UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

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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, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.	)	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION / FEASIBILITY STUDY

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the United States Department of Agriculture Forest Service (USFS), the Idaho Department of Environmental Quality (IDEQ), the Shoshone-Bannock Tribes, and Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc. (hereinafter collectively referred to as Respondents). The EPA, USFS, IDEQ, the Shoshone Bannock Tribes (Tribes), and Respondents are collectively referred to as the "Parties" and may be singularly referred to as a "Party." This Settlement provides for the performance of a remedial investigation and feasibility study (RI/FS) by Respondents and the payment of certain response costs incurred by EPA and USFS, IDEQ, and the Shoshone Bannock Tribes at or in connection with the Stibnite Mine Site (the "Site") generally located about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response,

3. Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923-26 (1987), and the Secretary of the United States Department of Agriculture ("Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987),3 C.F.R., 1987 Compilation, p. 193. The authority was further delegated to the EPA Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14-A, 14-14-B, 14-14-C and 14-14-D. This authority has been redelegated by the Regional Administrator, EPA Region 10, and to the Office of Superfund Environmental Management Division Director. ~~The Secretary's authority was further delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39).~~ The Secretary's authority was further delegated to the Chief of the Forest Service (the "Chief") by 7 C.F.R. § 2.60(a)(39). The Chief's authority was re-delegated to the Regional Foresters, pursuant to the Forest Service Manual 2164.04c, 2.1, effective November 10, 1994. ~~The Secretary's authority was further delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39). The Secretary's authority was further delegated to the Chief of the Forest Service (the "Chief") by 7 C.F.R. § 2.60(a)(39). The Chief's authority was re-delegated to the Regional Foresters, pursuant to the Forest Service Manual 2164.04c, 2.1, effective November 10, 1994. The Secretary's authority was re-delegated by the Chief of the FS to the FS Region 4 Regional Forester.~~ EPA will consult with the USFS on decisions and approvals made under this Settlement. In the event of disagreement, the USFS will make decisions on the National Forest System (NFS) portion of the Site.

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4. Consistent with EO 12580 and the NCP, EPA will be the lead agency for response actions involving the private portions of the Site, and the USFS~~Forest Service~~ will be the lead for response actions involving the NFS portions of the Site. Nevertheless, the parties have agreed that it is appropriate, for fiscal and efficiency reasons, for EPA to take the principal responsibility for implementation of the response action as a whole.

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5. The State enters into this Settlement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. §§ 9620(f) and 9621(f) and will serve as Support Agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions and approvals made under the Settlement.

6. The Tribes are a federally-recognized Indian Tribe with a governing body known as the Fort Hall Business Council. The Tribes assert that they are exercising their authorities pursuant to their inherent sovereign powers, the Fort Bridger Treaty (15 Stat. 673) the Fort Bridger Treaty (15 Stat. 673), and the Constitution and By-Laws of 1936. The Tribes will serve as a support agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions approvals made under the Settlement.

7. The EPA RPM and the other governmental parties' Project Coordinators shall coordinate with each other to implement response actions at the Site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings with contractors, consultants, the state, trustees, or other participating third parties related to the Site, or any significant on-Site activities. In most cases, reasonable prior notice shall be considered seven (7) days. In the event that a meeting needs to be scheduled on shorter notice, the EPA RPM shall use their best efforts to contact their governmental parties' counterparts and shall determine the counterparts availability prior to scheduling the meeting.

8. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement 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 Settlement, the validity of the findings of facts, conclusions of law, and determinations in Section [REF _Ref364854851 \r \h] (Findings of Fact) and [REF _Ref364854871 \r \h] (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

9. This Settlement is binding upon EPA, the USFS, IDEQ, the Shoshone Bannock Tribe and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement.

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

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

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

III. DEFINITIONS

13. Unless otherwise expressly provided in this Settlement, terms used in this Settlement 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 Settlement or its attached appendices, the following definitions shall apply:

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

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

"Effective Date" shall mean the effective date of this Settlement as provided in Section [REF _Ref326220092 \r \h].

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

"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.

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the Support Agencies incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section [REF _Ref378061137 \r \h * MERGEFORMAT] (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 [REF _Ref326220129 \r \h] (Emergency Response and Notification of Releases), Paragraph [REF _Ref408837399 \r \h] (Work Takeover), Paragraph [REF _Ref362014500 \r \h] (Access to Financial Assurance)], Paragraph [REF _Ref377733374 \r \h * MERGEFORMAT] (Community Involvement Plan), 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 [REF _Ref364855795 \r \h] (Dispute Resolution), the costs of any cooperative agreements under Section 104(d)(1), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site, and all Interest on Past Response Costs.

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

"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 [HYPERLINK "https://www.epa.gov/superfund/superfund-interest-rates"].

"Stibnite Mine Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"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 Settlement identified by an Arabic numeral or an upper or lower case letter.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site from [x date] to the Effective Date of the Settlement, plus Interest on all such costs through such date.]

Commented [A3]: This date will be the date on which Midas first met with EPA HQ regarding a CERCLA settlement.

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

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

"Respondents" shall mean Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc.

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

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section [REF _Ref408929826 \w \h] (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean all area within the Stibnite Mining District in which Respondent has ownership interest in land or mining claims, and/or has conducted mine exploration drilling activities, 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.

"State" shall mean the State of Idaho

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to develop the RI/FS for the Site, as set forth in Appendix __ to this Settlement. The Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

"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.

"Tribe" shall mean the Shoshone Bannock Tribes.

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

"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 58.01.02.010.731; (f) "contaminants" as defined in IDAPA 58.01.11.007.10; (g) "hazardous materials" as defined in IDAPA58.01.02.010.40; or "deleterious materials" as defined in IDAPA 58.01.02.010.16.

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"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section [REF _Ref326220583 \w \h] (Record Retention).

IV. FINDINGS OF FACT

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14. The Stibnite Mining Site ("Site") is about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho. The Site includes both NFS~~National Forest Service~~ lands and private lands, although most of the mining and processing areas are on patented (private) claims. The Site comprises a number of hazardous substances source areas resulting from mining along Meadow Creek and East Fork South Fork ("EFSF') Salmon River.

15. The Site is comprised of private, federal, and state land. Approximately 2,932 acres are under USF~~F~~S jurisdiction, 895 acres are private lands including lands owned by Midas Gold, 25 acres are administered by the Bureau of Reclamation, and 37 acres are administered by the State of Idaho.

16. The Site is located within the historic Stibnite Mining District (District). Mining operations began in the District in the 1920s and continued through the 1990s. Historical mining in the District mostly occurred in three general areas named Hangar Flats, Yellow Pine, and West End. Mining operations in the 1920s through the 1950s focused in the area of the proposed Hangar Flats and Yellow Pine pits. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the Homestake pit located within the area of disturbance for Midas Gold's proposed Yellow Pine pit. Past mining, development, and reclamation activities in the District include: exploration, road construction, underground and surface mining, milling, tailings disposal, smelting, ore heap leaching, spent ore disposal, waste rock disposal, hydro- power development, water retention dam construction, saw mill, housing camps, a townsite, transmission line, and other associated infrastructure.

17. Antimony, tungsten and gold were mined at the Site. Most ore was mined by Bradley Mining Company using open-pit methods, although underground methods were used from 1927 to 1943. During World War II the mining area gained significance as the largest producer of strategic metals, specifically antimony and tungsten, which had many uses during the war. Early mining involved hauling ore rock from the underground workings to a mill site at the town of Stibnite where antimony and tungsten concentrates were separated from the pit-run ore in a mill using a selective flotation process. In 1943, Bradley Mining abandoned the underground workings and began the Yellow Pine Pit Mine. Waste tailings produced in the milling process were deposited in Meadow Creek above the mill site at the south end of the valley, using the upstream method tailings dam, and in areas along the creek downstream of the main tailings deposition area. A smelter was constructed at Stibnite in 1948 to process low grade gold and gold-antimony ore. The smelter existed at the site until 1955, when it was dismantled and moved to another mine.

18. Exploration of gold reserves in the area resumed in 1970. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the

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Homestake pit located adjacent to the historical Yellow Pine pit within the area of disturbance for Midas Gold's proposed Yellow Pine pit. Processing occurred primarily by heap leaching using both one-time use pads and on/off pads where the ore was loaded on, leached and then removed to allow the next load of ore to be placed. The leaching occurred primarily in the Meadow Creek valley. The use of a cyanide heap-leaching process to recover gold from low-grade ore was initiated and full-scale operation began in 1982. Heap-leach facilities were constructed along the north side of Meadow Creek to recover gold from low-grade ore.

19. There are several contaminant sources in the area including mill and smelter tailings, spent ore from heap leaching operations, contaminated soils in the smelter area, open pit mines, abandoned adits, tailings, and waste rock dumps.

20. [Place holder: insert hazardous substances at the Site. EPA reviewing information to summarize.]

21. A Preliminary Assessment/Site Investigation was conducted on public lands administered by the USFS in 2001. The Site was proposed for listing on the National Priorities List in 2001 (Federal Register, Vol. 66, No. 178, Thursday, September 13, 2001). There has been no change in the status since 2001, and the Stibnite/Yellow Pine Mining area, which includes the mine site, remains as "proposed" status on the NPL.

22. [Identification of the populations at risk, both human and non-human.]

23. [Health/environmental effects of some major contaminants.]

24. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

25. Beginning in 1982, the IDEQ began monitoring the Site. The IDEQ sampled surface water and groundwater for hazardous substances generated by mining operations. Sampling results showed exceedances of cyanide for the EPA quality criteria for water for fresh water aquatic organisms.

26. On September 25, 1991, the EPA placed the Yellow Pine Mine Area on the Federal Facilities Docket. The USFS~~Forest Service~~ initiated a CERCLA Section 104 and 107 response and enforcement action at the Site.

27. In 1995, former owner/operator Stibnite Mine, Inc. entered into an Administrative Order on Consent (AOC) with the EPA Region 10 to mitigate environmental problems associated with the historic Bradley tailings in the upper Meadow Creek Valley. The AOC required Stibnite Mine, Inc. to stabilize the upper Meadow Creek Diversion Channel and to treat the flow exiting the diversion to meet water quality standards.

28. In 1999, the USFS~~Forest Service~~ completed a time-critical removal action at the pilot plant. The action consisted of covering and capping ponds constructed by Canadian Superior Mining (U.S.) Limited in 1979 and were used as a pilot test for processing gold. The pilot test used cyanide-leaching technology for ore extracted from the site (Forest Service 2004).

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29. By the end of 1999, most of the SMI facilities and haul roads were reclaimed under a reclamation plan approved by IDEQ, IDL, and the UFS~~Forest Service~~ and implemented by IDL. Reclamation and closure continued in 2000.

30. In 2002, the USFS~~Forest Service~~ completed two time-critical removal actions (TCR). The first was to remove tailings from the Poison Pond area. The Poison Ponds were located along Meadow Creek south of Hecla's heap leach pad. Approximately 2,500 cubic yards were removed and placed in a repository cell located on the northwest Bradley waste dump. The second TCR was in the smelter stack area. This action consisted of removing the wood flume and ash to an off-site EPA approved facility. This TCR also included removal and placement of 400 cubic yards of soil in the same repository cell located on the northwest Bradley waste dump. The soil was removed from below the smelter stack flume.

31. The USFS~~Forest Service~~, IDL, IDEQ, and EPA have performed several removal actions in the Stibnite/Yellow Pine Mining Area including removal of minor quantities of legacy tailings and the smelter stack in 2003, re-channelization of lower Meadow Creek in 2005, and covering certain legacy tailings-related impoundments with clean fill in 2009.

32. In the summer of 2003, the USFS and IDEQ found mine wastes containing very high levels of arsenic at the Stibnite Mine. These arsenic "hot spots" were in the northwest Bradley waste dump, which was an unsecured area with unrestricted public access. In 2004, EPA through its contractor, Environmental Quality Management (EQM), implemented a removal of the contaminated waste, regrading of the removal area, and soil placed on top. The area was later seeded with native plants and covered with straw. Excavated waste was placed in the on-site Forest Service "repository cell", an area designed to safely store the waste and prevent exposure to the public.

33. In 2004, a Meadow Creek Engineering Evaluation/Cost Analysis (EE/CA) was completed under a Forest Service contract by Science Applications International Corporation (SAIC), including specifications and design of the recommended alternative. Also, in 2004, a Biological Assessment (BA) was completed, as required by the Endangered Species Act (ESA), and submitted to the USFWS and National Marine Fisheries Service.

34. In 2005, the USFS~~Forest Service~~ and EPA completed a CERCLA removal action in Meadow Creek between Blowout Creek and its confluence with the EFSFSR. Legacy tailings that were contributing elevated levels of arsenic to the stream were excavated from a 19-acre area and placed in an engineered repository in the SODA and 3,500 feet of stream channel was reconstructed, providing habitat suitable for salmonid spawning.

35. In 2009, Respondents began acquiring land and mineral interests at the Site and is currently has ownership and operational control over the lands and mining claim(s) at the Site. Midas Gold has conducted exploratory drilling and is currently seeking a mine operating permit through the National Environmental Policy Act process.

36. Respondent proposes to develop and operate a mining operation that produces gold and silver doré, and antimony concentrates from ore deposits associated with Midas Gold's mining claims and rights in the project area. In addition, Respondents' proposed mining plan

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states that Respondents will undertake cleanup and reclamation at the Site before, during, and after the proposed mining.

37. In general, Midas Gold's proposed development of the mineral resources would include construction of access and haul roads within the mine site; construction of supporting infrastructure for the mine site (e.g., worker housing and support facilities); open pit mining; ore processing at the mine site for the recovery of gold, silver, and antimony; placement of tailings in a composite- lined TSF; and placement of development rock in engineered and designed facilities.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Stibnite Mine 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 "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondents ares "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondents are the "owners" and/or "operators" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

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

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

g. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

40. **Selection of Contractors, Personnel**. All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least __ days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within __ days after EPA's disapproval. 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 EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

Commented [A5]: EPA will be the lead agency and will be the primary point of contact with Midas. However, please suggest areas where IDEQ, Tribes, USFS should be inserted instead of just EPA.

Commented [A6]: Given that close to half of the site is on NFS land, I think it might be less confusing to refer to the United States or Federal Agencies instead of EPA. The specific decision-making, roles, and consultation between EPA and the USFS can be separately addressed as needed.

Commented [A7]: The governments need to discuss whether each mention of EPA approval needs to be "EPA/USFS approval". Also, does it make sense to have one statement in the beginning of the document that says something to the effect that "EPA will consult with the IDEQ and the Tribes when making a decision/approving documents" rather than putting in the consulting language each and every time we say EPA will do something?

41. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement and shall submit to EPA 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 the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph [REF _Ref461736563 \r \h * MERGEFORMAT] (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within __ days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

42. EPA has designated Kathy Cerise of the Superfund Emergency Management Division in EPA Region 10 as its Remedial Project Manager (RPM). EPA will notify Respondents of a change of its RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to

the EPA RPM in accordance with Paragraph [REF _Ref446583619 \r \h * MERGEFORMAT].

43. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA RPM from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

44. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at [HYPERLINK "https://semspub.epa.gov/src/document/11/128301"], "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at [HYPERLINK "http://semspub.epa.gov/src/document/11/156756"], and guidance referenced therein, and guidance referenced in the SOW. If a mine operating permit is not issued and/or mining does not occur at the Site, Respondents remain obligated to perform the Work. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, evaluating and proposing early actions based on the results of the human health and ecological risk assessments, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

45. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

46. **Activities and Deliverables**

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a. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at [HYPERLINK "https://semspub.epa.gov/src/document/11/128301"], "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at [HYPERLINK "http://semspub.epa.gov/src/document/11/156756"], and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

47. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

48. **Modification of the RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to EPA's Project Coordinator within ▒ days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's RPM by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

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c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI/FS.

d. Respondents shall confirm their willingness to perform the additional work in writing to EPA within 7 days after receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

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

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

49. **Off-Site Shipments**

a. 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 § 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).

b. 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 EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. 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

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Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

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

51. **Progress Reports**. In addition to the deliverables set forth in this Settlement, Respondents shall submit written monthly progress reports to EPA by the ___ day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

a. describe the actions that have been taken to comply with this Settlement;

b. include all results of sampling and tests and all other data received by Respondents;

c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and

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

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

52. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to EPA's RPM at1200 6th Avenue, Seattle, Washington 98101, (206) 553-2589, [HYPERLINK "mailto:cerise.kathy@epa.gov"], to the USFS (Kathy Zamba) at 324 25th Street, Room 3403, Ogden, UT 84401, (801) 625-5454, [HYPERLINK "mailto:Kathy.zamba@usda.gov"], and to the State at [**insert contact information**]. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

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(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph [REF _Ref425414746 \w \h * MERGEFORMAT]. All other deliverables shall be submitted in the electronic form specified by EPA's RPM. If any deliverable includes maps, drawings, or other exhibits that are larger

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than 8.5 x 11 inches, Respondents shall also provide paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the ESRI File Geodatabase format; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at [HYPERLINK "https://edg.epa.gov/EME/"].

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult [HYPERLINK "https://www.epa.gov/geospatial/geospatial-policies-and-standards"] for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

53. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement EPA 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) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions**. Upon receipt of a notice of disapproval under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref422321426 \r \h * MERGEFORMAT] (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref422321426 \r \h * MERGEFORMAT], Respondents shall, within __ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (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 EPA under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref447018382 \r \h * MERGEFORMAT] (Initial Submissions) or Paragraph [REF _Ref322533499 \w \h * MERGEFORMAT] (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 [REF _Ref447018476 \r \h] (Stipulated Penalties) for violations of this Settlement.

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 EPA.

55. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

56. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

57. For all remaining deliverables not listed in Paragraph [REF _Ref446931936 \r \h * MERGEFORMAT], Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

58. **Material Defects**. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph [REF _Ref447018382 \r \h * MERGEFORMAT] (Initial

Submissions) or [REF _Ref322533499 \r \h * MERGEFORMAT] (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement 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 [REF _Ref447018476 \r \h] (Stipulated Penalties).

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

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

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

61. **Laboratories**

a. Respondents shall ensure that EPA, the USFS, IDEQ, and the Shoshone Bannock Tribes' personnel and its their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at [HYPERLINK "https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures"]. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at [HYPERLINK "https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements"], and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program ([HYPERLINK "https://www.epa.gov/superfund/programs/clp/"]), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" ([HYPERLINK "https://www.epa.gov/hw-sw846"]), "Standard Methods for the Examination of Water and Wastewater" ([HYPERLINK "http://www.standardmethods.org/"]), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" ([HYPERLINK "https://www.epa.gov/ttnamti1/airtox.html)"].

b. Upon approval by the United States~~EPA~~, after a reasonable opportunity for review and comment by the ~~USFS~~, the State, and the Shoshone Bannock Tribes, Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control

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(QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

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

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

62. **Sampling**

a. Upon request, Respondents shall provide split or duplicate samples to EPA. Respondents shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA, in the next monthly progress report as described in Paragraph [REF _Ref425418789 \r \h * MERGEFORMAT] (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

c. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

XI. PROPERTY REQUIREMENTS

63. **Agreements Regarding Access and Non-Interference**. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by

Respondents, Respondents shall, commencing on the Effective Date, provide EPA, USFS, IDEQ, and the Shoshone Bannock Tribes, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, as may be needed to implement this Settlement. Beginning on the Effective Date of this Settlement, USFS shall permit access to the portions of the Site located on federally managed land to Respondents and its authorized representatives, as necessary to perform the Work required under this Settlement.

64. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents (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 (i) provide EPA, USFS, IDEQ, the Shoshone Bannock Tribes and Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] interfere with or adversely affect the implementation or integrity of the Work. Respondents shall provide a copy of such access agreement(s) to EPA.

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 EPA and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it 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 [REF _Ref326224281 \w \h] (Payment of Response Costs).

66. If EPA determines 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 EPA's efforts to secure and ensure compliance with such Institutional Controls.

XII. ACCESS TO INFORMATION

67. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, 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 EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

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68. **Privileged and Protected Claims**

a. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph [REF _Ref358288570 \w \h * MERGEFORMAT], and except as provided in Paragraph [REF _Ref383005108 \w \h * MERGEFORMAT].

b. If Respondents assert a claim of privilege or protection, they shall provide EPA 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 EPA 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 EPA 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; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

69. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section [REF _Ref326220583 \w \h * MERGEFORMAT] (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 Settlement for which Respondents assert business confidentiality claims. Records claimed as 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 EPA [and the State], or if EPA has 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.

70. Notwithstanding any provision of this Settlement, EPA 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

71. Until 10 years after EPA provides Respondents with notice, pursuant to Section [REF _Ref326220653 \r \h] (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable

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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 its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that 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.

72. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph [REF _Ref358291431 \r \h] (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

73. 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 notification of potential liability by EPA, USFS, or the State and that it has fully complied with any and all EPA, USFS, 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.

XIV. COMPLIANCE WITH OTHER LAWS

74. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the RI/FS. 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 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 [REF _Ref364856006 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

75. **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

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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 Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (206) 553-1263 and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section [REF _Ref326224281 \r \h] (Payment of Response Costs).

76. **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. § 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 EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (206) 553-1263, and the National Response Center at (800) 424-8802. 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.

77. For any event covered under this Section, Respondents shall submit a written report to EPA within 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 EPA, USFS, IDEQ, and TRIBES' RESPONSE COSTS

Commented [A9]: USFS, State, Tribe need to add their cost provisions in this section

78. **Payment for EPA Past Response Costs**

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $____ for Past Response Costs. Respondents shall make payment 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 _____ and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

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500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
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and shall reference Site/Spill ID Number ____ and the EPA docket number for this action.

For online payment:

Respondents shall make payment at [HYPERLINK "https://www.pay.gov"] to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

b. At the time of payment, Respondents shall send notice that payment has been made to Kathy Cerise, 1200 Sixth Avenue, MC___, Seattle, WA 98101, 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

Such notice shall reference Site/Spill ID Number ____ and the EPA docket number for this action.

c. **Deposit of EPA Past Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph [REF _Ref326155583 \w \h * MERGEFORMAT] shall be deposited by EPA in the Stibnite Mine Site Special Account 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 Special Account 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.

d. **Payments for EPA Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis EPA will send Respondents a bill requiring payment that includes a cost summary. Respondents shall make all payments within thirty (30) days of receipt of each bill requiring payment. Respondents shall make all payments required by this Paragraph in the manner required by Paragraph 76, with notice as required by Subparagraph 76.b. The total amount paid will be deposited by EPA in the Stibnite Mine Special Account 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.

79. **Interest**. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The

Interest on Future Response Costs shall begin to accrue on the date of the bill. 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 United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section [REF _Ref364855845 \r \h] (Stipulated Penalties).

80. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section [REF _Ref364855795 \w \h] (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT] (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondents shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 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 to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT], 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 EPA's Project Coordinator 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 EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT]. 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 to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT]. 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 [REF _Ref364855795 \w \h] (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVII. NATURAL RESOURCE DAMAGES

81. For the purposes of Section 113(g)(1) of CERCLA, the Parties agree that, upon the Effective Date of this Settlement for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.

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XVIII. DISPUTE RESOLUTION

Commented [A10]: For IDEQ, USFS, Shoshone Bannock Tribes: discuss DR for disputes over non-EPA costs.

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

83. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, or, in the case of disputes between Settling Defendant and the USFS, IDEQ, or the Tribes under Paragraphs [payment of costs]___, they shall send EPA, or if applicable, another Party, a written Notice of Dispute describing the objection(s) within 20 days after such action. Respondents shall have 20 days from EPA's or another Party's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period maybe extended at the sole discretion of the Party with whom Respondents raised the dispute. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

Commented [A11]: Sean to check if this is OK. I'm imagining disputes over State-incurred costs.

84. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to EPA's RPM, or if applicable, to another Party's Project Manager. The Party with whom Respondents raised the dispute may, within 30 days thereafter, submit a statement of position. Thereafter, a management official at the appropriate supervisory level will issue a written decision on the dispute to Respondents. EPA's or another Party's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's or another Party's decision, whichever occurs.

85. Except as provided in Paragraph [REF _Ref326155627 \w \h * MERGEFORMAT] (Contesting Future Response Costs) or as agreed by EPA, 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 Settlement. Except as provided in Paragraph [REF _Ref408928773 \r \h * MERGEFORMAT], 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 Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref364855845 \w \h] (Stipulated Penalties).

XIX. FORCE MAJEURE

86. "Force Majeure" for purposes of this Settlement, 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 Settlement 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

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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.

87. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Emergency Management Division, EPA Region 10, within 24 hours of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide in writing to EPA 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 EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph [REF _Ref408928929 \w \h * MERGEFORMAT] and whether Respondents have exercised their best efforts under Paragraph [REF _Ref408928929 \w \h * MERGEFORMAT], EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

88. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA 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 EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

89. If Respondents elect to invoke the dispute resolution procedures set forth in Section [REF _Ref364855795 \w \h * MERGEFORMAT] (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's 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 [REF _Ref408928929 \w \h * MERGEFORMAT] and [REF _Ref408929054 \w \h * MERGEFORMAT]. 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 Settlement identified to EPA.

90. The failure by EPA, USFS, IDEQ, or the Tribes to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XX. STIPULATED PENALTIES

91. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs [REF _Ref453850196 \r \h * MERGEFORMAT] and [REF _Ref377733892 \w \h * MERGEFORMAT] for failure to comply with the obligations specified in Paragraphs [REF _Ref462842168 \r \h * MERGEFORMAT] and [REF _Ref377733892 \r \h * MERGEFORMAT], unless excused under Section [REF _Ref364856006 \w \h * MERGEFORMAT] (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

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

Penalty Per Violation Per Day	Period of Noncompliance
$ 5,000	1st through 14th day
$ 7,500	15th through 30th day
$ 10,000	31st day and beyond

Ex. 5 Deliberative Process (DP)

a. **Obligations**

(1) Payment of any amount due under Section [REF _Ref326224281 \w \h] (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section [REF _Ref453851067 \w \h] (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph [REF _Ref326155627 \w \h] (Contesting Future Response Costs).

(4) [Will insert list of major deliverables and milestones when SOW is finalized.]

93. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in Paragraph [REF _Ref462842168 \w \h]:

Penalty Per Violation Per Day	Period of Noncompliance
$ 2,500_____	1st through 14th day
$ 5,000_____	15th through 30th day
$ 7,500_____	31st day and beyond

Ex. 5 Deliberative Process (DP)

94. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref408837399 \w \h * MERGEFORMAT] (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs [REF _Ref408837399 \r \h * MERGEFORMAT] (Work Takeover) and [REF _Ref362014500 \w \h * MERGEFORMAT] (Access to Financial Assurance).]

Commented [A14]: EPA will be calculating this number.

95. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section [REF _Ref408930226 \w \h * MERGEFORMAT] (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the appropriate EPA Management Official, under Paragraph [REF _Ref408843896 \w \h * MERGEFORMAT] (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

97. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph [REF _Ref326154300 \w \h * MERGEFORMAT] (Payments for Future Response Costs).

98. 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 [REF _Ref408928773 \w \h * MERGEFORMAT] 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 [REF _Ref408929252 \w \h * MERGEFORMAT] 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.

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

100. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant 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 Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref408837399 \w \h * MERGEFORMAT] (Work Takeover).

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

XXI. COVENANTS BY THE UNITED STATES

Commented [A15]: Add covenants by IDEQ and Tribes?

102. Except as provided in Section [REF _Ref364856274 \w \h * MERGEFORMAT] (Reservations of Rights by the United States), the United States covenants 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 Work , Past Response Costs, and 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 obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXII. RESERVATIONS OF RIGHTS BY THE UNITED STATES

Commented [A16]: Add reservations for IDEQ and Tribes?

103. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States 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 Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

104. The covenant not to sue set forth in Section [REF _Ref364857586 \r \h * MERGEFORMAT] (Covenants by the United States) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

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

b. liability for costs not included within the definitions of Past Response Costs or 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 Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

105. **Work Takeover**

a. In the event EPA determines 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, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph [REF _Ref408843613 \w \h * MERGEFORMAT], Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT]. Funding of Work Takeover costs is addressed under Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] (Access to Financial Assurance).]

c. Respondents may invoke the procedures set forth in Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT]. However, notwithstanding Respondents' invocation of such dispute

resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT] until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph [REF _Ref408843896 \w \h * MERGEFORMAT] (Formal Dispute Resolution).

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

XXIII. COVENANTS BY RESPONDENTS

106. 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, Past Response Costs, Future Response Costs, or this Settlement, including, but not limited to:

Commented [A17]: State and Tribes, please insert appropriate language for covenants by Responsent.

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, Past Response Costs, Future Response Costs, and this Settlement;

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

107. Except as provided in Paragraph [REF _Ref408843999 \w \h * MERGEFORMAT] (Waiver of Claims by Respondents) these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section [REF _Ref364856274 \r \h * MERGEFORMAT] (Reservations of Rights by EPA), other than in Paragraph [REF _Ref377734500 \w \h * MERGEFORMAT] (liability for failure to meet a requirement of the Settlement), [REF _Ref377734512 \w \h * MERGEFORMAT] (criminal liability), or [REF _Ref424916441 \r \h * MERGEFORMAT] (liability for violations of federal or state law), 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.

108. Nothing in this Agreement 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).

109. Respondents reserve, and this Settlement 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

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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 EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

110. **Waiver of Claims by Respondents**

a. 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:

(1) **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;

b. **Exception to Waiver**

The waiver under this Paragraph 108 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 if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXIV. OTHER CLAIMS

111. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA 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 Settlement.

112. Except as expressly provided in Paragraphs [REF _Ref408843999 \w \h] (Waiver of Claims by Respondents) and Section [REF _Ref364857586 \w \h] (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, 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.

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113. No action or decision by EPA pursuant to this Settlement 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).

XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

114. Except as provided in Paragraphs [REF _Ref408843999 \w \h] (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section [REF _Ref364855096 \w \h] (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 which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the 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).

115. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States 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 Settlement. The "matters addressed" in this Settlement are the Work, Past Response Costs, and Future Response Costs.

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

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

118. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA and/or the USFS, 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 EPA set forth in Section [REF _Ref364857586 \w \h] (Covenants By the United States).

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119. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from such Respondent the payments required by Paragraphs [REF _Ref326155588 \w \h * MERGEFORMAT] (Payment for Past Response Costs) and, if any, Section [REF _Ref364855845 \w \h] (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph [REF _Ref326219447 \r \h * MERGEFORMAT] and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the United States gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by the United States.

XXVI. INDEMNIFICATION

120. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA and the USFS's 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 Settlement. 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 Settlement. 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 Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

121. 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.

122. 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

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performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. INSURANCE

123. No later than 30 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 [REF _Ref326220653 \r \h] (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 EPA and USFS as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA 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 Settlement, 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 Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA and the USFS that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, 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 EPA under this Paragraph identify the Stibnite Mine Site, Idaho and the EPA docket number for this action.

XXVIII. FINANCIAL ASSURANCE

124. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $ [ ] ("Estimated Cost of the Work"), for the benefit of EPA. 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 [HYPERLINK "https://cfpub.epa.gov/compliance/models/"], and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

Commented [A18]: EPA is working with EPA HQ to determine the appropriate amount of FA.

Commented [A19]: What about for the benefit of the USFS with respect to the NFS land? If EPA were to recover such funds, could they be spent on NFS land? If not, how can this be addressed?

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 EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

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c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

125. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of Paragraph [REF _Ref362014481 \w \h] (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

[NOTE REGARDING PARAGRAPH [REF _Ref362014500 \r \h] (Access to Financial Assurance): Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

126. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT], then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

b. If EPA is 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 30 days prior to the

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cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT], either: (1) EPA is 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; or (2) the financial assurance is a demonstration or guarantee under Paragraphs [REF _Ref362014207 \w \h * MERGEFORMAT] or [REF _Ref362014209 \w \h * MERGEFORMAT], then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within __ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made 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.

e. All EPA Work Takeover costs not paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] must be reimbursed as Future Response Costs under Section [REF _Ref326224281 \w \h * MERGEFORMAT] (Payment of Response Costs).

127. **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 EPA in accordance with Paragraph [REF _Ref362014176 \r \h * MERGEFORMAT], 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. EPA will notify Respondents of its 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) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section [REF _Ref364855795 \w \h] (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA 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 EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or

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alternative financial assurance mechanism in accordance with Paragraph [REF _Ref362014176 \r \h * MERGEFORMAT].

128. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section [REF _Ref326220653 \w \h] (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section [REF _Ref364855795 \w \h] (Dispute Resolution).

XXIX. MODIFICATION

129. EPA's RPM may modify any plan or schedule or the SOW]in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

130. If Respondents seek permission to deviate from any approved work plan or schedule or the SOW, Respondents' RPM shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph [REF _Ref326219627 \r \h * MERGEFORMAT].

131. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

132. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs and Record Retention, EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement.

XXXI. INTEGRATION/APPENDICES

133. This Settlement [and its appendices] constitute[s] the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations,

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agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. [The following appendices are attached to and incorporated into this Settlement:

a. "Appendix _" is the description and/or map of the Site

b. "Appendix _" is the SOW.

XXXII. ADMINISTRATIVE RECORD

134. EPA and the USFS will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

XXXIII. EFFECTIVE DATE

135. This Settlement shall be effective on the date that it has been signed by all of the Parties [and concurred on by the United States Attorney General].

Commented [A20]: I think the AG needs to sign agreements with multiple federal agenices, but I'm not sure.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Commented [A21]: Need to add signature pages for IDEQ and Tribe.

_____
Dated

_____
[Name]
Regional Administrator (or designee/delegatee), Region __

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Signature Page for Settlement Regarding _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____
Dated

_____
[Name]
[Title]
[Company]
[Address]