Note: The "qualifications" are in the next ¶, not this one. Change to "36"

herein, and shall notify the Agencies of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within seven (7) days after the Effective Date or such date on which a contractor or subcontractor is proposed for selection, whichever date is later. Respondents shall also notify the Agencies of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least seven (7) days prior to commencement of such performance The Agencies retain the right to disapprove of any or all unqualified contractors and/or subcontractors retained by Respondents. If the Agencies disapprove of a selected contractor or subcontractor, within thirty (30) days after the disapproval, Respondents shall either (1) retain a different contractor or subcontractor and shall notify the Agencies of that contractor's or subcontractor's name, title, contact information, and qualifications, or (2) provide notice to the Agencies of Respondents' intention to initiate the procedures of Section XVII (Dispute Resolution). Respondents may initiate the procedures of Section XVII (Dispute Resolution) if they believe that the Agencies have disapproved a contractor or subcontractor that meets the qualifications of Paragraph 21.

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36. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance 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), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by the Agencies. The Agencies will review and verify the qualifications of the persons undertaking the Work for Respondents based on objective assessment criteria (e.g., experience, capacity, technical expertise), including verification that the person does not have a conflict of interest with respect to the project.

37. Within thirty (30) days of the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this ASAOC and shall submit to the Agencies the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during work. The Agencies retain the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 36. If the Agencies disapprove of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify the Agencies of that person's name, title, contact information, and qualifications within thirty (30) days following the Agencies' disapproval. Notice or communication relating to this ASAOC from the Agencies to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

38. EPA has designated Kathy Cerise and Conor Neal of EPA Region 10's Office of Superfund Emergency Management, as its On-Scene Coordinators (OSC). The USFS has designated Todd Leeds of the Intermountain Region as its OSC. The Agencies shall have the right to change their respective designated OSCs. Respondents shall have the right to change their designated Project Coordinator subject to Paragraph 37. Respondents shall notify the

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Agencies seven (7) days before such a change is made. The initial notification by Respondents may be made orally but shall be promptly followed by a written notice.

39. The OSCs shall be responsible for overseeing Respondents' implementation of this ASAOC. The OSCs shall have the authority vested in an OSC by the NCP and this ASAOC, including the authority to halt, conduct, or direct any Work required by this ASAOC, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC in accordance with this ASAOC.

VIII. WORK TO BE PERFORMED

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40. Respondents shall perform, at a minimum, all actions necessary to implement Phase 1 consistent with this ASAOC and the SOW, attached as Appendix A. At times specified in the SOW, Respondents may commit to perform the additional phases of work. These additional removal actions in the Bridge Phase and Phase 3 will be located in the Source Areas defined in Attachment 1 of the SOW. The Yellow Pine Pit (also known as the Glory Hole), the Spent Ore Disposal Area (SODA) and the Bradley Tailings are not Source Areas as defined in this ASAOC. In addition to the geographic scope of Phase 1, the Bridge Phase, and Phase 2, Work to be performed in Phase 3 also may include removal actions in locations agreed to by the parties that the Agencies determine were not, and based on the PRO in effect on the date of the determination, are unlikely to be subject to mining and reclamation activities.

41. As described more fully in the SOW, the Work has been divided into three distinct phases, to be performed in a sequential fashion in accordance with the time frames set forth below. The Agencies do not intend to sue or take administrative action against Respondents to carry out any work specified in the Bridge Phase or Phases 2 and 3 before the time frames set forth in this ASAOC for the Respondents to elect to carry out such Phase, or, if the Respondents elect to carry out a Phase, before such time as the Respondents fail to meet their obligations with respect to a Phase as provided in this ASAOC. This paragraph does not apply to any situation that presents an imminent and substantial endangerment.

Phase 1. Respondents shall perform, at a minimum, all actions necessary to implement Phase 1. Phase 1 shall begin on the Effective Date of the ASAOC and must be completed within four (4) years of the Agencies' initial comments on the Time Critical Removal Action (TCRA) Work Plan, unless the Agencies, in their discretion, agree to extend the deadline for the completion of Phase 1. Either the Agencies or Respondents may elect to terminate at the end of any phase in accordance with Section XXXI (Termination).

Optional Bridge Phase. Respondents may elect to perform the optional Bridge Phase if they have not obtained all necessary approvals and permits to begin construction and mining operations at the end of Phase 1. Respondents must submit a written commitment to conduct the optional Bridge Phase within thirty (30) days after the Agencies' issuance of the Phase 1 Notice of Completion. Termination will occur in accordance with Section XXXI (Termination) if Respondents do not commit to perform the optional Bridge Phase within thirty (30) days after the issuance of the Phase 1 Notice of Completion. If

Respondents timely commit to perform the optional Bridge Phase, Respondents shall complete the optional Bridge Phase as set forth in the SOW within one year of the Agencies' initial comments on the TCRA Bridge Phase Work Plan unless the Agencies, in their discretion, agree to extend the deadline for completion of the optional Bridge Phase.

After completion of the optional Bridge Phase, either the Agencies or Respondents may elect to terminate at the end of any phase in accordance with Section XXXI (Termination).

Optional Phase 2. If Respondents do not obtain all necessary approvals and permits to begin construction and mining operations upon issuance of a Notice of Completion of Phase 1, or upon Notice of Completion of the optional Bridge Phase, termination will occur in accordance with Section XXXI (Termination). If Respondents have obtained all necessary approvals and permits to begin mining operations after issuance of a Notice of Completion for Phase 1 and the optional Bridge Phase (if conducted), Respondents may elect to perform Phase 2 by submitting to the Agencies a written commitment to conduct Phase 2 within thirty (30) days after the Agencies' issuance of Notice of Completion of Phase 1 or, within thirty (30) days after completion of the optional Bridge Phase, if conducted. Termination will occur in accordance with Section XXXI (Termination) if Respondents do not commit to perform the Phase 2 Work within the thirty (30) days after completion of Phase 1 or the optional Bridge Phase, if conducted. If Respondents timely commit to perform the Phase 2 Work, Respondents shall complete Phase 2, as set forth in the SOW, within three years of the Agencies' initial comments on the draft Removal Action Work Plan for the Phase 2 Work.

After completion of Phase 2, either the Agencies or Respondents may elect to terminate in accordance with Section XXXI (Termination).

Optional Phase 3. Respondents may elect to perform Phase 3 if they have previously received a Notice of Completion from the Agencies for Phase 2. Respondents must submit a written commitment to conduct Phase 3 within thirty (30) days after the Agencies' issuance of the Phase 2 Notice of Completion. Termination will occur in accordance with Section XXXI (Termination) if Respondents do not commit to perform Phase 3 within the thirty (30) days after the Agencies' issuance of a Notice of Completion of Phase 2. If Respondents timely commit to perform Phase 3 tasks, Respondents shall complete Phase 3 as set forth in the SOW within eleven years of Agencies' initial comments on the Removal Action Work Plan for the Phase 3 Work. During Phase 3, the Agencies may terminate in accordance with Section XXXI (Termination) if the Agencies determine that substantial Phase 3 Work is not performed on a continual basis. Respondents may invoke the procedures set forth in Paragraph 89 (Formal Dispute Resolution) to dispute the Agencies' determination. The Parties recognize that the weather conditions at the Site may limit Site access and may prevent certain activities during portions of the year. The Agencies will deem activities continual for purposes of this ASAOC so long as actions that require physical access to the Site continue during the time period when the Respondents are able to access the Site and the Agencies determine that it is practicable and feasible to perform the actions.

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Areas. Boundary spatial data does not, and is not intended to, define the boundaries of the Site.

52. **Community Involvement Plan.** The Agencies will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by the Agencies, Respondents shall participate in community involvement activities, including participation in: (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by the Agencies to explain activities at or relating to the Site. Respondents' support of the Agencies' community involvement activities may include providing online access to initial submissions and updates of deliverables to: (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondents at the Agencies' request are subject to the Agencies' oversight. Upon the Agencies' request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.

53. Approval of Deliverables

a. Initial Submissions

(1) After review of any deliverable that is required to be submitted for the Agencies' approval under this ASAOC, SOW, or approved work plan, the Agencies shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) The Agencies also may modify the initial submission to cure deficiencies in the submission if: (i) the Agencies determine 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 deficiencies and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

upon

b. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 53.a (1) (Initial Submissions), or if required by a notice of approval specified conditions under Paragraph 53.a (1), Respondents shall, within 10 days or such longer time as specified by the Agencies in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, the Agencies may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission in accordance with Paragraph 53.a (2); (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

shall send the Agencies a written Notice of Dispute describing the objection(s) within thirty (30) days after such action. Respondents and the Agencies shall have thirty (30) days from the Agencies' receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the Agencies. 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 ASAOC.

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89. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSCs. The Agencies may, within twenty (20) days thereafter, submit a statement of position. The Agencies will jointly resolve the dispute, after which time an Agency management official will issue a written decision on the dispute to Respondents on behalf of the Agencies. The Agencies' decision shall be incorporated into and become an enforceable part of this ASAOC. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Agencies' decision, whichever occurs.

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90. The respective roles of EPA and USFS will be addressed in a memorandum of understanding among the Agencies.

91. Except as provided in Paragraph 86 (Contesting Future Response Costs) or as agreed by the Agencies, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this ASAOC. Except as provided in Paragraph 98, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this ASAOC. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties).

XVIII. FORCE MAJEURE

92. "Force Majeure" for purposes of this ASAOC, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this ASAOC despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents 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" does not include financial inability to complete the Work or increased cost of performance.

93. If any event occurs or has occurred that may delay the performance of any obligation under this ASAOC for which Respondents intend or may intend to assert a claim of Force Majeure, Respondents shall notify the OSCs orally or, in his or her absence, the alternate

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certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

133. Respondents providing financial assurance by means of a demonstration or guarantee must also:

a. Annually resubmit the documents within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify the Agencies within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to the Agencies, within 30 days of the Agencies' request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified here; the Agencies may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

134. Access to Financial Assurance

a. If the Agencies issue a notice of implementation of a Work Takeover under Paragraph 110.b, then, in accordance with any applicable financial assurance mechanism the Agencies are entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 134.d.

b. If the Agencies are notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 134.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 110.b, the Agencies are unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work, then the Agencies are entitled to demand an amount, as determined by the Agencies, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within seven (7) days of such demand, pay the amount demanded as directed by the Agencies.

d. Any amounts required to be paid under this Paragraph shall be, as directed by the Agencies, paid to the standby trust set up concurrently with the form of financial assurance provided pursuant to Paragraph [illegible] for the benefit of the

Note
We think this is meant to be ¶ 129.
It cannot be 86 – that ¶ has
nothing to do with Financial Assurance.

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sentence includes compliance by Respondents with all applicable requirements of this ASAOC, within the deadlines established under this ASAOC.

96. *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 identified in Paragraph 96 b:*

Penalty Per Violation Per Day	*Period of Noncompliance*
$1,000	*1st through 14th day*
$2,500	*15th through 30th day*
$5,000	*31st day and beyond*

b. *Obligations:*

i. *Payment of any amount due under Section XVI (Payment of Response Costs).*

ii. *Establishment and maintenance of financial assurance in accordance with Section XXVII (Financial Assurance).*

iii. *Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 86 (Contesting Future Response Costs).*

iv. *Submission of timely deliverables that meet the substantive requirements of the SOW and approved work plans.*

v. *Performance of Work in accordance with and on the schedule set forth in the applicable approved work plans.*

97. *In the event that the Agencies assume performance of a portion or all of the Work pursuant to Paragraph 110 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of 25% of the cost for the Agencies to complete the Work Takeover. Stipulated penalties under this Paragraph are in addition to the remedies available to the Agencies under Paragraphs 110 (Work Takeover) and 114 (Access to Financial Assurance).*

98. *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 fifteen (15) days after the agreement or the receipt of the Agencies' decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section IX (Submission of Deliverables), during the period, if any, beginning on the 31st day after the Agencies' receipt of such submission until the date that the Agencies notify Respondents of any deficiency; and (b) with respect to a decision by the Agencies' management official, under*

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