UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 10

UNITED STATES DEPARTMENT OF AGRICULTURE

FOREST SERVICE INTERMOUNTAIN REGION

IN THE MATTER OF: Stibnite Mine Site Midas Gold Corp., Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc. Respondents Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	)	CERCLA Docket No. _____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS**

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS

This page left intentionally blank

TABLE OF CONTENTS

Page

I. BACKGROUND, JURISDICTION AND GENERAL PROVISIONS 1

II. PARTIES BOUND 3

III. DEFINITIONS 4

IV. FINDINGS OF FACT 8

V. CONCLUSIONS OF LAW AND DETERMINATIONS 9

VI. SETTLEMENT AGREEMENT AND ORDER 9

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR 9

VIII. WORK TO BE PERFORMED 11

IX. SUBMISSION OF DELIVERABLES 14

X. OFF-SITE SHIPMENTS 16

XI. PROPERTY REQUIREMENTS 17

XII. ACCESS TO INFORMATION 20

XIII. RECORD RETENTION 21

XIV. COMPLIANCE WITH OTHER LAWS 22

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES 22

XVI. PAYMENT OF RESPONSE COSTS 23

XVII. DISPUTE RESOLUTION 24

XVIII. FORCE MAJEURE 25

XIX. STIPULATED PENALTIES 27

XX. COVENANTS BY THE AGENCIES 29

XXI. RESERVATIONS OF RIGHTS BY THE AGENCIES 29

XXII. COVENANTS BY RESPONDENTS 31

XXIII. OTHER CLAIMS 33
XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION 33
XXV. INDEMNIFICATION 34
XXVI. INSURANCE 35
XXVII. FINANCIAL ASSURANCE 36
XXVIII. MODIFICATION 40
XXIX. ADDITIONAL REMOVAL ACTION 40
XXX. NOTICE OF COMPLETION OF WORK 41
XXXI. TERMINATION 43
XXXII. INTEGRATION/APPENDICES 44
XXXIII. EFFECTIVE DATE 44

I. BACKGROUND, JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (ASAOC) is entered into voluntarily by Midas Gold Corp. (MGC), Idaho Gold Resources Company, LLC (IGRCLLC), Stibnite Gold Company (SGC), and Midas Gold Idaho, Inc. (MGII) (collectively, Respondents), the United States Environmental Protection Agency (EPA), and the United States Department of Agriculture Forest Service (USFS) (collectively, the Agencies). This ASAOC provides for the performance of removal actions by Respondents and the payment of certain response costs incurred by the Agencies at or in connection with the Stibnite Mine Site located in Valley County, Idaho.

2. The Stibnite Mining District was mined extensively by numerous entities between the 1920s and 1990s. These historic activities, which pre-date Respondents' formation and involvement in the District, have resulted in legacy environmental concerns on both unpatented mining claims on National Forest System (NFS) lands and patented mining claims on private land located within the Boise and Payette National Forests. The prior mining activities in Stibnite Mining District resulted in multiple CERCLA response actions overseen by EPA, the USFS, and the Idaho Department of Environmental Quality (IDEQ). Notwithstanding these efforts, significant legacy tailings, waste rock, and related contamination issues have remained unremediated for decades within the Stibnite Mining District, and such remaining legacy issues continue to impact water quality.

3. Respondents assert that they seek to redevelop the Site within the Stibnite Mining District. Respondent MGC asserts that it was incorporated in 2011 and has three direct and indirect subsidiaries. Respondents assert that IGRCLLC and SGC hold certain patented and unpatented mining claims in the Stibnite Mining District and that Respondent MGII will serve as the operator of the mining project on behalf of IGRCLLC and SGC. Respondents assert that as part of the plan to recommence resource development at the Site, Respondents intend to simultaneously mine and engage in environmental restoration of the Site to improve water quality and address other historic contamination left behind by former operators.

4. Respondents assert that they and their predecessors have never constructed or operated a mine in the Stibnite Mining District. Respondents assert that they have no current mining operations and are presently funded entirely by investor capital that has been raised only through the prospect of future mining. Respondents assert that they will not have on-going operating revenue unless they are able to commence future mining operations in the Stibnite Mining District.

5. Under the General Mining Law of 1872, Respondent MGII filed a proposed Plan of Restoration and Operations (PRO) with the USFS and other regulators for the Stibnite Gold Project in September 2016. The proposed PRO describes the Respondent MGII's plan to undertake mining, mineral processing, reclamation, and restoration activities within the Stibnite Mining District.

6. The proposed mining project is partly on NFS land and the PRO requires National Environmental Policy Act (NEPA) review. The USFS initiated the NEPA process in June

ED_005488A_00069711-00005

2017 and is preparing an Environmental Impact Statement to support its decision on Respondent MGII's PRO. Other Federal, State, and local government permits and authorizations are required for the mining project, including a Clean Water Act (CWA) Section 404 permit issued by the U.S. Army Corps of Engineers as well as Idaho Pollutant Discharge Elimination System (IPDES) permits issued by the Idaho Department of Environmental Quality, both of which are cooperating agencies in the NEPA process led by the USFS. Activities to be performed under an approved plan of operations and under any applicable permits are distinct from work to be performed under this ASAOC. Those separate activities are subject to the approvals of State and Federal agencies other than EPA.

7. Respondents assert that the restoration and water quality benefits envisioned under Respondent MGII's PRO are contingent on Respondent MGII's ability to secure the necessary permits and operate a mine in the Stibnite Mining District. Respondents are separately entering into this ASAOC committing them to perform certain Work within a four-year time period before approved mining operations begin, which Work is designed to further improve water quality in the Stibnite Mining District through activities not included in the PRO and not reviewed under the ongoing NEPA process. Phase I Work is expected to provide lasting environmental benefits, even if full-scale mining and restoration never occur.

8. The terrain and weather in the Stibnite Mining District present challenges to performing certain aspects of the Work during certain periods of the year. There is a limited outdoor work season within each calendar year. Additionally, the Stibnite Mining District is in a remote region of Idaho and currently has limited infrastructure, including roads, to access portions of the District, and limited facilities for equipment, fuel, and personnel, especially when compared to what will be present once full-scale mining and reclamation operations commence. This ASAOC has been structured in recognition of these practical limitations and the limited work season available to Respondents each year to complete the Work, as well as the limited number of years available to Respondents to complete each Phase of the Work.

9. In negotiating this ASAOC, the Agencies have taken into account Respondents' willingness to commit to certain pre-mining Phase 1 Work on a fixed timeline, the fact that Respondents did not create the historic environmental issues at the Site, Respondents' current status as start-up entities, and the specific Site characteristics, and the opportunity to address some legacy mining impacts on NFS lands through private investment.

10. The Agencies recognize that abandoned mine sites are a longstanding environmental problem, particularly in the Western United States. Returning a site of historic mining operations with legacy environmental issues to productive operations while addressing those legacy environmental issues has the potential to benefit the environment, economy, and local community. However, addressing legacy environmental issues before, during, and after operations are reinitiated poses unique challenges. Recognizing both the potential benefits and challenges of returning the Stibnite Mining District to active mining operations, the purpose of this ASAOC is to address certain pre-existing environmental issues in the Stibnite Mining District that may not otherwise be addressed by Respondents

through the actions proposed in the PRO. This ASAOC establishes the framework to address certain areas in the Stibnite Mining District through an iterative, phased restoration approach, including securing removal actions that can occur before mining begins in the Stibnite Mining District. This ASAOC allows for continued Work under this ASAOC during the Respondents' execution of the PRO (as ultimately reviewed and if approved), while avoiding disruption to the execution of PRO actions.

11. This ASAOC is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA and to the Secretary of Agriculture, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987). It was then further delegated to EPA Regional Administrators on September 13, 1987, in and through EPA Delegation Nos. 14-14-A, 14-14-B, 14-14-C and 14-14-D. This authority has since been redelegated by the Regional Administrator, EPA Region 10, to the Office of Superfund Environmental Management Division Director. The Secretary's authority has likewise been delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39), and then re-delegated by the Chief of the USFS to the USFS Intermountain Region Regional Forester. In addition, the Secretary's authority under CERCLA Section 106(a) has been delegated to the USDA Under Secretary for Natural Resources and Environment, who has concurred with this ASAOC. The Principal Deputy Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice has concurred with this ASAOC, in accordance with the requirements of Section 4 of Executive Order 12580. EPA has notified the State of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

12. The Parties recognize that this ASAOC has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this ASAOC do not constitute an admission of any liability. Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this ASAOC, 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 ASAOC. Respondents agree to comply with and be bound by the terms of this ASAOC and further agree that they will not contest the basis or validity of this ASAOC or its terms.

13. Consistent with Executive Order 12580 and the National Contingency Plan (NCP), EPA is the lead agency for response actions involving the privately owned/operated portions of the Site, while the USFS is the lead agency for response actions involving the portions of the Site located on NFS land. The Agencies' respective roles and responsibilities in implementing this ASAOC shall be addressed in a separate Memorandum of Understanding.

II. PARTIES BOUND

14. This ASAOC is binding upon the Agencies, Respondents and Respondents' heirs, successors, and assigns. Any change in ownership or corporate status of a Respondent

ED_005488A_00069711-00007

including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this ASAOC.

15. Respondents are jointly and severally liable for carrying out all activities required by this ASAOC. In the event of the insolvency or other failure of any Respondent to implement the requirements of this ASAOC, the remaining Respondents shall complete all such requirements.

16. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this ASAOC and to execute and legally bind Respondents to this ASAOC.

17. Respondents have designated MGII to implement their obligations under this ASAOC. Respondents shall be bound by MGII's actions to undertake these obligations, including any failure of MGII to act in accordance with and as required by this ASAOC. Nothing in this Paragraph alters Respondents' joint and several liability for the conduct of all activities required by this ASAOC.

18. Respondents shall provide a copy of this ASAOC to each contractor hired to perform the Work required by this ASAOC and to each person representing any Respondents with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this ASAOC. Respondents or their contractors shall provide written notice of the ASAOC to all subcontractors hired to perform any portion of the Work required by this ASAOC. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this ASAOC.

III. DEFINITIONS

19. Unless otherwise expressly provided in this ASAOC, terms used in this ASAOC that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this ASAOC or its attached appendices, the following definitions shall apply:

"Action Memorandum" shall mean the memorandum relating to the removal actions selected for the Site signed by Calvin Terada, Director, Region 10 Superfund & Emergency Management Division (or successors), and signed by the Regional Forester, USFS Intermountain Region, all attachments thereto except for the confidential enforcement addendum. The Action Memorandum for Phase I is attached as Appendix B.

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

"Agencies" shall mean the U.S. Environmental Protection Agency and the U.S. Forest Service.

ED_005488A_00069711-00008

"Bridge Phase" shall mean the activities outlined in Section 3 of the SOW and as set forth in an approved Bridge Phase Action Memorandum.

"Bridge Phase Action Memorandum" shall mean an Action Memorandum, if required, for work related to the Bridge Phase and executed by Calvin Terada, Director, Region 10 Superfund & Emergency Management Division, (or successor), and USFS Intermountain Region, once Respondents have elected to enter the Bridge Phase.

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

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

~~"DMEA" shall mean Defense Minerals Exploration Administration.~~

Commented [A1]: Note this is the only use of DMEA in this document and it is defined on page 3 of the SOW.

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

"EFSFSR" shall mean the East Fork of the South Fork of the Salmon River.

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

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in negotiating this ASAOC, reviewing or developing deliverables submitted pursuant to this ASAOC, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this ASAOC, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XI (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access including, but not limited to, the amount of just compensation), Section XV (Emergency Response and Notification of Releases), Paragraph 110 (Work Takeover), Paragraph 134 (Access to Financial Assurance), (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XVII (Dispute Resolution), and all litigation costs). Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"IGRCLLC" shall mean Idaho Gold Resources Company, LLC., a wholly owned subsidiary of MGC.

"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.

"MGC" shall mean Midas Gold Corp.

"MGII" shall mean Midas Gold Idaho, Inc., a wholly owned subsidiary of Midas Gold Corp.

"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.

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

"Parties" shall mean the EPA, USFS, and Respondents.

"Phase 1" shall mean the activities outlined in Section 2 of the SOW.

"Phase 2" shall mean the activities outlined in Section 4.1 of the SOW.

"Phase 3" shall mean the activities outlined in Section 4.2 of the SOW.

"PRO" means the Plan of Restoration and Operations for the Stibnite Gold Project, as approved by the USFS and other regulators, if such approval occurs. The PRO constitutes a "plan of operations" under 36 C.F.R. Part 228.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal actions to be performed pursuant to this ASAOC consistent with Sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

"Respondents" shall mean MGC, IGRCLLC, SGC, and MGII.

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

"Site" shall mean the Stibnite Mine site located in Valley County, Idaho, approximately 10 miles east of Yellow Pine, Idaho, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action, implementation, and materials handling. The Site is depicted generally on the map attached to the Statement of Work (Appendix A).

ED_005488A_00069711-00010

"Source Areas" shall mean the areas that are sources of Waste Material that are within the Site and listed on Attachment 1 to Appendix A.

"State" shall mean the State of Idaho.

"Statement of Work" or "SOW" shall mean the document describing the mandatory activities Respondents must perform and the optional activities Respondents may perform to implement removal actions pursuant to this ASAOC, as set forth in Appendix A and any modifications made thereto in accordance with this ASAOC.

"SGC" shall mean Stibnite Gold Company, a wholly owned subsidiary of IGRCLLC.

"Stibnite Mining District" shall mean the area of historically significant mining located in Stibnite, Valley County, Idaho, approximately 98 miles northeast of Boise, 40 miles east of McCall, and 10 miles east of the community of Yellow Pine in the EFSFSR drainage basin, where Respondents hold patented and unpatented mining claims.

"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.

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

"USFS" shall mean the United States Forest Service, an agency of the United States Department of Agriculture, and its successor departments, agencies, offices, or instrumentalities.

"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 wastes" as defined in the Idaho Hazardous Waste Management Act, Idaho Code 39-4403(8); (e) "pollutants" as defined in IDAPA 58.01.02.010.79; (f) "contaminants" as defined in IDAPA 58.01.11.007.10; (g) "hazardous materials" as defined in IDAPA 58.01.02.010.47; or "deleterious materials" as defined in IDAPA 58.01.02.010.21.

"Work" shall mean all activities and obligations Respondents are required to perform under this ASAOC except those required by Section XIII (Record Retention). Upon the Effective Date of this ASAOC, Work shall mean activities and obligations required under Phase 1. Should Respondents commit to perform the Bridge Phase, Phase 2, and/or Phase 3 pursuant to Paragraph 41 of this ASAOC, the respective Phase shall be included in this definition. Should Respondents choose to conduct certain activities set forth in the SOW under an approved mine plan and/or a CWA permit as allowed pursuant to Paragraphs 145 and 147 of this ASAOC, those activities shall not be considered to be within the definition of "Work."

IV. FINDINGS OF FACT

20. Pursuant to the PRO and 36 C.F.R. § 228.3(b), MGII is an "operator," as defined by the regulation, which is "[a] person conducting or proposing to conduct operations" on the Site. Respondents IGRCLLC and SGC hold mineral rights that include patented lode claims, patented mill site claims, unpatented Federal lode claims, and unpatented Federal mill site claims within the Site.

21. Historical mining in the Stibnite Mining District mostly occurred in two general areas commonly known as Meadow Creek (or Hangar Flats) and Yellow Pine Mining Areas. Mining operations began in the Stibnite Mining District in the 1920s and expanded rapidly and extensively starting in 1939 during Strategic Minerals Investigations (when large deposits of antimony were discovered by the U.S. Bureau of Mines) and again in 1941 (when tungsten was discovered by U.S. Geological Survey) and continued through the 1950s. During this initial period of mining activity, the mining of gold, silver, antimony, and tungsten mineralized materials was carried out by both underground and, later, open-pit mining methods.

22. Exploration activity resumed in the Stibnite Mining District in the 1970s and commercial mining operations resumed in the 1980s and continued through the 1990s. Mining-related activities generally occurred in areas similar to those with prior activity, but with the addition of open pit mining in the West End area and processing facilities in the Meadow Creek Valley.

23. Past sampling results showed exceedances of cyanide for the EPA quality criteria for water for fresh-water aquatic organisms.

24. The Yellow Pine Mining Area is located along the EFSFSR, 10 miles southeast of the town of Yellow Pine in Valley County, Idaho, in the Payette National Forest, where gold, silver, antimony, and tungsten mining operations took place from the early 1900s until the late 1990s.

25. Between 1982 and 1999, several diversions of Meadow Creek were completed.

26. From 1999 through 2009, the USFS and EPA oversaw or completed a number of removal actions at the Site pursuant to their delegated CERCLA authorities.

Commented [A2]: Extra space

27. During the summer of 2003, the USFS and the IDEQ found mine wastes containing very high levels of arsenic at the Stibnite Mine. In 2004, EPA through its contractor, Environmental Quality Management (EQM), implemented a removal action which included excavation of contaminated waste, regrading of the removal area, and placement of clean soil on top.

28. Elevated arsenic, antimony, and mercury levels have been detected in sampling in water and soil in multiple locations at the Site.

ED_005488A_00069711-00012

29. Alluvial groundwater sampled in groundwater wells in the northwest Bradley waste rock dump and wells downgradient of the Bradley tailings and spent ore disposal area (SODA) repository regularly indicate elevated arsenic and antimony concentrations.

30. Respondents' current water quality monitoring data indicates the presence of elevated levels of aluminum, arsenic, antimony, cyanide, iron, manganese, mercury, and thallium within the Stibnite Mining District. These contaminants are among the analytes for which Respondents currently collect data to support the NEPA process.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

31. Based on the Findings of Fact set forth above, and the administrative record, the Agencies have determined that:

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

    b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

    c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

    d. Each Respondent is an "owner or operator" as defined by Section 107(a) of CERCLA, 42 U.S.C. § 107(a).

32. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

33. The removal actions required by the Action Memoranda are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this ASAOC, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

34. Based upon the Findings of Fact, and Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this ASAOC, including, but not limited to, all appendices to this ASAOC and all documents incorporated by reference into this ASAOC.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

35. Respondents shall retain one or more contractors or subcontractors to perform the Work, subject to various provisions to suspend or terminate the Work as more fully set forth

ED_005488A_00069711-00013

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 ~~35~~36.

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

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

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 II-2 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 no later than 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~~ no later than thirty (30) days after the issuance of the Phase 1 Notice of

Commented [A3]: As noted in any earlier draft, Midas Gold requests this change in order to conform to the language in the prior sentence. This is both a matter of language consistency but also, potentially, a small matter of substance.
Under the language in the prior sentence, Midas Gold has the ability to submit its written commitment "no later than 30 days after the Agencies' issuance" of the completion report, which gives Midas Gold the ability to submit this request much sooner (i.e. before the issuance of the report) if it wishes. Midas Gold prefers this formation also for electing into Phase 2, as it could reduce the risk that subsequent phases have delays in approvals that impact the timelines for subsequent phases. The language here that we have requested be changed -- "within 30 days" of finishing a phase to elect -- might be read as preventing Midas Gold from making an earlier commitment, such as even before finishing the prior Phase 1.

Midas Gold has made similar conforming changes in the subsequent paragraphs.

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 no later than thirty (30) days after the Agencies' issuance of Notice of Completion of Phase 1 or, no later than 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~~no later than thirty (30) days after completion of the optional Bridge Phase. 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 ~~II~~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 no later than 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~~no later than thirty (30) days after the Agencies' issuance of 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.

42. For any regulation or guidance referenced in the ASAOC, 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 Respondents receive notification from the Agencies of the modification, amendment, or replacement.

43. The Agencies reserve the right to stop the Work from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during performance of the Work required under this ASAOC if Respondents fail to comply with the terms of this ASAOC.

44. Respondents shall submit to the Agencies for approval draft work plans for performing the TCRAs in Phase 1 in accordance with the schedule set forth in the SOW. The draft Phase 1 TCRA Work Plans shall provide a description of, schedule for, the actions required by this ASAOC for Phase 1.

45. The Agencies may approve, disapprove, require revisions to, or modify the draft Phase 1 TCRA Work Plans in whole or in part in accordance with Paragraph 53 (Approval of Deliverables). Once approved, or approved with modifications, the Phase 1 TCRA Work Plans, the schedules, and any subsequent modifications shall be incorporated into and become fully enforceable under this ASAOC. Respondents shall implement the Phase 1 TCRA Work Plans as approved in writing by the Agencies in accordance with the schedule approved by the Agencies. Respondents shall not commence or perform any Work under this ASAOC except in conformance with the terms of this ASAOC.

46. If Respondents elect to perform the removal actions in the optional Bridge Phase in accordance with Paragraph 41, and the Agencies agree to the performance of the Bridge Phase, Respondents shall submit to the Agencies for approval draft work plans for performing the TCRAs in the Bridge Phase. The draft Bridge Phase TCRA Work Plans shall provide a description of, and schedule for, the actions required by this ASAOC for the Bridge Phase. In order to solicit the Agencies' feedback, Respondents may submit draft Bridge Phase TCRA Work Plans prior to submitting a written commitment to conduct the optional Bridge Phase.

47. The Agencies may approve, disapprove, require revisions to, or modify the draft Bridge Phase TCRA Work Plans in whole or in part in accordance with Paragraph 53 (Approval of Deliverables). Once approved, or approved with modifications, the Bridge Phase TCRA Work Plans, the schedules, and any subsequent modifications shall be incorporated into and become fully enforceable under this ASAOC. Respondents shall implement the Bridge Phase TCRA Work Plans as approved in writing by the Agencies in accordance with the schedule approved by the Agencies. Respondents shall not commence or perform any Work under this ASAOC except in conformance with the terms of this ASAOC.

48. In order to solicit the Agencies' feedback, Respondents may submit a proposal to amend the SOW to specify Source Areas and water diversions projects to be addressed in Phase 2 prior to submitting a written commitment to conduct this the optional Phase. If Respondents elect to perform optional Phase 2 in accordance with Paragraph 41, the

ED_005488A_00069711-00017

Agencies may amend the SOW to specify the specific Source Areas and projects to be addressed. The amended SOW shall be incorporated into and become fully enforceable under this ASAOC. Respondents shall perform the tasks outlined in the SOW for optional Phase 2 and submit to the Agencies for approval a draft Removal Action Work Plan for performing the Phase 2 activities of the removal action in accordance with the schedule set forth in the SOW or amended SOW. Respondents shall not commence or perform any activities in Phase 2 under this ASAOC except in conformance with the terms of this ASAOC.

49. In order to solicit the Agencies' feedback, Respondents may submit a proposal to amend the SOW to specify Waste to be addressed and projects in Phase 3 prior to submitting a written commitment to conduct this ~~the~~ optional Phase. If Respondents elect to perform optional Phase 3 in accordance with Paragraph 41, the Agencies may amend the SOW to specify the specific actions and locations to be addressed in optional Phase 3. The amended SOW shall be incorporated into and become fully enforceable under this ASAOC. Respondents shall perform the tasks outlined in the SOW or amended SOW in accordance with the schedule set forth in the SOW or amended SOW. Respondents shall not commence or perform any tasks in optional Phase 3 under this ASAOC except in conformance with the terms of this ASAOC.

IX. SUBMISSION OF DELIVERABLES

50. General Requirements for Deliverables:

    a. Except as otherwise provided in this ASAOC, Respondents shall direct all submissions required by this ASAOC to the EPA OSCs at cerise.kathryn@epa.gov and neal.conor@epa.gov and hard copies (where required) mailed to EPA Region 10 at 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, and to the USFS OSC at todd.leeds@usda.gov, with hard copies mailed to 500 N. Mission, Building 2, McCall, ID 83638. Respondents shall submit all deliverables required by this ASAOC, the attached SOW, or any approved work plan to the Agencies in accordance with the schedule set forth in such plan.

    b. Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 51. All other deliverables shall be submitted to the Agencies in the form specified by the OSCs. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide the Agencies with paper copies of such exhibits.

51. Technical Specifications for Deliverables:

    a. Sampling and monitoring data shall be submitted in accordance with the SOW.

    b. Spatial data, including spatially-referenced data and geospatial data shall be submitted in accordance with the SOW. Spatial data submitted by Respondents related to boundary lines is intended to define the boundaries of the Source

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.

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.

c. Implementation. Upon approval, approval upon conditions, or modification by the Agencies under Paragraph 53.a (Initial Submissions) or Paragraph 53.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XIX (Stipulated Penalties) for violations of this ASAOC.

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

55. If an initially submitted or resubmitted plan, report, or other deliverable contains a deficiency, and the plan, report, or other deliverable is disapproved or modified by the Agencies under Paragraph 53.a (Initial Submissions) or 53.b (Resubmissions) due to such deficiency, Respondents shall be deemed in violation of this ASAOC for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XIX (Stipulated Penalties).

56. Neither failure of the Agencies to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by the Agencies.

X. OFF-SITE SHIPMENTS

57. Respondents may ship hazardous substances, pollutants and contaminants 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), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain 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).

58. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate State environmental official in the receiving facility's State and to the OSCs. This written 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. Respondents also shall notify the State environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

ED_005488A_00069711-00020

59. Respondents 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 Action Memoranda. 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.

XI. PROPERTY REQUIREMENTS

60. **Agreements Regarding Access and Non-Interference.** If any one of Respondents owns or controls the Site, or any other property where access is needed to conduct any activity regarding the ASAOC, including those activities listed in Paragraph 64 (Access Requirements), Respondents shall, (i) provide the Agencies and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the ASAOC, and; (ii) refrain from using any interest any of the Respondents control on NFS land in any manner that USFS 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, integrity, or protectiveness of the removal action. The Parties acknowledge that while the Site is in operations during optional Phase 2 or optional Phase 3, the Respondents may, upon approval by the Agencies, reasonably restrict Agency representatives, contractors, and subcontractors from access to the Site to accommodate health, safety, and operational considerations.

61. The Respondents shall require that assignees, successors in interest, and any other parties with rights to use the Site shall provide access and cooperation to the Agencies, and their respective authorized officers, employees, representatives, and all other persons performing response actions under the Agencies' oversight. The Respondents shall require that assignees, successors in interest and other parties with rights to use the Site implement and comply with any land use restrictions and institutional controls on the Site in connection with the Work, and not contest the Agencies' authority to enforce such land use restrictions and institutional controls on the Site. The Respondents shall provide a copy of this ASAOC to any current and other party with rights to use the Site as of the Effective Date.

62. Where any action under this ASAOC is to be performed in areas owned by or in possession of someone other than the Parties, Respondents shall use best efforts to secure an agreement, enforceable by Respondents and the United States providing that such owner shall provide the Parties, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the ASAOC; and refrain from using such property in any manner that the Agencies determine will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or unduly interfere with or adversely affect the implementation or integrity of the Work. Respondents shall provide a copy of such access agreement(s) to the Agencies.

ED_005488A_00069711-00021

63. To the extent any action under this ASAOC is to be performed on NFS land, the USFS shall cooperate with Respondents to allow Respondents to perform the Work and provide the Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity required under this ASAOC.

64. **Access Requirements**. The following is a list of activities for which access is required regarding the Site:

a. Monitoring the Work;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations regarding contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, implementing, or monitoring response actions;

f. Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW and as defined in the approved QAPP;

g. Implementing the Work pursuant to the conditions set forth in Paragraph 110 (Work Takeover);

h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XII (Access to Information); and

i. Assessing Respondents' compliance with the ASAOC.

65. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents 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 Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the Agencies, and include a description of the steps taken to comply with the requirements. If the Agencies deem it appropriate, they may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States 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 XVI (Payment of Response Costs).

66. If the Agencies determine in a decision document prepared in accordance with the NCP that institutional controls in the form of State or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall

cooperate with the Agencies' efforts to secure and ensure compliance with such institutional controls. In the event of any Transfer of the Site, unless the Agencies otherwise consent in writing, Respondents shall continue to comply with their obligations under the ASAOC, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Site.

67. If Respondents decide to sell claims at, or other rights to operate at, the Site while in the process of performing any Phase of Work, Respondents must provide the United States with notice if a purchaser intends to assume the responsibilities under this ASAOC at least ninety (90) days before completion of the Transfer. Before a purchaser may assume any obligations under this ASAOC the purchaser must provide the Agencies with any requested information, and the Agencies must approve, in writing, of the purchaser assuming the obligations under this ASAOC. Transfer to the purchaser does not relieve Respondents of their obligation to complete the Work. If the Agencies allow the purchaser to assume the responsibilities under this ASAOC and complete the Phase of the Work, the purchaser must sign the ASAOC prior to the Transfer and agree to comply with the applicable terms and conditions of the ASAOC.

68. If the Agencies do not allow the purchaser to assume the responsibilities under this ASAOC, Respondents shall complete the Phase of Work they are performing at the time of the Transfer, including continuing obligations as described in Section XXX (Notice of Completion of Work). The Agencies may agree to complete the Phase of Work if the Respondents pay the Agencies from the proceeds of the sale. The amount paid to the Agencies will be equal to the estimated cost for the Agencies to complete the Phase including continuing obligations, such as Post Removal Site Control, related to such Phase of Work less any sum directly payable to the Agencies by the financial assurance instrument. In addition, Respondents shall surrender to the Agencies the Financial Assurance in accordance with Paragraph 134. The Agencies shall expend such funds to complete the Work for the Phase occurring at the time of the Transfer, excluding continuing obligations. If the Agencies agree to perform the Work, Respondents shall remain responsible for the performance of all continuing obligations as described in Paragraph ~~135~~142. Respondents must provide the Agencies at least ninety (90) days' notice prior to completion of such Transfer, and must provide the Agencies an engineering estimate for the cost of completing the remaining Work under the Phase that Respondents are in at the time of the Transfer. Respondents must ensure that the Agencies have continued access to the Site following the Transfer as necessary to implement this ASAOC.

69. Respondents may initiate the procedures of Section XVII (Dispute Resolution) regarding the amount estimated by Respondents under Paragraph 68 if the Agencies do not approve Respondents' estimate or ~~Transfertransfer of obligations.~~ To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the Agencies within thirty (30) days after receipt of the Agencies' disapproval of the estimate.

Commented [A4]: To conform to Paragraph 67 and 68, which allows the Agencies to deny a transfer of obligations rather than the Transfer itself.

70. Notwithstanding any provision of the ASAOC, the Agencies retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

71. Respondents shall provide to the Agencies, upon request, copies of all non-privileged, non-protected records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to the implementation of this ASAOC, 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. Respondents shall also make available to the United States, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

72. Privileged and Protected Claims

a. Respondents may assert all or part of a Record requested by the United States is privileged or protected as provided under Federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 72.b, and except as provided in Paragraph 72.c.

b. If Respondents assert such a privilege or protection, they shall provide the United States 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, Respondents shall provide the Record to the United States in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents 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 related to this ASAOC, except data that is related to assessments of mineral deposits or associated economic costs and returns may be claimed as protected; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this ASAOC.

73. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to the United States under this Section or Section XIII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this ASAOC for which Respondents assert business confidentiality claims. Records that Respondents claim

ED_005488A_00069711-00024

to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the Agencies, or if the Agencies have notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

74. Notwithstanding any provision of this ASAOC, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION

75. Until ten (10) years after the Agencies provide Respondents with notice, pursuant to Section XXX (Notice of Completion of Work), that all Work has been fully performed in accordance with this ASAOC, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work; provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

76. At the conclusion of the document retention period, Respondents shall notify the United States at least ninety (90) days prior to the destruction of any such Records, and, upon request by the United States and except as provided in Paragraph 72 (Privileged and Protected Claims), Respondents shall deliver any such Records to the United States.

77. Each Respondent certifies individually 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 its potential liability regarding the Site since the date[s] upon which Respondents acquired ownership interests in the Site and that it has fully complied with any and all United States and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and State law.

ED_005488A_00069711-00025

XIV. COMPLIANCE WITH OTHER LAWS

78. Nothing in this ASAOC limits Respondents' obligations to comply with the requirements of all applicable State and Federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this ASAOC shall, to the extent practicable, as determined by the Agencies, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under Federal environmental or State environmental or facility siting laws. Respondents shall include ARARs selected by the Agencies in the work plans or other appropriate deliverable as directed by the Agencies.

79. No local, State, or Federal permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any activities conducted by Respondents at the Site that are not explicitly required under the ASAOC require a Federal or State permit or approval, Respondents shall submit timely and complete applications and take all actions necessary to obtain and comply with all such permits or approvals. Where any portion of the Work that is not on-site requires a Federal or State permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVIII (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 ASAOC is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

80. **Emergency Response**. If any event occurs during performance of the Work that 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, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this ASAOC, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the OSCs or, in the event of his/her unavailability, the Regional Duty Officer at 206-553-1263 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and the Agencies take such action instead, Respondents shall reimburse the Agencies for all costs of such response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

81. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C.

ED_005488A_00069711-00026

§ 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 206-553-1263, and the National Response Center at 1-800-424-8802. Respondents shall also initiate Idaho's Hazardous Materials Incident Command and Response Support Plan by calling 1-800-632-8000. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, and any release reporting requirements under state law including, but not limited to, the Idaho Hazardous Waste Management Act, I.C. §39-4401, *et. seq.*, Rules and Standards for Hazardous Waste, IDAPA 58.01.05, and Idaho Water Quality Standards, IDAPA 58.01.02

82. For any event covered under this Section, Respondents shall submit a written report to the Agencies within seven (7) 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.

XVI. PAYMENT OF RESPONSE COSTS

83. **Payments for Future Response Costs**. Respondents shall pay all Future Response Costs not inconsistent with the NCP.

84. **Payment of Sum for Future Response Costs**. On a periodic basis, each Agency will send Respondents a bill requiring payment that includes a cost summary for Future Response Costs, which includes direct and indirect costs incurred by each Agency, its contractors, subcontractors, and the United States Department of Justice. Within sixty (60) days of receipt, Respondents shall make all payments as follows:

    a. Payments to EPA by Fedwire Electronic Funds Transfer (EFT) to: "Federal Reserve Bank of New York, ABA = 021030004, Account = 68010727, SWIFT address = FRNYUS33, 33 Liberty Street, New York, NY 10045, Field Tag 4200 of the Fedwire message should read 'D 68010727 Environmental Protection Agency' and shall reference Site/Spill ID Number SSID: 10Q7 and the EPA docket number for this action." At the time of each payment, Respondents shall send notice that such payment has been made to the OSC's and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to EPA Cincinnati Finance Office: 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268.

    b. Payments to USDA/Hazardous Materials Management Program and USDA/USFS by EFT, in accordance with EFT instructions provided on the Bill for Collection. At the time of payment, Respondents shall send notice that payment has been made to Kathy Zamba, Forest Service Intermountain Region Engineering, 324 25th St., Ogden, UT 84401, kathy.zamba@usda.gov.

ED_005488A_00069711-00027

85. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the ~~Participating Parties~~Agencies by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX (Stipulated Penalties).

Commented [A5]: This is an old defined term from prior drafts that no longer appears in this version.

86. **Contesting Future Response Costs.** Respondents may initiate the procedures of Section XVII (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph ~~83~~84 (Payments for Future Response Costs) if they determine that such billed Future Response Costs included a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe a billed Future Response Costs resulted from incurred excess costs as a direct result of an action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the OSC's within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs in the manner described in Paragraph ~~83~~84, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the OSCs a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the Agencies prevail in the dispute, within five (5) days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) in the manner described in Paragraph 84. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail in the manner described in Paragraph 85. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Respondents' obligation to reimburse the Agencies for their Future Response Costs.

XVII. DISPUTE RESOLUTION

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

88. **Informal Dispute Resolution**. If Respondents object to any action taken by the Agencies pursuant to this ASAOC, including billings for Future Response Costs, the Respondents 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.

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.

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.

ED_005488A_00069711-00029

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 OSCs, or, in the event the Agencies' designated representatives are unavailable, the Director of the Superfund Emergency Management Division, EPA Region 10, within ten (10) days of when Respondents first knew that the event might cause a delay. Within five (5) days thereafter, Respondents shall provide in writing to the Agencies 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; Respondents' rationale for attributing such delay to a Force Majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if the Agencies, despite the late or incomplete notice, are able to assess to their satisfaction whether the event is a Force Majeure under Paragraph 92 and whether Respondents have exercised their best efforts under Paragraph 92, the Agencies may, in their unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

Commented [A6]: Defined term in paragraph 92

94. If the Agencies agree that the delay or anticipated delay is attributable to a Force Majeure, the time for performance of the obligations under this ASAOC that are affected by the Force Majeure will be extended by the Agencies 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 Agencies do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, the Agencies will notify Respondents in writing of its decision. If the Agencies agree that the delay is attributable to a Force Majeure, the Agencies will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure. If Respondents elect to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of the Agencies' notice. In any such proceeding, Respondents 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 Respondents complied with the requirements of Paragraphs 92 and 93. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this ASAOC identified to the Agencies.

Commented [A7]: Defined term in paragraph 92

XIX. STIPULATED PENALTIES

95. Respondents shall be liable to the Agencies for stipulated penalties in the amounts set forth in Paragraph 96.a for failure to comply with the obligations specified in Paragraph 96.b unless excused under Section XVIII (Force Majeure). "Comply" as used in the previous 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 134 (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

ED_005488A_00069711-00031

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 Paragraph 89 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Agency Management Official issues a final decision regarding such dispute. Nothing in this ASAOC shall prevent the simultaneous accrual of separate penalties for separate violations of this ASAOC.

Commented [A8]: Not a defined term in paragraph 89

99. Following the Agencies' determination that Respondents have failed to comply with a requirement of this ASAOC, the Agencies may give Respondents written notification of the failure and describe the noncompliance. The Agencies may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Agencies have notified Respondents of a violation.

100. All penalties accruing under this Section shall be due and payable to the Agencies within thirty (30) days after Respondents' receipt from the Agencies of a demand for payment of the penalties unless Respondents invoke the Dispute Resolution procedures under Section XVII (Dispute Resolution) within the 30-day period. All payments to the Agencies under this Section shall indicate that the payment is for stipulated penalties and shall be made consistent with instructions from the Agencies that will be included in the Agencies' demand for payment of the penalties.

101. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have 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 85 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 85 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

102. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete the performance of the Work required under this ASAOC.

103. Nothing in this ASAOC shall be construed as prohibiting, altering, or in any way limiting the ability of the Agencies to seek any other remedies or sanctions available by virtue of Respondents' violation of this ASAOC or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that the Agencies shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated

penalty is provided in this ASAOC, except in the case of a willful violation of this ASAOC or in the event that the Agencies assume performance of a portion or all of the Work pursuant to Paragraph 110 (Work Takeover).

104. Notwithstanding any other provision of this Section, the Agencies may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this ASAOC.

XX. COVENANTS BY THE AGENCIES

105. Except as provided in Section XXI (Reservations of Rights by the Agencies), the Agencies covenant not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Phase 1 Work and Phase 1 Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their Phase 1 obligations under this ASAOC. The covenants extend only to Respondents and do not extend to any other person. The United States' covenant not to sue for Work subsequent to Phase 1 will take effect on the date of the Agencies' acceptance of the Respondents' written commitment to perform the Work for the respective optional Bridge Phase, optional Phase 2, or optional Phase 3 and will be conditioned upon the complete and satisfactory performance by Respondents of the Work in the respective later optional Phase. The covenant not to sue does not extend to releases or threats of releases of hazardous substances, pollutants or contaminants caused by or related to Respondents' mining activities at the Site.

106. The covenants not to sue set forth in Paragraph 105 are also conditioned on Respondents' dismissal without prejudice of the third-party complaint filed against the United States, USDA, and USFS (1:19-cv-00307-BLW, (D. Idaho), Dkt. No. 51) and the complaint filed against the United States, USDA, and USFS (1:20-cv-00409-DCN, (D. Idaho), Dkt. No. 1), within 10 Days of the Effective Date.

XXI. RESERVATIONS OF RIGHTS BY THE AGENCIES

107. Except as specifically provided in this ASAOC, nothing in this ASAOC shall limit the power and authority of the Agencies to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this ASAOC shall prevent the Agencies from seeking legal or equitable relief to enforce the terms of this ASAOC, from taking other legal or equitable action as they deem appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

108. In the event Respondents renew, or any Respondent renews, the claims asserted in the third-party complaint filed against the United States, USDA, and USFS (1:19-cv-00307-BLW, (D. Idaho), Dkt. No. 51) or the complaint filed against the United States, USDA, and USFS (1:20-cv-00409-DCN, (D. Idaho), Dkt. No. 1) or brings any other similar claims

in any new action against the United States, the covenants not to sue set forth in Section XX (Covenants by the Agencies) shall not apply to any counterclaims asserted by the United States. The United States agrees not to assert defenses in any new action based on statute of limitations, laches, estoppel, or waiver, or other equitable or legal defenses based upon timeliness or the running or expiration of any time period.

109. The covenants set forth in Section XX (Covenants by the Agencies) do not pertain to any matters other than those expressly identified therein. The Agencies reserve, and this ASAOC is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this ASAOC;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of 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; and

h. liability for costs incurred or to be incurred by the United States for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this ASAOC.

110. Work Takeover

a. In the event the Agencies determine that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, the Agencies may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by the Agencies (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of thirty (30) days within which to remedy the circumstances giving rise to the Agencies' issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 110, Respondents have not remedied to the Agencies' satisfaction the circumstances giving rise to the Agencies' issuance of the relevant Work

Takeover Notice, the Agencies may at any time thereafter assume the performance of all or any portion(s) of the Work as the Agencies deem necessary ("Work Takeover"). The Agencies will notify Respondents in writing (which writing may be electronic) if the Agencies determine that implementation of a Work Takeover is warranted under this Paragraph 110. Funding of Work Takeover costs is addressed under Paragraph 134 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in Paragraph 89 (Formal Dispute Resolution) to dispute the Agencies' implementation of a Work Takeover under Paragraph 110. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, the Agencies may in their sole discretion commence and continue a Work Takeover under Paragraph 110 until the earlier of (1) the date that Respondents remedy, to the Agencies' satisfaction, the circumstances giving rise to the Agencies' 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 89 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this ASAOC, the Agencies retain all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY RESPONDENTS

111. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this ASAOC, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this ASAOC; or

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

112. Respondents shall dismiss without prejudice the third-party complaint filed against the United States, USDA, and USFS (1:19-cv-00307-BLW, (D. Idaho), Dkt. No. 51) and the complaint filed against the United States, USDA, and USFS (1:20-cv-00409-DCN, (D. Idaho), Dkt. No. 1), within 10 Days of the Effective Date. Respondents (or any Respondent) agree that the claims at issue in the dismissed complaints may be renewed

only if Respondents (or any Respondent) are held liable by the Court for the causes of action asserted in civil action 1:19-00307-BLW (D. Idaho). The United States reserves all of its rights to assert any and all defenses and, as reserved in Paragraph 108, any and all counterclaim(s) if the claims at issue in the dismissed complaints are later renewed by Respondents or any Respondent. Respondents agree not to assert defenses to such counterclaim(s) based on statute of limitations, laches, estoppel, or waiver, or other equitable or legal defenses based upon timeliness or the running or expiration of any time period.

113. Except as provided in Paragraph 116 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the EPA or the USFS brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XXI (Reservations of Rights by the Agencies), other than in Paragraph 109.d (criminal liability), or Paragraph 109.e (violations of Federal/State law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

114. Nothing in this ASAOC 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).

115. Respondents reserve, and this ASAOC is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on the Agencies' selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

116. Waiver of Claims by Respondents. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

a. **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

ED_005488A_00069711-00036

b. **Exceptions to Waiver.** The waiver[s] under this Paragraph 116 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXIII. OTHER CLAIMS

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

118. Except as expressly provided in Paragraphs 116 (Waiver of Claims by Respondents) and Section XXII (Covenants by Respondents), nothing in this ASAOC constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this ASAOC, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

119. No action or decision by the Agencies pursuant to this ASAOC shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION

120. Except as provided in Paragraph 116 (Waiver of Claims by Respondents), nothing in this ASAOC shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this ASAOC. Except as provided in Section XXII (Covenants by Respondents), 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 that 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 ASAOC diminishes the right of the United States, 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).

121. The Parties agree that this ASAOC constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States for Phase 1 Work within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this ASAOC. The "matters addressed" in this ASAOC are the Phase 1 Work and Future Response Costs related to Phase 1 Work. If Respondents elect to perform activities, and the Agencies agree to the performance of the activities, in the optional Bridge Phase,

ED_005488A_00069711-00037

optional Phase 2, or optional Phase 3, the Respondents and the Agencies agree that each Respondent has, as of the date of Respondents' timely written commitment to perform the Work in a particular Phase, protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the activities that will be completed in that optional Phase.

122. The Parties further agree that this ASAOC constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved its liability to the United States for Phase 1 Work within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B) and as of the date of Respondents' timely written commitment to perform the Work in the optional Bridge Phase, optional Phase 2, or optional Phase 3 if Respondents complete the Work in an optional Phase.

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

124. In any subsequent administrative or judicial proceeding initiated by the Agencies, or by the United States on behalf of the Agencies, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents 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 Agencies set forth in Section XXII (Covenants by Respondents).

XXV. INDEMNIFICATION

125. The United States does not assume any liability by entering into this ASAOC or by virtue of any designation of Respondents as the Agencies' authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this ASAOC. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this

ED_005488A_00069711-00038

ASAOC. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this ASAOC. Neither Respondents nor any such contractor shall be considered an agent of the United States.

126. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

127. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents 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, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. INSURANCE

128. No later than fourteen (14) days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXX (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the Agencies as an additional insureds with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this ASAOC. In addition, for the duration of the ASAOC, Respondents shall provide the Agencies with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the ASAOC, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this ASAOC. If Respondents demonstrate by evidence satisfactory to the Agencies 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, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to the Agencies under this Paragraph identify the Stibnite Mine Site, Valley County, Idaho and the EPA docket number for this action.

XXVII. FINANCIAL ASSURANCE

129. In order to ensure completion of the Work, Respondents shall secure financial assurance, including specifically for Phase 1 Work in the amount of $7,500,000.00, for the benefit of the Agencies. Respondents have selected, and the Agencies have found satisfactory, a surety bond accompanied by a standby trust as an initial form of financial assurance. Within fifteen (15) days after the Effective Date, Respondents shall secure the executed and/or otherwise finalized mechanisms or other documents consistent with the Agencies-approved form of financial assurance and shall submit such mechanisms and documents to the Agencies' contacts listed in Paragraph 38. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to the Agencies. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, or trust funds.

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 Agencies, which 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;

c. A trust fund established for the benefit of the Agencies 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.

130. If Respondents elect to enter into the optional Bridge Phase, optional Phase 2, or optional Phase 3 under this ASAOC, then they will be required to secure financial assurance for the benefit of the Agencies equal to the estimated cost of the Work for that phase, including Post Removal Site Control, as determined by the Agencies. The financial assurance for each phase must be one or more of the mechanisms listed above or Respondents may request the Agencies approve submission of either:

a. A demonstration by a Respondent that it meets the financial test criteria of Paragraph 131, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of the Agencies, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

b. A guarantee to fund or perform the Work executed in favor of the Agencies by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h))

with a Respondent; and (2) can demonstrate to the Agencies' satisfaction that it meets the financial test criteria of Paragraph 131.

131. If, in the Agencies' discretion. Respondents are sufficiently financially stable to allow submission of a financial test or corporate guarantee under Paragraphs 131.a or 131.b, the Agencies will inform Respondents that they have the option to demonstrate that:

a. the affected Respondent or guarantor has:

(1) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(2) Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

(3) Tangible net worth of at least $10 million; and

(4) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

b. The affected Respondent or guarantor has:

(1) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(2) Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

(3) Tangible net worth of at least $10 million; and

(4) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

132. Respondents providing financial assurance by means of a demonstration or guarantee must also submit to the Agencies for the affected Respondent or guarantor: (1) a copy of an

ED_005488A_00069711-00041

independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent 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 ~~136~~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 ~~136~~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 ~~86~~ 129 for the benefit of the Agencies in order to facilitate the completion of the Work by the Agencies or by another person. If payment is made from the standby trust to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. If payment is made from the standby trust to the USFS, the USFS will deposit the payment into a designated account to be retained and used to conduct or finance response actions at or in connection with the Site.

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

135. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondents 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 Agencies, 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 Agencies will notify Respondents of a decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) the Agencies' approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with the Agencies' approval. Any decision made by the Agencies 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 Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of the Agencies' approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to the Agencies documentation of the reduced, revised, or alternative financial assurance mechanism.

a. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware at any time of information indicating that the financial assurance provided under this Section is inadequate in amount or form or otherwise no longer satisfies the requirements of this Section, Respondent shall notify the Agencies of such information within seven (7) days. If at any time the Agencies determine that the financial assurance provided under this Section is inadequate in amount or form or otherwise no longer satisfies the requirements of this Section, the Agencies will notify Respondents of such determination. Respondents shall, within 30 days after

notifying the Agencies or receiving notice from the Agencies under this Paragraph, secure and submit to the Agencies for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. The Agencies may extend this deadline for such time as is reasonably necessary.

b. If Respondents choose to perform the optional Bridge Phase, Phase 2, or Phase 3, within thirty (30) days after the Agencies accept Respondents' written commitment to perform the Work for the respective optional Bridge Phase, optional Phase 2, or optional Phase 3, Respondents shall provide an updated financial assurance instrument covering the estimated cost of the Work of the new Phase in accordance with the Agencies' approval and Paragraphs ~~129-133~~130-134.

136. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if the Agencies determine that all Work, including continuing obligations as described in Paragraph 142 have been completed, following any phase of work under Section XXX (Notice of Completion of Work); (b) in accordance with the Agencies' approval of such release, cancellation, or discontinuation; or (d) 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 XVII (Dispute Resolution).

XXVIII. MODIFICATION

137. The OSCs may modify any plan or schedule to implement a SOW in writing or by oral direction. Any oral modification will be memorialized by the relevant Agency promptly but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this ASAOC may be modified in writing by mutual agreement of the Respondents and the Agencies.

138. If Respondents seek permission to deviate from any approved work plan or schedule or the SOW, Respondents' Project Coordinator shall submit a written request to the Agencies for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSCs pursuant to Paragraph 137.

139. No informal advice, guidance, suggestion, or comment by the OSCs or other Agency representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this ASAOC, or to comply with all requirements of this ASAOC, unless it is formally modified.

XXIX. ADDITIONAL REMOVAL ACTION

140. If the Agencies determine that additional removal actions not included in an approved work plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the SOW, the

Agencies will notify Respondents of that determination. Unless otherwise stated by the Agencies, within thirty (30) days after receipt of notice from the Agencies that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall either (1) submit for approval by the Agencies a work plan for the additional removal actions or (2) provide notice to the Agencies of Respondents' initiation of the procedures of Section XVII (Dispute Resolution). Respondents may initiate the procedures of Section XVII (Dispute Resolution) if they believe that the Agencies have unreasonably determined that additional removal actions are necessary to protect public health, welfare, or the environment, or that such additional removal actions are inconsistent with the SOW. If Respondents elect to submit a work plan, the work plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this ASAOC. Upon the Agencies' approval of the work plan pursuant to Section VIII (Work to Be Performed), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein.

141. This Section does not alter or diminish the OSCs' authority to make modifications to any plan or schedule pursuant to Section XXVIII (Modification).

XXX. NOTICE OF COMPLETION OF WORK

142. When the Agencies determine, after their review of the final Phase 1 Removal Action Completion Report, that all Phase 1 Work has been fully performed in accordance with this ASAOC, the Agencies will provide a written Notice of Completion to Respondents. The Notice of Completion does not release Respondents from the performance of all continuing obligations required of the Respondents under this ASAOC (e.g., payment of Future Response Costs, Property Requirements, Post Removal Site Control, Access to Information, Record Retention, payment of Stipulated Penalties, and Financial Assurance). If the Agencies determine that such Work, with the exception of continuing obligations under this ASAOC, has not been completed in accordance with this ASAOC, the Agencies will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall submit a modified Removal Action Completion Report in accordance with the Agencies' notice. Failure by Respondents to implement the approved Phase 1 TCRA Work Plans shall be a violation of this ASAOC.

143. No later than thirty (30) days of receipt of a Notice of Completion for Phase 1 Work from the Agencies, Respondents shall notify the Agencies as to whether Respondents elect to: (1) terminate in accordance with Section XXXI (Termination), (2) enter into the optional Bridge Phase, or (3) enter into optional Phase 2. The Agencies may elect or decline to proceed with the Bridge Phase.

144. If the Agencies determine, after their review of the final Bridge Phase Removal Action Completion Report, that all tasks in the Bridge Phase have been fully performed in accordance with this ASAOC, with the exception of any continuing obligations described in Paragraph 142, the Agencies will provide written notice to the Respondents. The Notice of Completion does not release Respondents from the performance of all continuing obligations required of the Respondents under this ASAOC. If the Agencies determine that the Bridge Phase Work, with the exception of continuing obligations under this ASAOC,

ED_005488A_00069711-00045

has not been completed in accordance with this ASAOC, the Agencies will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall submit a modified Bridge Phase Removal Action Completion Report in accordance with the Agencies' notice. Failure by Respondents to implement the approved Bridge Phase TCRA Work Plan shall be a violation of this ASAOC.

145. No later than thirty (30) days from receipt of a Notice of Completion for the optional Bridge Phase from the Agencies, Respondents shall notify the Agencies as to whether Respondents elect to: (1) terminate in accordance with Section XXXI (Termination), (2) conduct the optional Phase 2 tasks under this ASAOC, (3) conduct the Phase 2 tasks under a modified PRO, or (4) conduct optional Phase 2 tasks under a CWA Section 404 or an IPDES permit. If Respondents elect to conduct any of the Phase 2 tasks under a modified PRO or conduct any of the Phase 2 tasks under a CWA Section 404 permit or an IPDES permit, such tasks will be outside the scope of this ASAOC. If Respondents intend to conduct Phase 2 under this ASAOC and the Agencies agree to allow Respondents to conduct Phase 2, then Respondents must also submit a certification to the Agencies stating that they have received all permits and approvals necessary to commence construction at the Site. When considering modifications and determining the schedule for optional Phase 3 tasks, the Agencies should take into consideration any approved mine plan and schedule of mine operations.

146. If the Agencies determine, after their review of the final Phase 2 Removal Action Completion Report, that Phase 2 tasks have been fully performed in accordance with this ASAOC, with the exception of continuing obligations under this ASAOC and described in Paragraph 142, the Agencies will provide written notice to Respondents. The Notice of Completion does not release Respondents from the performance of all continuing obligations required of the Respondents under this ASAOC. If the Agencies determine that such Phase 2 tasks have not been completed in accordance with this ASAOC, with the exception of continuing obligations under this ASAOC, the Agencies will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall submit a modified Phase 2 Removal Action Completion Report in accordance with the Agencies' notice. Failure by Respondents to implement the approved Phase 2 Removal Action Work Plan shall be a violation of this ASAOC.

147. No later than thirty (30) days of receipt of a Notice of Completion for the Phase 2 from the Agencies, Respondents shall notify the Agencies as to whether Respondents elect to: (1) terminate in accordance with Section XXXI (Termination); (2) conduct the optional Phase 3 tasks under this ASAOC, (3) conduct Phase 3 tasks under a modified PRO, or (4) conduct Phase 3 tasks under a CWA Section 404 permit or an IPDES permit. If Respondents elect to conduct any Phase 3 tasks under a modified PRO or under a CWA Section 404 permit or an IPDES permit, such work will be outside the scope of this ASAOC. If Respondents elect to conduct all tasks in optional Phase 3 outside the ASAOC, the Agencies will terminate in accordance with Section XXXI (Termination). Phase 3 Work cannot include any actions undertaken pursuant to permits or Respondents' plan of operations.

148. If Respondents elect to conduct optional Phase 3 tasks under the ASAOC and the Agencies agree to allow Respondents to conduct Phase 3, then the Agencies may modify the SOW as needed, and Respondents shall develop Phase 3 Removal Action Work Plan. In considering modifications and determining the schedule for optional Phase 3 tasks, the Agencies should take into consideration any approved mine plan and schedule of mine operations.

149. When the Agencies determine, after their review of the optional Phase 3 Completion Report, that all Work has been fully performed in accordance with this ASAOC, with the exception of any continuing obligations under this ASAOC and as described in Paragraph 142, the Agencies will provide written notice to Respondents. The Notice of Completion does not release Respondents from the performance of all continuing obligations required of the Respondents under this ASAOC. If the Agencies determine that such Work not been completed in accordance with this ASAOC, with the exception of continuing obligations under this ASAOC, the Agencies will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall submit a modified Phase 3 Removal Action Completion Report in accordance with the Agencies' notice. Failure by Respondents to implement the approved Phase 3 Removal Action Work Plan shall be a violation of this ASAOC.

150. Respondents may initiate the procedures of Section XVII (Dispute Resolution) regarding the Agencies' determination that Work under any phase has not been completed in accordance with this ASAOC. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the OSCs within thirty (30) days after receipt of the Agencies' written notice.

XXXI. TERMINATION

151. Except for continuing obligations as described in Paragraph 142 and provisions necessary to implement such continuing obligations (e.g., Stipulated Penalties, Dispute Resolution, Covenants not to Sue, Reservations of Rights, Effect of Settlement /Contribution), this ASAOC and Respondents' options to perform future work will terminate upon any of the following events:

a. Respondents do not give notice that they elect to perform either the Bridge Phase or Phase 2 ~~within~~ no later than thirty (30) days of receipt of a Notice of Completion for Phase 1 Work from the Agencies;

Commented [A9]: This again is to conform with the language in the Work to be Performed section, as well as the Notice of Completion section, which both allow for Respondents to give notice sooner than the receipt of the notice of completion.

b. Respondents elect to perform the Bridge Phase and do not have all mine permits and approvals necessary to commence construction at the Site at the completion of the Bridge Phase;

c. The Agencies elect to terminate in accordance with this Section after completion of the optional Bridge Phase, or at the end of any phase in accordance with Section XXX (Notice of Completion of Work).

d. Respondents do not give notice that they elect to perform Phase 2 ~~within~~ no later than thirty (30) days of receipt of a Notice of Completion for Bridge Phase Work from the Agencies;

e. Respondents do not give notice that they elect to perform Phase 3 ~~within~~ no later than thirty (30) days of receipt of a Notice of Completion for Phase 2 Work from the Agencies;

f. The Agencies determine that the Respondents do not substantially perform the Phase 3 Work on a continual basis; or

g. Upon the receipt of Agencies' Notice of Completion for Phase 3 Work.

152. In the event that the Agencies seek to terminate in accordance with this Section on the basis that Work is not being adequately performed on a continual basis, the Agencies must first give notice and provide Respondents with sixty (60) days to cure. Inability to perform work due to Force Majeure will not constitute grounds for termination.

XXXII. INTEGRATION/APPENDICES

153. This ASAOC and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this ASAOC. The Respondents and the Agencies acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this ASAOC. Appendix A (the SOW) is attached to and incorporated into this ASAOC.

XXXIII. EFFECTIVE DATE

154. This ASAOC shall be effective upon the later of the date on which i) the ASAOC is signed by the Regional Administrator or his/her delegate, or ii) the ASAOC is signed by the Regional Forester or his/her delegate.

155. The undersigned representative of Respondents certifies that it is fully authorized to enter into the terms and conditions of this ASAOC and to bind the Respondents it represents to this document.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____
Dated

_____
Chris Hladick
Regional Administrator, Region 10

U.S. FOREST SERVICE

_____	_____
Dated	Frank R. Beum Regional Forester (Acting), USFS Intermountain Region

Dated

Laurel Sayer
President and CEO ~~[Name]~~
Midas Gold Idaho, Inc.

Dated

~~[Name]~~Laurel Sayer
President and CEO
Midas Gold Corp.

Dated

Christopher Dail
President~~[Name]~~
Idaho Gold Resources Company LLC

Dated

~~[Name]~~Kyle Fend
President
Stibnite Gold Company

Dated

Ronald J. Tenpas,
Counsel
Vinson & Elkins LLP

Dated

John C. Cruden
Counsel
Beveridge & Diamond PC

Formatted: Font: 12 pt