisfied, (b) the Division's determination that the Remedial Action is not CERCLA Protective, or (c) the Division's selection of the further response actions. Notwithstanding any modification to the RD/RA Work Plan, and except as required pursuant to a Groundwater Interim Measures Work Plan required under Paragraph 69, nothing in this Settlement shall obligate Respondent to perform further response actions outside of the ROD-1 Boundary or that address releases of hazardous substances and other conditions outside of the ROD-1 Boundary.

80. **Submission of Plans**. If Respondent is required to perform further response actions pursuant to this Section, it shall submit a plan for such response action to the Division for approval in accordance with Section X (Submission and Approval of Deliverables). Respondent shall implement the approved plan in accordance with this Settlement.

## X. SUBMISSION AND APPROVAL OF DELIVERABLES

81. **Submission of Deliverables**. Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the Division's Project Coordinator. Respondent shall submit all Deliverables required by this Settlement, the attached SOWs, or any approved work plan in accordance with the schedule set forth in such plan. Respondent shall submit all Deliverables in an electronic format acceptable to the Division.

82. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any Deliverable that is required to be submitted for Division approval under this Settlement or the attached SOWs, the Division shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions, including the need to address comments on the submission provided by the Division; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) The Division also may modify the initial submission to cure deficiencies in the submission if: (i) after first providing Respondent with at least one notice of deficiency and an opportunity to cure within 14 days, the Division determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable Deliverable.

b. **Responses to Division Reviews**. Upon receipt of a notice of disapproval under Paragraph 82.a(1)(iii), or if required by a notice of approval upon specified conditions under Paragraph 82.a.(1)(ii), Respondent shall, by the date provided by the Division in such notice, which date shall be at least 30 days from the date of such notice, correct the deficiencies or respond to the specified conditions and provide written confirmation of such corrections or

responses to the Division. Unless specifically provided for by the Division in its notice, Respondent need not resubmit the Deliverable to the Division for further review and approval, but Respondent shall maintain adequate records sufficient to document any changes made to the Deliverable and any Work required thereunder, in accordance with Section XIV (Record Retention), and provide copies of such records to the Division upon request, in accordance with Section XIII (Access to Information). If resubmission is requested, the Division will follow a review process as provided for in Paragraph 82.a(1).

c. **Implementation**. Upon approval, approval upon conditions, or modification by the Division or Respondent under Paragraph 82.a or Paragraph 82.b, of any Deliverable, or any portion thereof: (i) such Deliverable, or portion thereof, will be incorporated into and enforceable under this Settlement; and (ii) Respondent shall take any action required by such Deliverable, or portion thereof, subject to Respondent's right to invoke the Dispute Resolution procedures in Section XVIII with respect to the modifications or conditions made by the Division. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties under Section XX (Stipulated Penalties) for violations of this Settlement.

83. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by the Division.

84. In the event that the Division takes over some of the tasks, but not the preparation of the RI Report, the FS Report, the RD/RA Work Plan, or the Remedial Design, Respondent shall incorporate and integrate information supplied by the Division into those documents.

85. **Division Review of Major Deliverables**. Upon their submittal, the Division shall have up to 60 days to review and comment on the following major Deliverables: RI Sampling and Analysis Plan(s); risk assessment work plans; draft RI Report(s); draft Risk Assessment Reports; draft FS Report(s); Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan; draft FS Report; RD/RA Work Plan; Remedial Design Report(s); and the Completion Reports identified in Section XXX (Notice and Certification of Completion of Work). During this time period, the Division shall solicit any comments or input from other State or Federal agencies, including EPA, and other community stakeholders that the Division determines, in its discretion, should be consulted on the subject matter of the Deliverable. The Division shall evaluate any such input received from the other consulted agencies and stakeholders, give due consideration to any input provided by EPA in its determination of whether the Deliverable under consideration will ensure CERCLA Protectiveness at the Site, and synthesize such input into a consolidated set of comments or conditions made by the Division and provided to Respondent within the required time period. Respondent shall not be required under this Settlement to directly respond to or address comments or conditions on any Deliverable made by any entity other than the Division unless specifically so directed by the Division consistent with this Paragraph. Respondent shall not proceed with any Work dependent on these Deliverables until receiving Division approval, approval on condition, or modification of such Deliverables. While awaiting Division approval, approval o n condition, or modification of these Deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these Deliverables, in accordance with the schedule set forth under this Settlement.

86. **Division Review of Other Deliverables**. For all remaining Deliverables not listed in Paragraph 85, the Division shall have up to 45 days for review and comment. Unless specifically directed by the Division, Respondent shall proceed with all subsequent tasks, activities, and Deliverables without awaiting Division approval of the submitted Deliverable. The Division reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity, or Deliverable at any point during the Work.

87. **Notice of Deliverable Submission and Requests for Extension of Time**. Respondent shall notify the Division in writing 14 days in advance of the date it will submit a deliverable called for under Paragraphs 85 and 86. In addition, the Division shall have the right to an extension of up to 15 days of the deadline for review and comment called for under Paragraphs 85 and 86 if necessary to accommodate a large volume of deliverables requiring review at the same time or because sufficient Division personnel are not available at the time a review is required.

88. **Deliverable Deemed Approved**. In order to ensure the timely and efficient performance of Work under this Settlement, failure of the Division to expressly approve, comment on, or disapprove of a Deliverable within a specified time period shall be deemed an approval by the Division and authorization for Respondent to proceed with any Work described in the Deliverable as proposed or described therein.

89. **Material Defects**. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by the Division under Paragraph 82.a and 82.b due to such material defect, Respondent shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondent may be subject to penalties for such violation as provided in Section XX (Stipulated Penalties).

## XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

90. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A-900C (March 2005), or other applicable guidance required by the Division.

91. **Laboratories**

a. Respondent shall ensure that Division personnel are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by the Division pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the proficiency testing program requirements specified in NAC §§ 445A.0594, 459.96932, the competency requirements set forth in EPA's "Policy to Assure

Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," or other applicable guidance required by the Division, and that the laboratories perform all analyses using Division-approved or EPA-accepted methods. Division-approved methods of testing are defined in NAC §§ 445A.0562, 459.9691. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program, SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", "Standard Methods for the Examination of Water and Wastewater", and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods".

b. Upon approval by the Division, Respondent may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a state or nationally recognized organization responsible for verification and publication of analytical methods, e.g., the Division, EPA, ASTM, NIOSH, OSHA, etc.

c. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement satisfy the requirements for "certified laboratories" under NAC §§ 445A.044 – 445A.067, 459.96902 – 9699 or have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. The Division may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

92. **Sampling**

a. Upon request, Respondent shall provide split or duplicate samples to the Division. Respondent shall notify the Division not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by the Division; provided that Respondent shall not be required to notify the Division in advance of any sample collection activity routinely performed in accordance with a schedule or work plan previously approved by the Division, unless the schedule is changed. In addition, the Division shall have the right to take any additional samples that the Division deems necessary. Upon request, the Division shall provide to Respondent split or duplicate samples of any samples it takes as part of the Division's oversight of Respondent's implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, during the period that this Settlement is

effective and not previously submitted to the Division, shall be submitted annually to the Division in the Annual Summary of RD/RA Activities and Annual RI/FS Data Summary Report pursuant to Paragraphs 55 and 62.

c. Respondent waives any objections to any data gathered, generated, or evaluated by the Division 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 this Settlement or any Division-approved RI/FS work plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the RI/FS or the Remedial Action, Respondent shall submit to the Division a report that specifically 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 the Division within 15 days after the annual or quarterly report containing the data.

## XII. PROPERTY REQUIREMENTS

93. **Agreements Regarding Access and Non-Interference**. Respondent shall, with respect to any Non-Settling Owner's Affected Property for whichan agreement is not already in place, use best efforts to secure from such Non-Settling Owneran agreement, enforceable by Respondent and the Division, providing that such Non-Settling Owner: (i) provide the Division and Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding this Settlement, including those listed in Paragraph 93.a (Access Requirements); and (ii) refrain from using such Affected Property in a manner that the Division determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation or integrity of the Work, including the restrictions listed in Paragraph 93.b (Land, Water, or Other Resource Use Restrictions). Such an agreement shall not be deemed unacceptable to the Division if, pursuant thereto, the Non-Settling Owner is entitled to (1) retain use and enjoyment of the Affected Property subject to interference when necessary to implement the Work or maintain the integrity and proper functioning of the Engineering Controls or physical elements of the Remedial Action; or (2) obtain written approval from the Division and coordinate with Respondent to alter the design and implementation of the Work, at the Non-Settling Owner's expense, to avoid unreasonable interference with use and enjoyment of the Affected Property. In its review of a Non-Settling Owner's request to change the design and implementation of the Work under subsection (2), the Division will consider whether the requested changes materially alter the purpose, goals, costs, or completion schedule of the Work or Remedial Action. Subject to the need to consider the Non-Settling Owner's input in good faith, NDEP will be responsible for making final decisions about any proposed changes to the design and implementation of the Work under subsection (2), including whether such proposed changes are consistent with the requirements in NRS 459.930(1)(a); CERCLA Section 101(40), 42 U.S.C. 9601(40); and CERCLA Section 107(r)(1), 42 U.S.C. § 9607(r)(1). Respondent shall provide the Division with the same access and refrain from the same uses with respect to any Owner Respondent's Affected Property acquired after the Effective Date.

a. **Access Requirements**. The following is a list of activities for which access to an Affected Property is to be obtained:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the Division;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 141 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XIII (Access to Information);

(9) Assessing Respondent's compliance with this Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions that shall be incorporated into and enforceable pursuant to Proprietary Controls applicable to the Affected Property, unless the activity is required as part of the Work or undertaken with prior notification to and approval by the Division, or unless the Non-Settling Owner performing such activity assumes responsibility for any resulting adverse effects on the Remedial Action and any resulting release or thr eatened release of Hazardous Substances in an administratively approved settlement or other enforceable agreement or permit entered into with or issued by the Division:

(1) Physical disturbance or modification of Engineering Controls and other physical elements of the Remedial Action, which are implemented as a result of this Agreement including but not limited to: water pumping or treatment systems and structures, wells, ponds, bird deterrence systems, pipelines, ditches, conveyance lines and structures, underdrains, drainage systems, electrical systems, heap leach pads, soil covers, caps, revegetation, erosion controls, slope stabilizers, dams, liners, roadways and access routes, disposal areas, and repositories;

(2) Construction of temporary or permanent structures on top of or immediately adjacent to Engineering Controls and other physical elements of the Remedial Action in a manner that interferes with the implementation, integrity, or proper functioning of the Work;

(3) Excavation within any Engineering Controls and other physical elements of the Remedial Action or within a distance or space that causes or will cause a material alteration to the physical elements of the Remedial Action in a manner that materially alters them;

(4) Grading or land disturbance in a manner that materially alters the functioning of the stormwater management elements of the Remedial Action, or other actions that cause material erosion or deterioration of any completed Engineering Controls and other physical elements of the Remedial Action;

(5) Installation of water supply wells for potable use;

(6) Construction and operation of unlined ponds or lagoons or other facilities that retain liquids and facilitate their infiltration into the ground;

(7) Disposal of Waste Materials on the Affected Property, unless specifically permitted by State law or a new mine permit; and

(8) Activities that alter, disturb, or modify any natural or manmade surface water features on or immediately adjacent to the Affected Property.

94. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify the Division and include a description of the steps taken to comply with the requirements. If Respondent's best efforts are not successful in obtaining the required access or use restrictions, the Division will, to the extent authorized by State or federal law, assist Respondent, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the Division in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs).

95. If the Division determines in a decision document prepared in accordance with the NCP that additional Institutional Controls in the form of State or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondent shall cooperate with Division efforts to secure and ensure compliance with such Institutional Controls, which shall be implemented, maintained, and enforced pursuant to the Institutional Controls Implementation and Assurance Plan (ICIAP) described in Section 8.4(i) of the RD/RA SOW.

96. **Notice to Successors-in-Title**.

a. Respondent shall, within 30 days after acquiring any Owner Respondent's Affected Property after the Effective Date, submit for Division approval a notice to be filed regarding such property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) as to any Affected Property on which the Remedial Action will be implemented, that the Division selected a remedy for that portion of the Site; and (iii) the Division has entered into an agreement with Respondent for performance of an RI/FS or Remedial Action with respect to the Affected Property, as applicable; and (3) identify the name and effective date of this Settlement. Owner Respondent shall record the notice within 10 days after the Division's approval of the notice and submit to the Division, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Respondent shall, prior to entering into a contract to Transfer Owner Respondent's Affected Property, or 60 days prior to Transferring Owner Respondent's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that the Division has entered into an agreement with Respondent for performance of an RI/FS or requiring implementation of the Remedial Action with respect to the Affected Property (identifying the name and effective date of this Settlement); and

(2) Notify the Division of the name and address of the proposed transferee and provide the Division with a copy of the notice that it provided to the proposed transferee.

97. In the event of any Transfer of the Affected Property, unless the Division otherwise consents in writing to an assignment or Transfer of obligations, Respondent shall continue to comply with its obligations under this Settlement, including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

98. Notwithstanding any provision of this Settlement, the Division retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable State or federal statute or regulations.

## XIII. ACCESS TO INFORMATION

99. Respondent shall provide to the Division, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents that are generated by Respondent or on its behalf during and in connection with performance of the Work, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work.

Respondent shall also make available to the Division, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Respondent shall not be required under this Section to provide any Records to the Division that Respondent provided previously, that are contained in the administrative record file for the Site, or that are otherwise readily available from other public sources.

100. **Privileged and Protected Claims**

a. Respondent may assert that all or part of a Record requested by the Division is privileged or protected as provided under federal or Nevada law, in lieu of providing the Record, provided Respondent complies with Paragraph 100.b, and except as provided in Paragraph 100.c.

b. If Respondent asserts a claim of privilege or protection, it shall provide the Division with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to the Division in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until the Division has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any final (as opposed to draft) Record that Respondent is required to create or generate pursuant to this Settlement.

101. **Business Confidential Claims**. All Records required by this Settlement will be deemed public information upon submittal to the Division unless Respondent requests in writing at the time of submittal that a Record or specific information contained therein be treated as confidential, business information in accordance with NRS § 459.555 or § 445A.665, and such regulations adopted thereunder, and the Division grants the request. Pending such determination and any appeals thereof, the Division shall treat such information as confidential. Respondent shall adequately substantiate any assertion of confidentiality in writing when the request is made. Respondent may assert attorney client privilege, attorney work product, or business confidentiality claims covering part or all of any Record submitted to the Division under this Settlement to the extent permitted. If no claim of confidentiality accompanies a Record when it is submitted to the Division, or if the Division has notified Respondent that the Record is not confidential, subject to Respondent's right to invoke the Dispute Resolution procedures in Section XVIII on this decision, the public may be given access to such records, documents, or information without further notice to Respondent.

102. Notwithstanding any provision of this Settlement, the Division retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable State or federal statutes or regulations.

## XIV. RECORD RETENTION

103. Until 10 years after the Division provides Respondent with a notice of Certification of Work Completion pursuant to Paragraph 174 (Certification of Work Completion), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site or to the liability of any other person under CERCLA with respect to the Site. Respondent shall also preserve and retain, and instruct its contractors and agents to preserve, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, non-identical copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. These record retention requirements shall apply regardless of any corporate retention policy to the contrary.

104. At the conclusion of the document retention period, Respondent shall notify the Division at least 90 days prior to the destruction of any such Records, and, upon request by the Division, and except as provided in Paragraph 100 (Privileged and Protected Claims), Respondent shall deliver any such Records to the Division.

105. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to response actions it performed at the Site, hazardous substances found on or released from the Site, or the liability of any person under CERCLA with respect to the Site since issuance by EPA of the Unilateral Administrative Order for Initial Response Activities, CERCLA Docket No. 9-2005-0011, on March 31, 2005.

## XV. COMPLIANCE WITH OTHER LAWS

106. Where any portion of the Work requires a federal, State, or local government permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Respondent may seek relief under the provisions of Section XIX (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

107. The Division will, to the extent authorized by State or federal law, assist Respondent, or take independent action, in obtaining any State, federal, or local permits that may be required for performance of the Work, or in securing exemptions or waivers for such permits if

legally permissible and necessary to ensure the timely and cost-effective performance of the Work. All costs incurred by the Division in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs).

108. The Parties agree that the State laws governing the Reclamation of Land Subject to Mining Operations or Exploration Projects, NRS Chapter 519 and NAC Chapter 519A, are not applicable to the Work required under this Settlement to the extent such Work relates to operations at the Site that ceased prior to October 1, 1990, or to mining-related land disturbances that occurred prior to January 1, 1981. NAC 519A.100, 519A.120, 519A.245(2). The Parties likewise agree that the State laws governing the permitting, design, operation, and closure of mining facilities, NAC 445A.350 – 445A.447, are not applicable to the Work required under this Settlement to the extent such Work relates to any portion of a mining operation or facility that ceased operations prior to September 1, 1989. NAC 445A.359, NA C 445A.387, NAC 445A.390. As discussed in Paragraph 18, Anaconda ceased all operations at the Site in June 1978. The Division further acknowledges that the Work required under this Settlement does not and will not require any permits under any of the authorities cited in this Paragraph relating to reclamation, permitting, design, construction, operation, or closure of mining facilities.

## XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

109. **Emergency Response**. If any action taken by Respondent at the Site or if any occurrence arising from Respondent's performance of the Work causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the Division's Project Coordinator or, in the event of his/her unavailability, the Division's Alternate Project Coordinator of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and the Division takes such action instead, Respondent shall reimburse the Division for all costs of such response action not inconsistent with the NCP pursuant to Section XVII (Payment of Response Costs).

110. **Release Reporting**. Upon the occurrence of any event caused by Respondent's performance of the Work that Respondent is required to report pursuant to NAC 445A.347, 445A.3473, 445.3475, Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the Division's Project Coordinator or, in the event of his/her unavailability, the Division's Alternate Project Coordinator, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under NAC 445A.347, NAC 445A.3473, Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

111. For any event covered under this Section, Respondent shall submit a written report to the Division within 14 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

## XVII. PAYMENT OF RESPONSE COSTS

112. **Payments for Future Response Costs**. Respondent shall pay to the Division all Future Response Costs incurred by the Division not inconsistent with the NCP.

a. **Prepayment of Future Response Costs**. Within 45 days after the Effective Date, Respondent shall pay to the Division an amount estimated by the Division to represent the Division's first year of Future Response Costs as a prepayment of Future Response Costs. The exact amount of this pre-payment, which shall not exceed $600,000, shall be documented in a budget request submitted by the Division to the Nevada State legislature, a copy of which the Division shall provide to Respondent at least 30 days before the payment is due. Payment shall be made in accordance with the instructions provided in Paragraph 116. Such funds shall be maintained by the Division in the Anaconda Copper Mine Site Special Account. These funds, including any accrued interest, shall be retained and used by the Division to conduct or finance future response actions at or in connection with the Site and not for any other purpose.

b. **Shortfall Payment**. If at any time prior to the date the Division sends Respondent the first bill under Paragraph 112.c (Periodic Bill), the balance in the Anaconda Copper Mine Site Special Account falls below one-half of the pre-payment amount required under sub-Paragraph 112.a, the Division will so notify Respondent. Respondent shall, within 30 days after receipt of such notice, pay one-half of the pre-payment amount required under sub-Paragraph 112.a to the Division in accordance with the instructions provided in Paragraph 116. The amounts paid shall be deposited by the Division in the Anaconda Copper Mine Site Special Account and retained and used by the Division to conduct or finance future response actions at or in connection with the Site and not for any other purpose.

c. **Periodic Billing**. On a periodic basis (not more often than quarterly), the Division will send Respondent a bill requiring payment, which shall include documentation of all Future Response Costs incurred by the Division during the billing period, including documentation of: payroll hours and work descriptions for Division personnel; travel costs for Division personnel; contractor vouchers, drawdowns, invoices, and other documentation of work performed by and payments made to any Division contractors; contractor Deliverables, including progress/status reports, oversight reports, analytical reports, and investigation reports; and activities performed and the associated costs incurred to provide resources or direct technical assistance to the Yerington Paiute Tribe under Paragraph 72 (Community Involvement and Tribal Assistance; Technical Assistance for Tribes and Eligible Community Organization). Respondent shall make all payments within 60 days after Respondent's receipt of each bill that satisfies these documentation requirements, except as otherwise provided in Paragraph 112.d (Retention of Future Response Costs) and Paragraph 115 (Contesting Future Response Costs and Division RD/RA Costs), and in accordance with Paragraph 116 (Payment Instructions).



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d. **Retention of Future Response Costs**. For each periodic bill that Respondent receives from the Division, Respondent shall be entitled to withhold and retain 10% of any undisputed billed amount for the total invoiced and payable costs for Nevada state payroll and travel costs, and 10% of any amount specified in the resolution of a dispute under Paragraph 115 (Contesting Future Response Costs and Division RD/RA Costs), from the payment owed to the Division related to such payroll and travel costs. Respond ent shall maintain an accounting of such retained funds, which shall be paid in a lump sum to the Division within 30 days after the Division first incurs Division O&M Costs under Paragraph 63.c and provides written notification of same to Respondent.

e. **Deposit of Future Response Costs Payments**. The total amount paid by Respondent pursuant to Paragraph 112.c (Periodic Billing) shall be deposited by the Division in the Anaconda Copper Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, including payment or reimbursement of Division expenses incurred in performing oversight of Respondent's implementation of the Work.

f. **Unused Amount**. After the Division issues the final Certification of Remedial Action Completion pursuant to Paragraph 172, the Division shall apply any unused funds paid by Respondent under this Paragraph 112 and remaining at that time in the Anaconda Copper Mine Site Special Account towards the reimbursement of other response costs incurred by the Division with respect to the Site after such issuance; provided that such unused funds may not be applied towards the payment of any Division O&M Costs or Division RD/RA Costs.

113. **Payments for Division RD/RA Costs**. Subject to the Division's approved budget authority, the Division shall pay all Division RD/RA Costs to Respondent pursuant to this Paragraph.

a. Within 120 days after the Effective Date, Respondent shall provide the Division with a detailed listing of Remedial Action-related Response Activities (including design and construction tasks and elements) that Respondent does not consider to be within or related to OU-8 or directly or indirectly associated with OU-8 ("Non-Allocable RD/RA Work"). Upon receiving such listing, the Division and Respondent shall promptly confer as to whether and to what extent any other Remedial Action-related Response Activities should be identified as Non-Allocable RD/RA Work. Work performed outside the OU-8 boundarywill not be identified as Non-Allocable RD/RA Work if it materially contributes to the implementation and performance of Remedial Action-related Response Activities within the OU-8 boundary. If the Parties are unable to reach an agreement on this listing prior to the commencement of Remedial Action Construction, the Parties will engage the services of a mutually acceptable independent engineering consultant to review the listing, consider other available RD information, and make a final determination as to which Remedial Action-related Response Activities should be identified as Non-Allocable RD/RA Work. The Division, subject to its approved budget authority, and Atlantic Richfield shall each be responsible for 50% of the independent consultant's fees.

b. On a periodic basis (not more often than quarterly) after the commencement of Remedial Action Construction, Respondent will send the Division a bill requiring payment of Division RD/RA Costs, which shall include reasonably detailed documentation of all third-party contractor costs charged to and paid by Respondent during the billing period for Remedial Action-

related Response Activities other than Non-Allocable RD/RA Work ("OU-8 Allocable RD/RA Costs"), including, without limitation: contractor invoices detailing activities performed, labor charges and rates, expenses, and invoice back-up; evidence of Respondent's payments; and other documentation sufficient to establish that the Response Activities that are the subject of the bill are not Non-Allocable RD/RA Work .

c. The Division shall pay to Respondent 7.8% of the OU-8 Allocable RD/RA Costs as Division RD/RA Costs within 60 days after the Division's receipt of each bill that satisfies these documentation requirements, except as otherwise provided in Paragraph 115 (Contesting Future Response Costs and Division RD/RA Costs), and in accordance with Paragraph 116 (Payment Instructions).

d. The Division shall, in accordance with Nevada law, take such measures as may be necessary to authorize or obtain authorizations for the payment of Division RD/RA Costs and other costs necessary to perform and satisfy its obligations under this Settlement.

114. **Interest**. In the event that any payment for Future Response Costs or Division RD/RA Costs is not made by the date required, Respondent or the Division, as applicable, shall pay Interest on the unpaid balance. The Interest on Future Response Costs or Division RD/RA Costs shall begin to accrue on the date Respondent or the Division, as applicable, receives the bill and accrue through the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Division by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XX (Stipulated Penalties).

115. **Contesting Future Response Costs and Division RD/RA Costs**. Respondent or the Division may initiate the procedures of Section XVIII (Dispute Resolution) regarding payment of any Future Response Costs or Division RD/RA Costs billed under Paragraphs 112 (Payments for Future Response Costs) and 113 (Payments for Division RD/RA Costs) if either Party determines that the other Party has made a mathematical error, or included a cost item that is not within the definition of Future Response Costs or Division RD/RA Costs, or failed to provide the reasonably detailed documentation required under Paragraphs 112.c, 113, or the NCP (40 CFR § 300.160(a)(1)), as applicable, or if it believes the other Party incurred excess costs as a direct result of an action that was inconsistent with the NCP. To initiate such a dispute, the objecting Party shall submit a Notice of Dispute in writing to the other Party's Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs or Division RD/RA Costs and the basis for objection. If either Party submits a Notice of Dispute, it shall, within 60 days after receipt of the bill pay all uncontested Future Response Costs or Division RD/RA Costs, as applicable, to the other Party in the manner described in Paragraph 116. Whichever Party is unsuccessful in the dispute shall, within 10 days after the resolution of the dispute, remit any funds due to the other Party pursuant to the resolution in the manner described in Paragraph 116. Except as set forth in Paragraph 113.a, the dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII shall be the exclusive mechanisms for resolving disputes regarding the Parties' obligations with respect to Future Response Costs and Division RD/RA Costs.

116. **Payment Instructions and Notice of Payment**. For all payments of Future Response Costs and Division RD/RA Costs owed by Respondent or the Division under this Section XVII, the paying Party shall make such payment in accordance with written instructions provided by the receiving Party at the time the payment is owed. At the time of payment, the paying Party shall send written notice that such payment has been made to the other Party's Project Coordinator.

## XVIII. DISPUTE RESOLUTION

117. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

118. **Informal Dispute Resolution**. If Respondent objects to any Division action taken pursuant to this Settlement, including billings for Future Response Costs, or if the Division objects to a bill for Division RD/RA Costs presented by Respondent pursuant to Paragraph 113, it shall send the other Party a written Notice of Dispute describing the objection(s) within 30 days after such action. The Division and Respondent shall have 30 days from a Party's receipt of a Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended by written agreement of the Parties. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

119. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, the objecting Party shall, within 30 days after the end of the Negotiation Period, submit a Statement of Position to the other Party's Project Coordinator and to the Director of the Nevada Department of Conservation and Natural Resources ("Director"). The Statement of Position shall set forth the specific points of the dispute, the position the objecting Party claims should be adopted as consistent with the requirements of this Settlement, the basis for the objecting Party's position, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by the objecting Party, and any matters which it considers necessary for the Director's determination. The Statement of Position also may include a request for an opportunity to make an oral presentation of factual data, supporting documentation, and testimony (including expert testimony) to the Director. The receiving Party may, within 30 days after receipt of a Statement of Position, submit its own written statement of position. Within 45 days after submission of the in itial Statement of Position or after any oral presentation by the objecting Party, or such longer time as may be mutually agreed to by the Parties, the Director will issue a written decision on the dispute to the Parties. The final decision shall be incorporated into and become an enforceable part of this Settlement and shall be considered the Director's final decision. Respondent and the Division shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Director's decision, whichever occurs.

120. Except as provided in Paragraph 115 (Contesting Future Response Costs and Division RD/RA Costs) or as agreed by the Division, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of

Respondent under this Settlement. Except as provided in Paragraph 129, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

## XIX. FORCE MAJEURE

121. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" may include, without limitation: extraordinary weather or seismic events; natural disasters; strikes and lockouts; national emergencies; wars; acts of terror; delays in obtaining access or use of property not owned or controlled by Respondent despite timely commercially reasonable efforts to obtain such access or use approval; delays in obtaining any required approval or permit from the Division, BLM, EPA, or any other public agency that occur despite Respondent's complete and timely submission of information and documentation required for approval or applications for permits within a timeframe that would allow the Work to proceed in a manner contemplated by the schedule of this Settlement; and the failure by the Division to timely complete any obligation under this Settlement that prevents Respondent from meeting one or more deadlines under this Settlement. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

122. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondent shall notify the Division's Project Coordinator orally or, in his or her absence, the Alternate Division Project Coordinator, within 7 days of when Respondent first knew that the event might cause a delay. Within 21 days thereafter, Respondent shall provide in writing to the Division an explanation and description of 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 prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if the Division, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 121 and whether Respondent has exercised its best efforts under Paragraph 121, the Division may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

123. If the Division agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If the Division does not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Division will notify Respondent in writing of its decision. If the Division agrees that the delay is attributable to a force majeure, the Division will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

124. If Respondent elects to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), it shall do so no later than 15 days after receipt of the Division's written notice. In any such proceeding, 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, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 121 and 122. If Respondent carries this burden, the delay at issue shall not to be a violation by Respondent of the affected obligation of this Settlement identified to the Divisions.

## XX. STIPULATED PENALTIES

125. Respondent shall be liable to the Division for stipulated penalties in the amounts set forth in Paragraphs 126.a and 127 for failure to comply with the obligations specified in Paragraphs 126.b and 127, unless excused under Section XIX (Force Majeure) or as otherwise decided by the Division. "Comply" as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement. The Division may not assess any stipulated penalty hereunder for any period of time associated with the Division's or any other state or federal agency's or stakeholder's review of any Deliverable.

126. **Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance by Respondent with any obligation identified in Paragraph 126.b:

| Period of Noncompliance | Penalty Per Violation Per Day |
|---|---|
| 1st through 14th day | $1,000 |
| 15th through 30th day | $2,000 |
| 31st day and beyond | $4,000 |

b. **Obligations**

(1) Timely payment of any amount due under Section XVII (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXVIII (Financial Assurance).

(3) Timely and complete submittal of an original and any revised RI or FS Work Plan.

(4) Timely and complete submittal of an original and any revised RI or FS Report.

(5) Timely and complete submittal of an original and any revised RD/RA Work Plan or Remedial Design.

(6) Implementation of any Work task in accordance with any schedule or deadline required by this Settlement, a SOW, an RI/FS work plan, the RD/RA Work Plan, the Remedial Design, or other Work-related plan submitted to and approved by the Division pursuant to this Settlement.

127. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate Deliverables required by this Settlement, other than those specified in Paragraph 126.b:

| Period of Noncompliance | Penalty Per Violation Per Day |
|---|---|
| 1st through 14th day | $250 |
| 15th through 30th day | $500 |
| 31st day and beyond | $1,000 |

128. In the event that the Division assumes performance of a portion or all of the Work pursuant to Paragraph 141 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $250,000 or an amount equal to the Division's documented Future Response Costs incurred in performing such Work, whichever is less. Stipulated penalties under this Paragraph are in addition to any amounts owed to the Division under Paragraph 112 (Payments for Future Response Costs), including any Future Response Costs incurred by the Division in performing any Work following a Work Takeover, and the remedies available to the Division under Paragraphs 141 (Work Takeover) and 164 (Access to Financial Assurance).

129. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or Respondent's receipt of the Division's decision regarding the dispute. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day after the Division's receipt of such submission until the date that the Division notifies Respondent of any deficiency; or (b) with respect to a decision by the Division Administrator, under Paragraph 119 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Director issues a final decision regarding such dispute. Nothing in

this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

130. Following the Division's determination that Respondent has failed to comply with a requirement of this Settlement, the Division shall give Respondent written notification of the failure and describe the noncompliance. The Division may send Respondent a written demand for the payment of the penalties. Penalties shall accrue as provided in the preceding Paragraph but shall not be payable by Respondent unless the Division has notified Respondent of a violation. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Division has notified Respondent of a violation of any schedule or deadline required by this Settlement or any obligation set forth in sub-Paragraphs 126.b(1)–(5).

131. All penalties accruing under this Section shall be due and payable to the Division within 30 days after Respondent's receipt from the Division of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XVIII (Dispute Resolution) within the required period. All payments to the Division under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 112 (Payments for Future Response Costs).

132. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 129 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 131 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the Division may institute proceedings to collect the penalties and Interest.

133. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement.

134. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to NRS §§ 445A.700 and 459.585, provided, however, that the Division shall not seek statutory civil penalties for any violation for which a stipulated penalty is collected pursuant to this Settlement, or in the event that the Division assumes performance of a portion or all of the Work pursuant to Paragraph 141 (Work Takeover).

135. Notwithstanding any other provision of this Section, the Division may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

## XXI. COVENANTS BY THE DIVISION

136. Except as provided in Section XXII (Reservations of Rights by the Division), the Division, on behalf of itself and any other State agency with jurisdiction over the matters

addressed by this Settlement, covenants not to sue, order, or to take administrative action against Respondent relating to the Work, Future Response Costs, and those portions of OUs and CMUs addressed by the Remedial Action pursuant to Sections 107(a), 113, and 310 of CERCLA, 42 U.S.C. §§ 9607(a), 9613, and 9659; Sections 3004(u) and (v) an d 7002 of RCRA, 42 U.S.C. §§ 6924(u) and (v) and 6972; or any State law enacted pursuant to those authorities. The Division also covenants not to sue or take administrative action, relating to the Site, against Respondent under: Sections 309, 311, and 505 of the Clean Water Act, 33 U.S.C. §§ 1319, 1321, and 1365, as they apply to any authority granted to the State of Nevada; the Nevada Water Pollution Control Law, NRS Chapter 445A and the regulations enacted thereunder, NAC § 445A.070 to 445A.348; Sections 113, 120, and 304 of the Clean Air Act, 42 U.S.C. §§ 7413, 7420, and 7604, as they apply to any authority granted to the State of Nevada; the Nevada Air Pollution Control Act, NRS Chapter 445B and the regulations enacted thereunder, NAC §§ 445B.001 to 445B.390; NRS Chapter 459 (Hazardous Materials) and the regulations enacted thereunder, NAC Chapter 459; NRS §§ 444.440 to 444.645 (Solid Waste) and the regulations enacted thereunder, NAC §§ 444.570 to 444.980; and NRS Chapter 519A (Mine Reclamation) and the regulations enacted thereunder, NAC Chapter 519A; or to bring any claim relating to the Site based on any common law theory of negligence, trespass, nuisance, strict liability, or waste. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent, including its successors and assigns, and do not extend to any other person.

## XXII. RESERVATIONS OF RIGHTS BY THE DIVISION

137. **The Division's Pre-Certification Reservations**. Notwithstanding any other provision of this Settlement, the Division reserves, and this Settlement is without prejudice to, the right to institute proceedings and/or to issue an administrative order seeking to compel Respondent to perform further response actions relating to the OUs and CMUs addressed by the Remedial Action and/or to pay the Division for additional costs of response if, (a) prior to Certification of Remedial Action Completion under Paragraph 172, (1) conditions at or related to the OUs and CMUs addressed by the Remedial Action, previously unknown to the Division, are discovered, or (2) information, previously unknown to the Division, is received, in whole or in part, and (b) the Division determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not CERCLA Protective with respect to the OUs and CMUs addressed by the Remedial Action.

138. **The Division's Post-Certification Reservations**. Notwithstanding any other provision of this Settlement, the Division reserves, and this Settlement is without prejudice to, the right to institute proceedings and/or to issue an administrative order seeking to compel Respondent to perform further response actions relating to the OUs and CMUs addressed by the Remedial Action and/or to pay the Division for additional costs of response if, (a) subsequent to Certification of Remedial Action Completion under Paragraph 172, (1) conditions at or related to the OUs and CMUs addressed by the Remedial Action, previously unknown to the Division, are discovered, or (2) information, previously unknown to the Division, is received, in whole or in part, and (b) the Division determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not CERCLA Protective with respect to the OUs and CMUs addressed by the Remedial Action.

139. For purposes of Paragraph 137 (Pre-Certification Reservations), the information and the conditions known to the Division will include information and conditions known to the Division and to EPA as of the date the ROD-1 was signed, including, without limitation, information contained in any Records submitted by Respondent to the Division or EPA and information set forth in the ROD-1 or the administrative record supporting the ROD-1. For purposes of Paragraph 138 (Post-Certification Reservations), the information and the conditions known to the Division shall include information and conditions known to the Division and EPA as of the date of Certification of Remedial Action Completion, including, without limitation, information contained in any Records submitted by Respondent to the Division or EPA and information set forth in the ROD-1, the administrative record supporting the ROD-1, the post-ROD-1 administrative record, or in any Deliverable received by the Division pursuant to the requirements of this Settlement prior to Certification of Remedial Action Completion under Paragraph 172.

140. **General Reservations of Rights.** The Division reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the Division's covenants. Notwithstanding any other provision of this Settlement, the Division reserves all rights against Respondent with respect to:

a. liability for failure by Respondent to meet a requirement of this Settlement;

b. liability for costs not included within the definitions of Future Response Costs, Division O&M Costs, and Division RD/RA Costs;

c. liability for response action other than the Work;

d. criminal liability;

e. liability for violations of federal or State law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;

h. liability based upon Respondent's operation of the Site, or its transportation, treatment, storage, disposal, release, future release, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD-1, the Work, or otherwise ordered by the Division, after the Effective Date;

i. liability, beginning 15 years after Certification of Completion of Remedial Action Construction and prior to Certification of Remedial Action Completion, for additional response actions that the Division determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, but that cannot be required pursuant to Paragraph 54 (Modification of RD/RA SOW or Related Deliverables);

141. **Work Takeover**

a. In the event the Division determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, the Division may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by the Division will specify the grounds upon which such notice was issued and will provide Respondent a period of 30 days within which to remedy the circumstances giving rise to the Division's issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 141.a, Respondent has not remedied to the Division's satisfaction the circumstances giving rise to the Division's issuance of the relevant Work Takeover Notice, the Division may at any time thereafter assume the performance of all or any portion(s) of the Work as the Division deems necessary ("Work Takeover"). The Division will notify Respondent in writing if the Division determines that implementation of a Work Takeover is warranted under this Paragraph. Funding of Work Takeover costs is addressed under Paragraph 164 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute the Division's implementation of a Work Takeover under Paragraph 141.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, the Division may in its sole discretion commence and continue a Work Takeover under Paragraph 141.b until the earlier of (1) the date that Respondent remedies, to the Division's satisfaction, the circumstances giving rise to the Division's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 119 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, the Division retains all authority and reserves all rights to take any and all response actions authorized by law.

## XXIII. COVENANTS AND RESERVATIONS BY RESPONDENT

142. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the State, or its contractors or employees, with respect to the Work, past response actions regarding the OUs and CMUs addressed by the Remedial Action, Future Response Costs, and this Settlement, including, but not limited to:

a. any claims under Sections 107, 113, or 310 of CERCLA, 42 U.S.C. §§ 9607, 9613, 9659; Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), Section 505 of the Clean Water Act, 33 U.S.C. § 1365, Section 304 of the Clean Air Act, 42 U.S.C. § 7604, or State law regarding the Work, past response actions regarding the OUs and CMUs addressed by the Remedial Action Future Response Costs, and this Settlement;

b. any claim arising out of or in connection with the RI/FS or the Remedial Action, including any claim under the United States Constitution, the Nevada Constitution, NRS §§ 41.031 and 41.032, *et seq.*, or at common law;



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c. any direct or indirect claim for return of unused amounts from the Anaconda Copper Mine Site Special Account.

143. These covenants not to sue shall not apply in the event the Division or any other State agency brings a cause of action or issues an order pursuant to the reservations set forth in Section XXII (Reservations of Rights by the Division), other than in Paragraph 140.a (liability for failure to meet a requirement of this Settlement),140.d (criminal liability), or 140.e (liability for violations of federal or State law), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the Division is seeking pursuant to the applicable reservation.

144. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

145. **General Reservation of Rights**. Respondent reserves, and this Settlement is without prejudice to, all rights against the State or its contractors or employees with respect to all matters not expressly included within Respondent's covenants. Notwithstanding any other provision of this Settlement, Respondent reserves all rights against the State with respect to:

a. liability for failure by the Division to meet a requirement of this Settlement or the Framework Agreement; and

b. claims against the State, subject to the immunity the State has retained or enjoys under NRS Chapter 41, any other state law, and federal law, for money damages, other than those provided for under CERCLA, RCRA, the Clean Water Act, or the Clean Air Act, for injury or loss of property or personal injury or death caused by any employee, agent, contractor, or representative of the State while acting within the scope of his office or employment or agency. However, the foregoing shall not include any claim based on the Division's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

146. Respondent reserves, and this Settlement is without prejudice to, Respondent's right and ability to challenge or seek judicial review of (a) any future rule or proposal for listing the Site, or any portion thereof, on the NPL, and (b) any order, directive, or administrative or civil action requiring or seeking response actions or payment of response costs relating the Site, in the event that either EPA or the Division terminates the Deferral Agreement and, as a consequence thereof, Respondent or the Division terminates this Settlement.

147. Respondent reserves all rights, claims, and/or defenses it may have in any action brought or taken against Respondent by the State pursuant to any of the reservations in XXII other than in Paragraphs 140.a (claims for failure to meet a requirement of this Settlement) and 140.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the State is seeking pursuant to the applicable reservation. Any rights that Respondent may have to obtain contribution or otherwise recover costs or damages from persons, entities, or government agencies not a party to this Settlement are preserved, including without limitation the right to seek contribution from any person, entity, or government agency who is not a party to this Settlement

under CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B) or any other law, based (in whole or in part) on this Settlement.

## XXIV. OTHER CLAIMS

148. By issuance of this Settlement, the Division assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The Division shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

149. Except as expressly provided Section XXI (Covenants by the Division), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, State law, other statutes, or common law, including but not limited to any claims of the State for costs, damages, and interest under Section 107 of CERCLA, 42 U.S.C. § 9607.

## XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

150. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXIII (Covenants and Reservations by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the Division, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

151. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the State within the meaning of Sections 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work and Future Response Costs, Division O&M Costs, and Division RI/FS Costs, and, with respect to those portions of OUs and CMUs addressed by the Remedial Action, all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with those portions of OUs and CMUs addressed by the Remedial Action; provided, however, that if the Division exercises rights under the reservations in Section XXII (Reservations of Rights by the Division), other than in Paragraph 140.a (liability for failure to meet a requirement of this Settlement),140.d (criminal liability), or 140.e (liability for violations of federal or State law), the "matters addressed" in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

152. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved its liability to the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

153. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify the Division in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify the Division in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify the Division within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

154. In any subsequent administrative or judicial proceeding initiated by the Division, or by the State on behalf of the Division, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by the Division set forth in Section XXI (Covenants By the Division).

## XXVI. INDEMNIFICATION

155. The State does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as the State's authorized representatives under 40 C.F.R. § 300.400(d)(3). Respondent shall indemnify, save and hold harmless the State, its officials, agents, employees, contractors, subcontractors, and representatives from any claim, causes of action, settlement, loss, damage, or expense, including attorney's fees and costs, arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under their control, in performing the Work; provided that the indemnification will not apply to any settlement, loss, damage, or expense resulting from or caused by the fraud, negligence, recklessness or willful misconduct of the State or any of its agencies, departments, officials, agents, employees, contractors, subcontractors, and representatives. The State shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the State.

156. The State shall give Respondent notice of any claim or demand for which it plans to seek indemnification pursuant to this Section within a timely period, which in no event shall be longer than 60 days after service on the State of a complaint or receipt of a written demand or notice of claim. The State shall not settle any such claim without first consulting with and obtaining the prior written consent of Respondent, which consent shall not be unreasonably withheld.

157. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the State for damages or reimbursement or for set-off of any payments made or to

be made to the State, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## XXVII. INSURANCE

158. No later than 15 days before commencing any on-Site Work, Respondent shall secure, and shall maintain until the first anniversary after Certification of Remedial Action Completion, commercial general liability insurance with limits of liability of $2 million per occurrence and automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $2.5 million in excess of the required commercial general liability and automobile liability limits, naming the Division as an additional insured with respect to covered liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of this Settlement, Respondent shall provide the Division with certificates of such insurance. Respondent shall resubmit such certificates each year evidencing the renewal of the insurance. In addition, for the duration of this Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to the Division that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to the Division under this Paragraph identify the Site name and location.

## XXVIII. FINANCIAL ASSURANCE

159. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of $20,000,000.00 "Initial Financial Assurance Amount"), for the benefit of the Division. The financial assurance must be one or more of the mechanisms listed below, in a form satisfactory to the Division.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of the Division, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;



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c. A trust fund identifying the Division as a beneficiary (including a contingent beneficiary) that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency;

d. A policy of insurance that provides the Division with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that is eligible to issue insurance policies in the applicable jurisdiction and whose insurance operations are regulated and examined by a federal or State agency; or

e. A guarantee to fund or perform the Work executed in favor of the Division by Respondent and, in the event of Respondent's inability to satisfy its financial obligations under this Section XXVIII, by a company: (1) that is a direct or indirect parent company of the Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to the Division's satisfaction that it meets the financial test criteria of Paragraph 161.

160. Respondent has selected, and the Division has found satisfactory, as an initial financial assurance a policy of insurance to be prepared in accordance with Paragraph 159.d. Within 30 days after the Effective Date, or 30 days after the Division's approval of the form and substance of Respondent's financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the Division-approved form of financial assurance and shall submit such mechanisms and documents to the Division.

161. If Respondent seeks to provide financial assurance by means of a corporate guarantee:

a. Not more than 75 percent of the required financial assurance may be satisfied by the corporate guarantee, which is subject to periodic review and approval by the Administrator of the Division. The remaining portion of the surety must be satisfied by another form of financial assurance identified in Paragraph 159.d

b. The audited financial statements of Respondent, or the applicable guarantor, must indicate that it has two of the following three ratios:

(1) A ratio of total liabilities to stockholder's equity less than 2 to 1.

(2) A ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1 to 1.

(3) A ratio of current assets to current liabilities greater than 1.5 to 1.

c. The net working capital and tangible net worth each must equal or exceed the Initial Financial Assurance Amount.

d. The tangible net worth must be at least $10,000,000.



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e. Ninety percent of the assets of Respondent, or the applicable guarantor, must be:

(1) Located in the United States; or

(2) At least six times the Initial Financial Assurance Amount.

162. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section no longer satisfies the requirements of this Section because of a material change to the scope of the RI/FS, the Scope of the Remedy, Respondent's financial ability to perform the Work, or a guarantor's ability to satisfy a guarantee provided under 159.e, Respondent shall notify the Division of such information within 14 days. If the Division determines that the financial assurance provided under this Section no longer satisfies the requirements of this Section because of a material change to the scope of the RI/FS, the Scope of the Remedy, Respondent's financial ability to perform the Work, or a guarantor's ability to satisfy a guarantee provided under 159.e, the Division will notify Respondent of such determination. Respondent shall, within 30 days after notifying the Division or receiving notice from the Division under this Paragraph, submit to the Division for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. The Division may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to submit to the Division a proposal for a revised or alternative financial assurance mechanism. Respondent shall follow the procedures of Paragraph 165 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

163. Financial information submitted to the Division pursuant to this Section must be prepared in accordance with accounting principles that are generally accepted in the United States.

164. **Access to Financial Assurance**.

a. If the Division issues a notice of implementation of a Work Takeover under Paragraph 141.b, then, in accordance with any applicable financial assurance mechanism, and/or related standby funding commitment, the Division is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 164.d.

b. If the Division is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, Respondent shall provide an alternative financial assurance mechanism in accordance with this Section within 30 days after the cancellation notification. If Respondent fails to do so and cancellation occurs, the Division shall be immediately entitled to make a demand for payment, and Respondent shall pay such demand, in accordance with Paragraph 164.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 141.b, either: (1) the Division is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding

commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a guarantee under Paragraphs 159.e, then the Division is entitled to demand an amount, as determined by the Division, sufficient to cover the cost of the remaining Work to be performed pursuant to the notice. Respondent shall, within 60 days of such demand, pay the amount demanded as directed by the Division.

d. Any amounts required to be paid under this Paragraph 164 shall be, as directed by the Division: (i) paid to the Division in order to facilitate the completion of the Work by the Division or by its authorized representative; or (ii) de posited into an interest-bearing account, established at a duly chartered bank or trust company, in order to facilitate the completion of the Work by the Division's authorized representative. If payment is made to the Division, the Division shall deposit the payment into the Anaconda Copper Mine Special Account to be retained and used by the Division to conduct or finance response actions at or in connection with the Site and not for any other purpose.

e. All Division Work Takeover costs not paid under this Paragraph 164 must be reimbursed as Future Response Costs under Section XVII (Payment of Response Costs).

165. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the Division in accordance with Paragraph 159, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. The Division will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) the Division's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVIII (Dispute Resolution). Respondent may change the form or terms of the financial assurance mechanism only in accordance with the Division's approval. Any decision made by the Division on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of the Division's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to the Division documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 159.

166. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if the Division issues a Certification of Remedial Action Completion under Paragraph 172; (b) in accordance with the Division's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XVIII (Dispute Resolution).

## XXIX. MODIFICATION

167. Except as provided in Paragraphs 54 (Modification of RD/RA SOW or Related Deliverables), 61 (Modification of an RI/FS Work Plan), and 66 (Modification of FMS Work Plan), modifications to the this Settlement, including the RI/FS SOW, the RD/RA SOW, the FMS Work Plan, and the other Appendices, shall be in writing and shall be effective when signed by a duly authorized representative of the Division and Respondent.

168. If Respondent seeks permission to deviate from any approved work plan, schedule, or SOW, Respondent's Project Coordinator shall submit a written request to the Division for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the Division's Project Coordinator pursuant to Paragraph 167.

169. No informal advice, guidance, suggestion, or comment by the Division's Project Coordinator or other Division representatives regarding any Deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## XXX. NOTICE AND CERTIFICATION OF COMPLETION OF WORK

170. **Notice of Completion of RI/FS**. When the Division determines that all Work required under the RI/FS SOW and any Division-approved RI or FS work plans has been fully performed in accordance with this Settlement, the Division will provide written notice to Respondent. If the Division determines that any Work has not been completed in accordance with this Settlement, the Division will notify Respondent, provide a list of the deficiencies, and require that Respondent modify any applicable work plan(s), if appropriate and pursuant to Paragraph 61, in order to correct such deficiencies. Respondent shall implement the modified and approved RI/FS work plan(s) and shall submit a modified draft RI Report and/or FS Report in accordance with the Division notice. Failure by Respondent to implement the approved modified RI/FS work plan shall be a violation of this Settlement.

171. **Certification of Completion of Remedial Action Construction**.

a. Within 90 days after Respondent concludes that Remedial Action Construction has been fully performed and is complete (as set forth in Paragraph 15.mm), Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent and the Division to review the construction and operation of the constructed systems and to review whether such systems are functioning properly and as designed. If, after the pre-certification inspection, Respondent still believes that Remedial Action Construction has been fully performed and is complete, it shall, within 60 days after the inspection, submit a written report ("Construction Completion Report") to the Division documenting the Work performed and requesting the Division's approval and certification. In the report, a CEM working for Respondent's Supervising Contractor shall state that Remedial Action Construction has been completed in satisfaction of the requirements of the RD/RA Work Plan and this Settlement. The Construction Completion Report shall include: as-built drawings signed and stamped by a professional engineer; other necessary supporting documentation demonstrating that construction

of the Remedial Action is complete and that constructed systems are functioning properly and as designed; and the following statement signed by a responsible corporate official of Respondent or Respondent's project Coordinator:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after completion of the pre-certification inspection and receipt and review of the Construction Completion Report, the Division determines that Remedial Action Construction has not been completed in accordance with this Settlement, the Division, within 45 days after receiving the Construction Completion Report, will notify Respondent in writing of the activities that must be undertaken to complete Remedial Action Construction; provided, however, that Respondent may only be required to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the Scope of the Remedy. The Division will set forth in the notice a schedule for performance of such activities or require Respondent to submit a schedule to the Division for approval pursuant to Section X (Submission and Approval of Deliverables). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

c. If the Division determines, based on the initial or any subsequent Construction Completion Report, that Remedial Action Construction is complete, the Division shall so notify Respondent by providing a written certification signed by the Division's Administrator.

172. **Certification of Remedial Action Completion.**

a. Within 90 days after Respondent concludes that the Performance Standards for the Remedial Action have been achieved, Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent and the Division for the purpose of obtaining the Division's Certification of Remedial Action Completion. If, after the pre-certification inspection, Respondent still believes that the Performance Standards have been achieved, it shall, within 60 days after the inspection, submit a written report ("Remedial Action Completion Report") to the Division documenting the Work performed and requesting the Division's approval and certification. In the report, a CEM working for Respondent's Supervising Contractor shall state that the Remedial Action is complete because the Performance Standards have been achieved in satisfaction of the requirements of the RD/RA Work Plan and this Settlement. The Remedial Action Completion Report shall include: as built drawings showing changes to any constructed Remedial Action systems made since submission of the Remedial



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Action Construction Completion Report under Paragraph 171; supporting documentation, including monitoring data, demonstrating that the Performance Standards have been achieved; and the following statement signed by a responsible corporate official of Respondent or Respondent's project Coordinator:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after completion of the pre-certification inspection and receipt and review of the Remedial Action Completion Report, the Division determines that the Performance Standards have not been achieved, the Division, within 45 days after receiving the Remedial Action Completion Report, will notify Respondent in writing of the activities that must be undertaken to achieve the Performance Standards; provided, however, that Respondent may only be required to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the Scope of the Remedy. The Division will set forth in the notice a schedule for performance of such activities or require Respondent to submit a schedule to the Division for approval pursuant to Section X (Submission and Approval of Deliverables). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

c. If the Division determines, based on the initial or any subsequent Remedial Action Completion Report, that the Performance Standards have been achieved, the Division shall so notify Respondent by providing a written certification signed by the Division's Administrator. This certification will constitute the Certification of Remedial Action Completion for purposes of this Settlement. Except as specifically provided herein, Certification of Remedial Action Completion will not affect Respondent's remaining obligations under this Settlement.

d. Following Certification of Remedial Action Completion or after 10 years following Certification of Completion of Remedial Action Construction under Paragraph 171, whichever is earlier, the Division shall immediately assume responsibility for performing and funding all remaining Operation and Maintenance activities required to maintain the effectiveness of the Remedial Action, in addition to any FMS-related responsibilities assumed by the Division under Paragraph 63.b, and as specified in the Operation and Maintenance Plan for the Site (as described in Section 8.4(h) of the RD/RA SOW), including operation and maintenance of the FMS, graded HLPs and HLP covers, stormwater management systems constructed as part of the Remedial Action, on-Site repositories constructed as part of the Remedial Action, and associated Engineering Controls and Institutional Controls.



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173. **Division Request for EPA Confirmation of RA Completion** At the same time that the Division provides its Certification of Remedial Action Completion to Respondent under Paragraph 172.c, the Division shall also certify in writing to EPA, BLM, the Tribes, and other community stakeholders that the Remedial Action has been successfully completed and appropriate clean-up levels and Performance Standards have been achieved. As part of this certification, the Division will submit for EPA's review response action completion documentation for the portion of the Site addressed by the Remedial Action, consistent with that described in the June 1992 OSWER Directive "Remedial Action Report; Documentation for Operable Unit Completion" (OSWER Directive 9355.0-39FS) or the appropriate subsequent / later published EPA guidance ("Division's RA Certification and Completion Report"). The Division shall, in accordance with the Deferral Agreement, request that EPA review the Remedial Action described in the Division's RA Certification and Completion Report for the purpose of confirming the Division's certification. The Division and Respondent shall provide any information reasonably requested by EPA to perform a deferral completion inquiry and review of the Division's RA Completion Report.

174. **Certification of Work Completion.**

a. Within 90 days after Respondent concludes that all Work it is required to perform under this Settlement is complete, Respondent shall schedule and conduct a pre-certification inspection to be attended by Respondent and the Division for the purpose of obtaining the Division's Certification of Work Completion. If, after the pre-certification inspection, Respondent still believes that the Work is complete, it shall, within 60 days after the inspection, submit a written report ("Work Completion Report") to the Division documenting the Work performed and requesting the Division's approval and certification. In the report, a CEM working for Respondent's Supervising Contractor shall state that the Work is complete. The Work Completion Report shall include: as built drawings showing changes to any constructed Remedial Action systems made since submission of the Remedial Action Completion Report under Paragraph 172; supporting documentation demonstrating that the Work is complete; and the following statement signed by a responsible corporate official of Respondent or Respondent's project Coordinator:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after completion of the pre-certification inspection and receipt and review of the Work Completion Report, the Division determines that the Work is not complete, the Division, within 45 days after receiving the Work Completion Report, will notify Respondent in writing of the activities that must be undertaken to complete the Work; provided, however, that

Respondent may only be required to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the Scope of the Remedy. The Division will set forth in the notice a schedule for performance of such activities or require Respondent to submit a schedule to the Division for approval pursuant to Section X (Submission and Approval of Deliverables). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

175. If the Division determines, based on the initial or any subsequent Work Completion Report, that the Work is complete, the Division shall so notify Respondent by providing a written certification signed by the Division's Administrator. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities required under Section IX (Remedy Review) following a periodic review; (2) obligations under Sections XII (Property Requirements), XIV (Record Retention), and XIII (Access to Information); (3) maintenance of Institutional Controls; and (4) reimbursement of the Division's Future Response Costs under Section XVII (Payment of Response Costs).

## XXXI. INTEGRATION/APPENDICES

176. This Settlement, including its appendices, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement and in the Framework Agreement referenced in Paragraph 5. The following appendices are attached to and incorporated into this Settlement:

a. Appendix A is the Site map depicting the CMUs

b. Appendix B is the RI/FS SOW

c. Appendix C is the RD/RA SOW

d. Appendix D is the FMS Work Plan

e. Appendix E is the ROD-1

f. Appendix F is the insurance policy approved for financial assurance.

## XXXII. ADMINISTRATIVE RECORD

177. The Division will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to the Division documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of the Division, 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. Upon request of the Division, Respondent shall additionally submit any previous studies conducted under state, local, or federal authorities that may relate to selection of



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the remedial action, and all communications between Respondent and state, local, or federal authorities concerning selection of the remedial action.

## XXXIII. EFFECTIVE DATE

178. This Settlement shall be effective days on the date it is signed by the Division and notice of such signature is received by Respondent.

IT IS SO AGREED AND ORDERED:

**THE STATE OF NEVADA**:

_____
Dated

_____
Gregory Lovato, Administrator
For the State of Nevada, by and through its Department of Conservation & Natural Resources, Division of Environmental Protection



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Signature Page for Settlement Regarding Anaconda Copper Mine Site

**FOR ATLANTIC RICHFIELD COMPANY:**

_____
Dated

_____
Robert Genovese
President
Atlantic Richfield Company
201 Helios Way, 6.374A
Houston, TX 77079